

The Open Public Meetings Act

How it Applies to Washington Cities, Counties,
and Special Purpose Districts

Revision History

November 2016:

- Location requirements for meetings of county governing bodies. Pages 10-11. RCW 36.32.080, RCW 36.32.090, AGO 2014 No. 7

The Open Public Meetings Act

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Contents

1	Introduction
3	Who Is Subject to the Act?
6	What Is a “Meeting”?
9	What Procedural Requirements Apply to Meetings?
16	When May a Governing Body Hold an Executive Session?
26	What Meetings Are Exempt from the Act?
28	What Are the Penalties for Violating the Act?
30	What Training is Required by the Act?
31	Selected Cases and Attorney General Opinions

Foreword

This is the second revision of our original September 1997 publication on the Open Public Meetings Act. Issues involving public meetings of governing bodies of cities, towns, counties, and special purpose districts continue to figure prominently in inquiries to MRSC legal consultants. This publication is intended for use by city, town, county, and special purpose district officials and is intended to provide general guidance in understanding the policies and principles underlying this important law.

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Introduction

In 1971, the state legislature enacted the Open Public Meetings Act (the “Act”) to make the conduct of government more accessible and open to the public. The Act begins with a strongly worded statement of purpose:¹

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.²

Codified in chapter 42.30 RCW, the Act applies to all city and town councils,³ to all county councils and boards of county commissioners, and to the governing bodies of special purpose districts, as well as to many subordinate city, county, and special purpose district commissions, boards, and committees. It requires, basically, that all “meetings” of such bodies be open to the public and that all “action” taken by such bodies be done at meetings that are open to the public. The terms “meetings” and “action” are defined broadly in the Act and, consequently, the Act can have daily significance for cities, counties, and special purpose districts even when no formal meetings are being conducted.

¹RCW 42.30.010.

²Throughout this publication, indented quotations in italics are statutory language.

³For convenience, the term “city council” will in this publication also refer to town councils and to city commissions under the commission form of government.

This publication comprehensively reviews the Act as it applies to Washington cities, towns, counties, and special purpose districts.⁴ It also provides answers to selected questions that have been asked of MRSC staff concerning application of the Act. However, we find that new questions constantly arise concerning the Act. So, if you have questions that are not addressed by this publication, do not hesitate to contact your legal counsel or MRSC legal staff.

⁴There is no single uniform definition of a special purpose district in state law. In general, a special purpose district is any unit of local government other than a city, town, or county that is authorized by law to perform a single function or a limited number of functions, such as water-sewer districts, irrigation districts, fire districts, school districts, port districts, hospital districts, park and recreation districts, transportation districts, diking and drainage districts, flood control districts, weed districts, mosquito control districts, metropolitan municipal corporations, etc.

Who Is Subject to the Act?

The basic mandate of the Open Public Meetings Act is as follows:

*All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.*⁵

The Act applies to “meetings” of a “governing body” of a “public agency.” A “public agency” includes a city, county, and special purpose district.⁶ A “governing body” is defined in the Act as follows:

“Governing body” means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

The legislative bodies of cities and counties⁷ clearly are governing bodies under this definition, as are the boards or commissions that govern special purpose districts. However, they are not the only governing bodies to which the Act applies. The Act also applies to any “subagency” of a city, county, or special purpose district,⁸ because the definition of “public agency” includes:

*Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.*⁹

Under this definition, the subagency must be created by some legislative act of the governing body, such as an ordinance or resolution. A group established by a mayor to advise him or her

⁵RCW 42.30.030.

⁶RCW 42.30.020(1)(b).

⁷The legislative bodies of cities are the city councils or city commissions, and the legislative bodies of counties are the boards of county commissioners or county councils.

⁸Most special purpose district governing bodies do not have the authority to create such subagencies.

⁹RCW 42.30.020(1)(c).

could not, for example, be a subagency, because a mayor does not act legislatively. However, a legislative act alone does not create a subagency. According to the attorney general's office, a board or a commission or other body is not a subagency governed by the Act

unless it possesses some aspect of policy or rulemaking authority. In other words, its “advice,” while not binding upon the agency with which it relates . . . , must nevertheless be legally a necessary antecedent to that agency's action.¹⁰

If a board or commission (or whatever it may be termed) established by legislative action is merely advisory and its advice is not necessary for the city, county, or district to act, the Act generally does not apply to it.

Given the above definitions, the following are governing bodies within city and county government that *are subject* to the Act:

- City council or commission
- County council or board of commissioners
- Planning commission
- Civil service commission
- Board of adjustment

Other boards or commissions will need to be evaluated individually to determine whether the Act applies to them. For example, the definition of a subagency identifies library boards, but, in some cities (particularly those without their own libraries), library boards function as purely advisory bodies, without any policymaking or rulemaking authority. That type of a library board would not be subject to the Act. In cities where library boards function under statutory authority¹¹ and possess policymaking and rulemaking authority, those boards must follow the requirements of the Act.

Most special purpose districts have only one “governing body” under the meaning of that term in the Act.

In some circumstances, the Act applies to a committee of a governing body. As a practical matter, city or county legislative bodies are usually the only governing bodies with committees to which the Act may apply. A committee of a city or county legislative body will be subject to the Act in the following circumstances:

¹⁰AGO 1971 No. 33, at 9. The attorney general's office bases its conclusion on this issue on the language "or other policy or rulemaking body of a public agency" in the definition of "governing body" in RCW 42.30.020(2), quoted above. See also AGLO 1972 No. 48.

¹¹RCW 27.12.210.

- when it acts on behalf of the legislative body¹²
- when it conducts hearings, or
- when it takes testimony or public comment.

When a committee is not doing any of the above, it is not subject to the Act.¹³

Keep in mind that it is usually good public policy to open the meetings of city, county, and special district governing bodies to the public, even if it is uncertain or doubtful that the Act applies to them. Secrecy is rarely warranted, and the Act's procedural requirements are not onerous. This approach would be consistent with the Act's basic intent that the actions of governmental bodies “be taken openly and that their deliberations be conducted openly.”¹⁴

Further Questions

May four councilmembers-elect of a seven-member council meet before taking their oaths of office without procedurally complying with the Act?

