

FILED
Court of Appeals
Division II
State of Washington
5/30/2018 9:52 AM
No. 51787-6-II

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

JIMMY AND DEBORAH HILLIARD

Appellants;

v.

LEWIS COUNTY WATER & SEWER DISTRICT #5, VIRGIL FOX,
CAROL FOX AND KRISTINE CARTER,

Respondents.

BRIEF OF APPELLANTS

Attorneys for Jimmy and Deborah Hilliard

KAHRS LAW FIRM, P.S.
MICHAEL C. KAHRS, WSBA #27085
2208 NW Market St., Ste. 414
Seattle, WA 98107
(206) 264-0643

ALLIED LAW GROUP LLC
MICHELE EARL-HUBBARD, WSBA #26454
P.O. 33744
Seattle, WA 98133
(206) 443-0200

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR 1

 A. ASSIGNMENTS OF ERROR 1

 B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 2

III. STATEMENT OF THE CASE..... 4

 A. A QUORUM OF THE COMMISSIONERS APPROVED PAYMENT VOUCHERS AND PAYROLL TIME SHEETS WITHOUT HOLDING ANY PUBLIC MEETINGS. 4

 B. THE COMMISSIONERS FAILED TO NOTE A SPECIAL MEETING AFTER THE PUMP FAILURE AND FAILED TO DECLARE AN EMERGENCY. 10

 C. THE PROCEDURE BELOW..... 12

IV. SUMMARY OF THE ARGUMENT 15

V. ARGUMENT 15

 A. STANDARD OF REVIEW 15

 1. Summary Judgment. 15

 2. The Open Public Meetings Act..... 16

 B. THE HILLIARDS ARE ENTITLED TO AN ACCRUAL DATE OF WHEN THE RESPONDENTS STARTED VIOLATING THE OPMA. 17

 1. The Commissioners Deliberately Hid From the Hilliards How Disbursements Were Made on Behalf of the District..... 18

 2. The Hilliards Are Entitled to Equitable Tolling. 19

 3. The Discovery Rule Must Apply to the OPMA for Fundamental Fairness to Fulfill the Purposes of the Act. 20

 C. THE DISTRICT AND COMMISSIONERS VIOLATED THE OPMA WHEN A QUORUM OF COMMISSIONERS APPROVED PAYMENT

	VOUCHERS AND PAYROLL TIME SHEETS WITHOUT HOLDING A PUBLIC MEETING.....	25
D.	THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THE COMMISSIONERS DID NOT HAVE INTENT TO VIOLATE THE ACT AND WHEN IT DID NOT CONTINUE THE HEARING TO PERMIT THE HILLIARDS TO COMPLETE THEIR DISCOVERY ON THE ISSUE OF INTENT.	29
	1. The Commissioners Intended to Violate the OPMA Thus They Are Personally Liable for Per Violation Penalties.	29
	2. If This Court Determines There Is Insufficient Evidence to Find the Commissioners Knowingly Violated the OPMA then this Case Must Be Remanded to Permit the Hilliards to Conduct the Necessary Discovery.	30
E.	EACH AGENCY OFFICIAL WHO KNOWINGLY VIOLATES THE OPMA MUST BE PENALIZED FOR EACH VIOLATION PURSUANT TO RCW 42.30.120.	33
F.	THE RESPONDENTS VIOLATED THE OPMA WHEN THEY FAILED TO PROVIDE NOTICE OF A SPECIAL MEETING THAT WAS NOT AN EMERGENCY.	39
	1. Respondents’ Failure to State the August 19, 2016 Meeting Was an Emergency Forestalls Them Claiming It After-the Fact.....	39
	2. Even If No “Emergency Meeting” Documentation Does Not Preclude a Court from Examining the Evidence, the Facts Do Not Support the Finding of an Emergency..	42
G.	THE HILLIARDS ARE ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS.....	44
VI.	CONCLUSION.....	45

TABLE OF AUTHORITIES

Cases

Belenski v. Jefferson County, 186 Wn.2d 452, 378 P.3d 176 (2016) 19

Butler v. Joy, 116 Wn. App. 291, 65 P.3d 671, *review denied*, 150 Wn.2d 1017, 79 P.3d 446 (2003) 32, 33

Cawdrey v. Hanson Baker Ludlow Drumheller, P.S., 129 Wn. App. 810, 120 P.3d 605 (2005) 21

Corbally v. Kennewick School Dist., 94 Wn. App. 736, 740, 937 P.2d 1074 (1999)..... 16

Estate of Bunch v. McGraw Residential Center, 174 Wn.2d 425, 432, 275 P.3d 1119 (2012) 34

Eugster v. City of Spokane, 110 Wn. App. 212, 224, 39 P.3d 380 (2002) 27, 44

Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082, 1086 (9th Cir.2003)..... 16

Flight Options, LLC v. Dep't of Revenue, 72 Wn.2d 487, 500, 259 P.3d 234 (2011)..... 34

G.W. Constr. Corp. v. Profl Serv. Indus., 70 Wn. App. 360, 367, 853 P.2d 484 (1993)..... 21

Gazija v. Nicholas Jerns Co., 86 Wn.2d 215, 543 P.2d 338 (1975)..... 22

Havens v. C&D Plastics, Inc., 124 Wn.2d 158, 177, 876 P.2d 435 (1994) 16

Kittinger v. Boeing, 21 Wn. App. 484, 585 P.2d 812 (1978) 22, 23, 24

Magula v. Benton Franklin Title Co., 131 Wn.2d 171, 930 P.2d 307 (1997)..... 16

Mead Sch. Dist. No. 354 v. Mead Ed. Ass'n (MEA), 85 Wn.2d 140, 145, 530 P.2d 302, 304 (1975)). 43

<i>Millay v. Cam</i> , 135 Wn.2d 193, 206, 955 P.2d 791 (1998).....	20
<i>Nickum v. City of Brainbridge Island</i> , 153 Wn. App. 366, 378-79, 223 P.3d 1172 (2009).....	20
<i>Org. to Pres. Agr. Lands v. Adams Cty.</i> , 128 Wn.2d 869, 883, 913 P.2d 793, 802 (1996).....	17
<i>Potter v. New Whatcom</i> , 20 Wash. 589, 590-91, 56 P. 394 (1899).....	22
<i>Protect the Peninsula's Future v. Clallam Cty.</i> , 66 Wn. App. 671, 678, 833 P.2d 406, 410 (1992).....	44
<i>Rest. Dev., Inc. v. Cananwill, Inc.</i> , 150 Wn.2d 674, 682, 80 P.3d 598 (2003).....	35
<i>Ruth v. Dight</i> , 75 Wn.2d 660, 453 P.2d 631 (1969).....	20, 21
<i>State v. Armendariz</i> , 160 Wn.2d 106, 110, 156 P.3d 201 (2007).....	34, 35
<i>State v. J.P.</i> , 149 Wn.2d 444, 450, 69 P.3d 318 (2003).....	34
<i>State v. Ose</i> , 156 Wn.2d 140, 146, 124 P.3d 635, 638 (2005).....	38
<i>State v. Thornton</i> , 119 Wn.2d 578, 580, 835 P.2d 216 (1992).....	35
<i>Turner v. Kohler</i> , 54 Wn. App. 688, 693, 775 P.2d 474 (1989).....	32
<i>U.S. Oil & Refining Co. v. Dep't of Ecology</i> , 96 Wn.2d 85, 91, 633 P.2d 1329 (1981).....	23, 24
<i>Wash. State Human Rights Comm'n v. Cheney Sch. Dist. No. 30</i> , 97 Wn.2d 118, 121, 641 P.2d 163 (1982).....	35
<i>Wood v. Battle Ground Sch. Dist.</i> , 107 Wn. App. 550, 563 n.4, 27 P.3d 1208 (2001).....	27, 28

Statutes

RCW 36.22.090	6, 18, 25, 26
RCW 4.16.130	2, 17
RCW 4.16.350	21
RCW 42.30.010	17

RCW 42.30.020	25, 28
RCW 42.30.030	17, 25
RCW 42.30.035	41, 44
RCW 42.30.060	17
RCW 42.30.080(4).....	3, 39, 40, 41
RCW 42.30.101	22
RCW 42.30.120	passim
RCW 42.30.910	17
RCW 57.12.010	4
RCW 90.48	23
RCWA 42.30.010.....	16

Rules and Other Authorities

RAP 18.1.....	3, 44
Webster’s Third International Dictionary of the English Language (2002)	38

I. INTRODUCTION

Jimmy and Deborah Hilliard were customers, taxpayers and constituents of Lewis County Water & Sewer District #5 (“District”). Respondent Virgil Fox is a current Commissioner and Respondents Carol Fox (effective June 21, 2017) and Kristine Carter (effective January 4, 2016) are former Commissioners (Commissioners).¹ Virgil and Carol Fox are husband and wife. At all times relevant, Kristine Carter was the Foxes’ roommate. The Hilliards brought this lawsuit for violations of the Open Public Meetings Act (“OPMA”) for actions by the Commissioners in office at the time of the violations. They brought this action because for years the Commissioners secretly paid themselves for work they claimed had been done on behalf of the District without presenting notice or their justification at an opening public meeting. The Hilliards bring this timely appeal of the trial court’s grant of summary judgment to the Respondents in this case.

II. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its order granting the Respondents partial summary judgment dated September 29, 2017.

¹ The defendants in the trial court included both the Commissioners and the District. Hence, the group is referred to as the Respondents or Respondents.

2. The trial court erred in entering its order granting the Respondents partial summary judgment dated December 20, 2017.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err when it applied the two-year statute of limitations in RCW 4.16.130 to all claims arising on or before February 2, 2015? (Assignment of Error No. 1).

2. Did the trial court err when it failed to find an OPMA violation for a quorum of the Commissioners approving payment vouchers and payroll time sheets outside of a properly-noticed meeting? (Assignment of Error No. 1).

3. Did the trial court err when it failed to find an OPMA violation for a quorum of the Commissioners completing and filing a certificate of appointment or oath of office with Lewis County? (Assignment of Error No. 1).

4. Did the trial court err when it failed to find an OPMA violation for a quorum of Commissioners intentionally secretly communicating about agency business, and thus constituting “action” and a “meeting” under the OPMA, without proper notice and opportunity for the public to attend and observe? (Assignment of Error No. 1).

5. Did the trial court err when it ruled that RCW 42.30.120 only permits a single civil penalty in the amount of \$500 per lawsuit to be

assessed against any individual in a case no matter how many times that individual violated the OPMA? (Assignment of Error No. 1).

6. Did the trial court err when it failed to permit the Hilliards to complete discovery on whether or not the Commissioners knowingly violated the OMPA? (Assignment of Error No. 1).

7. Under the circumstances of this case and with the lack of discovery provided by Respondents, was the trial court wrong to rule that no individual Commissioner acted with knowledge that any conduct which is the subject of the lawsuit was a violation of the OPMA? (Assignment of Error No. 1).

8. Did the trial court err when it ruled that Respondents District, Mr. Fox and Ms. Fox did not violate the OPMA when they failed to properly notice a special meeting because there was allegedly an emergency exempting notice pursuant to RCW 42.30.080(4)? (Assignment of Error No. 2).

9. Are Jimmy Hilliard and Deborah Hilliard entitled to reasonable attorney fees and costs pursuant to RAP 18.1 and RCW 42.30.120(4)? (Assignment of Error Nos. 1 and 2).

III. STATEMENT OF THE CASE

A. A QUORUM OF THE COMMISSIONERS APPROVED PAYMENT VOUCHERS AND PAYROLL TIME SHEETS WITHOUT HOLDING ANY PUBLIC MEETINGS.

1. Background.

The District is a special purpose water and sewer district created to serve the Birchfield Master Planned Community (“Birchfield”) that Virgil and Carol Fox were developing. CP 926-27. The proposed 20-year development plan for Birchfield was to have up to 2,700 residence units, a commercial strip, a golf course, employment center, and hotel. CP 2554. To satisfy the Washington Department of Ecology’s requirement for a general sewer plan, in 2004 the District entered into an interlocal agreement with Lewis County Water District #2 (District #2) for Onalaska to provide the District with wastewater treatment services. The Respondent District is governed by a three-member body of commissioners. RCW 57.12.010; CP 2554. Two members is a quorum of the District and are a majority for voting purposes. The District is a public agency and is subject to the OPMA.² CP 301, 712.

