



# **Open Public Meetings Act RCW 42.30**

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# Transparency or Sunshine Laws

- Called this because they “shine light” on government.
- U.S. Supreme Court Justice Louis Brandeis once famously said, “*Sunlight is the best disinfectant.*”
- Transparency builds public confidence in government



“The people do not yield their sovereignty to the agencies which serve them.”  
*RCW 42.30.010*

“The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”  
*RCW 42.30.010*

“The people insist on remaining informed so they may retain control over the instruments they have created.”  
*RCW 42.30.010*



# Open Public Meetings Act (OPMA)

- Passed in 1971
- Requires meetings to be open to the public, gavel to gavel
- RCW 42.30 Open Public Meetings Act Law
- Public commissions, boards, councils, etc. listed in OPMA are agencies of this state that exist to aid in the conduct of the people's business. Their actions are to be taken openly and deliberations conducted openly. *RCW 42.30.010*
- Act is to be "liberally construed." *RCW 42.30.910*

## OPMA Applies to:

- **Any** county, **city**, school district, special purpose district, or other municipal corporation or political subdivision **of Washington**.
- 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. *RCW 42.30.020*
- **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 RCW 42.30. *RCW 42.30.030*

# Definitions



- “**Meeting**” means meetings at which the public agency takes “**action**” *RCW 42.30.020*
- “**Action**” means the **transaction of the official business of the public agency** and includes but is not limited to:
  - Public testimony, All deliberations, Discussions, Considerations, Reviews, Evaluations, Final actions
- A “meeting” of a governing body occurs when a majority of its members (quorum) gathers with the collective intent of transacting the governing body’s business.

*Citizens Alliance for Property Rights Legal Fund v. San Juan County*

# Meeting



- Physical presence not required – a meeting can occur by phone or email.
- Does not need to be titled “meeting” – OPMA also applies to “retreats,” “workshops,” “study sessions,” etc.
- No meeting occurs if the governing body lacks a quorum.
- An exchange of e-mail could constitute a meeting if, for example, a quorum of the members participate in the e-mail exchange and discuss agency business. Simply receiving information without comment is not a meeting. *Wood v. Battle Ground School District; Citizens Alliance for Property Rights Legal Fund v. San Juan County*

# Serial Meeting



- A serial meeting occurs when a majority of members of a governing body have a series of smaller gatherings or communications that results in a majority of the body collectively taking action even if a majority is never part of any one communication.
- Serial meetings can occur with or without technology, but the range of communication options available nowadays to members of a governing body increases the risk.
- Such a meeting violates the OPMA because it amounts to taking “action” — as defined in RCW 42.30.020(3) — outside an open meeting.



# Final Action

- “**Final action**” is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof”
- Must be taken in public, even if deliberations were in closed session
- Secret ballots are not allowed

*RCW 42.30.060, RCW 42.30.020*





# Travel & Gathering

- A majority of the members of a governing body may travel together or gather for purposes other than a regular meeting or a special meeting, so long as no action is taken.
- Discussion or consideration of official business would be action, triggering the requirements of the OPMA.

*RCW 42.30.070*

# *Egan v. City of Seattle (2020)*



- Washington Court of Appeals decision (Sept. 2020) involving alleged OPMA violations
- Plaintiffs claimed repeal of the employee head tax resulted from a serial meeting
- Over two dozen communications among councilmembers and staff over three days
- Types of communications:
  - In-person meetings, Emails, Phone calls, Text messages, Distribution of draft press release
- Court also noted a vote tally sheet prepared by a councilmember's aide

# *Egan v. City of Seattle (2020)*



- Communications could constitute a “meeting” if:
  - At least five councilmembers participated (quorum of nine-member council)
  - Members knew others were participating in discussions about repeal
- First two days: no quorum, no shared awareness → not a “meeting”
- Third day: draft press release suggested majority agreement to repeal
- Seven members reviewed and agreed to language indicating majority support
- Court held that prior agreement on how to vote is “action” under OPMA
- Case remanded to determine whether a collective decision occurred outside a public meeting

# Executive & Closed Sessions



- Part of a regular or special meeting that is closed to the public
- **Limited to specific purposes set out in the OPMA**
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins; time may be extended by further oral announcement

*RCW 42.30.110*

- Discussions are confidential
- No voting
- No final action may be taken

# Executive & Closed Sessions



- Examples of topics proper for Executive Session:
  - Agency enforcement actions
  - Agency litigation or potential litigation
  - Selection of a site or acquisition of real estate by lease or purchase
  - Minimum price at which real estate will be offered for sale or lease
- Examples of topics proper for Closed Session:
  - Collective bargaining, including contract negotiations, grievance meetings, planning or adopting strategy or position during course of collective bargaining



# Thank You

## Questions?

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