Yes. Councilmembers-elect are not yet members of the governing body and cannot take “action” within the meaning of the Act, and so they are not subject to the Act.¹⁵

Must a committee of the governing body be composed solely of members of the governing body for it to be subject to the Act under the circumstances identified in RCW 42.30.020(2)?

This statute defines a “governing body” to include a “committee thereof” when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” (Emphasis added.) Does a “committee thereof” include only members of the governing body? The state supreme court has held that a “committee thereof,” an entity created or specifically authorized by the governing body, may include or consist of individuals who are not members of the governing body.¹⁶

¹²In a 2015 decision, the state supreme court adopted the reasoning of AGO 1986 No. 16 in concluding that a committee acts on behalf of the governing body “when it exercises actual or de facto decision making authority.” *Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015). A committee when it is exercising actual or de facto decision making authority should be distinguished from the situation where a committee simply provides advice or information to the governing body and is not subject to the OPMA. *Id.*

¹³While the definition of “governing body” speaks of “when” a committee acts so as to come within that definition, the courts have not been clear about whether a committee is subject to the Act for all of its meetings when it is only at some that it is acting in that manner. See *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001).

¹⁴RCW 42.30.010.

¹⁵*Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 561 (2001).

¹⁶*Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015).

What Is a “Meeting”?

There must be a “meeting” of a governing body for the Act to apply. Sometimes it is very clear that a “meeting” must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the Act's definitions. The Act defines “meeting” as follows: “‘Meeting’ means meetings at which action is taken.”¹⁷ “Action,” as referred to in that definition of “meeting,” is defined as follows:

*“Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.*¹⁸

Since a governing body can transact business when a quorum (majority) of its members are present,¹⁹ it is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members gathers with the collective intent of transacting the governing body's business.²⁰ This includes simply discussing some matter having to do with agency business. Because members of a governing body may discuss the business of that body by telephone or e-mail, it is not necessary that the members be in the physical presence of each other for there to be a meeting subject to the Act.²¹ See the “Further Questions” at the end of this section. Also, it is not necessary that a governing body take “final action”²² for a meeting subject to the Act to occur.

Note that it does not matter if the meeting is called a “workshop,” a “study session,” or a “retreat”; it is still a meeting subject to the Open Public Meetings Act if a quorum is addressing the business of the city, county, or special purpose district. If a governing body just meets

¹⁷RCW 42.30.020(4).

¹⁸RCW 42.30.020(3).

¹⁹See, e.g., RCW 35A.12.120; 35.23.270; 35.27.280; 36.32.010.

²⁰*Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015).

²¹*Id.*; *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 562 (2001).

²²RCW 42.30.020(3) defines “final action” as “a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.”

socially or travels together, it is not having a meeting subject to the Act as long as the members do not discuss agency business or otherwise take “action.”²³

Further Questions

If a majority or more of the members of a governing body discuss city, county, or district business by telephone or e-mail, are they having a meeting subject to the Act?

Since the members of a governing body can discuss city, county, or district business together by telephone or by e-mail so as to be taking “action” within the above definition, the governing body can conduct a meeting subject to the Act even when the members are not in the physical presence of one another²⁴ This type of meeting could take many forms, such as a conference call among a majority or more of the governing body, a telephone “tree” involving a series of telephone calls, or an exchange of e-mails. Since the public could not, as a practical matter, attend this type of “meeting,” it would be held in violation of the Act.²⁵

Given the increasingly prevalent use of e-mail and the nature of that technology, members of city councils, boards of county commissioners, and special district governing bodies must be careful when communicating with each other by e-mail so as not to violate the Act. However, such bodies will not be considered to be holding a meeting if one member e-mails the other members merely for the purpose of providing relevant information to them. As long as the other members only “passively receive” the information and a discussion regarding that information is not then commenced by e-mail amongst a quorum, there is no Open Public Meetings Act issue.²⁶

May one or more members of a governing body “attend” a meeting by telephone?

Although no courts in this state have addressed this question, it probably would be permissible for a member of a governing body to “attend” a meeting by telephone, with the permission of the body, *if* that member's voice could be heard by all present, including the public, and if that member could hear all that is stated at the meeting. Some sort of speaker phone equipment would be necessary for this to occur. If a governing body decides

²³RCW 42.30.070; *In re Recall of Roberts*, 115 Wn.2d 551, 554 (1990).

²⁴*Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015); *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 562-63 (2001).

²⁵Though, at least one local government in this state has held an online meeting of its governing body, providing notice under the Act and giving the public the opportunity to “attend.”

²⁶*Id.*

to allow participation by telephone, it is advisable to authorize such in its rules, including under what circumstances it will be allowed.

May a quorum of a city or county legislative body attend, as members of the audience, a citizens' group meeting?

Yes, provided that the members attending the meeting do not discuss, as a group, city or county or district business, as the case may be, or otherwise take "action" within the meaning of the Act.²⁷ That possibility could in most circumstances be avoided by not sitting as a group.

May an entire county council attend a private dinner in honor of the out-going county official without complying with the Open Public Meetings Act?

Again, the issue comes down to whether the council will be dealing with county business. It can be argued that honoring the county official is itself county business. On the other hand, it could be argued that honoring an individual who is leaving county employment does not involve the functioning of the county. This is a gray area where caution should be exercised.

Must the public be allowed to attend the annual city council retreat?

Yes. A retreat attended by a quorum of the council where issues of city business are addressed constitutes a meeting.

²⁷See AGO 2006 No. 6.

What Procedural Requirements Apply to Meetings?

The Act establishes some basic procedural requirements that apply to all meetings of a governing body, whether they are regular or special meetings. *All meetings of a governing body are, under the Open Public Meetings Act, either regular or special meetings.* It does not matter if it is called a “study session” or a “workshop” or a “retreat,” it is either a regular or special meeting.

What is a regular meeting?

A regular meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule, as may be appropriate for the governing body.²⁸

What is a special meeting?

A special meeting is any meeting that is not a regular meeting. In other words, special meetings are not held according to a fixed schedule. Under the Act, special meetings have specific notice requirements, as discussed below. Also, governing bodies may be subject to specific limitations about what may be done at a special meeting.²⁹

What procedural requirements apply to all meetings of a governing body?