In 2003, the District Commissioners Virgil and Carol Fox approved the purchase of the water system for the development from

² The Washington State Auditor’s Office issued a report dated September 5, 2012 which found the District was a public agency and did not comply with the OPMA. CP 863, 876-879.

themselves as owners of the system for more than \$300,000 with interest. CP 931. Virgil and Carol Fox as Commissioners later agreed to provide unwritten loans from themselves as the developers, with interest, to the District which combined with the water system purchase price left the District more than \$400,000 in debt by 2011. CP 932.

Virgil and Carol Fox as lot owners for many years did not pay fees and assessments to the District that they, as Commissioners, charged the other lot owners. CP 931. During this period of time, Virgil and Carol Fox and Kristine Carter as Commissioners collected \$6,000 from the owners of each of the five other occupied lots for connection to the District's water system and to a sewer system owned by the City of Onalaska and charged those owners monthly sewer service fees, but did not actually pay any of the more than \$30,000 collected from the five lot owners to the City of Onalaska and used the funds instead for alleged "operating expenses" of the District. CP 931. When Onalaska demanded payment for the hook ups and four years of sewer services from the District, Commissioners Virgil and Carol Fox and Kristine Carter sought to charge the lot owners again for the hook up and sewer fees to pay the debt to Onalaska and increased rates to these customers to cover this unpaid debt. *Id.*

New temporary commissioners then created a "re-statement" of the 2003 original water system purchase contract in 2013. CP 956-57. These

temporary commissioners were Virgil and Carol Foxes' son, son-in-law and paid accountant, none of whom lived in the District.³ CP 9, 163-64. They were appointed by Virgil and Carol Fox to be Commissioners for the brief period in 2013 so the contract could be re-approved by Commissioners who were not also the sellers after the State Auditor noted the contract violated state law.⁴ CP 873-75.

The Lewis County Treasurer has managed the District's funds since 2013, and the District does not have the ability to issue its own checks. CP 932. The District must submit vouchers to Lewis County for all payments. *Id.* The vouchers must be signed by two of the three Commissioners for a payment to be made with no exceptions to this rule. RCW 36.22.090. From January, 2012 to February 3, 2017, the District held only 38 noticed open public meetings. The minutes of all these meetings do not state anywhere in the minutes that two or more commissioners approved payment of any payment vouchers for Lewis County or employee time sheets. CP 933. Not once did the Board provide copies of the proposed vouchers for signature during a properly noticed

³ The temporary officials were Gary Fox, Brad Olsen and Rick Ditri.

⁴ The Washington State Auditor's Office informed the Respondents that they had violated the law because public officials cannot vote on a contract which provides them a beneficial interest. CP 873-75.

public meeting. CP 933. All 239 vouchers at issue in the lawsuit were approved prior to the date of any properly noted public meeting.⁵ CP 935.

There were also at least 24 payroll time sheets which two of the three Commissioners had to approve prior to payment.⁶ These payments were made to individual commissioners and usually approved by the same commissioners who then received payments. The minutes of the 38 open public meetings held by the District during the time period when the time sheets were approved had no mention of these payroll time sheets, and they were not once approved at an open public meeting. CP 933.

2. The Hilliards Were Not Informed of the Payment Process Used by the Respondents Until 2015.

In 2010, the Hilliards moved to Washington and bought a home in Birchfield. CP 926. They are customers, taxpayers and constituents of the District. On February 9, 2011, Mr. Hilliard attended his first meeting of the Board of Commissioners (Board) of the District. CP 927. He was asked at this meeting if he would accept an appointment to fill a vacant Commissioner's position to which he said yes. *Id.* He served from April

⁵ After being sued in this lawsuit, the Commissioners retroactively approved the 239 vouchers and 24 payroll time sheets on August 16, 2017. CP 935, 1839-47. A table of these vouchers (with time sheets) listing the Clerk's Papers page numbers for each are attached as Appendix A and Appendix B. The two tables are divided by the date two years prior to filing this lawsuit.

⁶ A table of these time sheets (with vouchers) listing the Clerk's Papers page numbers for each are attached as Appendix A and Appendix B. The two tables are divided by the date two years prior to filing this lawsuit.

13, 2011 to December 31, 2011. He resigned due to concerns about financial and other improprieties by the Foxes. *Id.* This included comingling of funds between the Foxes and the District. CP 932-33. He also learned that Virgil and Carol Fox had failed to pay the required standby fees for all undeveloped properties in Birchfield. CP 928. The reduction in the District's income resulted in deficit spending and to solve this the District, through Commissioners Virgil and Carol Fox, borrowed money from the developer and development owners Virgil and Carol Fox. CP 929. Mr. Hilliard was never provided any supporting documentation to justify District expenditures and a later audit found the District had no contract or loan agreement with the Foxes for the money the Foxes allegedly loaned to the District. CP 929-30. He later found in 2011 that the District owed money to District 2 for the past hookup and sewer charges the Foxes as Commissioners had not paid. The sewer charges that were collected from the Hilliards and the other home owners that were to be paid to District 2 had been used by the Foxes and Kristine Carter as Commissioners to pay the District's operating expenses, including payments to Virgil and Carol Fox for rent, salaries and other expenses. CP 931.

3. The Respondents Continually Violated the OPMA Act.

When Mr. Hilliard was a commissioner, he was told that Carter managed the District's funds and paid the bills. CP 932. As the bills were paid from the personal loan from the Foxes to the District and came out of a bank account, Mr. Hilliard was unaware that Lewis County managed all funds that were collected each month. *Id.* He was also never asked to approve any time sheets or payment vouchers or knew there were such vouchers or time sheets. *Id.* After his time as commissioner, he attended all but 3 of the 38 regular meetings. Not once during these meetings were any payment vouchers or time sheets brought to the attention of the Commissioners in an open meeting. CP 933. The first time it was revealed to ex-Commissioner Hilliard that actions were taken outside of an open meeting that required a quorum of the Board was on May 8, 2015. This happened while Mr. Hilliard was inspecting public records at the Lewis County Treasurer's Office. *Id.* There, much to his surprise, he found six payment vouchers and learned, for the first time, that payment vouchers required the approval and signatures of two Commissioners before payment could be made by Lewis County. CP 933, 1043-48.

Mr. Hilliard subsequently submitted a PRA request to Lewis County for copies of payment vouchers and payroll time sheets. He received a total of 239 payment vouchers and 24 payroll time sheets. Of

these, he received 96 vouchers and time sheets signed prior to February 3, 2015.⁷ CP 1073-1344. He also received 167 vouchers and time sheets signed after February 3, 2015.⁸ CP 1346-1847. After this lawsuit was filed, Commissioners Mr. Fox and Mr. Dennis Eros adopted Resolution #30 which “ratified, reaffirmed and, as appropriate, re-approved” all of the vouchers and time sheets listed in the Hilliards’ complaint. CP 4-159, 1839-47.

B. THE COMMISSIONERS FAILED TO NOTE A SPECIAL MEETING AFTER THE PUMP FAILURE AND FAILED TO DECLARE AN EMERGENCY.

Mr. Fox found sewer pump #2 was not operational on or about August 15, 2016. CP 2493. The pump was removed two days later. *Id.* After locating a place to get it repaired, a special meeting was called for 7 a.m. on August 19, 2016. Defendants admit that notice of the meeting was posted on August 18th, less than 24 hours before the meeting.⁹ CP 2781-82. The pump was delivered to the repair facility on Thursday, August 18th. CP 2494-95.

⁷ A table of these vouchers and time sheets in attached as Appendix A.

⁸ A table of these vouchers and time sheets in attached as Appendix B.

⁹ In her prior declaration, Carol Fox claimed the notice was timely filed. CP 472. After further discovery, Virgil Fox was forced to admit that the call he made to Carol Fox to post the notice was less than 24 hours prior to the meeting. Defendants now claim this call was made August 18, 2016 at 8:59 a.m. CP 2495, 2504.

The meeting took place the next day. The agenda described the purpose of the meeting as “Agenda, to Discuss Purchase Of Replacement for Failed Sewer Pump.” CP 2569. At this meeting, the Commissioners approved to have Mr. Fox “to take whatever action may be necessary to deal with the problem in the most cost-effective manner.” CP 2567. The Commissioners agreed to first try to repair the pump and then if that was not possible, to replace it. CP 2580. Not once in the minutes of this meeting or in the transcript of the recording from the meeting¹⁰ was the word emergency used. CP 2578-91. The work on the pump was probably completed by August 31, 2016.¹¹ CP 2537. Mr. Fox did not pick up the repaired pump until September 1, 2016. CP 2571-73. The actual pump installation by Mr. Fox with the assistance of an electrician occurred between September 8, 2016 and September 9, 2016. *Id.* Mr. Fox completed the final installation apparently by himself on September 10, 2016, a full 26 days after discovering the pump was inoperable on August 15, 2016. CP 2573.

¹⁰ The recording was obtained through discovery after the lawsuit was filed.

¹¹ The Commissioners provided no evidence that Mr. Fox had told Mr. Lawson of L & L Machinery that the job was an emergency. The invoice shows ten hours of labor at \$80 per hour. CP 2519. There are no invoicing for overtime work.

C. THE PROCEDURE BELOW.

Jimmy and Deborah Hilliard filed this lawsuit February 3, 2017. CP 1-159. After the Hilliards granted a continuance to the Commissioners and District, the Commissioners filed their Answer along with the District on June 5, 2017. CP 160-290, 2758-27781, 1VPR 23.¹² Two days later, the Commissioners filed their motion for summary judgment along with their memorandum and supporting declarations. CP 291-545. Along with this motion, they propounded discovery on the Hilliards. 1VPR 23-24. The District joined the motion the next day. CP 546-708. The motion was then stricken. The Respondents refiled a summary judgment motion with supporting documentation on August 15, 2017. CP 291-515. The Hilliards responded September 5, 2017 with supporting documentation. CP 709-2310. In their response, the Hilliards cross-moved for summary judgment. They also asked for a continuance pursuant to CR 56(f) prior to a determination of whether or not the Commissioners had sufficient knowledge to be individually penalized.¹³ *Id.* The Respondents then replied September 11, 2017. CP 2331-2361.

¹² The September 15, 2017 hearing is designated as 1VPR. The December 20, 2017 is designated as 2VPR.

¹³ The basis of this motion was the inability of the Hilliards to conduct timely discovery including depositions because the Respondents had not complied with outstanding discovery requests. CP 722-23.

At the hearing held September 15, 2017, the trial court found there was a genuine issue of material fact as to whether or not proper notice was posted for the August 19, 2016 meeting. 1VRP 8. It agreed to the catchall two-year statute of limitations while denying the application of either the discovery rule or equitable tolling to the accrual date. 1VPR 44-45. To justify this ruling, it relied on the fact that the vouchers were public records available through the County. The trial court then found the signing of vouchers and other actions taken were not actions and deliberations made pursuant to the OPMA. 1VPR 45-46. The trial court then held that the plain reading of the statute would only permit a penalty of \$500 the first time an individual was found to have violated the OPMA. 1VPR 46. Having so decided, the trial court went on to rule on an issue not properly before it because it had previously found no violation of the OPMA – whether or not the Commissioners had acted with intent. Having taken up the gauntlet, it ruled there was no evidence of any violation. 1VPR 46-47. The order was signed September 29, 2017, with handwritten language added without notice dismissing all the Commissioners from the case even though one potential violation still existed.¹⁴ The Hilliards were

¹⁴ Counsel for the Hilliards had agreed that the proposed order submitted by Defendants' attorney accurately reflected the trial court's ruling and informed Defendants she would not be available to attend the presentation with the understanding the version circulated would be what was presented. At the presentment, the Defendants' attorney orally requested additional relief – dismissal of all defendants – and asked that it be added to the

forced to file a motion for reconsideration. CP 2368-2452. After an opposition was filed (CP 2453-2470), the trial court granted the motion for reconsideration and reinstated the Commissioners as defendants. CP 2471. After reconsideration, a final order was filed, October 17, 2017, granting partial summary judgment and striking the hand-written addition. CP 2362-2367. The issue involving the August 19, 2016 meeting was left unresolved.

