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Jan 12, 2015, 2:29 pm
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NO. 90500-2

SUPREME COURT OF THE STATE OF WASHINGTON

CITIZENS ALLIANCE FOR PROPERTY RIGHTS
LEGAL FUND,

Petitioner,

v.

SAN JUAN COUNTY, et al.

Respondents.

AMICUS CURIAE MEMORANDUM OF
ALLIED DAILY NEWSPAPERS OF WASHINGTON and
WASHINGTON COALITION FOR OPEN GOVERNMENT

Filed *E*
Washington State Supreme Court
JAN 26 2015 *bjh*
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 ORIGINAL

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I. INTRODUCTION

In our democracies, policymaking starts in committees. Like Congress, legislatures and parliaments, this state's councils, boards and commissions will not vote on a policy until it has been debated and developed at the subcommittee and committee level. Most discussion and revision occurs in committee meetings that are open to the public. The final voting by full bodies merely confirms decisions already made by committees entrusted with policy areas.

The Open Public Meetings Act (OPMA), Chap. 42.30 RCW, declares an intention for all committees to deliberate openly. If committees can start meeting privately simply because they do not have independent decision-making authority, as the Court of Appeals held, the true policymaking process will be removed from public view and the legislative intent will be frustrated. The public will lose oversight of elected policymakers, undermining the entire democratic process.

Government decisions should not be developed in secret. This Court should hold that committees must be open whenever they play a role in policymaking, including a preliminary or advisory role. Otherwise policymakers may use closed committee meetings to hide the influence of special interests, political deal-making or other factors

of concern to the public. Public oversight will be limited to ceremonial passage of ordinances and resolutions that sneaked through secret committees.

The OPMA says committees must meet openly if they are governing bodies themselves *or if they act on behalf* of such bodies. The Court of Appeals held that committees act on behalf of governing bodies only when they have “actual or de facto decision-making authority.” This makes no sense because committees of local government councils, boards and commissions *never* have authority to make final decisions. If they did have such authority, they would be “governing bodies” themselves, and there would be no need for the OPMA language requiring openness when acting on behalf of governing bodies. The Court of Appeals effectively stripped that language from the OPMA, contradicting the mandate to construe the OPMA liberally in favor of public oversight, and frustrating the Legislature’s stated intent for all committees to be transparent.

The Court of Appeals decision jeopardizes meaningful public oversight in every jurisdiction in the state. Accordingly, this Court should reverse the decision and hold that committees must meet openly

whenever they play a role in policymaking, including a preliminary or advisory role.

II. INTEREST AND IDENTITY OF AMICI

Allied Daily Newspapers of Washington (Allied) is a trade association representing 25 daily newspapers across the state. The Washington Coalition for Open Government (WCOG) is a statewide nonprofit, nonpartisan organization dedicated to promoting and defending the public's right to know about the conduct of public business and matters of public interest.

These organizations ("Amici") regularly advocate for public access to government records and proceedings in order to inform the public about matters of public concern. Their members frequently attend local government committee meetings to learn about policy decisions and the considerations behind those decisions. Newspapers routinely report on committee meetings as part of the policymaking process. Amici serve as a voice for the general public regarding access to meetings and enforcement of sunshine laws in this state.

Amici are interested in this case because it affects the public's right to know how, why and when governments make decisions affecting the daily lives of citizens. Amici want to preserve the vitality

of the OPMA so that the public can play a meaningful role in shaping public policies. Amici are concerned that if the Court of Appeals decision stands, county and city councils, school boards and other governing bodies will use private committees to avoid scrutiny of the policymaking process.

III. DISCUSSION

A. **The Term “Acts on Behalf Of” Does Not Mean “Acts Instead Of.”**

Under RCW 42.30.030, “All meetings of the governing body of a public agency shall be open and public.” A “governing body” includes the board, commission, council or other policymaking body of a public agency, as well as “any committee thereof when the committee acts on behalf of the governing body.” RCW 42.30.020(2). The Court of Appeals held that a committee “acts on behalf of” a governing body only “when it exercises actual or de facto decision making authority.” *Citizens Alliance for Property Rights Legal Fund v. San Juan Co.*, 181 Wn.App. 538, 551, 326 P.3d 730, 737 (2014). This interpretation effectively nullifies the language at issue.

