



Scott Fitzpatrick

Missouri State Auditor

Stone County Developmental Disability Board

Report No. 2025-023

April 2025

auditor.mo.gov



CITIZENS SUMMARY

Findings in the audit of the Stone County Developmental Disability Board

Sunshine Law	The Stone County Developmental Disability Board did not always ensure compliance with the Sunshine Law. The Board's Operations and Finance committees did not prepare meeting minutes; did not always provide notice of the time, date, and place of each meeting; and did not prepare or provide tentative agendas. The Board did not always discuss allowable topics in closed meetings. The Board discussed and voted to increase the Executive Director's salary from \$90,000 to \$125,000 annually in the December 21, 2023, closed meeting, which is a specifically prohibited closed meeting topic under the Sunshine Law.
Building Construction	The Board did not comply with state law when procuring a construction manager for construction of a facility to house all Board operations, including programs supporting the developmentally disabled and administrative functions. The Board solicited proposals from construction managers for the facility using the construction manager-at-risk method outlined in Section 67.5050, RSMo, and in March 2024, awarded a contract to a construction manager for a guaranteed maximum price of \$2.75 million. However, Section 67.5050(2), RSMo, allows this procurement method only for building projects that exceed \$3 million.
Electronic Communication Policy	The Board's records policy does not include all forms of electronic communication in compliance with the Missouri Secretary of State Records Services Division guidance, as approved by the Missouri Local Records Commission. The Board's policy covers email, but does not cover text messages or other electronic communications.

In the areas audited, the overall performance of this entity was **Fair**.*

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

Stone County Developmental Disability Board

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SCOTT FITZPATRICK

MISSOURI STATE AUDITOR

County Commission
and
Stone County Developmental Disability Board
Stone County, Missouri

We have audited certain operations of the Stone County Developmental Disability Board in fulfillment of our duties under Section 29.230, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2023. The objectives of our audit were to:

1. Evaluate the Board's internal controls over significant management and financial functions.
2. Evaluate the Board's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and procedures, including certain financial transactions.

Our methodology included reviewing minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing personnel of the Board, as well as certain external parties; and performing sample testing using haphazard and judgmental selection, as appropriate. The results of our sample testing cannot be projected to the entire populations from which the test items were selected. We obtained an understanding of internal control that is significant to the audit objectives and planned and performed procedures to assess internal control to the extent necessary to address our audit objectives. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of applicable contract, grant agreement, or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the Board's management and was not subjected to the procedures applied in our audit of the Board.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Stone County Developmental Disability Board.

A handwritten signature in black ink, reading "S. Fitzpatrick". The signature is stylized with a large, looped "S" and a cursive "Fitzpatrick".

Scott Fitzpatrick
State Auditor

Stone County Developmental Disability Board

Management Advisory Report

State Auditor's Findings

1. Sunshine Law

The Stone County Developmental Disability Board did not always ensure compliance with the Sunshine Law.

1.1 Board committees

The Board's Operations and Finance committees did not prepare meeting minutes; did not always provide notice of the time, date, and place of each meeting; and did not prepare or provide tentative agendas. Each committee consists of at least 2 Board members, meets independently of the Board, and carries out Board-delegated responsibilities, such as developing and monitoring operating policies, financial budgeting, and building construction.¹ The committees report conclusions and recommendations to the Board, and the Board votes on the recommendations and/or provides further direction to the committees. According to the Board's meeting minutes, during the year ended December 31, 2023, the Operations committee met approximately monthly, and the Finance committee met periodically. Without maintaining meeting minutes and providing public notice of Board committee meetings, the Board lacks an official record and there is no transparency regarding the actions taken during committee meetings.

Section 610.010, RSMo, identifies Board committees as subject to the Sunshine Law. Section 610.020.7, RSMo, requires minutes of open and closed meetings be taken and retained by the public governmental body. Section 610.020.1, RSMo, requires public entities to give notice of the time, date, and place of each meeting, and the tentative agenda to advise the public of matters to be considered. The Executive Director indicated under the Board's interpretation of the Sunshine Law, the Board did not believe the requirements applied to Board committees because the committees did not consist of a quorum of the full Board and no final business decisions were made in committee meetings.

