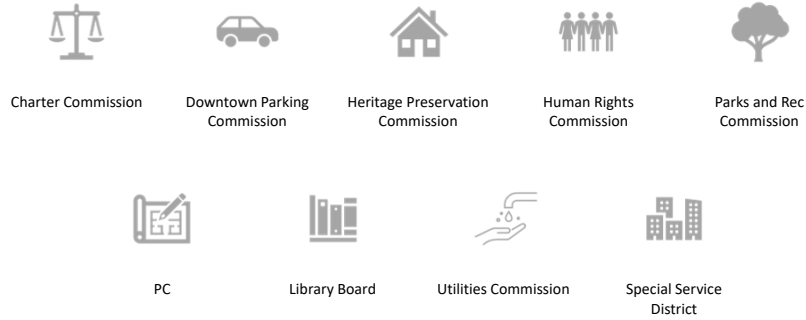




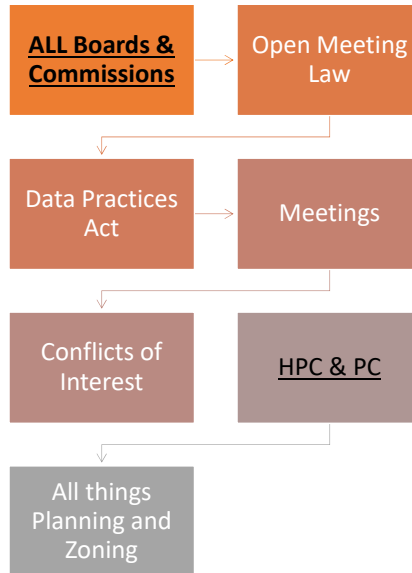
## Intro - me

- Firm:
  - LeVander, Gillen & Miller, P.A. = general practice law firm (circa 1929) focusing 50% of its business on representing cities of various sizes
  - Stillwater (since 2018), Cottage Grove, Hastings, Lilydale, Forest Lake, South St. Paul, Randolph, Sunfish Lake, Baxter, LeRoy and South Haven
- Experience:
  - Undergrad at Augustana University, law school at William Mitchell
  - Employed at LeVander since graduating from Law School
  - Over 25 years representing cities
  - Jon North is my professional reference

# Boards and Commission



## AGENDA



## General comments

Big picture discussion

No specific discussion about any projects, pending applications

Stop me if you have questions

Power Point is available if you want it – contact the City Clerk

Boards/Commissions Handbook is available on website or in your dropbox if you have an iPad



Open Meeting Law  
Minn. Stat. §13D.01

All meetings of -

The City; or	A committee, subcommittee, board, department or commission of the City,
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Must be open to the public.



## Open Meeting Law

- *Inside the room meetings*

Notice of the date, time, location is posted on the bulletin board and City's website

(including the remote location if a member is participating remotely)

Open Meeting Law  
Minn. Stat. §13D.02 Subd. 1(a)

Remote Location allowed IF:

- At least one person is in the regular meeting location
- All members and the public can see/hear everyone
- All votes are conducted by roll call
- Remote location is open and accessible to the public (for now)
- Need at least 3 days' notice (cannot decide at the last minute to be remote)

Open Meeting Law

- Do we have to allow *all* members of the public attend?
  - Yes, unless they are committing a crime
- What if members of the public are disruptive?
  - Stop the meeting (call a recess or adjourn)
- Do we have to have public/open forum where members of the public can talk?
  - No, but if you do, treat everyone the same (same time limit or no time limit)
- Can the City provide food/meals at meetings?
  - No, unless it is during a normal mealtime or an extended amount of time such that normal people would need to eat

Meetings

“Meetings” (not defined in the Open Meeting Law) Defined in case law:

- A quorum of the body;
- Discusses, decides, or receives information as a group; and
- Information is related to official business



