Executive Sessions in Associations: A Review of Current Literature

Mark Engle, DM FASAE, Anne Cordes, MBA CAE

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The ongoing challenge of achieving effective governance in nonprofit organizations, including associations, can be intensified by executive sessions that are initiated by boards of directors, particularly when the chief executive (chief staff officer) is not included in the process. This paper reviews the literature about three dominant theories of leadership and governance and examines the use of executive sessions in this context.

When a board of directors chooses to convene an executive session without including the chief executive the relationship between these parties can become strained, particularly when such a session comes as a surprise to the chief executive and the discussion of what transpired is not shared afterward with the chief executive. When a board chooses to exclude the chief executive from a discussion, it can be interpreted as evidence of lack of trust or confidence in the chief executive. Further, the chief executive may have legitimate concerns that the board's discussions in such situations lack sufficient input or guidance from those more familiar with the policies, programs, and activities of the organization and thus may result in inappropriate behavior or decision making. Boards of directors, on the other hand, may feel free to speak more frankly and be more comfortable exercising their responsibility for organizational oversight when the chief executive is not present. Boards may feel that they have to choose between these inclinations and a closer partnership with the chief executive.

Can this disparity be overcome? The purpose of this paper is to review the literature on executive sessions in the governance of nonprofit organizations in general—and of associations in particular—and to examine how and when executive sessions are used appropriately. Most of the literature is neither research based nor peer reviewed but rather relies on experience, observation, and opinion. Only recently has a body of research on how nonprofit boards actually work been developed (Cornforth & Brown, 2013). An exhaustive search yielded one white paper on the role that executive sessions play in nonprofit organizations. Published by BoardSource (2007), it reflects the opinions of an attorney, a nonprofit CEO, and a nonprofit consultant but is not based on scholarly research. Because of this deficiency, blog entries and non-peer-reviewed articles published online have been included in this review.

Executive sessions

Within the literature there is no common understanding of who attends executive sessions, when and for what purposes they should be convened, how they should be documented and reported, or the impact executive sessions have on organizational effectiveness.

Who should attend an executive session?

According to BoardSource (2007, p. 1), executive sessions in the nonprofit setting "are, by definition, exclusive to board members, but others, such as the chief executive or professional advisors, may be invited to join for part or all of the session." This same article notes, "Nonprofit board meetings are convened for the board to transact business and address important organization issues *with the chief executive* [emphasis added] and, often, senior staff" (BoardSource, 2007, p. 1). How, then, is "executive session" defined? Who is included?

In yet another variation on the definition, *Board & Administrator* (2009, p. 4) suggests that while the chief executive (executive director) is included, executive sessions are distinguished by the absence of other staff members (employees): "Rather than dismissing employees from the board room during board meetings when the executive director and board wish to meet in private, some nonprofit boards adjourn into executive or closed sessions."

Fellman (2003) defines an executive session as one to which only full board members are invited. In most circumstances the chief executive is specifically excluded, though the board may invite legal counsel or other outside consultants to attend. This definition is echoed by Masaoka (2008, para. 1): "An executive session is a meeting (or part of a meeting) of the board without staff present. In some cases an attorney or other advisor may be present, but not staff." When an association's management services are provided by a management company, the outside consultant or advisor may be a principal of the association's management company.

It is interesting to note that Fellman (2003) uses the term "full board members" and points out that "not even ex-officio members are allowed to attend" executive sessions. Because it is not unusual for chief executives of associations to serve as ex-officio members of the board, one would expect a clear definition of whether ex-officio members of the board are included in executive sessions to be more frequently mentioned in the literature.

In our review of the literature, the term "executive session" did not consistently indicate who typically attended these sessions. That is, an executive session may or may not include the chief executive, other staff members, and additional professional advisors, and one cannot know, from the simple use of the term without additional explanation, who participates. Within the association arena, the term "executive session" tends to be applied to board

sessions from which the chief executive and other staff members are specifically excluded. Some nonprofit organizations that have the authority of the state or receive certain kinds of government funding or provide certain services to a state may be subject to "sunshine laws" that require board meetings to be open to the public and restrict the use of executive sessions.