The following requirements and prohibitions apply to both regular and special meetings of a governing body:

²⁸See RCW 42.30.060, .070, .080. Also, state law, though not the Open Public Meetings Act, may require the governing body of a city, county, or special district to meet with a certain regularity, such as monthly. For example, second class and code city councils, town councils, and the board of directors of any school district must meet at least once a month. RCW 35.23.181; RCW 35.27.270; RCW 35A.12.110; RCW 28A.343.380.

²⁹For example, second class city councils may not pass an ordinance or approve a contract or a bill for the payment of money at a special meeting. RCW 35.23.181. Town councils may not pass a resolution or order for the payment of money at a special meeting. RCW 35.27.270. Many special purpose districts are subject to requirements that certain actions can be taken only at a regular meeting, i.e., not at a special meeting. See, e.g., RCW 54.16.100 (appointment and removal of public utility district manager); RCW 85.05.410 (setting compensation of board of diking district commissioners). The councils of first class and code cities and county legislative bodies have no specific limitations on actions that may be taken at a special meeting, other than those imposed by the Open Public Meetings Act.

- All meetings must be open to the public.³⁰
- A member of the public may not be required as a condition of attendance to register his or her name or other information, or complete a questionnaire, or be required to fulfill any other condition to be allowed to attend.³¹
- The governing body may require the removal of members of the public who disrupt the orderly conduct of a meeting. If order cannot be restored by removal of individuals, the governing body may order the meeting room cleared and may continue in session or it may adjourn and reconvene the meeting at another location, subject to the limitations in RCW 42.30.050.³²
- Votes may not be taken by secret ballot.³³
- Meetings may be adjourned or continued subject to the procedures in RCW 42.30.090, as discussed below.
- The governing body may meet in executive (closed) session, but only for one of the reasons specified in and in accordance with the procedures identified in RCW 42.30.110. See discussion on executive sessions.

Although the Act gives the public the right to attend meetings, the public has no statutory right to speak at meetings. However, as a practical and policy matter, city, county, and special district governing bodies generally provide the public some opportunity to speak at meetings.

The Open Public Meetings Act does not require that a city or county legislative body or special district governing body hold its meetings within the city or in a particular place in the county or district. However, other statutes provide that the councils of code cities, second class cities, and towns may take final actions on ordinances and resolutions only at a meeting within the city or town.³⁴ Also, as a general matter, county legislative bodies must hold their regular meetings at

³⁰RCW 42.30.030.

³¹RCW 42.30.040.

³²That statute provides in relevant part as follows

In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

³³RCW 42.30.060(2). Any vote taken by secret ballot is null and void.

³⁴RCW 35.23.181; 35.27.270; 35A.12.110. Although meetings need not necessarily be held within a city, when a governing body decides to hold one outside the city, it should not site the meeting at a place so far from the city as to effectively prevent the public from attending.

the county seat.³⁵ However, no more than once per calendar quarter, county legislative bodies can hold regular meetings outside the county seat but within the county if the legislative body determines that “holding a meeting at an alternate location would be in the interest of supporting greater citizen engagement in local government.” County legislative bodies may hold special meetings in the county outside of the county seat if there are agenda items that “are of unique interest or concern” to the residents of the area of the county in which the meetings are held.³⁶ And, joint meetings – regular or special – of two or more county legislative authorities may be held in the county seat of a participating county if the meeting agenda includes an item or items that “relate to actions or considerations of mutual interest or concern to the participating legislative authorities.” Two or more county legislative authorities may also hold a joint meeting by means of video conferencing, as long as each legislative authority is physically located within its county seat.³⁷ Some special purpose district governing bodies, such as first class school district boards of directors,³⁸ are specifically required to hold their regular meetings within the district, while others, such as irrigation districts,³⁹ are specifically required to hold meetings in the county where the district is located. Where the statutes are silent as to where meetings must be held for a particular type of district, they should be held, if possible, within the district or, at the very least, within the county in which the district is located.

What procedural requirements apply specifically to regular meetings?

- The date and time of regular meetings must be established by ordinance, resolution, order, or rule, as may be required for the particular governing body.⁴⁰
- If the regular meeting date falls on a holiday, the meeting must be held on the next business day.⁴¹
- The meeting agenda must be made available online at least 24 hours in advance of the

³⁵RCW 36.32.080.

³⁶RCW 36.32.090.

³⁷AGO 2014 No. 7.

³⁸RCW 28A.330.070.

³⁹RCW 87.03.115.

⁴⁰The Act does not directly address designating (in the ordinance, resolution, order, or rule designating the date and time of regular meetings) the place at which regular meetings will be held. RCW 42.30.070. However, the statutes governing the particular classes of cities, except those governing first class cities, require designation of the site of regular council meetings. RCW 35A.12.110; 35.23.181; 35.27.270. The county statutes and those relating to special purpose districts do not address designating the site of regular meetings. However, counties, first class cities, and special purpose districts should, of course, also designate the site of regular meetings along with the designation of the date and time of those meetings.

⁴¹RCW 42.30.070.

regular meeting.⁴² This requirement does not apply if the city, county, or district does not have a website or if it employs fewer than 10 full-time equivalent employees.

What procedural requirements apply specifically to special meetings?

The procedural requirements that apply to special meetings deal primarily with the notice that must be provided. These requirements, contained in RCW 42.30.080, are as follows:

- A special meeting may be called by the presiding officer or by a majority of the members of the governing body.⁴³
- Written notice must be delivered personally, by mail, by fax, or by e-mail at least 24 hours before the time of the special meeting to:
 - each member of the governing body, and to
 - each local newspaper of general circulation and each local radio or television station that has on file with the governing body a written request to be notified of that special meeting or of all special meetings.⁴⁴
- Notice of the special meeting must be provided to the public as follows:
 - “prominently displayed” at the main entrance of the agency’s principal location, and at the meeting site if the meeting will not held at the agency’s principal location; and
 - posted on the agency’s web site. Web site posting is not required if the agency:

⁴²Laws of 2014, ch. 61, § 2. This requirement does not mean that the agenda cannot be modified after it is posted online. Also, a failure to comply with this requirement with respect to a meeting will not invalidate an otherwise legal action taken at the meeting.