Open Meeting Law

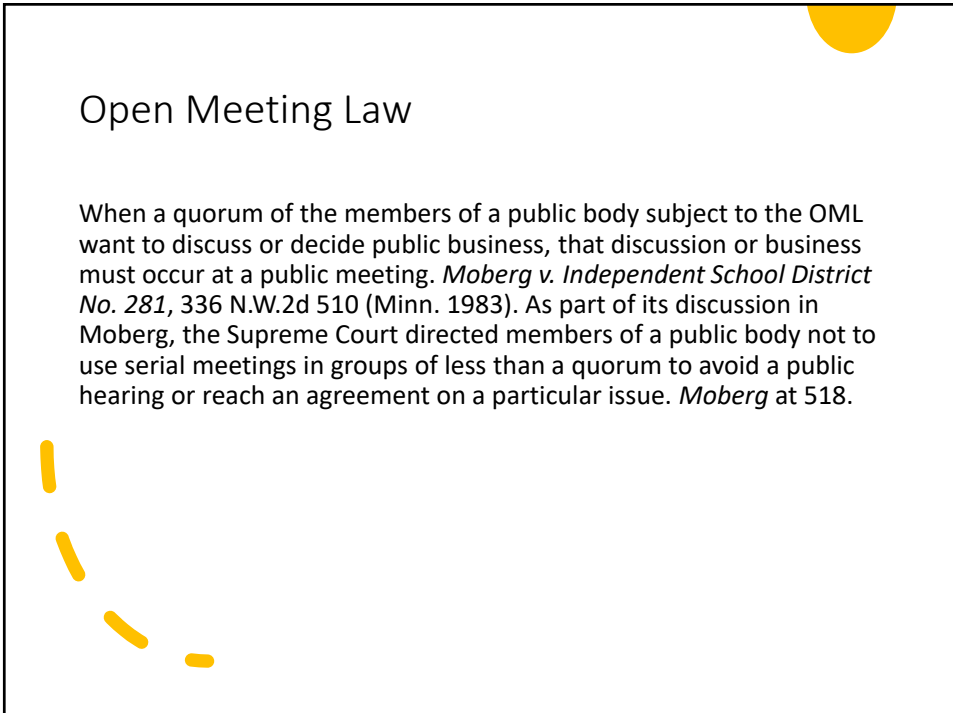
- *Outside the room meetings*
  - Email
  - Telephone
  - Social media



## Open Meeting Law

Email

- Too many members involved results in a quorum;
- Message is received by the group;
- Message contains information related to official business.



## Open Meeting Law

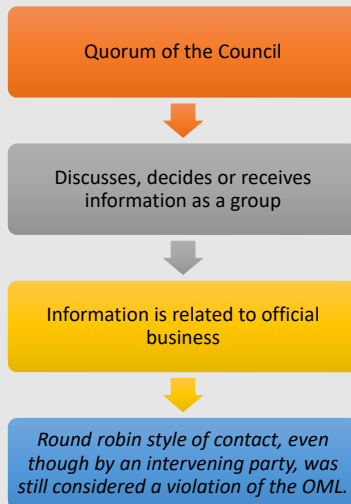
When a quorum of the members of a public body subject to the OML want to discuss or decide public business, that discussion or business must occur at a public meeting. *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983). As part of its discussion in *Moberg*, the Supreme Court directed members of a public body not to use serial meetings in groups of less than a quorum to avoid a public hearing or reach an agreement on a particular issue. *Moberg* at 518.

# Open Meeting Law

IPAD Opinion 06-017

- Background:
  - City was hiring a new finance director
  - Top candidate declined
  - #2 candidate quit after a week
  - City Administrator conducted a telephone poll of the four council members and asked if they could hire the third candidate
  - Each council member said yes

