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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT NO. 90500-2-I

CITIZENS ALLIANCE FOR PROPERTY RIGHTS LEGAL FUND, a
Washington non-profit corporation,

Appellant,

v.

SAN JUAN COUNTY, et al,

Respondents.

SAN JUAN COUNTY SUPPLEMENTAL BRIEF

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 ORIGINAL

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I. BACKGROUND

The six member San Juan County Council adopted four ordinances amending the County's critical areas regulations in December 2012. One ordinance was approved by all six members and the other three ordinances were approved in a five/one split. This litigation involves an informal group, the CAO Team, which met from early 2011 until April 2012 and consisted of up to three County Council members, planning staff and the County Administrator. The CAO Team gathered to schedule and coordinate the presentation of issues to effectively and efficiently update critical area regulations. The CAO Team did not take public testimony, conduct hearings, vote or otherwise take "final action."

The trial court granted summary judgment in favor of San Juan County, finding no evidence that the CAO Team "acted on behalf of" the County Council so as to invoke the OPMA. The Court of Appeals upheld the trial court's decision stating that, "[b]ecause CAPR submitted no evidence that a majority of the Council attended CAO Team gatherings or that the CAO Team exercised actual or de facto decision making authority, no 'meeting' occurred for OPMA purposes, and summary judgment was appropriate."

II. RESTATEMENT OF ISSUES

1. Whether a group of less than a majority of a county council is subject to the OPMA when it gathers to facilitate and coordinate the county's update of its critical areas regulations?
2. Whether summary judgment was properly granted when CAPR failed to present sufficient evidence to establish the elements of its claim?

III. ARGUMENT

A. The Legislature Recognizes that the OPMA Should Not and Does Not Apply to Every Government Action.

The OPMA applies to the governing body of a local government. The governing body of San Juan County is the County Council. Not every committee of a governing body is subject to the OPMA. In 1983 the Legislature amended the definition of governing body in RCW 42.30.020(2) to specify when a committee of a governing body is subject to the OPMA as follows:

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

Laws of 1983, ch. 155, sect. 1, pg 669 (attached as Appendix A). This amendment recognizes that not every committee is a "governing body" subject to the OPMA. Instead, the determination of when the OPMA

applies depends on whether the committee is (1) acting on behalf of the governing body, (2) conducting hearings, or (3) taking testimony or public comment.

By excluding courts and the legislature from the definition of a “public agency” to which the OPMA applies, the Legislature recognized that exceptions to the OPMA are necessary for the government to operate smoothly. Over the years, the courts have provided local governments with bright line rules to guide their actions, for example: a gathering of less than a majority of the governing body does not violate the OPMA. *Recall of Roberts*, 115 Wn.2d 551, 554, 799 P.2d 734 (1990) (a recall action under the OPMA); Also, members of a governing body can receive information about upcoming issues or communicate among themselves about matters unrelated to the governing body’s business without invoking the OPMA. *Wood v. Battleground School District*, 107 Wn. App. 550, 565, 27 P.3d 1208 (2001). Actions taken in violation of the OPMA are null and void, however subsequent actions taken in compliance with the Act are not invalidated. *Organization to Preserve Agricultural Lands (OPAL) v. Adams County*, 128 Wn.2d 869, 883, 913 P.2d 793 (1996). These holdings acknowledge the purpose behind the Act of ensuring that actions are taken openly and the public remains informed of the activities

of its government. Local governments have relied upon this guidance from the courts.

Additionally, the Legislature has directed that the Office of the Attorney General may provide information, technical assistance, and training on the provisions of the OPMA. RCW 42.30.210. The Office of the Attorney General provided such support in a 1986 opinion finding that a committee “acts on behalf of a governing body” when it exercises actual or de facto decisionmaking authority, not when it provides advice and information to a governing body. Wash AGO 1986 No 16. This Attorney General Opinion should be given substantial weight.

1. The Attorney General’s Opinion

Formal attorney general opinions are generally entitled to great weight. *Five Corners Family Farms v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011).