⁴³There is a conflict between the provision in RCW 42.30.080 authorizing a majority of the members of a governing body to call a special meeting and the provision for code cities in RCW 35A.12.110 authorizing three members of the city council to call a special meeting. This conflict occurs only with respect to a code city with a seven-member council, because three members is less than a majority. Since RCW 42.30.140 provides that the provisions of the Act will control in case of a conflict between it and another statute, four members of a seven-member code city council, not three, are needed to call a special meeting.

⁴⁴Note also that statutes relating to each class of city require that cities

establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement.

RCW 35A.12.160; 35.22.288; 35.23.221; 35.27.300. There are no similar statutes that apply to counties or special purpose districts. Nevertheless, we recommend that counties and special districts establish like procedures for notifying the public.

- does not have a web site;
 - has fewer than 10 full-time equivalent employees; or
 - does not employ personnel whose job it is to maintain or update the web site.
- The notice must specify:
 - the time and place of the special meeting, and
 - the business to be transacted at the special meeting.
 - The governing body may take final action *only* concerning matters identified in the notice of the meeting.⁴⁵
 - Written notice to a member or members of the governing body is not required when:
 - a member files at or prior to the meeting a written waiver of notice or provides a waiver by telegram, fax, or e-mail; or
 - the member is present at the meeting at the time it convenes.
 - Special meeting notice requirements may be dispensed with when a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when the time requirements of the notice would make notice impractical and increase the likelihood of such injury or damage.⁴⁶ An emergency meeting must, nevertheless, be open to the public.⁴⁷

What procedural requirements apply to adjournments of regular or special meetings?

A regular or special meeting may be adjourned to a specified time and place, where it will be continued. There are a number of circumstances under which a meeting might be adjourned. A meeting may be adjourned and continued to a later date because the governing body did not complete its business. The Act, in RCW 42.30.090, addresses two other circumstances under which a meeting may be adjourned and continued at a later date:

- When the governing body does not achieve a quorum. In that circumstance, less than a quorum may adjourn a meeting to a specified time and place; or

⁴⁵This does not prevent a governing body from discussing or otherwise taking less than final action with respect to a matter not identified in the notice.

⁴⁶The type of emergency contemplated here is a severe one that "involves or threatens physical damage" and requires urgent or immediate action. *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 144-45 (1975).

⁴⁷*Teaford v. Howard*, 104 Wn.2d 580, 593 (1985)

- When all members are absent from a *regular meeting* or an *adjourned regular meeting*. In that instance, the clerk of the governing body may adjourn the meeting to a stated time and place, with notice provided as required for a special meeting, unless notice is waived as provided for special meetings. However, the resulting meeting is still considered a regular meeting.

Notice of an adjourned meeting is to be provided as follows:

- An order or notice of adjournment, specifying the time and place of the meeting to be continued, must be “conspicuously posted” immediately following adjournment on or near the door of the place where the meeting was held.
- Notice of a regular meeting adjourned by the clerk when all members of the governing body are absent must be provided in the same manner as for special meetings.
- If the notice or order of an adjourned meeting fails to state the hour at which the adjourned meeting is to be held, it must be held at the hour specified for regular meetings by ordinance, resolution, or other rule.

If the governing body is holding a hearing, the hearing may be continued at a later date by following the same procedures for adjournment of meetings.⁴⁸

Further Questions

Must a city, county, or special purpose district provide published notice of a special meeting?

No, not under the Open Public Meetings Act. While notice must be provided to media that have on file a request to be notified of special meetings, this is not equivalent to a publishing requirement. Of course, if the governing body has adopted a requirement of published notice for special meetings, that requirement must be followed.

May notice to the media of a special meeting be provided by fax or e-mail?

Yes. Legislation passed in 2005 amended RCW 42.30.080 to allow notice by fax or e-mail.

May a governing body prohibit a member of the public from tape recording or videotaping a meeting?

⁴⁸RCW 42.30.100.

No, there is no legal basis for prohibiting the audio or videotaping of a meeting, unless the taping disrupts the meeting. If the governing body enacted such a rule, it essentially would be conditioning attendance at a meeting on not recording the meeting. This would be contrary to RCW 42.30.040, which prohibits a governing body from imposing any condition on attending a public meeting.⁴⁹

How can a majority of the governing body agree outside of a formal meeting to call a special meeting without violating the Act?

Since a majority of the governing body, under RCW 42.30.080, may call a special meeting “at any time,” it would indeed be an anomaly if, in calling for that meeting, the majority would be considered to have violated the Act. In our opinion, the only way to give effect to this statutory provision is to allow a majority to communicate as a group in some way (e.g., by phone, e-mail, in person, or through the clerk's office) to decide whether to have a special meeting, when to have it, and what matters it will deal with. The members could not discuss anything else, such as the substance of the matters to be discussed at the special meeting.

⁴⁹See AGO 1998 No. 15.

When May a Governing Body Hold an Executive Session?

What is an executive session?

“Executive session” is not expressly defined in the Open Public Meetings Act, but the term is commonly understood to mean that part of a regular or special meeting of a governing body that is closed to the public. A governing body may hold an executive session only for specified purposes, which are identified in RCW 42.30.110(1)(a)-(o),⁵⁰ and only during a regular or special meeting. Nothing, however, prevents a governing body from holding a meeting, which complies with the Act's procedural requirements, for the sole purpose of having an executive session.

A governing body should always follow the basic rule that it may not take final action in an executive session. However, there may be circumstances, as discussed below, where the governing body will need to reach a consensus concerning the matter being considered in closed session. Nevertheless, as discussed below, recent case law casts doubt on the authority of a governing body to reach a consensus regarding *any* matter in executive session.

Who may attend an executive session?

Attendance at an executive session need not be limited to the members of the governing body. Persons other than the members of the governing body may attend the executive session at the invitation of that body.⁵¹ Those invited should have some relationship to the matter being addressed in the closed session, or they should be attending to otherwise provide assistance to the governing body. For example, staff of the governing body or of the governmental entity may

⁵⁰There is at least one statute outside of the Open Public Meetings Act that authorizes an executive session for a purpose not identified in RCW 42.30.110(1)(a)-(o). RCW 70.44.062 authorizes the board of commissioners of a public hospital district to meet in executive session “concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider” or “to review the report or the activities of a quality improvement committee.”