On October 11, 2017, Carol Fox filed an amended and supplemental declaration to her first declaration filed in support of the summary judgment motion. CP 2781-2797. In this declaration, she admitted she was wrong when she had previously claimed she had posted the notice at least 24 hours prior to the special meeting. *Id.*

A second partial summary judgment addressing the August 19, 2016 hearing was filed November 3, 2017. CP 2472-2538. After the response (CP 2539-2583) was filed December 11, 2017 and reply (CP 2584-2599) was filed December 14, 2017, a hearing was held December 20, 2017. At this hearing, the trial court granted the summary judgment motion based on the concept that the record of the meeting need not have

Order. Defendants' attorney did not circulate the signed Order, and Plaintiffs' attorney was forced to request it. Once received, when counsel discovered that unauthorized language dismissing all three Commissioners from the lawsuit had been added even though only partial summary judgment was granted had been added at the hearing, the Hilliards filed a motion for reconsideration challenging this inappropriate action. CP 2368-74.

any mention of any threat to persons or property to constitute an emergency. 2VPR 13. The trial court agreed with counsel for the Hilliards that the decisions made at the August 19, 2016 meeting was about money. *Id.* The order was signed the same day. CP 2798-2801. A timely notice of appeal was then filed January 18, 2018. CP 2602-2615.

IV. SUMMARY OF THE ARGUMENT

Jimmy and Deborah Hilliard showed that the District and Commissioners violated the OPMA when a quorum of Commissioners approved all financial transactions involving vouchers and time sheets since December 2013 outside of a properly noticed public meeting. They also showed that the meeting held August 19, 2016 was a special meeting, not an emergency meeting, and that it was not properly noticed, violating the OPMA. The trial court's grant of summary judgment to the Defendants, and denial of summary judgment to the Hilliards, is reversible error.

V. ARGUMENT

A. STANDARD OF REVIEW

1. Summary Judgment.

Summary judgment is appropriate when the pleadings, affidavits, interrogatories, depositions and exhibits show there are no genuine issues of material fact and the moving party is entitled to judgment on the issues

presented as a matter of law. *Havens v. C&D Plastics, Inc.*, 124 Wn.2d 158, 177, 876 P.2d 435 (1994). When reasonable minds could reach but one conclusion regarding the claims of disputed facts, such questions may be determined as a matter of law. *Corbally v. Kennewick School Dist.*, 94 Wn. App. 736, 740, 937 P.2d 1074 (1999).

Any doubt as to the existence of a genuine issue of material fact will be resolved against the movant. *Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 930 P.2d 307 (1997). A material fact is a fact upon which the outcome of a case depends, in whole or in part. *Clements v. Travelers Indem. Co.*, 121 Wn.2d. 243, 850 P.2d 1298 (1993).

2. The Open Public Meetings Act.

“[T]he OPMA is a comprehensive statute, the purpose of which is to ensure that governmental actions take place in public.” *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1086 (9th Cir.2003).

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.

RCWA 42.30.010.

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.”

RCW 42.30.030.

The purpose of the OPMA is remedial and it “shall be liberally construed.” RCW 42.30.910.

The Act provides that any action taken at meetings failing to comply with the open meeting requirements will be null and void. Any ‘action’ taken during the phone call would thus be invalidated.

Org. to Pres. Agr. Lands v. Adams Cty., 128 Wn.2d 869, 883, 913 P.2d 793, 802 (1996) (citing RCW 42.30.060(1)).

B. THE HILLIARDS ARE ENTITLED TO AN ACCRUAL DATE OF WHEN THE RESPONDENTS STARTED VIOLATING THE OPMA.

The Hilliards were kept in the dark about the accounting means by which the District and the Commissioners paid the bills. The OPMA does not contain a statute of limitation (“SOL”) for claims alleging a violation of the OPMA. *See* RCW 42.30.010, et. seq. The trial court found that the two-year catchall SOL, RCW 4.16.130, applied to the OPMA. Because the payment methods had not previously been disclosed to the Hilliards, and the Defendants intentionally hid those methods, the Hilliards are entitled to equitable tolling. In the alternative, the Hilliards need not have sued until they discovered or should have discovered the necessary facts from which a reasonable person would know he or she had a basis to sue. Since

the Defendants intentionally hid the relevant facts, the Hilliards sued as soon as a reasonable person would know he or she had a basis to sue.

1. The Commissioners Deliberately Hid From the Hilliards How Disbursements Were Made on Behalf of the District.

Mr. Hilliard was led to understand that the secretary of the District paid all expenses of the District. The Commissioners never told the Hilliards that the District did not have a bank account or check book and that all payments of District funds were done through a voucher to the Lewis County Treasurer that had to be signed by two Commissioners requesting the Treasurer to pay the invoice. RCW 36.22.090. During the nine-months Mr. Hilliard was a Commissioner – during which time the District only held five open meetings – not once did Commissioners Virgil and Carol Fox tell him about the vouchers, ask him to sign such a voucher, show him such a voucher, or explain the voucher process to him. CP 932. Commissioners Virgil and Carol Fox would not share the agency records with Mr. Hilliard as Commissioner forcing him to make Public Record Act (“PRA”) requests to the District to obtain information, and even then the Foxes and Carter withheld these crucial records and these crucial facts from him. *Id.*

The Hilliards first learned of the voucher system and the voucher and timesheet events when they received public records from Lewis

County in response to a PRA request in June 2016 and were told that all payments from the District were handled in this way and that, contrary to what Mr. Fox had told Mr. Hilliard, the District did not have its own bank account and the Secretary did not pay any bills.

The Hilliards filed this lawsuit just seven months after discovering these facts. Until June 2016, they did not have facts that would lead a reasonable person to know of these specific OPMA violations. The Commissioners had deliberately hidden the essential facts from Plaintiffs, and thus even if the SOL clock started two years prior to the filing of this lawsuit, the SOL clock here must be tolled either based on the discovery rule or equitable tolling.

2. The Hilliards Are Entitled to Equitable Tolling.

Equitable tolling is a doctrine which has been applied to the Public Records Act (PRA). *See Belenski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016). In acknowledging that such tolling should be applied to the PRA, the Supreme Court acknowledged the

legitimate concerns that allowing the statute of limitations to run based on an agency's dishonest response could incentivize agencies to intentionally withhold information and then avoid liability due to the expiration of the statute of limitations.

Id. at 461. In light of the concerns that “such an incentive could be contrary to the broad disclosure mandates of the PRA and may be

fundamentally unfair in certain circumstances,” the Supreme Court permitted equitable tolling in PRA cases. Like the PRA, the OPMA presents similar concerns involving incentivizing agencies to not disclose actions taken in violation of the OPMA.

While this remedy should be used sparingly, its application should be consistent with the OPMA’s purpose. *See Nickum v. City of Brainbridge Island*, 153 Wn. App. 366, 378-79, 223 P.3d 1172 (2009). The party asking for tolling bears the burden of proof. *Id.* at 379 (citation omitted). “The predicates for equitable tolling are bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff.” *Id.* (quoting *Millay v. Cam*, 135 Wn.2d 193, 206, 955 P.2d 791 (1998)). The Hilliards meet this requirement and have met their burden of proof.

3. The Discovery Rule Must Apply to the OPMA for Fundamental Fairness to Fulfill the Purposes of the Act.

Washington first adopted the discovery rule in *Ruth v. Dight*, 75 Wn.2d 660, 453 P.2d 631 (1969). This case involved a surgical sponge left in an abdominal cavity for 22 years. *Id.* at 662-63. In rendering its decision, the Supreme Court asked the following question:

But what happens to the concepts of fundamental fairness and the common law’s purpose to provide a remedy for every genuine wrong when, from the circumstances of the wrong, the injured party would not in the usual course of events know he had been

injured until long after the statute of limitations had cut off his legal remedies?

Id. at 665. The Court's answer was to apply the "discovery rule" to medical malpractice cases involving foreign objects left in the body cavity. *Id.* at 667.¹ The Court was also quite clear that absolutely no element of fraudulent concealment was required and that both parties neither knew of the injury nor tried to conceal that knowledge. *Id.*

The theory of the discovery rule is that limitations statutes are not intended to foreclose a cause of action before the injury is known, and that the term "accrue" should not be interpreted to create such a consequence. *Id.* at 667-68. The action accrues when the plaintiff knows or should know the relevant facts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action. *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 120 P.3d 605 (2005). The burden is on the plaintiff to show that the facts giving rise to the claim were not discovered or could not be discovered by due diligence within the limitation period. *G.W. Constr. Corp. v. Prof'l Serv. Indus.*, 70 Wn. App. 360, 367, 853 P.2d 484 (1993).

Building on *Ruth*, our courts have applied the discovery rule in cases in which courts have recognized a special relationship between the

¹Two years later, the legislature formally adopted this rule as applied to medical malpractice cases. RCW 4.16.350.

parties. *See, e.g., Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 543 P.2d 338 (1975) (professional malpractice involves a fiduciary duty which permits the discovery rule); *Kittinger v. Boeing*, 21 Wn. App. 484, 585 P.2d 812 (1978) (the employer-employee relationship creates responsibilities to the employer).

There has always a special relationship between the citizen and her government. As far back as *Potter v. New Whatcom*, 20 Wash. 589, 590-91, 56 P. 394 (1899), our courts have acknowledged the special relationship between the government and the governed. A city was described as sustaining a trust relation with a member of the public and as such, the statute of limitations was held not to run on the warrant holder's claim to funds that were unlawfully converted until the warrant holder had notice or knowledge that the funds were misappropriated. *Id.* at 591. The OPMA acknowledges that agencies exist to aid in the conduct of the people's business." RCW 42.30.101. No more important relationship exists then that of the governors and the governed. This special relationship between the citizen and her government can be of no less importance than the relationship between a fisherman and his insurer, the doctor and his patient or the employee and his employer.

Where the opposing party controls disclosure of information that can inform the complaining party of a cause of action, a special

relationship is established which can invoke the discovery rule. We have seen this exact situation in *Kittinger*. While the *Kittinger* court expounded on the nature of the relationship, it also pointed out that deciding against Mr. Kittinger “would encourage employers to keep potentially libelous communications confidential.” *Kittinger*, 21 Wn. App. at 488. This same problem can exist with entities statutorily obligated to hold public meetings but don’t. A case decided three years after *Kittinger* makes it clear that a party with a duty to disclose cannot reap the benefits of non-disclosure. *U.S. Oil & Refining Co. v. Dep’t of Ecology*, 96 Wn.2d 85, 91, 633 P.2d 1329 (1981).

In *U.S. Oil*, the Department of Ecology (“DOE”) was charged by statute with the duty to collect penalties for unlawful waste discharges. Under the waste regulatory scheme of RCW 90.48, the DOE had to rely on the self-reporting industry to discover violations. *U.S. Oil*, 96 Wn.2d. at 92. Not surprisingly, U.S. Oil failed to properly report its unlawful discharges. When the DOE suspected that monitoring reports were inaccurate and began investigating, it determined that U.S. Oil had unlawfully discharged waste. *Id.* Unfortunately, under the law that existed at that time, the DOE’s discovery was subsequent to the expiration of the statute of limitations, preventing it from collecting penalties from U.S. Oil for its violations.

The Court found that without permitting a discovery rule to apply to situations involving self-disclosure, industries can discharge pollutants and, by failing to report violations, escape penalties. *Id.* at 92. Analogizing to other cases where the plaintiff lacks the means or ability to ascertain that a wrong has been committed, the court reasoned:

Where self-reporting is involved, the probability increases that the plaintiff will be unaware of any cause of action, for the defendant has an incentive not to report it.

....

Not applying the rule in this case would penalize the plaintiff and reward the clever defendant. Neither the purpose for statutes of limitation nor justice is served when the statute runs while the information concerning the injury is in the defendant's hands.

Id. at 93-94.

Permitting an agency to escape liability for violating the OPMA impairs the trust between the citizen and her government. To avoid this problem, the Respondents must be held accountable for their failure to properly hold meetings resulting in secret decision making. The most basic rudiments of justice and the history of judicial policy determinations set forth above compel the extension of the discovery rule as described in *U.S. Oil and Kittinger* to this case and the OPMA.