1.2 Closed meeting topics

The Board did not always discuss allowable topics in closed meetings. The Board discussed and voted to increase the Executive Director's salary from \$90,000 to \$125,000 annually in the December 21, 2023, closed meeting, which is a specifically prohibited closed meeting topic under the Sunshine Law.

Section 610.022.3, RSMo, requires the discussion topics and actions in closed meetings be limited to only those specifically allowed by law. Section 610.021(13), RSMo, allows public bodies to discuss in closed meetings "individually identifiable personnel records, performance ratings or records pertaining to employees," but further states that "this exemption shall not apply to the names, positions, salaries and lengths of service of officers and

¹ In January 2024, the Board created a Building committee to relieve the Operations committee of responsibilities regarding the new building construction.



Stone County Developmental Disability Board Management Advisory Report - State Auditor's Findings

employees." The Board indicated it believed it was allowed to discuss the salary increase in a closed meeting.

Ensuring only allowed topics are discussed in closed meetings is necessary to comply with state law and ensure Board decisions are transparent.

Recommendations

The Board of Directors:

- 1.1 Ensure minutes are prepared for all Board committee meetings and notices and agendas are provided to the public as required by state law.
- 1.2 Ensure only topics allowed by state law are discussed in closed meetings.

Auditee's Response

The Board's response is included in Appendix A.

Auditor's Comment

- 1.2 The Board's response indicates it disagrees that the discussion and vote on raising the Executive Director's salary in a closed meeting is a violation of the Sunshine Law. The Board argues it was allowed to discuss the salary increase in closed session under Section 610.021(3), RSMo. However, that provision is not relevant to this situation because that provision relates to the hiring, firing, disciplining, or promoting of particular employees when personal information about the employee is discussed or recorded. As noted in the finding, Section 610.021(13), RSMo, specifically states that salaries are not subject to closure under the Sunshine Law.

2. Building Construction

The Board did not comply with state law when procuring a construction manager for construction of a facility to house all Board operations, including programs supporting the developmentally disabled and administrative functions.

The Board solicited proposals from construction managers for the facility using the construction manager-at-risk (CMAR) method outlined in Section 67.5050, RSMo, and in March 2024, awarded a contract to a construction manager for a guaranteed maximum price (GMP) of \$2.75 million. However, Section 67.5050(2), RSMo, allows this procurement method only for building projects that exceed \$3 million.

The facility construction began in May 2024, with expected completion in March 2025. The CMAR process provides for selecting a construction manager through a request for qualifications process. That construction manager then uses the established scope of work and project designs to request bids for construction and presents a GMP for a project based on the bids received. The district is responsible for paying the GMP if there are no



Stone County Developmental Disability Board Management Advisory Report - State Auditor's Findings

significant project scope changes, and any cost overruns after the GMP is established are assumed by the construction manager.

The Board indicated it believed the CMAR procurement method was allowed for this project because it believes it is not subject to the provisions in Section 67.5050, RSMo. Since project costs did not exceed the \$3 million threshold for the CMAR method, the Board should have used a proper procurement process and building method available under state law, which might have resulted in a different contract price.

Recommendation

The Board of Directors ensure compliance with state law when procuring building construction.

Auditee's Response

The Board's response is included in Appendix A.

Auditor's Comment

The Board's response outlines its position that it is not subject to the CMAR method provisions outlined in Section 67.5050, RSMo, because Senate Bill 40 (SB 40) boards are not considered political subdivisions for purposes of the section. However, SB 40 boards are political subdivisions, as noted by the Board itself in the "About Us - SB40 Board State Statutes" page of its website, and as such, the Board is subject to the provisions of Section 67.5050, RSMo. See Appendix B for a screenshot of the Board's website.² In addition, the Board's response includes the following invalid arguments:

- (1) The Board argues because it is not a public institution of higher education, it does not fall within the definition of a political subdivision for purposes of Section 67.5050, RSMo. The Board references the definition found in Section 67.5065, RSMo, which states "[f]or purposes of section 67.5050 and section 67.5060, the term 'political subdivision' includes any public institution of higher education." While this Section provides clarification regarding public institutions of higher education, it does not exclude SB 40 boards (or other entities) from being considered political subdivisions.
- (2) The Board argues because it is not authorized or empowered to levy taxes, it is not a political subdivision for purposes of Section 67.5050, RSMo. The Board references the definition of a political subdivision found in Section 70.120(3), RSMo; however, that section is not applicable to Section 67.5050, RSMo, and only applies to Section 67.010, RSMo, which requires political subdivisions to prepare an annual budget.
- (3) The Board argues the only statutory reference to a SB 40 board being a political subdivision is for the purposes of participation in the Missouri

² The "About Us - SB40 Board State Statutes" page of the Board's website can be found at <https://stoneddbboard.com/about-2/sb40-board-state-statutes/>, accessed April 15, 2025.



Stone County Developmental Disability Board
Management Advisory Report - State Auditor's Findings

Local Government Employees' Retirement System (LAGERS) pursuant to Section 205.968.1, RSMo; therefore, the board is not a political subdivision for any other purpose. However, the purpose of Section 205.968.1, RSMo, is to clarify SB 40 boards are political subdivisions eligible for participation in the LAGERS. The Section does not limit SB 40 boards as *only* being political subdivisions for LAGERS eligibility.

- (4) The Board asserts it is distinct from county government and subject to the authority and limitations contained in statutes pertaining to SB 40 boards, and relies on Attorney General Opinion No. 90-96 to support this point. However, that opinion is not relevant to the Board's argument. The opinion found an ambulance district, as a political subdivision of the state, was subject to the competitive bidding provisions that pertain to ambulance districts, not those provisions that pertain to counties.

3. Electronic Communication Policy

The Board's records policy does not include all forms of electronic communication in compliance with the Missouri Secretary of State Records Services Division guidance, as approved by the Missouri Local Records Commission. This guidance recommends government entities have a policy that includes management and retention of all electronic messaging, including text messages, email, and other third party platforms. The Board's policy covers email, but does not cover text messages or other electronic communications.

Section 109.270, RSMo, provides that all records made or received by an official in the course of his/her public duties are public property and are not to be disposed of except as provided by law. Section 109.255, RSMo, provides that the Local Records Board issue directives for the destruction of records. The guidelines for managing electronic communications records can be found on the Secretary of State's website.³

Development of a written policy to address the use of all forms of electronic communications is necessary to ensure all documentation of official business of the Board is retained as required by state law. The Board indicated it does not believe it is subject to Section 109.270, RSMo, and Missouri Secretary of State Records Services Division guidelines.

Recommendation

The Board of Directors update the records policy to address all forms of electronic communications management and retention to comply with Missouri Secretary of State Records Services Division electronic communications guidelines.

³ Missouri Secretary of State Records Services Division, *Electronic Communications Records Guidelines for Missouri Government*, May 14, 2019, is available at <<https://www.sos.mo.gov/CMSImages/LocalRecords/CommunicationsGuidelines.pdf>>, accessed October 24, 2024



Stone County Developmental Disability Board
Management Advisory Report - State Auditor's Findings

Auditee's Response
Auditor's Comment

The Board's response is included in Appendix A.

The Board's response outlines its belief that it is not subject to Section 109.270, RSMo, and Missouri Secretary of State Records Services Division guidelines, and states it is not convinced it falls within the definition of an agency within the state and local records laws because it is not a political subdivision. However, as noted in the Auditor's Comment for finding number 2 and on the Board's website itself (see Appendix B), SB 40 boards are political subdivisions and are an agency as that term is defined for purposes of the state and local records laws; and as such, the Board is subject to the provisions of Section 109.270, RSMo.

Stone County Developmental Disability Board

Organization and Statistical Information

The Stone County Developmental Disability Board (also known as the Stone County Senate Bill 40 Board) was established by a vote of Stone County residents in 2016, and renewed in 2023, pursuant to Chapter 205, RSMo.