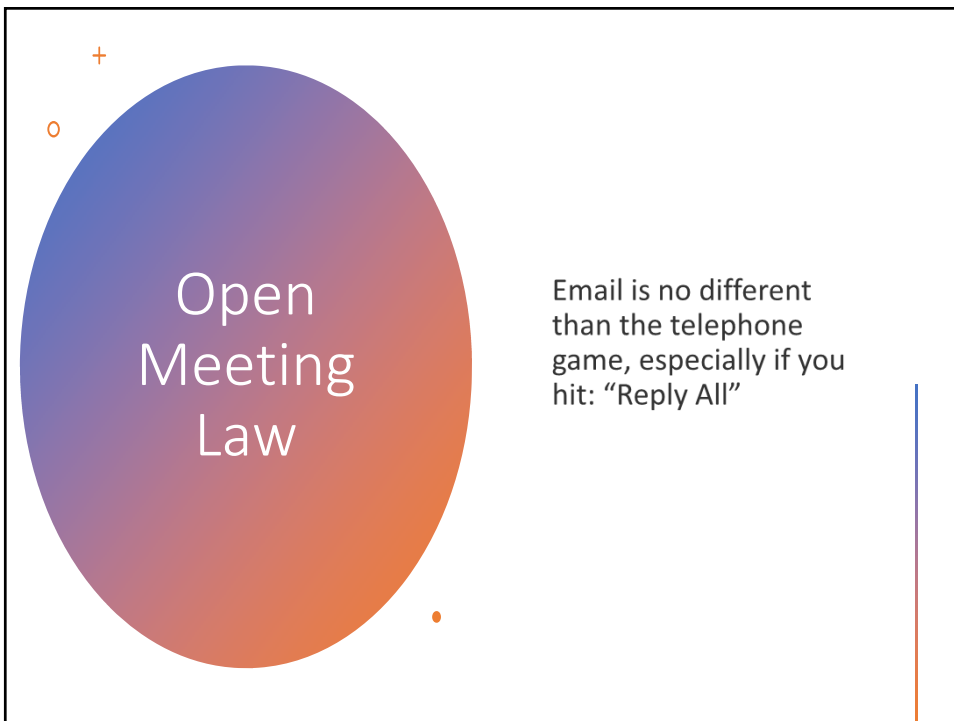
## Open Meeting Law





## Open Meeting Law

“The Commissioner will also take this opportunity to remind members of public bodies that the OML requires that public business be conducted in public. *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1, 4-5 (Minn. 1983). While it may be appropriate for the city administrator to inform council members that a City employee has resigned, the better process would be to convene a special meeting of the Council to discuss what the appropriate next step(s) are in the hiring process. Avoiding public scrutiny of a decision by having a city employee serially contact Council members is the type of conduct that was of concern to the Supreme Court in *Moberg*.”



+

o

Open Meeting Law

Email is no different than the telephone game, especially if you hit: “Reply All”

# Open Meeting Law

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- *Lessons Learned:*

- Email/phone calls/texts/instant messaging should be used:
  - To receive information from the City (one-way communication)
  - Between 2 (or 3) members only, without forwarding or copying each other

**No kidding – you cannot use any form of communication to talk to each other outside of a meeting if a quorum is involved and it relates to your board or committee business**

# Open Meeting Law



OML Pop Quiz:

Can my Commission share a document using Googledocs so others can collaborate on it?

# Open Meeting Law



## Apply the test:


- Quorum of the commission
- Discusses information as a group
- Related to official business

If the answer is No to any of the above, then not a violation.

## Open Meeting Law

### Penalties

- \$300 for each occurrence & attorney's fees (up to \$13,000)
- Removal from office for 3 or more violations
- Really embarrassing if called on it



## DATA PRACTICES ACT

- Minn. Stat. Chapter 13

*GENERAL RULE:*

All data is public unless it fits under an exception.

## Data Practices Act

- *Data* = All data collected, created, received, maintained or disseminated by the City, regardless of its physical form, storage media or conditions of use.
- Examples:
  - Documents you consider/review at meetings
  - Audio tapes & Video recordings (of meetings)
  - Computer storage media (external drives or storage devices) related to your business
  - Emails
  - Text messages

# Data Practices Act

All cities are required to have a Responsible Authority and a Compliance Officer to administer the Act.

Responsible Authority needs to have copies of all of the data that you review

When asked for data, refer all people to the Responsible Authority (City Clerk). DO NOT provide the data yourself.