These laws vary from state to state (see www.rcfp.org/open-government-guide for more details on each state's laws). In Hawaii, for example, the sunshine law governs meetings of boards of "any agency, board, commission, authority or committee *of the State or its political subdivisions* which is created by constitution, statute, rule or executive order to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions. Haw. Rev. Stat. § 92-2(1) (1996) (emphasis added)" (Reporters Committee for Freedom of the Press, n.d.). For the most part, sunshine laws do not apply to associations (i.e., business leagues) that qualify for tax exemption as 501(c)(6) organizations. For example, the attorney general of Florida has recognized that "private organizations generally are not subject to the sunshine law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. AGO 07-27. Thus the sunshine law does not apply to a private nonprofit corporation established by local business people to foster economic development where no delegation of legislative or governmental functions by any local governmental entity has occurred and the corporation does not act in an advisory capacity to any such entity" (Office of the Attorney General of Florida, 2011).

What is the purpose of an executive session?

Is there general agreement about the purpose of executive sessions? BoardSource (2007) suggests that executive sessions provide a venue for handling issues that are best discussed in private, for fostering robust discourse, and for strengthening trust and communication. These more private discussions serve four purposes: (1) they provide the opportunity to strengthen relationships and communication among board members and with the chief executive, (2) they promote trust and open communication and the exploration of different courses of action, (3) they enable the board to demonstrate and exercise its independence from the chief executive, and (4) they encourage confidentiality which may be particularly important in certain situations (BoardSource, 2007).

In a posting on *Blue Avocado*, an online magazine for nonprofit organizations, Masaoka (2008) agrees that "…there are some discussions that are appropriately held just among board members, such as annual meeting with the auditor; evaluation of the executive director, and establishing the executive director's salary; conflicts between two board members, or serious criticism of a board member by another; investigation into concerns about the executive director, or a report from a management consultant; and review of salary schedule, compensation policy, etc."

Without other staff members present, an executive session that includes only board members and the chief staff officer allows participants to more freely discuss sensitive issues (*Board & Administrator,* 2009, p. 4). Among credit unions, "…an executive session with the board and the CEO…is an opportunity for board members to respectfully disagree with the CEO" (Polaniecki, 2012, p. 45).

As noted earlier, BoardSource uses the term "executive session" for meetings that may or may not include the chief executive. The topics that are commonly covered during executive sessions with the chief executive present include issues that "keep the CEO awake at night;" alleged or improper activities (unless these activities have been perpetrated by the chief executive); litigation; major business transactions; crisis management; and roles, responsibilities, and expectations of the board and chief executive. Common issues discussed during executive sessions without the chief executive present include chief executive performance and compensation; succession planning; legal issues involving the chief executive; board practices, behavior, and performance; and the audit, often with an independent auditor present (BoardSource, 2007).

Fellman (2003) points out that it is common practice in some associations for the board to go into a short executive session once a year to discuss the performance of the executive director but otherwise the executive director is an essential part of any board meeting because the board is responsible for establishing policies and the executive is responsible for implementing them. Further, some organizations establish a type of "semi-executive session" during which the executive director is present but other staff members are not. Such sessions may include discussions concerning lawsuits, complaints, or grievances from staff or former staff; individual staff situations; and evaluation of the executive director with the executive director (Masaoka, 2008). Along these same lines, Taylor, Chait, and Holland (1996) suggest that chief executives should be present during executive sessions to open lines of communication among board members because differences of opinion among them, or between the board and the chief executive, can be treated more candidly.

Boards may also conduct executive sessions to enhance their communication and internal cohesion as a group. An executive session may help a board to develop a sense of itself as a leadership body, in contrast to a more common feeling of itself as a group of individuals who listen to and advise the executive director (Masaoka, 2008).

When and with what frequency should executive sessions be conducted?

Is there common wisdom or practice about how often executive sessions are called and when they are scheduled in relation to a full board meeting?

In nonprofit environments, executive sessions may take place before, in the middle of, or at the end of a regular board meeting, according to BoardSource, but should take place at *every* board meeting because hiring and firing the chief executive are among the most important tasks of the board. "An executive session at the end of every board meeting provides the opportunity for anyone to ask whether it is time for a new chief executive" (BoardSource, 2012, p. 205). The practice of holding an executive session in conjunction with every board meeting offers the additional advantage of "diffuse[ing] the notion that executive sessions are convened only to deal with matters involving the CEO or in times of crisis" (BoardSource, 2007, p. 7). Speaking of credit unions, Polaniecki (2012, p. 44) argues that they are not

needed at every meeting: "Given that executive sessions are held to address specific situations, there is no need to make them a standing agenda item."