The Board receives county taxpayer funds to support programs serving developmentally disabled individuals living in Stone County. Beginning in 2020, the Board contracted with the Missouri Department of Mental Health to administer day and residential services programs serving developmentally disabled individuals living in Stone, Taney, and Christian counties.

At May 15, 2024, the Board employed 39 full-time and 5 part-time employees. The Executive Director is responsible for the daily operations of the Board.

Board of Directors

The Board of Directors consists of 9 members appointed by the County Commission, of which 2 shall be related by blood or marriage within the third degree to a handicapped person as defined in Section 205.968, RSMo; 4 shall be public members; and at least 7 shall be residents of Stone County. The members are appointed for 3-year terms. The Chairperson is a member of and presides over the Board of Directors. Members of the Board of Directors, at December 31, 2023, are identified below. The Chairperson and Board members do not receive financial compensation.

Brittany Brosseau, Chairperson (1)
Shawn Mayr, Vice Chairperson (2)
Randy Moore, Treasurer
Anne Collins, Secretary
Anne Coleman (1)
Jeremy Rouch
Medessa Bolton
Liz Enochs
Vacant

(1) Anne Coleman served as Chairperson through December 21, 2023, and began serving as Treasurer in February 2024.

(2) Jim Holt served as Vice Chairperson prior to resigning on December 21, 2023.

Financial Activity

A summary of the Board's financial activity for the year ended December 31, 2023, obtained from the county's audited financial statements, follows. The Board's intergovernmental receipts are from the Missouri Department of Mental Health.



Stone County Developmental Disability Board
Organization and Statistical Information

The County of Stone
Galena, Missouri
Statement of Receipts, Disbursements, and Changes in Cash
Budget and Actual, All Governmental Funds: Regulatory Basis
For the year ended December 31, 2023

	Stone County Developmental Disability Board Fund	
	Budget	Actual
<u>Receipts</u>		
Property Taxes	\$ 750,000	\$ 790,039
Sales Taxes	-	-
Intergovernmental	2,844,900	2,106,477
Charges for Services	-	-
Interest	4,800	6,162
Other Receipts	-	5,235
Transfers In	-	-
Total Receipts	3,599,700	2,907,913
<u>Disbursements</u>		
Salaries	1,989,660	1,414,461
Employee Fringe Benefits	411,082	309,256
Materials and Supplies	41,575	51,169
Services	657,850	652,374
Other Disbursements	-	-
Capital Outlay	5,000	135,850
Transfers Out	-	-
Total Disbursements	3,105,167	2,563,110
Receipts Over (Under)		
Disbursements	\$ 494,533	\$ 344,803
Cash and Equivalents, Jan 1	766,322	766,322
Cash and Equivalents, Dec 31	\$ 1,260,855	\$ 1,111,125



Appendix A
Stone County Developmental Disability Board
Board's Responses to Audit Recommendations



February 21, 2025

Honorable Scott Fitzpatrick
Missouri State Auditor
P.O. Box 869
Jefferson City, MO 65102

Dear Sir:

Attached you will find the Stone County Developmental Disability Board's response to the findings cited in the Management Advisory Report submitted to us on January 17, 2025.

This response was approved by a unanimous vote of the Board in its regularly scheduled February 20, 2025, meeting.

Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDella Thomas".

LaDella Thomas
Executive Director
Stone County Developmental Disability Board
417-449-5160

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Appendix A Stone County Developmental Disability Board Board's Responses to Audit Recommendations



Response to Missouri State Auditor's Report

1. **Sunshine Law.**

- 1.1 **Board Committees.** The Auditor's Report indicates that the Operations and Finance Committees should give public notice of their meetings and prepare meeting minutes, in order to comply with the Missouri Sunshine Law.

The Board did not understand that these Committees were a Public Governmental Body under the Sunshine Law definitions because there was not a quorum of Board members on the committees. This confusion was the result of the Missouri Sunshine Law Handbook published by the Attorney General's Office, which states in relevant part:

MEETINGS OF PUBLIC GOVERNMENT BODIES

Meetings of public governmental bodies, where a quorum is present, and public business is discussed, are subject to the Sunshine Law.