# Data Practices Act

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Remember:

1. What you put in writing, documents that you possess, internal electronic files you keep about official business could be subject to a data practices request.
2. You should not be responsible for keeping this data.
3. *Never write anything that would embarrass you if it became public.*



## YOUR Meetings

- Roberts Rules of Order
  - Open Subject Matter
  - Planner's Overview
  - Invitation to Applicant
  - Open Public Hearing
  - Close Public Hearing
  - Motion
  - Further Discussion
  - Vote

## Meetings

- Roberts Rules of Order
  - Introduce Subject Matter
  - Overview
  - Invitation to Applicant/if any
  - Open/close Public Hearing/if any
  - Motion
  - Further Discussion
  - Vote



## Meetings (further discussion)



Get caught in the weeds



Focus on things outside your scope and authority



Want more information than what is available at the meeting



You disagree with each other

## Meetings

- Get caught in the weeds
  - Focus too much on the details (color of the door, location of the garage) not the bigger picture (does it comply)




## Meetings

- Focus on things outside your scope and authority
  - Let's study everything (must focus on thing you can control)
  - Squirrels, bike racks, solar panels, community gardens, open space, the broken fountain in the park (but you're on the Charter Commission)







## Meetings

- What if you want more information than what is available at the meeting?

Should you...

- Look it up during the meeting
- Text others asking for more information

## Meetings

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The information you receive may not be reliable (Dr. Google)

---


You may be misinterpreting the information you find (reading too fast)

---

You are not paying attention to the meeting if you are doing research (distracted)

---

*We don't do math at the table (not enough thought)*



## Meetings


Better idea:

- Continue the matter and ask Staff to find out the answers or research it between meetings; or
- Have the group decide if you can make a decision without the information

## Meetings

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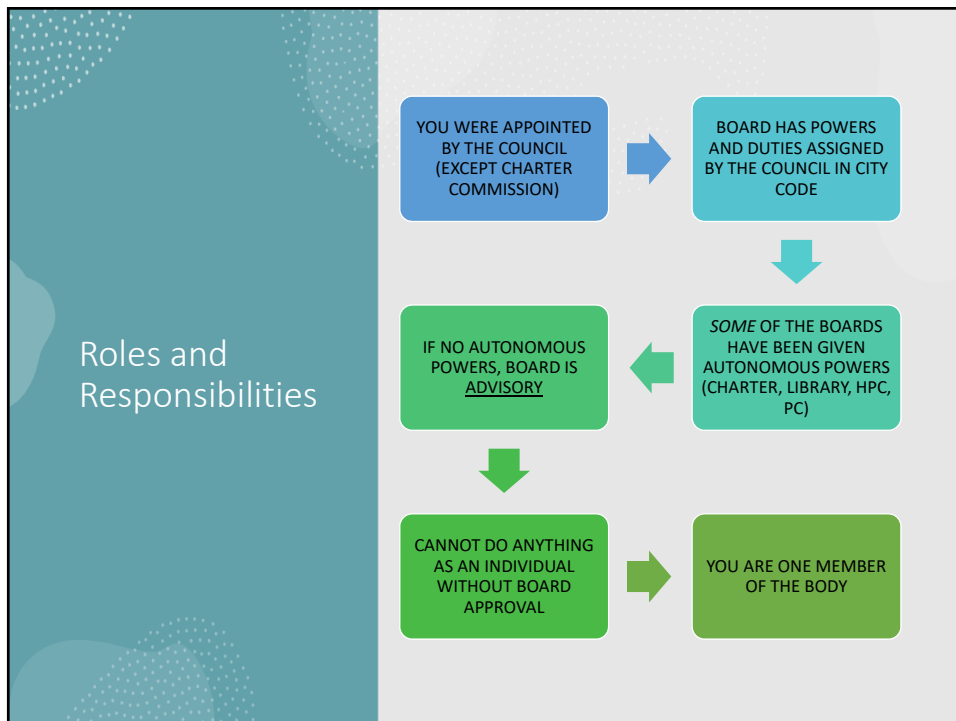
- Chair of the meeting has the duty to control the meeting.
  - Can redirect the discussion if they think it is outside the scope
  - Can call for a motion when issues are getting too contentious, have been thoroughly exhausted or when there is silence
  - Chair should repeat who made motion/second (especially when minutes are taken by a tape recorder)
- Sometimes you lose – accept it and move on (don't belabor the point)



## Minutes of Meetings

Minutes are a summary of the record, not a verbatim recitation of the meeting

1. A record of the meeting must be kept
2. The record reflects attendance, agenda items and actions taken
3. If it was a public hearing, then the facts that led to the decision need to be in the record (i.e. Staff reviewed their report, there was discussion)
4. If it is general discussion that led to an action: "There was general discussion about whether the city needed to add trash cans downtown. Motion was made by X and seconded by Y that there should be more trash cans and Z was asked to talk to the City Clerk about how to do it. Motion passed 4-0"
5. Who brought up the topic or exactly what was said is not important. As long as the message is correct, don't get hung up on the words (City pays contractor to transcribe the minutes)