Recommendations in the literature

In *Executive Sessions: How to Use Them Regularly and Wisely*, BoardSource (2007) provides a number of recommendations about the use of executive sessions in nonprofit organizations as a group. When planning executive sessions, the board chair and chief executive should work together and specify the timing, purpose, topics, and attendees in advance; invite the chief executive to part of the meeting to signal that the relationship between the board and the chief executive is paramount; keep the conversation on topic and do not let it devolve into gossip; and summarize the session and have the board chair communicate it as soon as possible to the chief executive. In addition, BoardSource (2007) recommends that organizations establish a policy on how to call and conduct an executive session and identify agenda items to address during an executive session, including the issues from which it is appropriate to exclude staff, as well as documentation and communication with the chief executive.

Speaking from his experience with the boards of colleges, universities, independent schools, and other nonprofits, consultant and author William Mott is philosophically "very opposed" to executive sessions from which the chief executive is excluded, primarily because they undermine the climate of trust and respect that is key to organizational effectiveness. "Further, such executive sessions demonstrate a lack of understanding that the CEO and board chair have different responsibilities and must work together to achieve mission and vision of the organization. Too often they include discussions about issues with which the board has limited or no information, and thus can devolve into unproductive and inappropriate discussions or even forums to spread gossip" (Mott, 2013). Mott argues that, other than issues of compensation, there is no reason to keep anything from the chief executive.

For associations, Masaoka (2008) recommends that the minutes of the meeting should indicate that the board met in executive session and report on the topic of the discussion, although the specifics (such as the amount of a lawsuit settlement) may be confidential and appear only in a set of confidential-to-the-board minutes or other notes.

Fellman (2003) argues that "using board meetings as a vehicle for evaluating the executive's performance is not an efficient management practice. Holding executive sessions and excluding both counsel and the chief executive is a practice that strongly is recommended against. Limited executive sessions to discuss staff performance might be necessary, but any expansion of the practice to discuss other issues should be avoided. As a nonprofit, tax-exempt organization, the practices of [the] board should be relatively transparent to the members, and executive sessions throw a cloud of secrecy and suspicion on the activities of the organization."

Theories of governance

In the writings about the use of executive sessions in the governance of nonprofits, we have seen that there is little agreement about who should attend, or about why, when, and how often they should be held. To shed more light on these issues, we turn to the literature about leadership roles and responsibilities and to three guiding theories of governance.

Expertise-based roles and relationships

Cornforth (2010, p. 1121) defines *governance* as "the systems and processes concerned with ensuring the overall direction, control, and accountability of an organization."

BoardSource (2007) affirms a point originally made by Carver that, in some nonprofit organizations, the stakeholders (e.g., members, donors, alumni) are distinct from those the organization serves and the board needs to distinguish between those to whom it feels accountable and the organization's primary beneficiaries. But, as Tecker, Frankel, and Meyer (2002, p. xi) point out, associations are different from some other nonprofit organizations in that their owners, customers, and workforce are one and the same. The majority of the members of boards of directors of associations are individuals elected or appointed from within the membership, their primary areas of experience are the business represented by the association, and they are more likely to be eager to participate in service and operational decisions. While this creates possibilities for improved decision making, it may also exacerbate tensions with the chief executive because their expertise is not governance of associations.

Taylor, Chait, and Holland (1996, p. 36) go so far as to say that "effective governance by most nonprofit boards is rare and unnatural. Seldom do they … harness the collective efforts of accomplished individuals to advance the institutions' mission and long-term welfare." Governance is too complex for a simple division of labor between boards and management and both interdependently carry out governance functions (Cornforth, 2010).

Conversely, BoardSource (2007) distinguishes the board's primary role in governance from the distinct role of staff in management, and emphasizes that these two important roles are parallel and noncompeting. According to Ingram (2009), the following are the ten basic responsibilities of nonprofit boards:

- Determine the organization's mission and purposes.
- Select the chief executive.
- Support the chief executive and assess his or her performance.
- Ensure effective organizational planning.
- Ensure adequate resources.
- Manage resources effectively.
- Determine, monitor, and strengthen the organization's programs and services.
- Enhance the organization's public standing.
- Ensure legal and ethical integrity and maintain accountability.
- Recruit and orient new board members and assess board performance.