[...]

And in some situations, a public meeting may also include series of meetings, each involving fewer than a quorum of the members, but collectively involving a quorum of the public body, where the body's members deliberately attempt to discuss public business while evading the Sunshine Law.
(page 7).

Since the committees did not have a quorum of the Board, and the committees report back to the Board in its public meetings, the Board did not believe there was a "Public Meeting" requiring Notice and separate minutes. There was no intention to evade the requirements of the Sunshine Law.

The Board will take steps to ensure that any Board Committee meetings in the future will follow Notice, Agenda, and Minutes requirements under RSMo 610.020.

- 1.2 **Board Closed Meeting Topics.** The Auditor's Report indicates that the Board discussed and voted on the Executive Director's salary in the December 21, 2023 closed meeting.

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Appendix A Stone County Developmental Disability Board Board's Responses to Audit Recommendations



The Auditor's Report indicates that RSMo 610.021(13) allows public bodies to discuss "individually identifiable personnel records, performance ratings or records pertaining to employees" but that the "exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees."

The Board did not intend to violate RSMo 610.021. However, the sub-section referenced by the Auditor is not the only provision in 610.021 relating to personnel issues. Sub-section (3) also provides as follows:

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

Since the salary issue came up in the Board Meeting in conjunction with discussing the Executive Director's "personal information" -- information relating to the performance or merit of an individual employee, the Board believed that compensation was a proper component of discussing the performance or merit of that employee. Thus, it is difficult to separate those discussions between an Open Meeting and Closed Meeting.

The Board finds no statutory authority or court decision that has ruled that the decision for compensation of an employee cannot be part of the Closed Meeting. An Attorney General Opinion has stated that a city council may go into closed session to discuss personnel matters involving any employee of the city. Op.Atty.Gen. No. 117-2001, Strickrodt, Walker, April 19, 2001. Furthermore, the Eastern District Court of Appeals has noted a difference between meetings and records under 610.021(3) and (13). The Court in *Librach v. Cooper*, 778 S.W.2d 351, 354-5 (Mo.App.E.D. 1989) notes that "... the policy manifested by this exception is twofold: first, to promote candid discussion by members of the governmental body in considering the listed matters; second, to protect the employee's privacy. See, e.g., *Hudson v. School District of Kansas City*, 578 S.W.2d 301, 308 (Mo.App. 1979)." The Court went further to state: "The exception for personnel decisions is designed to protect the process by which the ultimate decision is made, not the decision itself." *Librach v. Cooper*, 778 S.W.2d 351, 355 (Mo. Ct. App. 1989).

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Appendix A Stone County Developmental Disability Board Board's Responses to Audit Recommendations



Furthermore, another Attorney General Opinion, No. 129-97, has noted that:

The vote of each school board member must be available to the public on votes to hire, fire, discipline, or promote particular employees in a closed meeting pursuant to § 610.021(3), RSMo. But the information considered during the closed meeting and before the actual vote is taken does not have to be disclosed.

Therefore, the Board disagrees with the Auditor's finding that the discussion and vote on raising the compensation of the Executive Director in a Closed Meeting is a violation of the Sunshine Law. The Board does agree that the salary, name and position of the Executive Director is an Open Record under the law, and does agree to make any vote on a final decision on compensation, hiring or firing of "an employee with be made "available to the public within 72 hours of the close of the meeting where such action occurs."

2. **Building Construction.** The Auditor's Report states that the Board did not comply with state law when procuring a construction manager for construction of a new facility to house all Board operations. The Auditor's Report stated that a Construction Manager At-Risk ("CMAR") method as set forth in RSMo 67.5050 is allowed only for projects that exceed \$3 million, and the project in question had guaranteed maximum price of \$2.75 million.