## Roles and Responsibilities

The City Council could not do its job unless someone made the sausage

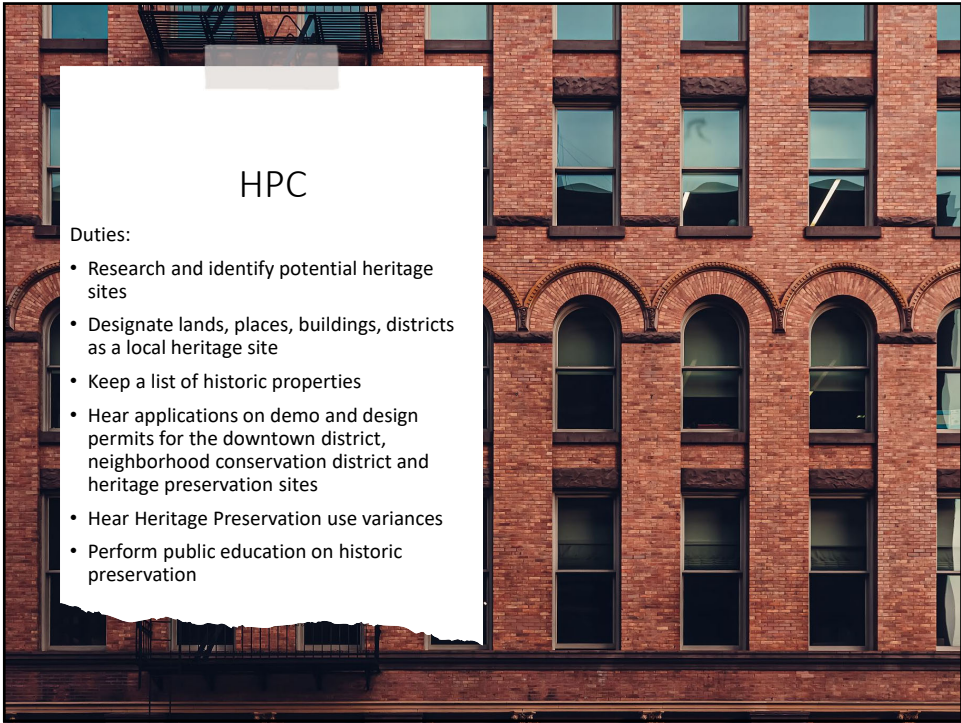
*You make the sausage*

## Downtown Parking Commission

### Duties:

- Make recommendations to the Council about the management of downtown parking
- Obtain public comments about parking improvement projects
- Explore options to make the parking system financially self-sustaining
- Other duties as assigned





## HPC

Duties:

- Research and identify potential heritage sites
- Designate lands, places, buildings, districts as a local heritage site
- Keep a list of historic properties
- Hear applications on demo and design permits for the downtown district, neighborhood conservation district and heritage preservation sites
- Hear Heritage Preservation use variances
- Perform public education on historic preservation

## Human Rights Commission

Purpose: Advise the Council to ensure all citizens have an equal opportunity in those human rights areas protected by the law. (race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation)

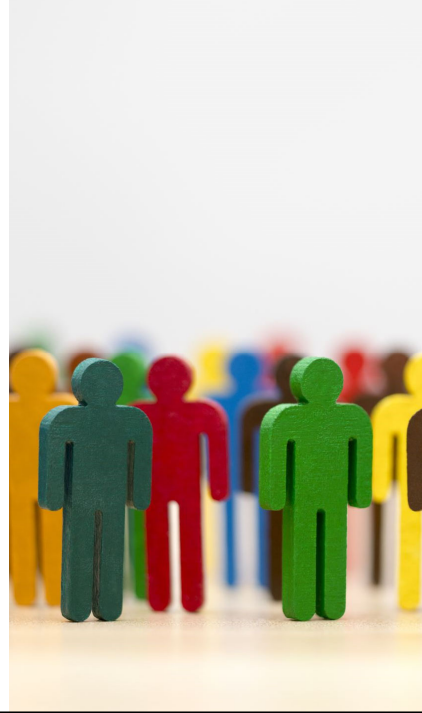
Duties:

- Study and review programs and policies to help the Council to create equal opportunity and eliminate discrimination and inequalities.
- Advise and aid the City Council in implementing recommendations regarding:
  - Programs about the State Human Rights Act.
  - Programs about affirmative action.
  - Programs about providing equal opportunity and eliminating barriers.
  - Programs designed to alleviate community tension.