Carver (1997, p. 101) suggests that the relationship between the board chair and the chief executive is one of the most important components of effective governance: "It is often said that the most important task of a board is the choice of CEO. Although choice is surely important, establishing an effective relationship is even more important." Having a board that shares a common vision is

important, as is having a CEO be the primary voice of that vision. Research conducted on more than 400 nonprofit organizations in Canada during the course of several years consistently showed that the leadership of a nonprofit's chief executive is the single most important determinant of effectiveness, and that boards are largely risk averse and play a limited role, mostly as trustees rather than entrepreneurs (Bradshaw, Murray, & Wolpin, 1992).

Focusing on governance in associations, Tecker and colleagues (2002) argue that good governance has three dimensions: direction setting, oversight, and attention to culture. In the world of associations, Tecker and colleagues are leading advocates for a "knowledge-based" governance strategy in which, except for decisions that only the board can legitimately make, the board and staff execute roles in the organization for which they are best suited.

In the traditional model of governance, the board takes a leading role in setting policy and direction while the staff play a supporting role in implementing policy and administering programs; in today's world, the perspectives and expertise of both members and staff leaders are required for success (Tecker et al., 2002). Newton argues that "an attempt to clearly define and separate board and management roles and responsibilities is both theoretically and practically unachievable" (Newton, 2008, p. 34).

Guiding theories

The relationship between an association's board members and the chief executive is complex, involving issues of business and governance expertise and effective, interdependent roles. The theories of governance that provide the best insight and guidance for the nonprofit community are agency (controlling board), managerial hegemony (passive board), and negotiable accountability (shared governance).

Figure 1 depicts the controlling board and the passive board as extremes, with shared governance holding the middle ground, reflecting a partnership between the board and chief executive and a balanced approach to governance.

Figure 1. Theories of Governance Spectrum

Governance Theory		
Agency Theory	*Negotiable Accountability Theory*	*Managerial Hegemony Theory*
Controlling Board	Shared Governance	Passive Board

Historically, the foundational theory that focuses on the accountability of the chief executive to the board of directors is *agency theory.* Agency theorists argue that decision control should be separated from decision management. Decision control is the domain of the board, and management is delegated to the agent (i.e., CEO). Decision control focuses on decision ratification and monitoring, while management includes decision formulation and implementation. Under this theory, "the board monitors and evaluates the organization's performance, its CEO and its strategies" (Huse, 2007, p. 46). Under agency theory, the chief executive serves as the agent of the board; boards delegate work to and monitor the actions of the agent. We might think of this as the "controlling board" theory of governance.

At the opposite end of the spectrum from agency theory (board control) is the theory of *managerial hegemony*, which describes the board as a legal fiction, as the formal but not principal governing body of the organization (Huse, 2007). According to Huse (p. 44), a board that operates according to this "passive board" theory of governance is dominated by management and is a "creature of the CEO," even though it is the formal governing power.

Between the extremes of agency theory (controlling board) and managerial hegemony theory (passive board) lies the collaborative approach, which is the basis of *stewardship theory*. This theory focuses on the importance of the working relationship between the board and the chief executive, in which the chief executive, as manager, is the steward of the owners' (association members') interests (Newton, 2006). It assumes that, in general, managers can be trusted to be good stewards (Huse, 2007). Stewardship theorists hold that trust, cohesiveness, and openness are core concepts; they argue that managers are motivated by nonfinancial incentives, interest in intrinsic rewards, satisfaction with work, and the feeling of achievement and interest in doing a good job (Huse). In an organization that operates with a stewardship theory of governance, the board and executive share a unified sense of direction, command, and control.

Kearns (1998) builds on stewardship theory with *negotiable accountability theory*, which describes a partnership between the board and the chief executive and adds a monitoring role for the board. While Golden-Biddle and Rao (1997) warn of the possibility of a tight partnership inhibiting the capacity for the board to exercise its responsibility to monitor, Morrison and Salipante (2007) expand on Kearns's work with something analogous to the "trust but verify" approach to international relations used by the Reagan administration. Once the board has established rules for legal, financial, and legislative practices, for example, it monitors the chief executive but does not exercise overly burdensome control. Morrison and Salipante (2007) maintain that bringing the board chair and chief executive together in a collaborative spirit and sharing information, expertise, and decision making creates a broader degree of accountability and enhances organizational achievement. We might think of this as the "shared governance" theory.