A formal attorney general opinion may be persuasive authority for one or more of at least three reasons. First, such opinions represent the considered legal opinion of the constitutionally designated “legal adviser of the state officers.” Second, we presume that the legislature is aware of formal opinions issued by the attorney general and a failure to amend the statute in response to the formal opinion may, in appropriate circumstances, be treated as a form of legislative acquiescence in that interpretation. The weight of this factor increases over time and decreases where the opinion is inconsistent with previous formal opinions, administrative interpretations, or court opinions. Third, where the opinion is issued in close temporal proximity to the passage of the statute in question, it may shed light on the intent of the legislature, keeping

in mind, of course, that the attorney general is a member of a separate branch of government.

Id. (internal citations omitted).

The 1986 Attorney General Opinion, discusses the 1983 amendment to the definition of governing body and addresses the question of “under what circumstances is a committee of a governing body required to comply with the provisions of the Open Public Meetings Act?” Wash AGO 1986 No 16.

The 1986 Attorney General Opinion provides an exhaustive analysis of the issue beginning with the intent of the 1983 amendment. “It appears to us that the purpose of this amendment was to extend the coverage of the Act to committees, subcommittees, and other groups that are not created by or pursuant to statute, ordinance, or other legislative act.” *Id.* at 3. A committee is considered to be part of the governing body itself, and the committee does not, in and of itself, constitute a *new* public agency or subagency because it is not created by or pursuant to statute, ordinance, or other legislative act. *Id.* at 4. This is the correct analysis and has been followed without significant challenge for almost 30 years.

2. When is a committee subject to the OPMA?

The Legislature did not intend that every committee meeting be subject to the OPMA. A “committee thereof” must first be created by the

governing body pursuant to the governing body's executive authority. AGO 1986 No 16 at 4. A committee is subject to the OPMA, only when the committee "acts on behalf of" the governing body, conducts hearings, or takes testimony. This is different than the assertion that "any committee playing any role in policymaking, advisory or otherwise" is doing so "on behalf of" the governing body. Memorandum of Allied Daily Newspapers and Coalition for Open Government Supporting Review ("Allied Daily Newspapers") pg. 6.

Under the interpretation given by Allied Daily Newspapers, the words "when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment" are superfluous. Giving meaning to these words does not take away the public's ability to remain informed and retain control of the people's business, rather it defines the conduct the Legislature has deemed significant enough to be subject to the OPMA. This recognizes the balance struck by the OPMA to achieve an open *and* efficient government. This Court should interpret the statute to give effect to all language, and not render a portion meaningless or superfluous. *Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010).

There are few court cases discussing when a committee's actions trigger OPMA requirements making the 1986 Attorney General Opinion

all the more important. In *Clark v. City of Lakewood*, the Ninth Circuit Court of Appeals found that a task force created as a committee of a planning advisory board which took testimony and public comments, conducted hearings and acted on behalf of the board was subject to the OPMA. 259 F.3d 996 (9th Cir. 2001). In contrast the CAO Team did not take public testimony and did not conduct hearings. The holding in *Clark* only further highlights that the OPMA is triggered only by actions taken on behalf of a governing body and not by scheduling and other matters done for sake of efficiency.

3. “Acts” does not mean “action” as defined in the OPMA

CAPR and Allied Daily Newspapers propose a new rule that a committee “acts on behalf of” whenever “action” is taken as defined by the OPMA. Because “action” is broadly defined to include “discussion” under their approach every informal conversation among two members of a governing body on the topic of the public agency would be subject to the OPMA. *See* RCW 42.30.020(3). If the Legislature had intended this meaning it would have used the word “action” instead of “acts on behalf of” in the 1983 amendment.