C. THE DISTRICT AND COMMISSIONERS VIOLATED THE OPMA WHEN A QUORUM OF COMMISSIONERS APPROVED PAYMENT VOUCHERS AND PAYROLL TIME SHEETS WITHOUT HOLDING A PUBLIC MEETING.

All public agencies are subject to the OPMA. A violation of the OPMA occurs when an action is taken by the governing body without a public meeting. RCW 42.30.120. All three elements must be present for a violation to be found – action, meeting, and governing body.

A meeting of such an agency is subject to the OPMA whenever that agency takes an “action.” RCW 42.30.020(4). An action is defined as

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.”

RCW 42.30.020(4). With few exceptions, all meetings of a governing body “shall be open and public.” RCW 42.30.030. Here, two of the three Commissioners approved vouchers and time sheets outside of a public properly-noticed meeting. This constituted “action” and thus a “meeting” and a violation of the OPMA.

Political subdivisions of counties who cannot issue their own warrants are obligated to have the county auditor for the county where the subdivision is located make the payments for it. RCW 36.22.090. Each warrant must have the approval of the subdivision’s governing body. *Id.* It is undisputed that each of the vouchers and timesheets identified by

Plaintiffs was a voucher or timesheet signed by two of the three Commissioners done at a time and place of each Commissioner's choosing, but not at any public meeting.¹⁵

Approving expenditures is the most basic of "action" taken by agencies at the heart of the OPMA – deciding where the agency's money should be spent, satisfying oneself that the expenditure is appropriate and legitimate and adequately documented, and approving as a member of the Governing Body of the agency the payment of such funds. This is especially true when the approval and distribution of funds is controlled by RCW 36.22.090 and cannot be delegated. This is not a role that this District lawfully can delegate to staff, even if Commissioners also, bizarrely, hires themselves as staff, as occurred here at times. The Commissioners concede they signed the vouchers and time sheets. CP 738-39, 743, 747, 751. In doing so, the District approved each payment voucher for submittal to the County. This was clearly an "action".

Any time two of the three Commissioners weighed in on something, whether or not in the same room or phone call or even on the same day – even if they did so in a serial or rolling fashion or using a third party, it was "action" and thus a "meeting," and an OPMA violation if

¹⁵ It is entirely possible that the warrants were signed in sequence, another violation of the OPMA.

done without proper notice.¹⁶ *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 563 n.4, 27 P.3d 1208 (2001).

Given the general definition of “meeting,” combined with the directive to liberally construe the OPMA, we conclude that the legislature intended a broad definition of the word “meeting.

Id. at 562. The holding in *Wood* recognized that “[e]lected officials no longer conduct the public’s business solely at in-person meetings.” *Id.* “Consequently, courts have generally adopted a broad definition of “meeting” to effectuate open meetings laws that state legislatures enacted for the public benefit.” *Id.* at 562-62. *See also Eugster v. City of Spokane*, 110 Wn. App. 212, 224, 39 P.3d 380 (2002) (remanding for further fact finding due to allegations of serial communications which would constitute a meeting). Finally, the Hilliards cited to the Municipal Resource Service Center (“MRSC”), the authoritative resource for municipal agencies, for its electronic communications recommendations.¹⁷ CP 715; Appendix C. The recommendations warn that “meetings” occur from staff sending material to which members respond or staff sharing members’ input with other members. *Id.*

¹⁶ “For example, the Washington Attorney General’s Open Records & Meetings Deskbook, 1.3A notes that “telephone trees,” where members repeatedly phone each other to form a collective decision, are inappropriate under the OPMA.”

¹⁷ Available at http://mrsc.org/getmedia/bfa1aec4-0e0f-4663-8918-be4afc885271/opma_electronic%20communications_practice%20tips.aspx (last visited May 28, 2018).

A meeting within the OPMA context is broadly defined. *Wood*, 107 Wn. App. at 562. It is broadly defined because it is defined as

the transaction of the official business ... by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.”

Id. (quoting RCW 42.30.020(2)). In combining this broad definition “with the directive to liberally construe the OPMA”, the *Wood* Court held the word “meeting” was to be broadly construed.” *Id.*

The action approving time sheets and vouchers could not be approved by anyone other than a quorum of the governing body of the District. Because a quorum of commissioners was required, its approval is an action as defined by the OPMA. Because such an action required at least a quorum of the governing body to approve the vouchers and time sheets, the approval took place at a meeting as defined by the OPMA. The Commissioners admitted the documents were not signed during an open public meeting. CP 739, 744, 748, 752. Such an action took place at a closed meeting, whether or not it was by email, in person, or sequentially. Thus, the District violated the OPMA.

D. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THE COMMISSIONERS DID NOT HAVE INTENT TO VIOLATE THE ACT AND WHEN IT DID NOT CONTINUE THE HEARING TO PERMIT THE HILLIARDS TO COMPLETE THEIR DISCOVERY ON THE ISSUE OF INTENT.

1. The Commissioners Intended to Violate the OPMA Thus They Are Personally Liable for Per Violation Penalties.

The Commissioners admit they attended various OPMA training sessions. All that is required is that the Commissioners were aware of the facts that made their actions illegal, not that they intended to break the law. The OPMA trainings attended by the Commissioners alerted them to the requirements of the OPMA. The Commissioners knew that only Commissioners can approve vouchers and time sheets and that such a responsibility cannot be delegated. The Commissioners knew that a quorum of the governing body – two Commissioners – were required to approve the vouchers and time sheets. The Commissioners knew that they had signed the vouchers and time sheets they signed and did so outside of a properly noticed public meeting. The Commissioners also knew that less than 24 hours' notice had been given for the August 19, 2016 meeting they nonetheless chose to attend. The Hilliards established that the Commissioners knew the facts that made their actions a violation of the OPMA. They proved that the Commissioners attended the “meetings” (voucher, time sheets and the August 19, 2016 event) with knowledge that

those meetings were not properly noticed and open to the public. The trial court could not legitimately find the Commissioners acted without such knowledge or intent on this record. Because all of these actions took place through the governing body at a closed meeting with knowledge of the OPMA's requirements and knowledge of the facts surrounding their own actions, the Hilliards showed the Commissioners knowingly violated the OPMA.

2. If This Court Determines There Is Insufficient Evidence to Find the Commissioners Knowingly Violated the OPMA then this Case Must Be Remanded to Permit the Hilliards to Conduct the Necessary Discovery.

Any member of a governing body who knowingly makes a decision in violation of the OPMA is liable for penalties. RCW 42.30.120(1)(2). In making its September 15th ruling, the trial court stated that the Commissioner's actions were not knowing.¹⁸ RCW 42.30.120(1); 1VP 46-47; CP 2365. This ruling was based on the self-serving declarations of the defendants claiming they did not know their actions were wrong, but did not include all possible relevant evidence because the

¹⁸ Missing just one prong of the definition of a violation of an open meeting is sufficient to dismiss a claim. Here, the trial court unnecessarily ruled on the intent element, relevant only to the separate issue of whether the Commissioners could be personally fined not whether or not a violation occurred, and the trial court did so even though a great deal of discovery was still to be conducted by the Hilliards and the Hilliards had timely filed a CR 56(f) motion.

Hilliards were denied the opportunity to complete discovery on whether or not the violations of the OMPA were intentional.

The Hilliards presented evidence below that the Commissioners deliberately hid evidence from them including how bill payments were made. Mr. Hilliard made it quite clear that during the time he was a Commissioner, he was not permitted open access to the District's records. CP 932. He was led to believe that the District had its own banking account for which all bills were paid. *Id.* He was not informed that there was the voucher system which required Lewis County to pay all bills and that they required the signatures of at least two Commissioners. *Id.*

After the Hilliards filed this action, the Respondents secured an extension to file their Answer until June of 2017. Two days after the Answer was filed, they issued discovery and motions for summary judgment. But Respondents, who possess relevant information and records, and who owe such information and records to Plaintiffs, have not adequately responded to discovery propounded upon them, and by delaying discovery production have prevented their depositions from being noted and taken.

In the Respondents' response to the summary judgment motion, it was pointed out that the Respondents had not completely complied with outstanding discovery including providing full, complete and honest

answers to the Interrogatories and Requests for Admission.¹⁹ CP 722. Furthermore, by delaying their discovery production, the Respondents prevented their depositions from being noted and taken. CP 728-28. The Hilliards were not permitted to ask the individual Defendants questions about the training they received on the OPMA, their understanding of the OPMA, and their knowledge of the law governing the OPMA. CR 728.

A closer look at the timeline shows that the incomplete discovery responses were mailed to the Hilliards on July 19, 27, 28 and 31, 2017. CP 777, 808, 834, 845, 856. The first summary judgment motion was filed August 15, 2017, less than a month after the first incomplete discovery responses were provided to the Hilliards.

A trial court may deny a motion for a continuance when: 1) the requesting party does not have a good reason for the delay in obtaining the evidence; 2) the requesting party does not indicate what evidence will be established by further discovery; and 3) the new evidence would not raise a genuine issue of material fact. *Butler v. Joy*, 116 Wn. App. 291, 65 P.3d 671, review denied, 150 Wn.2d 1017, 79 P.3d 446 (2003). Whether to grant or deny the motion for continuance is a matter within the court's discretion. *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989).

¹⁹ This includes providing the Hilliards with copies of the materials provided to the Commissioners during their training. CP 727-28, 736-856. The Hilliards needed this information and depositions based on it to counter the assertions in the Commissioners' self-serving declarations. They were not provided this opportunity by the trial court.

The court's primary consideration on a motion for continuance should be justice. *Butler*, 116 Wn. App. at 291. Here, the trial court abused its discretion when it ruled there was no intent because the Hilliards were not given the time to conduct the discovery necessary to establish the existence (or not) of the Commissioners' intent. This is especially true because having ruled against the Hilliards on the three other elements, there was no need to rule on intent. The Hilliards presented good reasons to delay the hearing, the evidence they sought and showed how the new evidence would raise a genuine issue of material fact.²⁰ The trial court abused its discretion when it issued a decision on intent which was both unnecessary and premature.

E. EACH AGENCY OFFICIAL WHO KNOWINGLY VIOLATES THE OPMA MUST BE PENALIZED FOR EACH VIOLATION PURSUANT TO RCW 42.30.120.

The trial court ruled that the plain language of RCW 42.30.120 allows only a single civil penalty of \$500 to be assessed against any individual in this case, no matter how many actual violations existed.²¹

This was based on the use of the word judgment in the statute. CP 2365.

²⁰ Given the actions of the Respondents in delaying filing their Answer only to immediately file a dispositive motion, it was reasonable to grant the Hilliards the time necessary to complete discovery on this issue.

²¹ Such an order was irrelevant to the case since no violation was found. However, since this Court should remand on the issues presented, the Hilliards will address the issue.

Since the OPMA's passage in 1972, it has provided penalties for each knowing violation of the act by any member of the governing body.

Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars.

RCW 42.30.120 (1972-2015). The penalty was always viewed as, and enforced as a "per meeting" violation, and the penalties were always paid to the Plaintiff in lawsuits. CP 726-27. Based on concerns that the mere \$100 per-meeting violation penalty was insufficient deterrence, the State Legislature amended the Act in 2016. In this amendment, the first knowing violation of the OPMA per-meeting penalty was assessed at \$500, and each subsequent knowing violation of the OPMA required a \$1000 per-meeting penalty. RCW 42.30.120 (2016-present).

A court's "fundamental objective" when interpreting a statute "is 'to discern and implement the intent of the legislature.'" *Flight Options, LLC v. Dep't of Revenue*, 72 Wn.2d 487, 500, 259 P.3d 234 (2011) (quoting *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)); *Estate of Bunch v. McGraw Residential Center*, 174 Wn.2d 425, 432, 275 P.3d 1119 (2012). "When interpreting a statute, courts first look to its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

If the plain language is subject to only one interpretation, the court's inquiry ends because plain language does not require construction. *Id.*; *State v. Thornton*, 119 Wn.2d 578, 580, 835 P.2d 216 (1992). "Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself." *Wash. State Human Rights Comm'n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P.2d 163 (1982). If a statute is ambiguous, the Court "may look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). The statute, having not been previously interpreted by our courts, is susceptible to two or more possible interpretations thus the statute is ambiguous and this Court must look to legislative intent to discern the legislature's intent in passing the revision.