The data strongly suggest that association boards and chief executives see themselves as engaging in the kind of collegial, close-working relationships described in the shared governance theory. On a scale of 1 to 7 (strongly disagree to strongly agree), average scores for both association board officers and chief staff executives were greater than 6.0 for statements such as, "The board and chief staff executive work together as colleagues" and "The board has a close working relationship with the chief staff executive" (ASAE Foundation, n.d.).

Connecting executive sessions to theories of governance

There are conflicting recommendations in the literature about the appropriate use of executive sessions in nonprofit governance. When viewed through the lens of governance theory, however, the guidelines for the appropriate use of executive sessions, both with and without the chief executive—including rationale,

topics, possible participants, and frequency—come into better focus. For example, when the chief executive is an *agent* of a controlling board, executive sessions may not disrupt their relationship. On the other hand, when the board and the chief executive are operating in a shared governance modality, executive sessions without the chief executive should be used sparingly and for specific purposes lest they undermine the trust, collaboration, and partnership that define the relationship. It could be argued that discussions of the chief executive's performance or compensation are appropriately held in executive sessions without the chief executive under any theory of governance, although it could also be argued that these matters are better handled by a committee rather than the full board.

Table 1 provides a set of guidelines for how to conduct executive sessions with and without the chief executive in nonprofit organizations that espouse theories of governance that are characterized by controlling boards, passive boards, and a partnership between the board and chief executive.

As one might expect, Table 1 shows that in organizations operating with controlling boards, executive sessions are for the most part held *without* the chief executive; the board has little reason to include in critical conversations an executive who acts only as its agent. Because the board's role in governance is to make decisions, delegate work, and monitor actions, it is appropriate for the board to meet in executive session without the chief executive to exercise these duties. Such a meeting does not tend to undermine the relationship with the executive who is an agent.

Table 1 also shows that, at the other end of the spectrum, executive sessions *without* the chief executive are rare in organizations with a passive board. In an organization in which the board expects to take direction from management and serve a more symbolic leadership role, a meeting with the chief executive would be a counter-cultural event. An annual executive session to discuss executive performance and compensation might be the only time that a passive board would be comfortable meeting without its authoritative executive.

Finally, Table 1 illustrates that in organizations that operate with a shared governance model, the chief executive participates in executive sessions under most circumstances. A board that sees itself as a partner in governance with management has little reason to meet without the chief executive. Exceptions include discussions of board behavior or discipline when a peer-to-peer conversation among board members may be more productive. Such a board might also meet without the chief executive in conference with independent consultants such as CPAs/auditors if the presence of the executive inhibits openness. But in theory both the board and the chief executive in this situation would encourage frank conversation with independent consultants in the presence of the chief executive, and would develop the relationships with its consultants with this goal in mind. And, finally, although discussions of the chief executive's performance or compensation are traditionally held in executive sessions without the chief executive, the authors see this responsibility handled with increasing frequency by a governance or other committee rather than the full board.

Table 1 describes how an organization's governance theory is reflected in its use of executive sessions. It also suggests how an association board and chief executive might use executive sessions in the process of operationalizing roles and responsibilities. For example, an association seeking a balanced middle ground of shared governance might consciously use executive sessions with chief executives present in new ways, in the process of building a partnership to fulfill their joint responsibilities to the organization and its stakeholders.

Conclusion

A review of the current literature, including online articles and blogs, about the use of executive sessions in the governance of nonprofit organizations reveals that there is little agreement about the definition of an executive session, about who is included, and the purposes for which or the methods by which they are conducted, documented, and reported. Further, there are no studies of the correlation between the use of executive sessions and organizational performance, and thus no evidence that executive sessions are a "best practice" for governing boards.

We have found, however, that three prevailing theories of governance—agency, negotiable accountability, and managerial hegemony—provide a useful lens for viewing both the relationship between the board and its chief executive and the appropriate uses for executive sessions with and without the chief executive. Negotiable accountability theory suggests, for example, that an organization that aims to govern through a partnership between the board and the chief executive would convene executive sessions without the executive only for specific purposes. Such a board might turn to methods other than executive sessions without the executive to encourage more open communication among the board; discuss sensitive issues with confidentiality; build the capacity for having difficult conversations and handling tension; and improve decision making.