The 1986 Attorney General Opinion reasoned that there were two possible readings of “acts on behalf of.” AGO 1986 No 16 at 5. Under the first interpretation, the “glass bubble test,” a committee acts on behalf

of a governing body whenever it performs a specified function in the interest of the governing body. *Id.* This subjects the activities of virtually every governing body official to the OPMA. Under the second interpretation, the “authorization test,” a committee acts on behalf of a governing body only when it exerts power or influence or produces an effect as the representative of the governing body. *Id.* While acknowledging the legislative declaration of liberal construction of the OPMA, the 1986 Attorney General Opinion properly reasons that the authorization test best reflects the intent of the Legislature as the glass bubble test leads to absurd results that render the statute meaningless.

The authorization test gives effect to all the words in the 1983 amendment. Additionally, as discussed by the 1986 Attorney General Opinion, if the Legislature had intended that the OPMA apply to all committees whenever they conduct a meeting at which “action” is taken, the Legislature would have only need to add the words “or a committee thereof” to the definition of governing body and there would have been no need to limit the types of “acts” which trigger the OPMA for committees of a governing body. AGO 1986 No 16 at 6.

This Court should look to the history of the 1983 amendment as it moved through the legislature. The law began as Senate Bill 3206. The bill as introduced was amended during the session to remove the words

“or deliberating the making of policy or rules” and then further amended “authorized to act” to read simply “acts”. *See*, AGO 1986 No 16 at 6. These changes, which made their way to the final bill, further indicate an intent to limit the circumstances in which a committee “acts on behalf of” a governing body.

Perhaps the most compelling part of the legislative history that supports the analysis of the 1986 Attorney General Opinion is the colloquy from the floor of the House of Representatives:

Mr. Isaacson: “Representative Hine, would formal notices be required when preliminary discussions were being held by members of the city council and city staff?”

Ms. Hine: “Representative Isaacson, I believe that is not the intent of this legislation.”

Mr. Isaacson: “Would the bill apply to the meeting of a budget committee consisting of less than a majority of the governing body, discussing the budget with a department head?”

Ms. Hine: “No, Representative Isaacson.”

Mr. Isaacson: “What are the requirements with respect to giving formal notice?”

Ms. Hine: “It’s the intent of the legislation, we believe, subject to the deliberations of the governing body, that this apply only to the deliberations of the governing body or subcommittees which the governing body specifically authorizes to act on its behalf, or which policy, testimony or comments are made in its behalf. In other words, it’s when making policy or rules, not for general comments or any kind of informal type meeting they may have. Those would not require the official formal notice.”

House Journal, 48th Legislature (1983) at 1294 (attached as Appendix B). This case offers the Court the opportunity to confirm the reasonable and balanced approach to the OPMA intended by the Legislature.

The 1986 Attorney General Opinion concludes that, “a committee acts on behalf of the governing body when it exercises actual or de facto decisionmaking authority for the governing body. This is in contrast to the situation where the committee simply provides advice or information to the governing body.” AGO 1986 No 16. Thus, a committee, or group such as the CAO Team, that only provides advice or information to the governing body is not subject to the OPMA.

The CAO Team was a group of administrative staff and less than a majority of the County Council gathering for the purpose of setting schedules and determining the order of presentations, the substance of which were later heard and deliberated on by the full County Council in open public meetings. The CAO Team did not act on behalf of the County Council and was thus not subject to the OPMA.

4. Authorization to “act on behalf of”

To act (conduct business) on behalf of a governing body, a committee needs authorization from a majority of the members of the governing body. It is sufficient if there is either actual authorization (by duly authorized motion, written authorization, resolution, or ordinance), or

de facto authorization (such as appointing members and providing direction to the committee).

At all times relevant to this case, the San Juan County Home Rule Charter required that “action of the Legislative Body shall require the affirmative vote of four (4) members.” San Juan County Charter, Section 2.40(3) (attached as Appendix C). Authorization to act is constrained by the power the governing body has to authorize any action. Thus, three Council members would never have the power to take action “on behalf of” the Council because in adopting the Charter, the people of San Juan County did not authorize “action” by less than four Council members.