RCW 42.30.120(1) imposes a \$500 fine on "[e]ach member of the governing body who attends a meeting ... where action is taken in violation of any provision of this chapter . . . with knowledge of the fact that the meeting is in violation thereof..." A \$1000 fine per meeting is imposed on repeat offenders who attend a meeting after being found by a Court to have violated the Act before. RCW 42.30.120(2). The trial court, based on the argument of the Respondents, held that the words "for the first violation" in RCW 42.30.120(1) and the words "in a final judgment"

in paragraph (2) mean the only penalty that can be awarded for knowingly attending multiple illegal meetings is a \$500 total fine until a judgment in a first case has been issued. This reading is not supported by the legislative history which shows that the goal of the amendment was to increase penalties for OPMA violations and increase deterrence and encourage greater compliance with the OPMA.

The Attorney General's office requested the amendment to raise the amount of penalties and increase its deterrent effect. Senate Bill Report, SB 6171. Appendix D. In the summary of public testimony including Nancy Krier from the Attorney General's Office, the point was made that "[t]he penalty is very small compared to attorneys' fees needed to litigate it, and the level of proof is very high."²² It is not cost effective or reasonable to litigate cases with such a small penalty." *Id.* at 2.

²² • Video of Senate Government Operations & Security Committee January 14, 10:00 am Meeting available at <https://www.tvw.org/watch/?eventID=2016010072> at counter 12:40 (last visited May 14, 2018).

• Video of Senate Government Operations & Security Committee January 28, 10:00 am meeting available at <https://www.tvw.org/watch/?eventID=2016010345> at counter 41:50 (last visited May 14, 2018).

• Video of House State Government Committee February 23, 10:00 am Meeting available at <https://www.tvw.org/watch/?eventID=2016021315> at counter 38:08 discussing SB 6171 (last visited May 14, 2018).

• Video of House State Government Committee, February 24, 2016, 8 am Meeting available at <https://www.tvw.org/watch/?eventID=2016021335> at counter 1:06 (last visited May 14, 2018).

Attorney General Bob Ferguson stated the following in the forward to the 2016 Open Public Meetings Act Guidance FAQs, dated June 1, 2016:²³

Transparency in government is a cornerstone of democracy, ensuring the people’s right to know. The Attorney General’s Office is an important resource for the public and for government entities on the state’s Sunshine Laws: the Public Records Act (PRA) and the Open Public Meetings Act (OPMA). My office recently successfully requested legislation to increase the OPMA’s penalties so they maintain the deterrent effect consistent with the original intent of the law. The passage of that bill, SB 6171, means that OPMA penalties are increased from \$100 to \$500 for a first knowing violation by a governing body member, and to \$1,000 for a subsequent knowing violation.

FAQ, pp. 2, 18 (Excerpts, Appendix E). It is clear the intent was to penalize each violation to protect that which is most precious to a citizen – open meetings. Otherwise, the Act, as noted above in the comments, is a paper tiger.

Another approach is to examine the language both prior to and after the 2016 amendment. Sections (1) and (2) of RCW 42.30.120 imposes a monetary violation for “[e]ach member of the governing body who attends a **meeting** . . .” (Emphasis added). The statutory language uses the indefinite article “a” before the word meeting. The Supreme Court has interpreted this narrowly, applying Webster’s definition:

²³ [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Open_Government_Ombudsman/OPMA%20FAQ%20Agency%20Searches %20June%201%202016.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Open_Government_Ombudsman/OPMA%20FAQ%20Agency%20Searches%20June%201%202016.pdf).

1—used as a function word before most singular nouns other than proper and mass nouns when the individual in question is undetermined, unidentified, or unspecified ...; used with a plural noun only if *few*, *very few*, *good many*, or *great many* is interposed.

State v. Ose, 156 Wn.2d 140, 146, 124 P.3d 635, 638 (2005) (citing Webster’s Third International Dictionary of the English Language (2002)).

It went on to say that the word “a” is used only to precede singular nouns except when a plural modifier is interposed . . .” *Id.* Given the plain language of the statute with no plural modifier, the only logical interpretation is that the legislature intended to impose penalties for each violation.²⁴

The interpretation of separate violations also comports with the language in sections (1) and (2). This then raises a rhetorical question – how can a court impose only one violation when the statute itself differentiates between the first and second violation? The obvious answer is that it cannot.

Nowhere in the text of the Statute, or its Legislative History, or its forty-plus year history since its passage, is there any hint the Legislature intended to impose less of a penalty on an official who participates in a meeting knowing it was in violation of the OPMA or that the official

²⁴This interpretation is supported by the original bill report whose language mirrors the final statutory language for each violation. <http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/6171%20SBA%20GOS%2016.pdf>

would be limited to a single one-time \$100, or now \$500, penalty in a lawsuit no matter how many meetings the official participated in knowing they were in violation of the OPMA. Public policy favors such a harsh penalty for a knowing violation of the OPMA. Otherwise, individuals may violate it with impunity.

Here, the individual Commissioners have admitted to participating in the action that constitutes the meetings at issue. Knowledge of the illegality of those meetings cannot be addressed until this case is remanded for further discovery including depositions and full responses and complete responses to outstanding discovery requests. But as a preliminary matter, this Court should rule that penalties for violation of the OPMA can be cumulative for each knowing violation of the act.

F. THE RESPONDENTS VIOLATED THE OPMA WHEN THEY FAILED TO PROVIDE NOTICE OF A SPECIAL MEETING THAT WAS NOT AN EMERGENCY.

1. Respondents' Failure to State the August 19, 2016 Meeting Was an Emergency Forestalls Them Claiming It After-the-Fact.

The District has admitted it did not timely post notice for a special session required by RCW 42.30.080(3). CP 2493-94. Instead, after being forced to change their testimony about providing proper notice of a special meeting, the Commissioners belatedly claimed there was an emergency

justifying improper notice.²⁵ Such a claim attempts to close the barn doors after the horses have escaped.

A court examining whether or not a meeting was being held under the emergency circumstances requires first asking a critical question – did the agency’s governing body declare that the meeting was for the purposes of an emergency. Such evidence is required because the OPMA permits a meeting to be held without notice when the purpose of the meeting is dealing with potential or real injury or damage to persons or property where notice would be impractical. RCW 42.30.080(4). Such a holding is required to show that the agency was aware that its decision to hold the meeting was due to a real threat to persons or property and would void the 24 hour notice requirement for special meeting set forth in RCW 42.30.080(2)(c).

If there is no evidence that the meeting was declared as an emergency at the time of the meeting, then the inquiry is over and a violation must be found.²⁶ However, if at the time of the meeting it was claimed to be an emergency meeting to justify the lack of notice, then and

²⁵ As was previously noted, Ms. Fox first claimed under oath that she had posted the meeting notice more than 24 hours prior to the meeting. After being caught in either an untruth or being too lazy to confirm the time through readily accessible phone records, the Respondents now admit they afforded less than 24 hours notice and now claim it was an emergency meeting, requiring no notice.

²⁶ Public policy favors this approach to avoid situations like this case where an agency makes an argument after the fact to justify its lack of notice of the meeting.

only then should the facts surrounding the alleged emergency be addressed to determine if the emergency claimed was truly an emergency or merely a pretext. Because no evidence supports the claim that it was declared an emergency meeting on August 19, 2016, any subsequent evidence must not be considered.

Absolutely no evidence has been produced that at the time of the August 19, 2016 meeting that it was called to deal with an emergency. The OPMA is quite clear on the requirements for minutes. They shall be promptly recorded and such minutes are then open to public inspection. RCW 42.30.035. The minutes reflected absolutely no emergency concerns justifying a quick response.²⁷ However, Mr. Fox's concern was only to get it up and running as soon as practicable, after investigating prices for various possible fixes.

It is also clear that notice is required for special meetings. RCW 42.30.080. Nowhere in the contemporaneously taken minutes was it declared an emergency meeting. Mr. Hilliard Decl. Exhibit D. Nor was such language in the transcript. Deborah Decl., Exhibit A. The District failed to meet its 24 hour notice requirement required by RCW

²⁷ The trial court relied on the transcript from the meeting held on August 19, 2017, to establish circumstantially that there was an emergency. 2VPR 13-15; CP 2578. However, none of the actions taken by Mr. Fox were those of someone who was in a hurry. The trial court choose to ignore the evidence that it took weeks to get the pump fixed and replaced and that not once during this period of time did Mr. Fox attempt to get the work done quicker.

42.30.080(2)(c). Because the District did not meet its special meeting notice requirement and there was no contemporaneous declaration that there was an emergency, the District violated the OPMA.

Nor do other facts support any assertion that the August 19, 2016 was an emergency meeting. Mr. Fox had asked his wife to post the appropriate notice for a special meeting.²⁸ If he had felt it was an emergency, no notice would have been required. The notice also makes no mention of the word emergency. *Id.* Having failed to declare an emergency in the notice, the minutes and in the transcript, the Respondents cannot justify the lack of notice and they violated the OMPA.

2. Even If No “Emergency Meeting” Documentation Does Not Preclude a Court from Examining the Evidence, the Facts Do Not Support the Finding of an Emergency.

Even assuming, arguendo, that the failure to declare at the time of the meeting that it was being held as an emergency is not critical, the facts support the Hilliard’s contention it was a special meeting without proper notice. The Supreme Court has emphasized that

[t]he circumstances must be unexpected and must call so urgently for action that even the 1-day delay the notice entails would substantially increase a likelihood of such injuries.

²⁸ Unfortunately, as the Respondents now admit, the alleged notice was improperly posted less than 24 hours prior to the meeting. They originally claimed to have provided a proper 24 hour special meeting notice but were forced to admit their error when their own phone records showed just the opposite.

Mead Sch. Dist. No. 354 v. Mead Ed. Ass'n (MEA), 85 Wn.2d 140, 145, 530 P.2d 302, 304 (1975)). Unfortunately for the Respondents, the story of the repair of pump #2 is a story of delay, not an emergency, not justifying an emergency meeting.

Mr. Fox first learned of the problems with the pump on August 15, 2016. CP 2493. It then took him two days to remove the pump and three days to start making phone calls from the discovery of the failure to determine if the pump needed to be replaced or repaired. After the meeting on August 19, 2016, it took another 13 days before the pump was picked up from L & L by Mr. Fox on September 1, 2016. Not once during this period of time were the repairs on pump #2 expedited by having the pump worked on using overtime.²⁹ CP 2519; 2571-73. It took another week for the electrician to work on the faulty wiring and reinstall the pump. *Id.* The final work was completed on September 10, 2016; a full 26 days after the discovery that pump #2 had failed. *Id.* No representative of the District ever contacted Lewis County Water District #2, which serves the District, about any emergency with their sewer system. CP 2582-83. These are not the actions of an agency facing an emergency.

²⁹ It is extremely difficult to imagine the owner of L & L not expediting the repair of the pump if told to do so. There were no major repairs of the pump itself. Looking at the invoice, the charges did not involve any major parts other than the standard repair kit to replace the bearings, seals, gaskets, and o-rings. CP 2519. It is possible that the simple work required to fix the pump was completed by August 23, 2016, but then Mr. Fox would have waited eight days to pick it up. Either way, nothing was expedited.

Finally, the Commissioners admit that they adopted the minutes of the prior June 8, 2016 meeting at this “emergency” meeting. CP 151, 283. Adopting minutes of a prior meeting does not justify an emergency and is an action which must be brought up at a regular or special meeting. RCW 42.30.035. The only logical conclusion based on the actual facts is that there was no emergency.³⁰

G. THE HILLIARDS ARE ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS.

RAP 18.1 permits attorneys fees and costs on appeal if the applicable law grants this right for an appeal. The Washington Supreme Court had determined that under the OPMA, an individual who prevails against the agency is entitled to all costs, including reasonable attorney fees. RCW 42.30.120(4); *Protect the Peninsula's Future v. Clallam Cty.*, 66 Wn. App. 671, 678, 833 P.2d 406, 410 (1992). It is not necessary to prove that the Commissioners acted knowingly in violating the Act to award reasonable attorney fees and costs. *Eugster*, 110 Wn. App. at 225. If this Court finds that the Respondents held unauthorized meetings which resulted in an action, then the Hilliard asks that reasonable attorneys fees and cost for this appeal be granted.