The Board does not agree that it is subject to the provisions of RSMo 67.5050. RSMo 67.5050 provides requirements relating to "political subdivisions" using a construction manager-at-risk method. This section provides no definition of "political subdivision." The only definition specific to RSMo 67.5050, is found in RSMo 67.5065, which provides: "For purposes of section 67.5050 and section 67.5060, the term "political subdivision" includes any public institution of higher education." Clearly, the Board does not fall within that specific definition.

The next potential guidance as to the meaning of the term "political subdivision" would be to look at the general scope and applicability of Chapter 67 as a whole. RSMo Chapter 67 is the Chapter of RSMo that is entitled "**Political Subdivisions, Miscellaneous Powers.**" This Chapter deals with county governments, certain special districts, and certain "political subdivisions." However, a review of the first section of Chapter 67 finds that there are specific definitions of what a "political subdivision" is within the meaning of this Chapter. RSMo 67.010 provides:

Political subdivisions to prepare annual budget — contents — expenditures not to exceed revenues. — 1. Each political subdivision of this state, as defined in section 70.120, except those required to prepare an annual budget by chapter 50 and section 165.191, shall prepare an annual budget.

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Appendix A Stone County Developmental Disability Board Board's Responses to Audit Recommendations



A review of RSMo 70.120 finds that the term “political subdivision” is defined in 70.120(3), as follows:

(3) *“Political subdivision” shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied;*

Based upon the above, the only logical scope of RSMo 67.5050 must be limited in application to (1) and agency or unit of the state of Missouri which is authorized or empowered to levy taxes or to cause taxes to be levied (per 70.120); or, (2) any public institution of higher education (per 67.5060, the term “political subdivision”).

As a **“COUNTY DEVELOPMENTAL DISABILITY RESOURCE BOARDS”**

DEVELOPMENTAL DISABILITY RESOURCE BOARDS (commonly referred to as an “SB40” Board”), the Board was established by the Stone County Commission pursuant to RSMo 205.968, et seq. The Board is clearly not established by Chapter 67, RSMo.

Instead, RSMo Chapter 205 deals with **County Health and Welfare Programs**. The SB40 Boards in Missouri are a special statutory creation, and this type of Board does not levy taxes. Per RSMo 205.971, the county commission levies a tax for developmental disability services as authorized by a vote of the citizens. The Board does not levy those taxes, it merely administers those funds.

The only reference to an SB40 Board being a potential “political subdivision” is found in RSMo 205.968.1, which provides in relevant part:

The board shall be taken and considered as a “political subdivision” as the term is defined in section 70.600 for the purposes of sections 70.600 to 70.755.

Of course, RSMo Sections 70.600 to 70.755 are the statutory provisions creating and governing the “Missouri local government employees' retirement system.” There is no other provision in the SB40 Board statutes that provide these Board will be considered a “political subdivision” for any other purposes.

An SB40 Board, such as Stone County DD Board, is distinct from county government and subject to the authority and limitations contained in Chapter 205, RSMo. The Board is vested with independent authority to 205.968 to “engage in and contract for any and all types of services, actions or endeavors, not contrary to the law, necessary to the successful and efficient prosecution and continuation of the business and purpose for which it is created, and may purchase, receive, lease or otherwise acquire, own, hold, improve, use, sell, convey, exchange, transfer, and otherwise dispose of real and personal property, or any interest therein, or other assets wherever situated and may incur liability and may borrow money at rates of interest up to the market rate published by the Missouri division of finance.” RSMo 205.968.1.

There is an Attorney General opinion that gives advice relating to an ambulance district board, which gives an opinion that the laws applicable to counties do not apply to an ambulance district. Office of the Attorney General, Opinion No. 90-96 (February 2, 1996).

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Appendix A Stone County Developmental Disability Board Board's Responses to Audit Recommendations



This Opinion noted that directors of such Boards are subject to certain fiduciary obligations because public funds are trust funds. The Opinion cites several court cases: *City of St. Louis v. Whitley*, 283 S.W.2d 490, 493 (Mo. 1955). See also *Fulton v. City of Lockwood*, 269 S.W.2d 1, 7 (Mo. 1954) ("Public officials act in regard to public funds in a trust capacity as servants of the public"). A public official is bound by the same measure of good faith "required of an ordinary trustee towards his cesti que trust, or an agent towards his principal." *Butler County v. Campbell*, 353 Mo. 413, 419, 182 S.W.2d 589, 592 (Mo. 1944). In exercising their duties, public officials "are required to act with reasonable skill and diligence, and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs." *Id.* The Opinion thus concludes that although those statutes do not apply to such a Board, each Board must devise their own procedures to achieve this result.