A group of less than a majority of a governing body is not “acting on behalf of” that body absent clear authorization. The burden was on CAPR to show such authorization as an element of its claim. To hold otherwise would call into question every interaction between any two members of the governing body and put local governments in the position of having to defend against baseless allegations that the OPMA has been violated every time two or more members of a governing body interact in any capacity. Such a holding is contrary to the reasonable limitations built into the OPMA and the careful balance drawn by the Legislature in the 1983 amendment.

B. The Facts of This Case Support Summary Judgment in Favor of San Juan County.

When reviewing a motion for summary judgment courts look at the facts in the “light most favorable” to the nonmoving party. But this standard does not mean that a court is obligated to accept unsupported statements and speculation from the nonmoving party. A nonmoving party in a summary judgment may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

CAPR failed to present evidence sufficient to show that the CAO Team acted on behalf of the County Council. To the contrary, when asked about their understanding of the purpose of the CAO Team, all three Council members who attended CAO Team gatherings responded that the purpose of the group was to schedule and coordinate the work of the full County Council as it related to the critical areas ordinances. CR 0255, 0290-0292, 0320, 0324. Specifically, Councilwoman Pratt stated, “the general purpose was to discuss the timeline, to schedule the work of the council on the update process.” CR 0255. Councilwoman Miller stated, “Well, again, you’re using the term committee and we really were I think [sic] implementation team, but the primary function was to discuss the

timing and schedule and I guess process for the CAO -- how to move the CAO forward through the process.” CR 0320. Later in her deposition, the following exchange occurred with respect to the review and discussion of draft ordinances:

- Q: So what would be unusual about reviewing drafts?
A: It’s not unusual for the Council to review drafts. It’s unusual for the -- it would be unusual for the CAO Implementation Team to review drafts.
Q: Why do you say that?
A: Because that wasn’t our role.
Q: What was your role?
A: I’ve already answer that question.
Q: Why don’t you give me your answer again?
A: Our role was to look at schedule, timing, and logistics for how the CAO and SMP were moving through the process.

CR 0324. Councilwoman Miller again expressed her understanding of the CAO Team’s role in the following exchange:

- Q: You said that the members of the team would give guidance back to staff or direction back to staff as appropriate. Is that -- did I accurately characterize one of your responses?
A: Yes.
Q: In your mind, what was -- how would you define the terms “as appropriate”? When was it appropriate?
A: Again, primarily associated with schedule, timing, coordination with Planning Commission, coordination with consultants, ways to present it to the council to make it easier for us [County Council] to have intelligent deliberations or discussions on it.

CR 0366. Councilman Fralick expressed a similar understanding of the work of the CAO Team in this exchange:

Q: What did you understand to be the purpose of the CAO Implementation Team?

A: To help with the implementation of the CAO.

Q: Would that be implementation of its adoption or implementation of the product after it's adopted?

A: No. To implement -- to help with the implementation interface between the County Council and planning staff.

Q: So in terms of interfacing with the County Council and the planning staff, would you tell me how that worked?

A: A meeting would be called and we would typically work through some of the logistics of what would be transpiring in the upcoming months.

Q: So logistics would include what, sir?

A: Well primarily it would include meeting times and report as to where the work was currently at and then if there was -- if there was a need to change the schedule, we would look at that schedule and bring it back to the Council for their discussion and approval.

CR 0290-0292. Likewise, when asked about the work of the CAO Team, County Planner Shireene Hale replied,

You know, I don't recall that group ever making decisions -- ideas were brought forward, yes. I don't know that policies were narrowed and discarded. I think -- that group understood that the Council makes decisions as a whole. That group didn't make decisions. We [CAO Team] were attempting to facilitate moving the process forward, but the full Council made decisions.

Like on the Best Available Science discussions, what I recall of that group reviewing the Best Available science drafts was that they were providing their thoughts on presentation and how to say things in a way that the public could understand what the scientists were saying, perhaps organization of the document to try to make it clear, those kind of general things.