³⁰ The Notice also failed to disclose that minutes would be adopted, so the meeting notice itself, even if timely posted, would be invalid, and a violation of the OPMA.

VI. CONCLUSION

The Hilliards respectfully ask this Court find that the Respondents held public meetings to approve both vouchers and time sheets. They ask that it be remanded on the issue of intent so that they may conduct discovery on this issue. They further ask that this Court find that if, on remand, it is determined that the Respondents intentionally violated the OPMA, that they be individually penalized for each separate violation.

The Hilliards also ask that this Court find the Respondents violated the OPMA by not providing proper notice for the August 19, 2016 meeting and having not done so, individually pay the appropriate penalty, attorney fees and costs. Finally, the Hilliards ask this Court grant reasonable attorney fees and costs on appeal and to remand this case back to the trial court for eventual determination of costs and fees below.

Respectfully submitted this 30th day of May, 2018.

Attorneys for Jimmy and Deborah Hilliard

KAHRS LAW FIRM, P.S.

/s Michael c. Kahrs

MICHAEL C. KAHRS, WSBA #27085

ALLIED LAW GROUP LLC

/s Michele Earl-Hubbard

MICHELE EARL-HUBBARD, WSBA #26454

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date I caused to be served in the manner noted below a copy of the foregoing document on the Respondents in this case:

VIA U.S. MAIL [**first class**] [priority] [express]
 VIA HAND DELIVERY
 VIA FACSIMILE
 VIA ELECTRONIC MAIL [by prior agreement]

TO:

Quinn N. Plant
Menke Jackson Beyer, LLP
807 North 39th Avenue
Yakima, WA 98902
qplant@mjbe.com

Michael B. Tierney and Paul Correa
Tierney & Correa, P.C
719 Second Avenue; Ste. 701
Seattle, WA 98104
correa@tierneylaw.com

/s Michael Kahrs
Michael Kahrs

May 30, 2018
Date

LIST OF APPENDICIES

- A. 96 vouchers and time sheets signed prior to February3, 2015.
- B. 167 vouchers and time sheets signed after February 3, 2015
- C. Municipal Resource Service Center.
- D. Senate Bill Report, SB 6171.
- E. Open Public Meetings Act Guidance FAQs, dated June 1, 2016.

APPENDIX A

**PAYMENT VOUCHERS AND PAYROLL TIME SHEETS
DECEMBER 3, 2013 THROUGH FEBRUARY 3, 2015**

Item ¹	Comm. 1 ²	Date Signed 1	Comm. 2	Date Signed 2	Date Entered	Clerk Paper No.
Time Sheet	V. Fox		C. Fox		DEC 2013	1073
U19611	V. Fox	12/03/2013	C. Fox	12/03/2013	12/09/2013	1074
U19613	K. Carter	12/03/2013	V. Fox		12/09/2013	1079
U20645	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	1081
U20651	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	2804
U20658	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	1087
U20662	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	1093
U20665	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	1095
U20669	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	1097
U20672	V. Fox	12/09/2013	K. Carter	12/09/2013	12/24/2013	1099
U21465	V. Fox	12/09/2013	K. Carter	12/09/2013	01/03/2014	1102
U20684	V. Fox	12/17/2013	C. Fox	12/17/2013	12/24/2013	1104
U02708	V. Fox	12/17/2013	C. Fox	12/17/2013	12/24/2013	1106
U22163	V. Fox C. Fox	12/28/2013 12/28/2013	K. Carter	12/28/2013		1108
Time Sheet	V. Fox		C. Fox		JAN 2014	1110
U21464	V. Fox	01/01/2014	C. Fox	01/01/2014	01/03/2014	1111
U21466	V. Fox	01/01/2014	C. Fox	01/01/2014	01/03/2014	1113
U21467	V. Fox	01/01/2014	C. Fox	01/01/2014	01/03/2014	1115
U22157	V. Fox	01/08/2014	C. Fox	01/08/2014	01/17/2014	1117
V11267	V. Fox	01/08/2014	C. Fox	01/08/2014	01/29/2014	1122
V11268	V. Fox	01/08/2014	C. Fox	01/08/2014	01/29/2014	1124
U22156	V. Fox	01/15/2014	C. Fox	01/15/2014	01/17/2014	1127
U22164	V. Fox	01/15/2014	C. Fox	01/15/2014	01/17/2014	1131
V11689	K. Carter	01/18/2014	V. Fox		02/07/2014	1133
V11739	K. Carter	01/18/2014	V. Fox	01/18/2014	02/07/2014	1135
V14610	V. Fox	01/20/2014	K. Carter	01/20/2014	03/28/2014	1137
V11610	K. Carter	01/30/2014	V. Fox	01/30/2014	02/07/2014	1139
V11678	K. Carter	01/29/2014	V. Fox	01/30/2014	02/07/2014	1141
V11679	V. Fox	01/30/2014	K. Carter	01/30/2014	02/07/2014	1144
Time Sheet	V. Fox		C. Fox		FEB 2014	1148
V12875	V. Fox	02/17/2014	C. Fox	02/17/2014	02/26/2014	1149
V12877	V. Fox	02/14/2014	C. Fox	02/17/2014	02/26/2014	1151
Time Sheet	V. Fox		C. Fox		MAR 2014	1153
V14609	V. Fox	03/11/2014	C. Fox	03/11/2014	03/25/2014	1154

¹ A time sheet will be so labeled. Vouchers will be identified by their voucher number.

² Each signature on a voucher will have a corresponding date of that signature.

V14611	V. Fox	03/11/2014	C. Fox	03/11/2014	03/25/2014	1156
V14612	V. Fox	03/11/2014	C. Fox	03/11/2014	03/25/2014	1158
V14613	V. Fox	03/11/2014	C. Fox	03/11/2014	03/25/2014	1160
V14614	V. Fox	03/11/2014	C. Fox	03/11/2014	03/25/2014	1163
V15261	V. Fox	03/11/2014	C. Fox	03/11/2014		1168
Time Sheet	V. Fox		K. Carter		APR 2014	1170
V15772	V. Fox	04/07/2014	K. Carter	04/07/2014	04/11/2014	1171
V15774	V. Fox	04/07/2014	K. Carter	04/07/2014	04/11/2014	1176
V15775	V. Fox	04/07/2014	K. Carter	04/07/2014	04/11/2014	1178
V17146	K. Carter	04/07/2014	V. Fox	04/07/2014	05/01/2014	1183
V17148	V. Fox	04/07/2014	K. Carter	04/07/2014	05/01/2014	1185
V17145	V. Fox	04/29/2014	K. Carter	04/29/2014	05/01/2014	1187
V17147	V. Fox	04/29/2014	K. Carter	04/29/2014	05/01/2014	1190
V18332	V. Fox	04/29/2014	K. Carter	04/29/2014	05/23/2014	1192
Time Sheet	V. Fox		C. Fox		MAY 2014	1194
V17780	V. Fox	05/08/2014	K. Carter	05/08/2014	05/16/2014	1195
V17781	V. Fox	05/08/2014	K. Carter	05/08/2014	05/16/2014	1198
V18331	V. Fox	05/15/2014	C. Fox	05/15/2014	05/23/2014	1202
V18333	V. Fox	05/15/2014	C. Fox	05/15/2014	05/23/2014	1204
V19412	V. Fox	05/24/2014	K. Carter	05/27/2014	06/14/2014	1206
Time Sheet	V. Fox		C. Fox		JUN 2014	1214
V19411	K. Carter	06/04/2014	V. Fox	06/04/2014	06/14/2014	1215
V20419	K. Carter	06/23/2014	C. Fox	06/23/2014	06/30/2014	1218
Time Sheet	C. Fox		V. Fox		JUL 2014	1220
V21538	V. Fox	07/08/2014	C. Fox	07/08/2014	07/18/2014	1221
V22446	V. Fox	07/24/2014	K. Carter	07/24/2014		1223
V22443	V. Fox	07/25/2014	C. Fox	07/25/2014	08/04/2014	1225
Time Sheet	V. Fox		C. Fox		AUG 2014	1227
V24456	V. Fox	08/25/2014	C. Fox	08/25/2014	09/09/2014	1228
V24457	V. Fox	08/25/2014	C. Fox	08/25/2014	09/09/2014	1231
V24458	V. Fox	08/25/2014	C. Fox	08/25/2014	09/09/2014	1233
V24459	V. Fox	08/25/2014	C. Fox	08/25/2014	09/09/2014	1237
V24461	V. Fox	08/25/2014	C. Fox	08/25/2014	09/09/2014	1239
Time Sheet	C. Fox		V. Fox		SEPT 2014	1241
V24851	K. Carter	09/01/2014	V. Fox	09/01/2014	09/16/2014	1242
V24854	V. Fox	09/03/2014	K. Carter	09/03/2014	09/15/2014	1272
V24852	C. Fox	09/10/2014	V. Fox	09/10/2014	09/16/2014	1279
V24853	C. Fox	09/10/2014	V. Fox	09/10/2014	09/16/2014	1284
V25746	C. Fox	09/23/2014	V. Fox	09/23/2014	09/30/2014	1286
V25747	C. Fox	09/23/2014	V. Fox	09/23/2014	09/30/2014	1289

Time Sheet	V. Fox		C. Fox		OCT 2014	1291
V26633	V. Fox	10/01/2014	C. Fox	10/01/2014		1292
V26636	V. Fox	10/01/2014	C. Fox	10/01/2014		1294
V28245	V. Fox	10/25/2014	C. Fox	10/25/2014		1299
Time Sheet	V. Fox		C. Fox		NOV 2014	1301
V28636	V. Fox	11/07/ 2014	C. Fox	11/07/2014	11/14/2014	1302
V28643	V. Fox	11/07/2014	C. Fox	11/07/2014	11/14/2014	1307
V28649	V. Fox	11/07/2014	C. Fox	11/07/2014	11/14/2014	1310
V29104	V. Fox	11/17/2014	C. Fox	11/17/2014		1313
Time Sheet	C. Fox		V. Fox		DEC 2014	1316
V29858	K. Carter	12/02/2014	C. Fox	12/02/2014		1317
V29859	V. Fox	12/02/2014	K. Carter	12/02/2014		1320
V29860	V. Fox	12/02/2014	C. Fox	12/02/2014		1321
V29861	V. Fox	12/02/2014	C. Fox	12/02/2014		1323
V30720	V. Fox	12/12/2014	C. Fox	12/12/2014	12/22/2014	1325
V30721	C. Fox	12/12/2014	K. Carter	12/12/2014	12/22/2014	1327
Time Sheet	V. Fox		C. Fox		JAN 2015	1329
X00176	K. Carter	01/08/2015	V. Fox	01/08/2015	01/15/2015	1330
X00177	V. Fox	01/08/2015	C. Fox	01/08/2015	01/15/2015	1333
X00178	V. Fox	01/08/2015	C. Fox	01/08/2015	01/15/2015	1336
X00179	V. Fox	01/08/2015	C. Fox	01/08/2015	01/15/2015	1341
X01659	V. Fox	01/29/2015	K. Carter	01/29/2015		1343