The Court of Appeals essentially substituted the term “*acts on behalf of*” for “*acts instead of*” the governing body, as if a committee must actually replace the larger body as the final decision-maker in

order to fall under the OPMA. This makes no sense. If a committee has decision-making authority of its own, then it is a governing body itself, and is not acting on behalf of another body.

This Court should hold that any committee advising its parent governing body about policies necessarily does so “on behalf of” that parent body. In the common law context of agency, the term “on behalf of” refers to one party agreeing to act under another party’s control. Restatement (Third) of Agency §1.01 (2006). When a committee reviews, develops or recommends proposals to be considered by the full body, it is agreeing to act under that body’s control. Quite simply, a governing body’s “committee thereof” exists to serve that governing body. If it stopped acting under the parent body’s control and started exercising independent authority, it would become a governing body itself. If a committee somehow usurped authority not granted by a parent body, it would no longer be acting on behalf of that body. In sum, the term “acts on behalf of” is the opposite of taking control, and cannot be equated with exercising independent authority.

RCW 42.30.020(2), which defines governing bodies subject to open meeting requirements, does not say that a committee must have its

own decision-making authority to trigger the requirements. On the contrary, the statute defines a governing body as a “policy or rule-making body...or any committee thereof...” RCW 42.30.020(2) (emphasis added). Thus, only the parent governing body – and not the “committee thereof” - must have “policy or rule-making” authority to fall under the OPMA. *Id.*; *Clark v. City of Lakewood*, 259 F.3d 996, 1013 (9th Circ. 2001) (the definition of “governing body” is not limited to groups that make policy or rules).

B. Liberal Construction Requires Open Committees.

RCW 42.30.910 requires liberal construction of the OPMA to promote the remedial purpose of the OPMA. The Court of Appeals construed the OPMA narrowly, inferring a limitation on open meetings which is nowhere in the statute’s language. The narrow construction of the term “acts on behalf of” frustrates the purpose of the OPMA to shine a light on the entire policymaking process. This Court should construe the term liberally to include reviewing, recommending, discussing or developing policies to be considered by the parent governing body.

The OPMA states that “deliberations,” not just final decisions, must “be conducted openly.” RCW 42.30.010.¹ The OPMA also declares an intent for committees and subcommittees, not just commissions, boards and councils, to deliberate openly. RCW 42.30.010. Thus, the Legislature intended to require openness at every level of policymaking – including preliminary discussions by committees which shape larger bodies’ decisions. *Id.* The proper inquiry is not whether a committee has independent power, but whether it discusses, reviews, considers or evaluates matters at the behest of and under the governing body’s control. RCW 42.30.020. Practically speaking, any time a committee deals with a proposed resolution or ordinance, it is necessarily acting on behalf of the governing body that will decide the matter. No other interpretation is consistent with common sense, liberal construction and the stated intent of the OPMA to require openness at all levels.

IV. CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Court of Appeals and clarify that committees must be open when

¹ See also RCW 42.30.030 (all governing body “meetings” must be open); RCW 42.30.020(4) (a “meeting” is where “action” is taken); RCW 42.30.020(3) (“action” includes deliberation, discussion, consideration, review and evaluation as well as final action).

they play any role in policymaking, including discussing, considering, reviewing or evaluating matters to be decided by the parent governing body.

Dated this 12th day of January, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on January 12, 2015, I served a copy of the Motion for Leave to File an Amicus Curiae Memorandum and related memorandum by electronic mail, per agreement, to:

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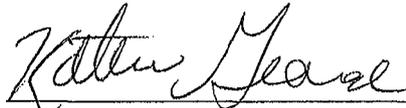
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A handwritten signature in cursive script, appearing to read "Katherine George". The signature is written in black ink and is positioned above a horizontal line.

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