

The respondent's interpretation ignores two important points expressed in the statute. First, the beneficiaries of this statute are intended to be our state's political subdivisions as representative of the public benefit. The beneficiaries of this statute are not intended to be the LGC and its members and its other entities. By abolishing each program's respective board and substituting the LGC, Inc. board of directors, the political subdivision members of each pooled risk management program were deprived of the governance previously maintained for their benefit. There can be no reasonable dispute that such an action dilutes the power of the respective members of each program, the health trust and the property liability trust, to control operation and expenditures. The duty of care that is so crucial to legitimate not-for-profit organizational governance and that was previously exclusive to the trust members, thereafter faced competition with members of other LGC entities in existence and potentially additional LGC entities that may be added to the LGC conglomerate. The duty of loyalty that attends board membership also becomes muddled particularly with respect to "fiduciary duties." The evidence differed as to whether there were two or four duties that qualified as fiduciary duties. The LGC, Inc. adopted a "parent/subsidiary" model where the LGC, Inc. took the position that the legal fiduciary duties of board members flowed "up" to the parent. Nevertheless, the LGC, Inc.'s witness Samuels, whose law practice involves considerable corporate and business entity law, testified that fiduciary duties flowed both up and down in the LGC model. Samuels also acknowledged under cross examination that the LGC, Inc. board would have to determine that a decision they planned to make was, "in the best interest of whatever parties they are governing." LGC witness McCue said all fiduciary duties run up to the parent, noting also however that "under the structure of a single member LLC and in exercising that power [the LGC, Inc. board] has obligations [to the trust members]." Indeed, considering all of the testimony of actual board members that testified, the LGC, Inc. board seems to be continuously "taking off one hat