APPENDIX B

**PAYMENT VOUCHERS AND PAYROLL TIME SHEETS
FEBRUARY 3, 2015 THROUGH FEBRUARY 2, 2017**

Item ¹	Comm. 1 ²	Date Signed	Comm. 2	Date Signed	Date Entered	Clerk Paper No.
Time Sheet	V. Fox		C. Fox		FEB 2015	1346
X01657	K. Carter	02/05/2015	V. Fox	02/05/2015	02/24/2015	1347
X01658	K. Carter	02/05/2015	V. Fox	02/05/2015	02/24/2015	1348
X02030	V. Fox	02/17/2015	K. Carter	02/17/2015	02/26/2015	1350
X01665	V. Fox	02/17/2015	K. Carter	02/17/2015	02/24/2015	1355
Time Sheet	C. Fox		V. Fox		MAR 2015	1357
X02469	V. Fox	03/02/2015	C. Fox	03/02/2015	03/06/2015	1358
X02470	V. Fox	03/02/2015	C. Fox	03/02/2015	03/06/2015	1360
X02874	K. Carter	03/07/2015	C. Fox	03/07/2015	03/12/2015	1362
X03291	C. Fox	03/10/2015	V. Fox	03/10/2015		1365
X03292	C. Fox	03/10/2015	V. Fox	03/10/2015		1367
X03366	C. Fox	03/17/2015	V. Fox	03/17/2015	03/20/2015	1372
X03382	C. Fox	03/17/2014	V. Fox	03/17/2014		1373
X03400	C. Fox	03/17/2015	V. Fox	03/17/2015	03/20/2015	1377
X04295	C. Fox	03/31/2015	V. Fox	03/31/2015	04/03/2015	1391
X04576	V. Fox	03/31/2015	K. Carter	03/31/2015	04/10/2015	1393
Time Sheet	C. Fox		V. Fox		APR 2015	1395
X04294	C. Fox	04/01/2015	V. Fox	04/01/2015	04/03/2015	1396
X05015	C. Fox	04/03/2015	V. Fox	04/03/2015	04/17/2015	1397
X05011	C. Fox	04/09/2015	V. Fox	04/09/2015	04/17/2015	1400
X05013	C. Fox	04/09/2015	V. Fox	04/09/2015	04/17/2015	1402
X06491	V. Fox	05/05/2015	K. Carter	04/17/2015	05/12/2015	1407
Time Sheet	C. Fox		K. Carter		MAY 2015	1409
X06486	K. Carter	05/05/2015	V. Fox	05/05/2015	05/12/2015	1410
X06488	V. Fox	05/05/2015	C. Fox	05/05/2015	05/12/2015	1411
X06489	V. Fox	05/05/2015	C. Fox	05/05/2015	05/12/2015	1414
X06490	V. Fox	05/05/2015	C. Fox	05/05/2015	05/12/2015	1416
X07242	C. Fox	05/16/2015	K. Carter	05/16/2015	05/26/2015	1419
X07243	C. Fox	05/16/2015	K. Carter	05/16/2015	05/26/2015	1422
X07244	C. Fox	05/16/2015	K. Carter	05/16/2015	05/26/2015	1424
X07245	C. Fox	05/16/2015	K. Carter	05/16/2015	05/26/2015	1429
Time Sheet	V. Fox		C. Fox		JUN 2015	1431
X09543	V. Fox	06/30/2015	K. Carter	06/30/2015	07/02/2015	1432
X09544	V. Fox	06/30/2015	K. Carter	06/30/2015	07/02/2015	1434

¹ A time sheet will be so labeled. Vouchers will be identified by their voucher number.

² Each signature on a voucher will have a corresponding date of that signature.

X09545	K. Carter	06/30/2015	V. Fox	06/30/2015	07/02/2015	1435
X09546	V. Fox	06/30/2015	K. Carter	06/30/2015	07/02/2015	1437
Time Sheet	V. Fox		K. Carter		JUL 2015	1439
X10659	V. Fox	07/10/2015	K. Carter	07/10/2015	07/17/2015	1440
X10660	V. fox	07/10/2015	K. Carter	07/10/2015	07/17/2015	1443
(X10989)	V. Fox	07/16/2015	K. Carter	07/16/2015	07/24/2015	1445
Time Sheet	V. Fox		C. Fox		AUG 2015	1450
X11668	V. Fox	08/01/2015	C. Fox	08/01/2015	08/06/2015	1451
X11669	K. Carter	08/01/2015	V. Fox	08/01/2015	08/06/2015	1453
X11670	V. Fox	08/01/2015	C. Fox	07/28/2015	08/06/2015	1454
X12544	V. Fox	08/03/2015	K. Carter	08/03/2015	08/24/2015	1456
X12545	V. Fox	08/17/2015	C. Fox	08/17/2015	08/24/2015	1458
X13202	V. Fox	08/17/2015	K. Carter	08/17/2015	09/04/2015	1463
X15205	V. Fox	09/29/2015	C. Fox	09/29/2015	10/08/2015	1467
X15207	V. Fox	09/29/2015	K. Carter	09/29/2015	10/08/2015	1469
X15209	V. Fox	09/29/2015	C. Fox	09/29/2015	10/08/2015	1472
Time Sheet	V. Fox		C. Fox		OCT 2015	1474
X15203	K. Carter	10/01/2015	V. Fox	10/01/2015	10/08/2015	1475
X15903	V. Fox	10/06/2015	C. Fox	10/06/2015	10/19/2015	1476
X16950	V. Fox	10/27/2015	C. Fox	10/27/2015	11/5/2015	1481
X17435	V. Fox	10/31/2015	C. Fox	10/31/2015	11/16/2015	1484
Time Sheet	V. Fox		C. Fox		NOV 2015	1486
X17434	K. Carter	11/01/2015	V. Fox	11/01/2015	11/16/2015	1487
X17436	V. Fox	11/04/2015	C. Fox	11/04/2015	11/16/2015	1488
X17437	V. Fox	11/04/2015	C. Fox	11/04/2015	11/16/2015	1491
X17438	V. Fox	11/04/2015	C. Fox	11/04/2015	11/17/2015	1494
X17439	V. Fox	11/04/2015	C. Fox	11/04/2015	11/17/2015	1497
X17440	V. Fox	11/07/2015	C. Fox	11/07/2015	11/17/2015	1500
X17441	V. Fox	11/07/2015	C. Fox	11/07/2015	11/17/2015	1505
X18601	V. Fox	11/23/2015	C. Fox	11/23/2015	12/04/2015	1507
X18602	V. Fox	11/23/2015	C. Fox	11/23/2015	12/04/2015	1514
X18632	K. Carter	11/30/2015	V. Fox	11/30/2015	12/04/2015	1516
Time Sheet	V. Fox		C. Fox		DEC 2015	1518
X18633	K. Carter	12/01/2015	V. Fox	12/01/2015	12/04/2015	1519
X19661	V. Fox	12/14/2015	C. Fox	12/14/2015	12/23/2015	1520
X19662	V. Fox	12/14/2015	C. Fox	12/14/2015	12/23/2015	1522
X19663	V. Fox	12/14/2015	C. Fox	12/14/2015	12/23/2015	1527
X20106	V. Fox	12/21/2015	C. Fox	12/21/2015	12/29/2015	1529
X20110	V. Fox	12/21/2015	K. Carter	12/21/2015	12/29/2015	1531
Y00715	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1535
Y00716	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1538

Y00717	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1541
(Y00718)	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1543 /1544
Y00719	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1551
Y00720	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1554
Y00721	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1557
Y00722	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1559
Y00732	V. Fox	01/31/2016	C. Fox	01/31/2016	02/08/2016	1566
Y01561	V. Fox	02/17/2016	C. Fox	02/17/2016	02/22/2016	1571
Y01562	V. Fox	02/17/2016	C. Fox	02/17/2016	02/22/2016	1573
Y01563	V. Fox	02/17/2016	C. Fox	02/17/2016	02/22/2016	1575
Y01564	V. Fox	02/17/2016	C. Fox	02/17/2016	02/22/2016	1577
Y01565	V. Fox	02/17/2016	C. Fox	02/17/2016	02/22/2016	1580
Y02078	C. Fox	02/22/2016	V. Fox	02/22/2016	02/26/2016	1583
Y03074	C. Fox	03/11/2016	V. Fox	03/11/2016	03/18/2016	1586
Y03075	C. Fox	03/11/2016	V. Fox	03/11/2016	03/18/2016	1589
Y03076	C. Fox	03/11/2016	V. Fox	03/11/2016	03/18/2016	1591
Y03077	C. Fox	03/11/2016	V. Fox	03/11/2016	03/18/2016	1601
Y03078	C. Fox	03/11/2016	V. Fox	03/11/2016	03/18/2016	1603
Y03574	C. Fox	03/21/2016	V. Fox	03/21/2016	03/25/2016	1606
Y03575	C. Fox	03/21/2016	V. Fox	03/21/2016	03/25/2016	1608
Y03576	C. Fox	03/21/2016	V. Fox	03/21/2016	03/25/2016	1610
Y05617	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1615
Y05618	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1617
Y05619	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1620
Y05620	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1625
Y05621	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1627
Y05622	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1629
Y05623	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1632
Y05624	V. Fox	04/20/2016	C. Fox	04/20/2016	04/29/2016	1634
(Y05881)	V. Fox	05/01/2016	C. Fox	05/02/2016		1639
Y05882	V. Fox	05/01/2016	C. Fox	05/02/2016	05/05/2016	1644
Y05883	V. Fox	05/01/2016	C. Fox	05/02/2016	05/05/2016	1646
Y05884	V. Fox	05/01/2016	C. Fox	05/02/2016	05/05/2016	1648
Y05885	V. Fox	05/01/2016	C. Fox	05/02/2016	05/05/2016	1650
Y05886	V. Fox	05/01/2016	C. Fox	05/02/2016	05/05/2016	1652
Y06346	V. Fox	05/09/2016	C. Fox	05/09/2016	05/12/2016	1654
Y07453	C. Fox	05/15/2016	V. Fox	05/15/2016	06/02/2016	1657
Y07451	V. Fox	05/26/2016	C. Fox	05/26/2016	06/02/2016	1659
Y07452	V. Fox	05/26/2016	C. Fox	05/26/2016	06/02/2016	1664
Y07454	V. Fox	05/26/2016	C. Fox	05/26/2016	06/02/2016	1666
Y07455	V. Fox	05/26/2016	C. Fox	05/26/2016	06/02/2016	1669
Y07870	C. Fox	06/07/2016	V. Fox	06/07/2016	06/13/2016	1673
Y07871	C. Fox	06/07/2016	V. Fox	06/07/2016	06/13/2016	1675
Y09020	C. Fox	06/26/2016	V. Fox	06/26/2016	07/05/2016	1678
Y09021	C. Fox	06/26/2016	V. Fox	06/26/2016	07/05/2016	1681
Y09022	C. Fox	06/26/2016	V. Fox	06/26/2016	07/05/2016	1685

Y09023	C. Fox	06/26/2016	V. Fox	06/26/2016	07/05/2016	1689
Y09024	C. Fox	06/26/2016	V. Fox	06/26/2016	07/05/2016	1692
Y09025	C. Fox	06/26/2016	V. Fox	06/26/2016	07/05/2016	1695
Y09648	C. Fox	07/08/2016	V. Fox	07/08/2016	07/15/2016	1698
(Y09637)	C. Fox	07/08/2016	V. Fox	07/08/2016	07/15/2016	1700
Y09650	C. Fox	07/08/2016	V. Fox	07/08/2016	07/15/2016	1706
Y09651	C. Fox	07/08/2016	V. Fox	07/08/2016	07/15/2016	1708
Y11886	C. Fox	07/31/2016	V. Fox	07/31/2016	08/19/2016	1710
Y11887	C. Fox	07/31/2016	V. Fox	07/31/2016	08/19/2016	1712
Y11891	C. Fox	07/31/2016	V. Fox	07/31/2016	08/19/2016	1716
Y11892	C. Fox	07/31/2016	V. Fox	07/31/2016	08/19/2016	1719
Y11888	V. Fox	08/09/2016	C. Fox	08/09/2016	08/19/2016	1721
Y11889	V. Fox	08/09/2016	C. Fox	08/09/2016	08/19/2016	1724
Y11890	V. Fox	08/09/2016	C. Fox	08/09/2016	08/19/2016	1726
Y11893	V. Fox	08/09/2016	C. Fox	08/09/2016	08/19/2016	1728
Y11894	V. Fox	08/09/2016	C. Fox	08/09/2106	08/19/2016	1733
Y12154	V. Fox	08/17/2016	C. Fox	08/17/2016	08/25/2016	1735
Y12563	V. Fox	08/27/2016	C. Fox	08/27/2016	09/01/2016	1740
Y12908	C. Fox	09/01/2016	V. Fox	09/01/2016	09/12/2016	1742
Y13271	V. Fox	09/13/2016	C. Fox	09/14/2016	09/19/2016	1751
Y13751	V. Fox	09/19/2016	C. Fox	09/19/2016	09/26/2016	1753
Y15453	C. Fox	09/27/2016	V. Fox	09/27/2016	10/25/2016	1757
Y14367	C. Fox	09/27/2106	V. Fox	09/27/2016	10/10/2016	1760
Y14368	C. Fox	09/27/2016	V. Fox	09/27/2016	10/10/2016	1762
Y14371	C. Fox	09/27/2106	V. Fox	09/27/2016		1765
Y14335	C. Fox	09/28/2016	V. Fox	09/28/2016	10/10/2016	1767
Y14337	V. Fox	09/28/2016	C. Fox	09/28/2016	10/10/2016	1769
Y14369	C. Fox	09/29/2016	V. Fox	09/28/2016	10/10/2016	1773
Y14370	C. Fox	09/29/2016	V. Fox	09/29/2016	10/10/2016	1775
Y14919	C. Fox	10/03/2016	V. Fox	10/03/2016	10/10/2016	1777
Y15448	C. Fox	10/14/2016	V. Fox	10/14/2016	10/25/2016	1780
Y15450	C. Fox	10/14/2016	V. Fox	10/14/2016	10/25/2016	1791
Y15451	C. Fox	10/14/2016	V. Fox	10/14/2016	10/25/2016	1795
-	V. Fox	10/23/2016	C. Fox	10/23/2016		1797
-	V. Fox	10/23/2016	C. Fox	10/23/2016		1800
Y15832	V. Fox	10/23/2016	C. Fox	10/23/2016	10/28/2016	1802
Y15833	V. Fox	10/23/2016	C. Fox	10/23/2016	10/28/2016	1805
Y15834	V. Fox	10/23/2016	C. Fox	10/23/2016	10/28/2016	1807
Y15835	V. Fox	10/23/2016	C. Fox	10/23/2016		1813
Y17368	V. Fox	11/09/2016	C. Fox	11/09/2016	11/29/2016	1818
Y17370	V. Fox	11/09/2016	C. Fox	11/09/2016	11/29/2016	1820
Y16996	V. Fox	11/09/2016	C. Fox	11/09/2016	11/18/2016	1825
Y16997	C. Fox	11/10/2016	V. Fox	11/14/2016	11/18/2016	1827
Y17378	C. Fox	11/21/2016	V. Fox	11/23/2016	11/29/2016	1829
Y17379	C. Fox	11/21/2016	V. Fox	11/21/2016	11/29/2016	1831
Y17380	C. Fox	11/21/2016	V. Fox	11/21/2016	11/29/2016	1836