The Board takes its duties relating to tax dollars seriously, and attempted to follow procedures similar to those applicable in the statutes for CMAR, even if they were not specifically applicable. When the Board started the Request for Proposal process, there was limited interest in the project from bidders. However, the proposals that the Board received were in excess of the \$3 million amount mentioned in the Auditor's Report. Thus, at the time the construction manager contracts were being proposed the project cost was over the \$3 million figure referenced by the Auditor. It was not until after the bids were submitted and contract awarded that the Board set a hard maximum cost, and ended up working with the construction manager in removing a few "wants" to get the cost down to the \$2.75 million figure.

Therefore, the Board believes the audit findings relating to the building project are unfounded, and that the Board met its fiduciary obligations to prudently use funds for this construction project. The Board contends it has complied with any applicable state laws relating to this project.

3. **Electronic Communication Policy.** The Auditor's Report indicates that the Board's record policy does not include all forms of electronic communication in compliance with RSMo Section 109.270, and the Secretary of State's Records Services Division guidance. The Auditor recommends an update to the Board's records policy to address all forms of electronic communications management and retention to comply with the Secretary of State's guidelines.

The Board has had its legal counsel review RSMo Sections 109.200 to 109.310, known as "The State and Local Records Law". This law indicates that it applies to an "Agency," which is defined in RSMo 109.210(1), as follows:

STONE COUNTY DEVELOPMENTAL DISABILITY BOARD
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Appendix A Stone County Developmental Disability Board Board's Responses to Audit Recommendations



(1) "Agency", any department, office, commission, board or other unit of state government or any political or administrative subdivisions created for any purpose under the authorities of or by the state of Missouri;

For the reasons set forth above, the Board is not convinced that it falls within the above definition, since it is not a political subdivision. The Board has been unable to find any notifications or directives stating that SB40 Boards are subject to this law.

However, the Board believes that it does comply with the general duties set forth in RSMo 109.240, which merely requires the head of each agency to:

(1) Establish and maintain an active, continuing program for the economical and efficient management of the agency;

(2) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities;

Two of the provisions of RSMo 109.240 seem completely inapplicable to the Board, which require the following:

(3) Submit to the chairman of the state records commission, in accordance with the standards established by the commission and promulgated by the director of records management and archives service, schedules proposing the length of time each state records series warrants retention for administrative, legal, historical or fiscal purposes after it has been received or created by the agency. The head of each agency also shall submit lists of state records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal, historical or fiscal value to warrant their further keeping;

(4) Cooperate with the director in the conduct of surveys made by him pursuant to the provisions of sections 109.200 to 109.310;

Neither of these two requirements have ever been submitted to the Board by the chair of the State Records Commission.

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That leaves the apparent requirement being referenced by the Auditor's Report. It provides:

(5) Comply with the rules, regulations, standards and procedures approved by the state records commission and issued by the director, records management and archives service.

The Board would point out to the Auditor that the State Records Commission Guidelines in the Secretary of State's website do not clearly explain the application to text messages and third-party platforms. A review of the website lists the following relating to what constitutes "Official Records:"

Official Records

1. Any documentation related to the agency's official duties or activities. Examples may include:

- Decision papers
- Correspondence:
 - Memoranda
 - Letters
 - E-mail
- Data files
- Reports
- Official Publications

2. Supporting materials sufficient to document and/or explain the document trail/decision making process for administrative, legal, fiscal, programmatic, and historical purposes.

https://www.sos.mo.gov/records/recmgmt/whatisarecord#nonrecord_materials

This creates the potential for confusion to any office or body that is subject to these laws. The Board has reviewed the Electronic Records Guidelines page that is referenced in the Auditor's Report, found at <https://www.sos.mo.gov/CMSImages/RecordsManagement/CommunicationsGuidelines.pdf>.