## Human Rights Commission (cont.)

- Attempt to conciliate, *within its authority*, all grievances involving discrimination occurring within the City and make all appropriate reports to the City Council and State Department of Human Rights.
- *Advise Independent School District No. 834* on matters relating to human rights.



## Library Board

Created as an Association in 1859, then transferred to the City, then codified in state law, Charter and ordinance:

- The Library Board has charge of the operation of the City library and of the expenditures of all library funds

*But it is still a public body that is regulated by the OML, Data Practices, Free Speech (which has become a sticky wicket).*



## Parks & Rec Commission

Duties:

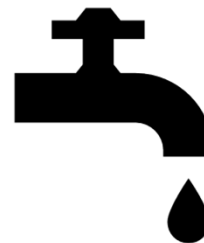
- Review the Comp. Plan for park facilities and open space
- Visit City parks and keep informed of current recreation programs
- Recommend methods to stimulate positive public interest in parks
- Recommend methods of discouraging vandalism and destruction of parks
- Serve as a forum for citizen input about parks
- Promote coordination with the school district serving the City about shared uses of parks
- Encourage dissemination of information to garden clubs, athletic groups and civic organizations
- Recommend capital improvements to the City Council
- Review development proposals when requested to ensure compliance with policies, ordinances, park requirements
- Recommend items to be included in the park and recreation annual budget.



## Utilities Commission

Duties:

- Review public utility future needs in the Comp. Plan
- Review user fees, connections charges and other public utility fees annually
- Review public utilities maintenances plans and policies
- Review development proposals for conformance with public utility plans, as requested
- Recommend system improvements



## Special Service District Board

Duties:

- Advise the city council in connection with the design, construction, maintenance and operation of improvements and the types of special services
- Review and comment on any proposal by the city council regarding they types of services or special service charges in the district *before* the adoption of such proposal.



## Planning Commission

...too many things



## CONFLICTS OF INTEREST



## CONFLICTS OF INTEREST

You cannot have a direct or indirect personal or financial interest in any matter upon which you can make a decision.

## Conflicts of Interest

You or someone you know will benefit from this decision personally or professionally

- In the form of money
- In the form of approval
- Politically



## Conflicts of Interest

Your Committee is hosting an informational event that will encourage exhibitors

- You want to have a booth at the event for your business

Your neighbor is applying for variance

- The decision will impact your property

A neighborhood study supports utility improvements

- You live in the neighborhood and will be assessed

## Conflicts of Interest

Your Committee is hosting an informational event that will encourage exhibitors

- You want to have a booth at the event for your business – **PICK YOUR HAT**

Your neighbor is applying for variance

- The decision will impact your property – **STEP DOWN FROM THE DAIS**

A neighborhood study supports utility improvements

- You live in the neighborhood and will be assessed – **DO NOT TAKE PART IN THE DISCUSSION OR DECISION**



## Conflicts of Interest

What should you do?

1. Disclose the conflict
2. Do not participate in the discussion or the vote
3. Leave the room during the discussion and vote

If you wonder if you have a conflict, contact Staff in advance so it can be determined prior to the meeting.



## Gifts

*General Rule:*

*City Officials* cannot accept *gifts* from *interested persons.*



## Gifts

01

*City Official* = Elected or Appointed officer

02

*Gift* = Money, personal property, real property, service, loan, forgiveness of debt

03

*Interested Person* = Anyone living or doing business in the City who is or could be impacted by a decision you make

## Gifts

No cars, boats, ATVs

No trips

No Timeshares

No Gift Baskets at Christmas

No Free Lunch

Nothing over \$5 in value

Coffee is fine.