Further research is needed to study current practice with respect to the use of executive sessions by the boards of directors of associations. Such studies should examine the frequency with which various types of associations (trade and professional, stand-alone as well as affiliated with an association management company) engage in executive sessions; the roles of the board chair and chief executive in these organizations; who attends; the purposes and issues addressed; and the ways in which they are documented and reported. The quality of the decision making in all types of executive sessions should also be examined, as well as the impact on the organization's success in achieving its mission and goals. That is, do executive sessions advance the mission of the organization and, if so, what are the factors associated with this success? Are other methods more effective than executive sessions in building the capacity for difficult conversations, handling conflict, and making high-quality decisions?

The results of the proposed next phase of this study promise to be of significant benefit to the association community.

Table 1. Use of Executive Sessions According to Theory of Governance			
In each theory of governance, the board has a different view of...	**Controlling Board**	**Shared Governance**	**Passive Board**
Management (chief executive)	Boards delegate work to and monitor the actions of the chief executive.	Management is in partnership with the board.	Management is the authority.
Its relationship with management	Boards are in control and independent of management.	Boards trust management but monitor and verify.	Boards are passive and dominated by management.
Its role in governance	To control decision making and monitor implementation by management	To be accountable to stakeholders along with management	To be the symbolic governing body
The appropriate use of executive sessions …			
With the chief executive			
	• to ask tough questions	• to foster a more constructive partnership • to build the capacity for robust discussion • to discuss roles and expectations of board and staff and succession planning • to discuss sensitive issues and maintain confidentiality • to confer with professional advisors such as attorneys • to manage crises	• to discuss sensitive issues and maintain confidentiality • to confer with professional advisors such attorneys and auditors • to discuss succession planning • to manage crises
	• to create a forum that is not unduly influenced by the chief executive • to encourage more open communication among the board • to discuss sensitive issues and maintain confidentiality • to confer with professional advisors such attorneys and auditors • to discuss roles and expectations of board and staff, including performance, compensation, and succession planning • to manage crises	• to foster a more constructive partnership • to build the capacity for robust discussion • to discuss roles and expectations of board and staff and succession planning • to discuss sensitive issues and maintain confidentiality • to confer with professional advisors such as attorneys • to manage crises	• to discuss sensitive issues and maintain confidentiality • to confer with professional advisors such attorneys and auditors • to discuss succession planning • to manage crises
Without the chief executive			
	• to create a forum that is not unduly influencedby the chief executive • to encourage more open communication among the board • to discuss sensitive issues and maintain confidentiality • to confer with professional advisors such attorneys and auditors • to discuss roles and expectations of board and staff, including performance, compensation, and succession planning • to manage crises	• to discuss board behavior or discipline • to confer with independent CPAs/auditors • to discuss chief executive performance and compensation	• to discuss chief executive performance and compensation

Mark T. Engle, DM FASAE CAE, Principal of Association Management Center (AMC) in Chicago, IL, has been a trusted partner in the association field for nearly 40 years. Engle received his Doctor of Management degree in 2011 from Case Western Reserve University with his study in nonprofit governance and is a Fellow of the Mandel Center for Nonprofit Leadership at Case Western. He is also a Fellow of the American Society of Association Executives (ASAE) and has served as an ASAE board member and officer, the Chair of the ASAE Research Committee, and is a current board member of ASAE Business Services, Inc. Engle was recently honored with the Samuel Shapiro Award for Outstanding CEO by the Association Forum of Chicagoland and inducted into the Chicago Area Entrepreneurship Hall of Fame.

Anne M. Cordes, MBA CAE, has been an executive at Association Management Center for over 20 years, serving as the executive director of professional and trade associations, certification boards, and foundations. Certified by BoardSource as a Certified Governance Trainer, she provides consulting services in governance, strategic planning, board development, and interim executive leadership. Cordes has led a variety of nonprofit organizations through major restructuring of bylaws and policies that enabled their elected leaders to focus on strategic goals and advance to higher levels of performance. She has a strong track record of guiding strategic planning and providing advice in governance that enhances staff/volunteer partnerships and increases organizational effectiveness.

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