Those Guidelines provide that:

Private phones, email accounts and computers, that are used to send, receive, or otherwise handle public, or official, business are also subject to records retention

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requirements. It is the responsibility of the account owner to preserve and maintain these records.

The Board would point out that it does not provide a messaging platform or cellphone to members of the Board. Official email accounts are provided to Board members and employees for official business purposes so that there is an archive of those communications. It is expected that those accounts will be used for official business purposes rather than any text messages or third-party platforms.

Without admitting that an SB40 Board is subject to the "The State and Local Records Law," the Board does recognize that it is subject to the Missouri Sunshine Law. Therefore, the Board will agree to examine the extent to which its Records Policy needs to be updated to address electronic messaging, including text messages and other third-party platforms, if they are used for official communications as referenced in the Secretary of State's Guidelines. This will include a warning that any use of private email, text messages or third-party communications used to conduct official business is prohibited, and may be subject an obligation for the individual to preserve and maintain those records in accordance with RSMo 109.270.

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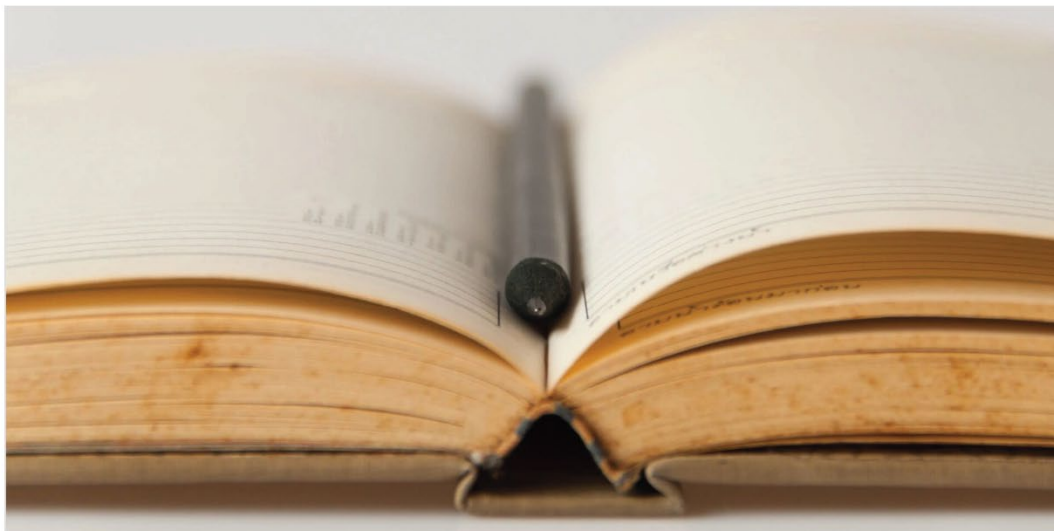
Appendix B
Stone County Developmental Disability Board
Screenshot of Board's Website - SB40 Board State Statutes Page

4/15/25, 4:48 PM

SB40 Board State Statutes – STONE COUNTY DEVELOPMENTAL DISABILITY BOARD



Highlighting of text was added
by auditors for emphasis.



SB40 Board State Statutes

The Stone County Developmental Disability Board is a political sub-division of the State of Missouri, and bound by the following State statutes when making determinations about funding and services provided to the residents of Stone County. The SCDDDB is a self-governing body within Stone County, and the County's role is to appoint and approve board members.

- **205.968. Facilities authorized — persons to be served, limitations, definitions.**
- **205.969. Sheltered workshop program rules and regulations — board may provide residences or social centers.**
- **205.970. Board of directors, appointment, qualifications, terms, officers, powers and duties — vacancies and removal from office, procedure.**
- **205.971. Tax levy, approval, use.**
- **205.972. Maximum tax — ballot form.**

<https://stoneddbboard.com/about-2/sb40-board-state-statutes/>