⁵¹When the governing body is meeting in executive session to discuss litigation or potential litigation, legal counsel *must* be present and take part in the discussion. RCW 42.30.110(1)(i).

be needed to present information or to take notes or minutes. However, minutes are not required to be taken at an executive session.⁵²

What procedures must be followed to hold an executive session?

Before a governing body may convene in executive session, the presiding officer must publicly announce the executive session to those attending the meeting by stating two things:

- the purpose of the executive session, and
- the time when the executive session will end.

The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held. The announcement must contain enough detail to identify the purpose as falling within one of those identified in RCW 42.30.110(1).

If the executive session is not over at the stated time, it may be extended only if the presiding officer announces to the public at the meeting place that it will be extended to a stated time. If the governing body concludes the executive session *before* the time that was stated it would conclude, it should not reconvene in open session until the time stated. Otherwise, the public may, in effect, be excluded from that part of the open meeting that occurs between the close of the executive session and the time that was announced for the conclusion of the executive session.

What are the allowed purposes for holding an executive session?

An executive session may be held only for one or more of the purposes identified in RCW 42.30.110(1). The purposes addressed below are those which have practical application to cities, counties, and special purpose districts. A governing body of a city, county, or special district may meet in executive session for the following reasons:

- *To consider matters affecting national security;*

Until the events of September 11, 2001, this provision had little, if any, practical application to cities, counties, or special districts. However, since the events of September 11, 2001, it has become clear that local security issues may in some instances have national security implications. So, discussions by city, county, or district governing bodies of security matters relating to possible terrorist activity should come within the ambit of this executive session provision. This would include discussions of vulnerability or response assessments relating to criminal terrorist activity.

⁵²See RCW 42.32.030.

- *To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;*⁵³

This provision has two elements:

- the governing body must be considering either purchasing or leasing real property; and
- public knowledge of the governing body's consideration would likely cause an increase in the price of the real property.

The consideration of the purchase of real property under this provision can involve condemnation of the property, including the amount of compensation to be offered for the property.⁵⁴

Since this provision recognizes that the process of purchasing or leasing real property or selecting real property to purchase or lease may justify an executive session, it implies that the governing body may need to reach some consensus in closed session as to the price to be offered or the particular property to be selected.⁵⁵ However, the state supreme court has emphasized that “only the action explicitly specified by [an] exception may take place in executive session.”⁵⁶ Taken literally, this limitation would preclude a governing body in executive session from actually selecting a piece of property to acquire or setting a price at which it would be willing to purchase property, because such action would be beyond mere “consideration.” Yet, the purpose of allowing this type of consideration in an executive session would be seemingly defeated by requiring a vote in open session to select the property or to decide how much to pay for it, where public knowledge of these matters would likely increase its price. While this issue awaits judicial or legislative resolution, city and county legislative bodies and special district governing bodies should exercise caution.

⁵³RCW 42.30.110(1)(b).

⁵⁴*Port of Seattle v. Rio*, 16 Wn. App. 718, 724 (1977).

⁵⁵See *Port of Seattle v. Rio*, 16 Wn. App. at 723-25.

⁵⁶*Miller v. Tacoma*, 138 Wn.2d 318, 327 (1999). See also, *Feature Realty, Inc. v. Spokane*, 331 F.3d 1082 (9th Cir. 2003).

- *To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;*⁵⁷

This subsection, the reverse of the previous one, also has two elements:

- the governing body must be considering the minimum price at which real property belonging to the city or county will be offered for sale or lease; and
- public knowledge of the governing body's consideration will likely cause a decrease in the price of the property.

The requirement here of taking final action selling or leasing the property in open session may seem unnecessary, since all final actions must be taken in a meeting open to the public. However, its probable purpose is to indicate that, although the decision to sell or lease the property must be made in open session, the governing body may decide in executive session the minimum price at which it will do so. However, see the discussion regarding the previous provision for meeting in executive session and taking any action in executive session that is not expressly authorized.

If there would be no likelihood of a change in price if these real property matters are considered in open session, then a governing body should not meet in executive session to consider them.

- *To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;*⁵⁸

This subsection indicates that when a city, county, or special district and a contractor performing a publicly bid contract are negotiating over contract performance, the governing body may “review” those negotiations in executive session if public knowledge of the review would likely cause an increase in contract costs. MRSC is not aware of an executive session being held under this provision. It is not clear what circumstances would result in a governing body meeting in executive session under this provision.

⁵⁷RCW 42.30.110(1)(c).

⁵⁸RCW 42.30.110(1)(d).

- *To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;*⁵⁹

For purposes of meeting in executive session under this provision, a “charge” or “complaint” must have been brought against a city, county, or special district officer or employee. The complaint or charge could come from within the city, county, or district or from the public, and it need not be a formal charge or complaint. The bringing of the complaint or charge triggers the opportunity of the officer or employee to request that the discussion be held in open session.⁶⁰

As a general rule, city governing bodies that are subject to the Act do not deal with individual personnel matters.⁶¹ For example, the city council should not be involved in individual personnel decisions, as these are within the purview of the administrative branch under the authority of the mayor or city manager.⁶² This provision for holding an executive session should not be used as a justification for becoming involved in personnel matters which a governing body may have no authority to address.

- *To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;*⁶³

There are two different purposes under this provision for which a governing body may meet in executive session. For both purposes, the references to “public employment” and to “public employee” include within their scope public offices and

⁵⁹RCW 42.30.110(1)(f).

⁶⁰Another possible interpretation of this provision is that the officer or employee subject to the complaint or charge may request that the complaint or charge be heard by the governing body in open session, *in addition to* rather than instead of a discussion of the complaint or charge in executive session. This provision, however, has not been addressed by the courts.

⁶¹A civil service commission is an obvious exception. It, however, addresses personnel actions taken against a covered officer or employee, and it does so in the context of a formal hearing. Another exception is where the governing body may be considering a complaint against one of its members. Also, when a city council has confirmation authority over a mayoral appointment, it may discuss the appointment that is subject to confirmation in executive session.

⁶²An exception is where the council, in a council-manager city, may be considering a complaint or charge against the city manager.