CR 0382, 0407. The record shows that the members of the CAO Team did not understand the Team to have authorization from the County

Council to act on behalf of the Council and did not exercise decisionmaking authority on the Council's behalf. Even viewing the facts in the light most favorable to CAPR, there was nothing more than discussions among three Council members on the topics of the critical areas ordinances, the scheduling and sequence of consideration and methods of presenting scientific reports to the full Council. CR 256, 309, 392.

A "discussion" that does not arrive at a decision by a minority of a County Council has never served as the basis for violation of the OPMA and for good reason; such limited "action" was not intended to be subject to the Act. As Representative Hines explained, "it's when making policy or rules, not for general comments or any kind of informal type meeting they may have. Those would not require the official formal notice." House Journal, 48th Legislature (1983) at 1294. The CAO Team did not take action on the business of the full County Council. The trial court properly dismissed CAPR's claim for failing to establish the existence a governing body as that term is defined by RCW 42.30.020(2).

IV. CONCLUSION

Good government is both open and efficient. This Court should recognize the balanced approach set forth by the Legislature and adopt

the reasoning of the 1986 Attorney General Opinion, which has been followed by local governments for almost 30 years.

For the foregoing reasons, San Juan County respectfully requests the Court uphold the decision of the trial court, affirm the decision of the Court of Appeals and dismiss this case with prejudice. Pursuant to RAP 14.2 and RCW 4.84.010, this Court should award San Juan County its costs on appeal.

Respectfully submitted this 5th day of December 2014.

RANDALL K. GAYLORD
PROSECUTING ATTORNEY

By: AK
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Appendix A

Laws of 1983, Ch. 155, Sect 1, pg. 669

CHAPTER 155

[Engrossed Substitute Senate Bill No. 3206]

OPEN PUBLIC MEETINGS—EMERGENCY MEETINGS—LOCATION—
EXECUTIVE SESSIONS—SCOPE

AN ACT Relating to the open public meetings act; amending section 2, chapter 250, Laws of 1971 ex. sess. as amended by section 10, chapter 43, Laws of 1982 1st ex. sess. and RCW 42.30.020; amending section 7, chapter 250, Laws of 1971 ex. sess. as amended by section 1, chapter 66, Laws of 1973 and RCW 42.30.070; and amending section 11, chapter 250, Laws of 1971 ex. sess. as last amended by section 1, chapter 42, Laws of 1979 and RCW 42.30.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 250, Laws of 1971 ex. sess. as amended by section 10, chapter 43, Laws of 1982 1st ex. sess. and RCW 42.30.020 are each amended to read as follows:

As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

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

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

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

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to a collective decision made by a majority of the members of a governing body, a collective commitment or promise by a majority of the members of a governing body to make a positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken.

Sec. 2. Section 7, chapter 250, Laws of 1971 ex. sess. as amended by section 1, chapter 66, Laws of 1973 and RCW 42.30.070 are each amended to read as follows:

Appendix B

House Journal, 48th Legislature (1983), pg. 1293-1294

HOUSE JOURNAL
OF THE
Forty-Eighth Legislature
OF THE
STATE OF WASHINGTON
AT
Olympia, the State Capitol

VOLUME I

1983 Regular Session
Convened January 10, 1983
Adjourned Sine Die April 24, 1983



Wayne Ehlers, *Speaker*
John L. O'Brien, *Speaker Pro Tempore*
Dean R. Foster, *Chief Clerk*
Eljo Sutherland, *Minute/Journal Clerk*

SENATE BILL NO. 3251, by Committee on Commerce, by Senators Vognild, Jones, Bolliger and Williams, read three times and placed on final passage.

The bill was read the third time and placed on final passage. The bill passed the House by the following vote: Yeas, 95; nays, 0.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 3251 and the bill passed the House by the following vote: Yeas, 95; nays, 0.