APPENDIX C

PRACTICE TIPS

For Local Government Success



These practice tips are intended to provide practical information to local government officials and staff about electronic communications and requirements under the Open Public Meetings Act (OPMA), **chapter 42.30 RCW**. Electronic communications between members of an agency’s governing body can implicate the OPMA, and these practice tips will help guide you in identifying and addressing key issues in this regard.* *For more information and resources visit www.mrsc.org/opmapra.*

An Email Exchange Can Constitute a Meeting

If you, as a member of the governing body (e.g., city council, board of commissioners, planning commission), communicate with other members of the governing body by email, keep in mind that email exchanges involving a majority of members of the governing body can constitute a “meeting” under the OPMA. This principle also applies to text messaging and instant messaging.

What types of email exchanges can constitute a meeting? If a majority of the members of the governing body takes “action” on behalf of the agency through an email exchange, that would constitute a meeting under the OPMA. Note that taking “action” under the OPMA can occur through mere discussion of agency business, and that any “action” may be taken only in a meeting open to the public. The participants in the email exchange don’t have to be participating in that exchange at the same time, as a “serial” or “rolling” meeting can occur in violation of the OPMA. However, the participants must collectively intend to meet to conduct agency business.

Recommendations: As a member of the governing body, consider the following tips to avoid potential OPMA violations:

- Passive receipt of information via email is permissible, but discussion of issues via email by the governing body can constitute a meeting.
- An email message to a majority or more of your colleagues on the governing body is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you want to provide information or documents via email to a majority of members of the governing body, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: “For informational purposes only. Do not reply.”
- Unless for informational purposes only, don’t send an email to all or a majority of the governing body, and don’t use “reply all” when the recipients are all or a majority of the members of the governing body.
- Alternatively, rather than emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member. It’s permissible, for example, for a staff member to communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.

2

Phone Calls and Voice Messages Can Constitute a Meeting

As with email exchanges, if a majority of the members of the governing body is taking "action" (see above) on behalf of the agency through phone calls or a voice mail exchange, that would constitute a meeting. Such a "telephone tree" occurs, for example, when members call each other to form a majority decision. As above, the calls and messages can constitute a serial or rolling meeting if the members collectively intend to meet and conduct agency business.

3

Key Consideration Related to Conferring to Call a Special Meeting

Under [RCW 42.30.080](#), a special meeting (in contrast to a regular meeting) may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this authority granted under [RCW 42.30.080](#), we believe it's permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting. This includes conferring for that purpose via phone, email or other electronic means.

4

Use of Social Media Can Implicate the OPMA

Question: If members of the governing body use social media (e.g., through a Facebook page or Twitter feed) to host a discussion about issues related to the agency, and the discussion includes comments from members of the governing body, could that violate the OPMA?

Answer: If the discussion includes comments from a majority of the members of the governing body, that discussion could constitute a public meeting under the OPMA. There's no authority under the OPMA regarding what would constitute adequate public notice – if that's even possible – for this kind of virtual meeting, so it's best to avoid this type of discussion on social media.

Recommendation: Social media can be an effective tool to solicit comments from the public, but social media shouldn't be used by your agency's governing body to collectively formulate policy.

5

Failure to Comply with the OPMA Can Be Costly

Violation of the OPMA can result in personal liability for officials who knowingly violate the OPMA and in invalidation of agency actions taken at a meeting at which an OPMA violation occurred. Attorney fees and court costs are awarded to successful OPMA plaintiffs. OPMA violations can also lead to a loss of public trust in the agency's commitment to open government.

*DISCLAIMER: These practice tips are meant to provide practical information to local government officials and staff about electronic records and requirements under the OPMA. The tips aren't intended to be regarded as specific legal advice. Consult with your agency's attorney about this topic as well.

May 2016

APPENDIX D

SENATE BILL REPORT

SB 6171

As of January 19, 2016

Title: An act relating to civil penalties for knowing attendance by a member of a governing body at a meeting held in violation of the open public meetings act.

Brief Description: Concerning civil penalties for knowing attendance by a member of a governing body at a meeting held in violation of the open public meetings act.

Sponsors: Senators Roach, Liias and Benton; by request of Attorney General.

Brief History:

Committee Activity: Government Operations & Security: 1/14/16.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Staff: Samuel Brown (786-7470)

Background: The Open Public Meetings Act (OPMA) requires all meetings of the governing body of a public agency to be open to the public. The OPMA applies to all public agencies, which are defined broadly to include state boards, commissions, departments, education institutions, agencies, local governments, and special purpose districts. A public official who knowingly attends a meeting held in violation of the OPMA can be subject to a civil penalty of \$100.

Summary of Bill: The penalty for a public official who knowingly attends a meeting held in violation of the OPMA is increased to \$500 for the first violation, and \$1,000 for each successive violation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is the same civil penalty as when the OPMA was introduced in 1971, and it now lacks deterrent effect. Washington lags behind

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

many states in this penalty provision. The penalty is very small compared to attorneys' fees needed to litigate it, and the level of proof is very high. It is not cost-effective or reasonable to litigate cases with such a small penalty.

Persons Testifying: PRO: Nancy Krier, Attorney General's Office; Arthur West, citizen.

Persons Signed In But Unable to Testify: OTHER: Genesee Adkins, University of Washington.

APPENDIX E

WASHINGTON STATE

Open Public Meetings Act Guidance

On Frequently Asked Questions About Processes to Fill
Vacant Positions By Public Agency Governing Boards*

**And Some Suggested Practice Tips*

June 1, 2016





Message from Attorney General Bob Ferguson

Greetings.

Transparency in government is a cornerstone of democracy, ensuring the people's right to know. The Attorney General's Office is an important resource for the public and for government entities on the state's Sunshine Laws: the Public Records Act (PRA) and the Open Public Meetings Act (OPMA). My office recently successfully requested legislation to increase the OPMA's penalties so they maintain the deterrent effect consistent with the original intent of the law. The passage of that bill, SB 6171, means that OPMA penalties are increased from \$100 to \$500 for a first knowing violation by a governing body member, and to \$1,000 for a subsequent knowing violation.

When problems arise involving these laws, they are often the result of a lack of knowledge. In an effort to increase awareness, my office provides resources on our Open Government [web page](#). The web page includes links to the Open Government Trainings, the *Open Government Resource Manual*, and other useful information. In addition, Open Government Assistant Attorney General Nancy Krier provides information, technical assistance, and training. Ms. Krier prepared the enclosed document, "Open Public Meetings Act Guidance on Frequently Asked Questions about Processes to Fill Vacant Positions by Public Agency Governing Boards", also available on our Open Government Training [web page](#).

The guidance is intended to assist board and commission members in complying with the OPMA when filling vacant top positions at their public agencies. The guidance also offers the public a better understanding of their rights under the law.

While the FAQ guidance does not bind any agency or person, we hope it will be a useful resource for agencies, the public, and members of the media alike. Our goal is to assist in providing a better comprehension of the OPMA, reducing risks of possible violations and penalties.

Thank you for your interest in open government. I hope you find this guidance informative.

Bob Ferguson
Washington State Attorney General

If you have questions or comments, please contact Nancy Krier, the Assistant Attorney General for Open Government at nancyk1@atg.wa.gov.

TIPS

Practice tips:

- A board should decide its search process up front (see Question # 1), including the finalist process, and how and when the final selection will be announced.
- A board should also let applicants know what that process will involve with respect to any public discussion of the names of applicants or finalists, or disclosure of any records concerning applicants or finalists.
 - Elected Positions. When filling vacancies in elected positions, boards should also consider that (1) interviews must be conducted in public (so if a board is choosing to have a “meet the finalists” opportunity for the public, it could do that before or after those interviews), and (2) there are limitations in RCW 42.17A.555 on the use of public resources if the applicants have also filed or announced as candidates for elective office. A board should contact the Public Disclosure Commission if it has questions about use of public resources with respect to applicants who are also candidates seeking election to office.
 - Non-Elected Positions. For non-elected positions, there may be options to consider, depending upon the position to be filled, historical or community practice, or other factors. For example:
 - A board could choose to inform all applicants that the board may make applicants’ or finalists’ names or other applicant information public during its discussions.
 - As another option, a board could also choose to hold a “meet the finalists” session at an open meeting and/or provide the public other opportunities to meet the finalists.
 - Or, a board could choose to ask finalists to provide a one-paragraph summary of their qualifications, which will be the document made public at some point during the process rather than an entire application.
 - Or, there may be other options as well.
- If a board may take action to hire an applicant after an executive session, it may wish to consider adding a “possible action” agenda item after an executive session agenda item where applicants are evaluated. For special meeting procedures and final actions, see RCW 42.30.080.
- As noted, there may be other options as well. The process used among boards may vary.



13. If a board decides in an open meeting that “Candidate A” is the apparent best applicant for the appointed (non-elective) position, can it authorize negotiations and contacts with that applicant by a board representative to discuss a salary, start date, or other conditions of employment set by the board?

Yes. Presumably, in the advertised job description the board likely would have already publicly provided information such as the salary range, benefits, other conditions of

KAHRS LAW FIRM PS

May 30, 2018 - 9:52 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51787-6
Appellate Court Case Title: Jimmy Hilliard, et ux., Appellants v. Lewis County Water & Sewer District #5, et al., Respondents
Superior Court Case Number: 17-2-00111-1

The following documents have been uploaded:

- 517876_Briefs_20180530095024D2207433_9674.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Opening Brief - Hilliard Final.pdf

A copy of the uploaded files will be sent to:

- admin@tierneylaw.com
- barb@tierneylaw.com
- janet@mjbe.com
- julie@mjbe.com
- michele@alliedlawgroup.com
- paul@tierneylaw.com
- qplant@mjbe.com
- tierney@tierneylaw.com

Comments:

Opening brief by Appellants

Sender Name: Michael Kahrs - Email: mike@kahrslawfirm.com

Address:

2208 NW MARKET ST STE 414

SEATTLE, WA, 98107-4097

Phone: 206-264-0643

Note: The Filing Id is 20180530095024D2207433