⁶³RCW 42.30.110(1)(g).

public officials. This means that a governing body may evaluate in executive sessions persons who apply for appointive office positions, such as city manager, as well as those who apply for employee positions.⁶⁴

The first purpose involves evaluating the qualifications of applicants for public employment. This could include personal interviews with an applicant, discussions concerning an applicant's qualifications for a position, and discussions concerning salaries, wages, and other conditions of employment personal to the applicant.

This authority to “evaluate” applicants in closed session allows a governing body to discuss the qualifications of applicants, not to choose which one to hire (to the extent the governing body has any hiring authority). Although this subsection expressly mandates that “final action hiring” an applicant for employment be taken in open session, this does not mean that a governing body may take preliminary votes in executive session that eliminate candidates from consideration.⁶⁵

The second part of this provision concerns reviewing the performance of a public employee. Typically this is done where the governing body is considering a promotion or a salary or wage increase for an individual employee or where it may be considering disciplinary action.⁶⁶

The result of a governing body's closed session review of the performance of an employee may be that the body will take some action either beneficial or adverse to the officer or employee. That action, whether raising a salary of or disciplining an officer or employee, must be made in open session.

Any discussion involving salaries, wages, or conditions of employment to be “generally applied” in the city, county, or district must take place in open session. However, discussions that involve collective bargaining negotiations or strategies are not subject to the Open Public Meetings Act and may be held in closed session without being subject to the procedural requirements for an executive session.⁶⁷

⁶⁴The courts have, for various purposes, distinguished between a public "office" and a public "employment." See, e.g., *Oceanographic Comm'n v. O'Brien*, 74 Wn.2d 904, 910-12 (1968); *State ex rel. Hamblen v. Yelle*, 29 Wn.2d 68, 79-80 (1947); *State ex rel. Brown v. Blew*, 20 Wn.2d 47, 50-52 (1944). A test used to distinguish between the two is set out in *Blew*, 20 Wn.2d at 51.

⁶⁵*Miller v. Tacoma*, 138 Wn.2d 318, 329-31 (1999).

⁶⁶In general, a city council has little or no authority regarding discipline of public officers or employees. An exception would be a city manager over which the council has removal authority. RCW 35A.13.130; 35.18.120.

⁶⁷See RCW 42.30.140(4).

- *To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;*⁶⁸

This provision applies to a city, county, or district governing body only when it is filling a vacant elective position. Under this provision, the governing body may meet in executive session to evaluate the qualifications of applicants for the vacant position. However, any interviews with the candidates must be held in open session. As with all other appointments, the vote to fill the position must also be in open session.

- *To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.*

*This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present.*⁶⁹

For purposes of this subsection (1)(i), “potential litigation” means matters protected by RPC 1.6⁷⁰ or RCW 5.60.060(2)(a)⁷¹ concerning:

(A) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(B) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(C) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

⁶⁸RCW 42.30.110(1)(h).

⁶⁹RCW 42.30.110(1)(i).

⁷⁰RPC 1.6 is part of the Rules of Professional Conduct for attorneys, and it deals specifically with client confidentiality, generally prohibiting disclosure of client confidences except in certain specific situations.

⁷¹RCW 5.60.060(2)(a) provides that an attorney may not be compelled to be a witness at trial and reveal client confidences.

Three basic requirements must be met before this provision can be used by a governing body to meet in closed session:⁷²

- The attorney or special legal counsel representing the city, county, or special district must attend the executive session to discuss the enforcement action or the litigation or potential litigation;
- The discussion with legal counsel must concern either an enforcement action or litigation or potential litigation to which the city, county, district, a governing body, or one of its members is or is likely to become a party; and
- Public knowledge of the discussion would likely result in adverse legal or financial consequence to the city, county, or district.

The potential litigation issue. Until this section was amended in 2001 to define “potential litigation,” the scope of this provision was unclear and subject to a range of interpretations. The 2001 legislature expanded the meaning of that term to authorize governing bodies to discuss in executive session the legal risks of a proposed or existing practice or action, when discussing those risks in open session would likely have an adverse effect on the agency’s financial or legal position. This allows a governing body to freely consider the legal implications of a proposed decision or an existing practice without the attendant concern that some future litigation position might be jeopardized.

The probability of adverse consequence to the city or county. It is probable that public knowledge of most governing body discussions of existing litigation would result in adverse legal or financial consequence to the city, county, or district. Knowledge by one party of the communications between the opposing party and its attorney concerning a lawsuit will almost certainly give the former an advantage over the latter. The same probably can be said of most discussions that qualify as involving potential litigation.

The state supreme court has held that a governing body is not required to determine beforehand whether public knowledge of the discussion with legal counsel would likely have adverse consequences; it is sufficient if the agency, from an objective standard, should know that the discussion is not benign and that public knowledge of it will likely result in adverse consequences.⁷³

⁷²This provision for holding an executive session is based on the legislative recognition that the attorney-client privilege between a public agency governing body and its legal counsel can co-exist with the Open Public Meetings Act. See *Final Legislative Report, Forty-Ninth Legislature, 1985 Regular and 1st Special Sessions*, at 270-71; see also *Recall of Lakewood City Council*, 144 Wn.2d 583, 586-87 (2001); *Port of Seattle v. Rio*, 16 Wn. App.718, 724-25 (1977); AGO 1971 No. 33, at 20-23. However, that privilege is not necessarily as broad as it may be between a private party and legal counsel.

⁷³*Recall of Lakewood City Council*, 144 Wn.2d 583, 586-87 (2001).

Again, no final action in executive session. The purpose of this executive session provision is to allow the governing body to discuss litigation or enforcement matters with legal counsel; the governing body is not authorized to take final action regarding such matters in an executive session. And, recent case law emphasizes that, in order for any action to take place legally in executive session, authority must be “explicitly specified” in an exemption under RCW 42.30.110(1), though that case law did not address this exemption.⁷⁴ The only action that is specifically authorized in this exemption is discussion.

However, since a basic purpose of shielding these discussions from public view is to protect the secrecy of strategic moves concerning litigation, the scope of a governing body's authority in executive session should be interpreted to afford that protection. So, for example, while this provision does not authorize a governing body to approve a settlement agreement in executive session, it should provide authority for that body to authorize its legal counsel to settle a case for no higher than a certain amount. An interpretation supporting the council's authority to take such action appears warranted, *but* such an interpretation may not be supported by the strict language in recent case law.