Yeas: Addison, Allen, Appelwick, Armstrong, Ballard, Barnes, Braddock, Brekke, Broback, Brough, Burns, Canlu, Chandler, Charnley, Clayton, Crane, Dellwa, Dickie, Ebersole, Egger, Ellis, Fisch, Fisher, Flske, Fuhrman, Galloway, Galt, Halsan, Hankins, Hastings, Haugen, Heck, Hine, Holland, Johnson, Jacobsen, Johnson, Kaiser, King P, King R, Kreidler, Locke, Long, Lux, MacIntyre, Madison, McDonald, McMullen, Miller, Mitchell, Monohon, Moon, Nealey, Nelson D, Nelson G, O'Brien, Padden, Patrick, Powers, Prince, Pruitt, Ristuben, Rust, Sanders, Scyan, Schmidt, Silver, Smith, Smitherman, Sommers, Stratton, Struthers, Sutherland, Tanner, Taylor, Todd, Van Dyken, Vander Sloop, Vekich, Walk, Wang, West, Williams B, Williams J, Wilson, Zellinsky, and Mr. Specker - 95.

Absent: King J, Lewis, Rust - 3.

The bill passed the House by the following vote: Yeas, 95; nays, 0.

MESSAGE FROM THE SENATE

April 18, 1963

- SUBSTITUTE SENATE BILL NO. 3007,
- SENATE BILL NO. 3018,
- SUBSTITUTE SENATE BILL NO. 3043,
- SUBSTITUTE SENATE BILL NO. 3052,
- SUBSTITUTE SENATE BILL NO. 3054,
- SUBSTITUTE SENATE BILL NO. 3066,
- SUBSTITUTE SENATE BILL NO. 3094,
- SENATE BILL NO. 3140,
- SUBSTITUTE SENATE BILL NO. 3151,
- SUBSTITUTE SENATE BILL NO. 3161,
- SENATE BILL NO. 3167,
- SENATE BILL NO. 3185,
- SENATE BILL NO. 3250,
- SENATE BILL NO. 3252,
- SENATE BILL NO. 3655,
- SUBSTITUTE SENATE BILL NO. 3742,
- SENATE BILL NO. 3991,
- SUBSTITUTE SENATE BILL NO. 4201,

Transmitted.

Sidney R. Snyder, Secretary

SIGNED BY THE SPEAKER

The speaker was signing:

- HOUSE BILL NO. 270,
- SUBSTITUTE HOUSE BILL NO. 1035,
- SUBSTITUTE SENATE BILL NO. 3007,
- SENATE BILL NO. 3018,
- SUBSTITUTE SENATE BILL NO. 3043,
- SUBSTITUTE SENATE BILL NO. 3052,
- SUBSTITUTE SENATE BILL NO. 3054,
- SUBSTITUTE SENATE BILL NO. 3066,
- SUBSTITUTE SENATE BILL NO. 3094,

- SENATE BILL NO. 3140,
- SUBSTITUTE SENATE BILL NO. 3151,
- SUBSTITUTE SENATE BILL NO. 3161,
- SENATE BILL NO. 3167,
- SENATE BILL NO. 3185,
- SENATE BILL NO. 3250,
- SENATE BILL NO. 3252,
- SENATE BILL NO. 3655,
- SUBSTITUTE SENATE BILL NO. 3742,
- SENATE BILL NO. 3991,
- SUBSTITUTE SENATE BILL NO. 4201.

ENGROSSED SENATE BILL NO. 3130, by Senators Talmadge, Hemstad and Woody

Awarding attorneys fees in frivolous actions or defenses and to prevailing parties acting as private attorneys general.

The bill was read the third time and placed on final passage.

Mr. Armstrong spoke in favor of passage of the bill.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Senate Bill No. 3130 and the bill passed the House by the following vote: Yeas, 95; nays, 1; absent, 2; excused, 0.