Further Questions

May an executive session be called to discuss “personnel matters”?

No, this would not be a legally sufficient reason to hold an executive session. The purpose for holding an executive session must be within those specifically identified in RCW 42.30.110(1). Although there are personnel issues that may be addressed in an executive session under this statute, such as complaints or charges against an employee or an employee's performance, “personnel matters” is too broad a purpose and could include purposes not authorized by the statute.

May a city council meet in executive session to ask the mayor to resign?

No. Although the council could meet in executive session to discuss complaints or charges against the mayor, the council should take the action of asking for the mayor's resignation in open session. (Of course, a mayor is not legally bound by the council's wishes.)

⁷⁴*Miller v. Tacoma*, 138 Wn.2d 318, 327 (1999). See also, *Feature Realty, Inc. v. Spokane*, 331 F.3d 1082 (9th Cir. 2003).

May the board of a special purpose district meet in executive session at a special meeting if the notice of the special meeting did not identify that an executive session would be held?

Yes. The prohibition in RCW 42.30.080 on taking final disposition on any matter not identified in the special meeting notice does not apply to holding an executive session, because that does not involve final disposition on any matter. The board is already prohibited from taking final action in an executive session. Nevertheless, from a policy standpoint, the notice should identify the executive session if the board knows at the time of giving the notice that it will be meeting in executive session at the special meeting.

If three members of a seven-member city council interview candidates for a council vacancy, must those interviews be open to the public?

Yes. Although they do not represent a quorum of the council, the three councilmembers would be acting on behalf of the entire council in conducting these interviews. As such, they would be considered a "governing body" subject to the Act. Since interviews by a governing body of candidates for appointment to elective office must occur in an open meeting (RCW 42.30.110(1)(h)), this three-member committee may not meet in executive session for the purpose of interviewing the candidates.

What Meetings Are Exempt from the Act?

RCW 42.30.140 sets out four situations where a governing body may meet and not be subject to any requirements of the Open Public Meetings Act. That statute provides that the Act does not apply to:

- *The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary;*

This provision, for the most part, has little, if any, application to any city, county, or special district governing body. One type of proceeding where it has been used is where a city provides for a hearing before revoking a business license.⁷⁵

- *That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group;*

This exception applies when a governing body is acting in a quasi-judicial capacity.⁷⁶ Typically, a city or county governing body is acting in a quasi-judicial capacity in certain land use actions such as site-specific rezones, conditional use applications, variances, and preliminary plat applications. Other examples include the civil service commission when it is considering an appeal of a disciplinary decision and the LEOFF disability board when it is considering an application for disability benefits.

⁷⁵See *Cohen v. Everett City Council*, 85 Wn.2d 385, 386 (1975).

⁷⁶The courts have employed a four-part test to determine whether a matter qualifies under the quasi-judicial action exemption from the Open Public Meetings Act (RCW 42.30.140(2)): (1) whether the action is one a court could have been charged to determine; (2) whether it is one historically performed by courts; (3) whether it involves the application of existing law to past or present facts for purposes of enforcing or declaring liability; and (4) whether it resembles the ordinary business of courts more than that of legislators or administrators. *Raynes v. Leavenworth*, 118 Wn.2d 237, 244 (1992). See also, RCW 42.36.010 (definition of quasi-judicial land use actions, for purposes of the appearance of fairness doctrine); *The Appearance of Fairness Doctrine in Washington State*, MRSC Report No. 32 (January 1995), at 6-8 (discussion of quasi-judicial land use actions).

However, where a public hearing is required for a quasi-judicial matter, only the deliberations by the body considering the matter can be in closed session.

- *Matters governed by chapter 34.05 RCW, the Administrative Procedures Act;*

This exception has no application to cities, counties, or special purpose districts.

- *Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.*

The language of this exception is basically self-explanatory.⁷⁷ However, the term “professional negotiations” must be interpreted in the context of collective bargaining; it should not be interpreted to apply generally to negotiations for professional services.

Further Questions

Does the Open Public Meetings Act require that a civil service commission hearing regarding a police officer's appeal of disciplinary action be open to the public?

No, because such a hearing would fall under the exception from the Act in RCW 42.30.140(2) for quasi-judicial matters. However, since RCW 41.12.090 requires that such a hearing be public, the Act's exemption does not apply. The commission may nevertheless deliberate in private.

Must the city council give any notice under the Act when it is meeting to discuss the strategy to be taken during collective bargaining with an employee union?

No. Under RCW 42.30.140(4), this meeting is exempt from the Open Public Meetings Act. The council may therefore meet without notifying anyone. Of course, each of the councilmembers should be notified.

⁷⁷City, county, and special district governing bodies should be aware that this exemption from the Act does not protect from public disclosure documents that are introduced at such a meeting. *ACLU of WA v. City of Seattle*, 121 Wn. App. 544 (2004).

What Are the Penalties for Violating the Act?

The only avenue provided by the Open Public Meetings Act to enforce its provisions or to impose a penalty for a violation of its provisions is by an action in superior court. “Any person” may bring that action in superior court. If a superior court determines that a violation has occurred, liability may be imposed as follows:

- *Individual liability.* Members of a governing body who attend a meeting where action is taken in violation of the Act are subject to a \$500 penalty for the first violation, *if* they attend with knowledge that the meeting is in violation of the Act.⁷⁸ Subsequent, knowing violations of the Act carry a \$1,000 penalty. Violation of the Act is not a criminal offense. The penalty is assessed by the superior court, and any person may bring an action to enforce the penalty.⁷⁹

Also, a knowing or intentional violation of the Act may provide a legal basis for recall of an elected member of a governing body, although recall is not a penalty under the Act.⁸⁰

- *City, county, or district liability.* The city, county, or district is liable for all costs, including reasonable attorney fees.⁸¹

However, if a court determines by written findings that an action for violation of the Act was “frivolous and advanced without reasonable cause,” a city, county, or district *may* be awarded reasonable expenses and attorney fees.⁸²

In addition to the above, any person may bring an action by mandamus or injunction to stop violations of the Act or to prevent threatened violations.⁸³

⁷⁸RCW 42.30.120(1).

⁷⁹RCW 42.30.120(2).

⁸⁰See *Recall of Lakewood City Council*, 144 Wn.2d 583, 586 (2001); *In re Recall of Kast*, 144 Wn.2d 807, 817 (2001).

⁸¹RCW 42.30.120(4).

⁸²*Id.*

⁸³RCW 42.30.130.

Actions in violation of the Act are null and void. Any ordinance, resolution, rule, regulation, order, or directive that is adopted at a meeting that does not comply with the Act, and any secret vote taken, is null and void.⁸⁴ This does not, however, mean that a subsequent action that complies with the Act is also invalidated.⁸⁵ But, where action taken in open session merely ratifies an action taken in violation of the Act, the ratification is also null and void.⁸⁶

⁸⁴RCW 42.30.060.

⁸⁵*OPAL v. Adams County*, 128 Wn.2d 869, 883 (1996); *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001); see also, AGO 1971 No. 33 at 40.

⁸⁶*Clark v. City of Lakewood*, 259 F.3d at 1014, n. 10; see, *Miller v. Tacoma*, 138 Wn.2d at 329-31.

What Training is Required by the Act?

The 2014 Legislature enacted a requirement that all members of governing bodies, state and local, receive training on the requirements of the Open Public Meetings Act.⁸⁷ The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The training must be repeated at intervals of no longer than four years, as long as an individual is a member of the governing body. This legislation does not specify the training that must be received, other than it is to be on the requirements of the OPMA and that it may be completed remotely.⁸⁸ No penalty is provided for the failure of a member of a governing body to receive the required training.

⁸⁷Laws of 2014, ch. 66, § 2.

⁸⁸For more information on this training requirement, see the Attorney General's 2014 Open Government Trainings Act Guidance, at http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Open_Government_Training/QandA-Re-ESB-5964.pdf.

Selected Cases and Attorney General Opinions

AGO 1971 No. 33 – This AGO contains a comprehensive overview of the scope of the Open Public Meetings Act, as it was enacted in 1971. Although parts of the Act have been amended since 1971, much of it remains the same.

RCW 42.30.010 – Legislative Declaration (Purpose of Act)

- *Cathcart v. Anderson*, 85 Wn.2d 102 (1975).
- *Equitable Shipyards v. State*, 93 Wn.2d 465 (1980).

RCW 42.30.020 – Definitions

- *Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015).
- *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120 (2011).
- *Eugster v. City of Spokane*, 110 Wn. App. 212, *review denied*, 147 Wn.2d 1021 (2002).
- *Wood v. Battle Ground School District*, 107 Wn. App. 550 (2001).
- *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001).
- *Miller v. City of Tacoma*, 138 Wn.2d 318 (1999).
- *Improvement Alliance v. Snohomish Cy.*, 61 Wn. App. 64 (1991).
- *Refai v. Central Wash. Univ.*, 49 Wn. App. 1 (1987), *review denied*, 110 Wn.2d 1006 (1988).
- *Estey v. Dempsey*, 104 Wn.2d 597 (1984).
- AGO 2010 No. 9.
- AGO 2006 No. 6.
- AGO 1986 No. 16 – Applicability of Open Public Meetings Act to a committee of the governing body.

RCW 42.30.030 – Meetings Declared Open and Public.

- AGO 1992 No. 21.

RCW 42.30.040 – Conditions to Attendance Not to be Required.

- AGO 1998 No. 15.

RCW 42.30.060 – Actions in Violation of Act Are Null and Void.

- *Eugster v. City of Spokane*, 128 Wn. App. 1 (2005).
- *Eugster v. City of Spokane*, 110 Wn. App. 212, *review denied*, 147 Wn.2d 1021 (2002).
- *Recall of Lakewood City Council*, 144 Wn.2d 583 (2001).
- *OPAL v. Adams County*, 128 Wn.2d 869 (1996).
- *Snohomish County Improv. Alliance v. Snohomish County*, 61 Wn. App. 64 (1991).
- *Henry v. Oakville*, 30 Wn. App. 240 (1981).
- *Slaughter v. Fire District*, 50 Wn. App. 733 (1988).
- *Mead School Dist. v. Mead Education Assoc.*, 85 Wn.2d 140 (1975).

RCW 42.30.070 – Time and Places for Meetings – Emergencies

- *In re Recall of Roberts*, 115 Wn.2d 551 (1990).
- *Teaford v. Howard*, 104 Wn.2d 580 (1985)
- *Mead School Dist. v. Mead Education Assoc.*, 85 Wn.2d 140 (1975).
- AGO 1992 No. 21.

RCW 42.30.080 – Special Meetings

- *Estey v. Dempsey*, 104 Wn.2d 597 (1985).
- *Dorsten v. Port of Skagit County*, 32 Wn. App. 785 (1982).
- *Kirk v. Fire Protection Dist.*, 95 Wn.2d 769 (1981).

RCW 42.30.110 – Executive Sessions

- *Recall of Lakewood City Council*, 144 Wn.2d 583 (2001).

- *Miller v. City of Tacoma*, 138 Wn.2d 318 (1999).
- *Port of Seattle v. Rio*, 16 Wn. App. 718 (1977).
- *Feature Realty, Inc. v. Spokane*, 331 F.3d 1082 (9th Cir. 2003).

RCW 42.30.120 – Violations - Personal Liability - Penalty - Attorney Fees and Costs

- *Eugster v. City of Spokane*, 110 Wn. App. 212, *review denied*, 147 Wn.2d 1021 (2002).
- *Wood v. Battle Ground School District*, 107 Wn. App. 550 (2001).
- *Protect the Peninsula's Future v. Clallam Cy.*, 66 Wn. App. 671 (1992).
- *Cathcart v. Anderson*, 10 Wn. App. 429 (1974).

RCW 42.30.130 – Violations - Mandamus or Injunction

- *Protect the Peninsula's Future v. Clallam Cy.*, 66 Wn. App. 671 (1992).
- *Lopp v. Peninsula School Dist.*, 90 Wn.2d 754 (1978).

RCW 42.30.140 – Chapter Controlling - Application (Exceptions)

- *ACLU of WA v. City of Seattle*, 121 Wn. App. 544 (2004).
- *Protect the Peninsula's Future v. Clallam Cy.*, 66 Wn. App. 671 (1992).
- *Pierce v. Lake Stevens School Dist.*, 84 Wn.2d 772 (1974).