Yeas: Representatives Addison, Allen, Appelwick, Armstrong, Ballard, Barnes, Barrett, Belcher, Betozoff, Bond, Braddock, Brekke, Broback, Brough, Burns, Canlu, Chandler, Charnley, Clayton, Crane, Dellwa, Dickie, Ebersole, Egger, Ellis, Fisch, Fisher, Flske, Fuhrman, Galloway, Garrett, Grimm, Halsan, Hankins, Hastings, Haugen, Heck, Hine, Holland, Johnson, Jacobsen, Johnson, Kaiser, King P, King R, Kreidler, Locke, Long, Lux, Martinis, McIntyre, McDonald, McMullen, Miller, Mitchell, Monohon, Moon, Nealey, Nelson D, Nelson G, O'Brien, Padden, Patrick, Powers, Prince, Pruitt, Ristuben, Rust, Sanders, Scyan, Schmidt, Silver, Smith, Smitherman, Sommers, Stratton, Struthers, Sutherland, Tanner, Taylor, Todd, Van Dyken, Vander Sloop, Vekich, Walk, Wang, West, Williams B, Williams J, Wilson, Zellinsky, and Mr. Specker - 95.

Volting nay: Representative Niemi - 1.

Absent: Representatives King J, Lewis - 2.

Engrossed Senate Bill No. 3130, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

ENGROSSED SUBSTITUTE SENATE BILL NO. 3206, by Committee on Local Government (originally sponsored by Senators Thompson, Zimmerman and Bauer)

Modifying provisions on open public meetings.

The bill was read the third time and placed on final passage.

Ms. Haugen spoke in favor of passage of the bill.

POINT OF INQUIRY

Mr. Charnley yielded to question by Mr. Ballard.

Mr. Ballard: "Representative Charnley, I have two questions I would like some clarification on. On the water district board we have three members on our board. Two of us wanted to go up to the site of a new reservoir simply for an informational gathering and it would actually constitute a majority of the board, but we were there not to conduct any business, would that conflict with the open meetings act?"

Mr. Charnley: "Representative Ballard, I think the language is very clear on this matter. It would not conflict. Members of a board could be going to obtain information, to bring data back to the board. They are not acting for the board in this case, as the new language clearly states. When the committee acts on behalf of the governing body, they simply would not have to worry about the language in open meetings."

Mr. Ballard: "In the section where it deals with the vacancy of elected office, the new language indicates that those interviews must be conducted in an open meeting. However, let's say that there was some sensitive information that one of the members had regarding a candidate—maybe a previous police record or something that had happened in which there were illegal activities by one of the candidates—is there anything to preclude that from being discussed in an open session before the selection has been made?"

Mr. Charnley: "Again, the answer is 'no.' There is nothing to preclude the existing language of the law remains over the executive sessions or regular open meetings to consider the appointments. That certainly would include times when they want to discuss those candidates and consider some sensitive matters."

POINT OF INQUIRY

Ms. Hine yielded to question by Mr. Isaacson.

Mr. Isaacson: "Representative Hine, would formal notices be required when preliminary discussions were being held by members of the city council and staff?"

Ms. Hine: "Representative Isaacson, I believe that is not the intent of the legislation."

Mr. Isaacson: "Would the bill apply to the meeting of a budget committee consisting of less than a majority of the governing body, discussing the budget with a department head?"

Ms. Hine: "No, Representative Isaacson."

Mr. Isaacson: "What are the requirements with respect to giving formal notice?"

Ms. Hine: "It's the intent of the legislation, we believe, subject to the definitions of the governing body, that this apply only to the deliberations of the governing body or subcommittees which the governing body specifically authorizes to act on its behalf, or which policy, testimony or comments are made in its behalf. In other words, it's when making policy or rules, not for general comments of any kind of informal type meetings they may have. Those would not require the official formal notice."

Mr. B. Williams spoke in favor of the bill.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 3206, and the bill passed the House by the following vote: Yeas, 97; nays, 1; absent, 1; excused, 0.

Voting yea: Representatives Addison, Allen, Appelwick, Armstrong, Ballard, Barren, Barrell, Belcher, Betzoff, Bond, Braddock, Brekke, Broback, Brough, Burns, Carlu, Charnley, Chamley, Clayton, Crane, Dellwo, Dickie, Ebersole, Egger, Ellis, Fisch, Fisher, Flake, Fultano, Gallagher, Galloway, Garrett, Grimm, Halsan, Hankins, Hastings, Haugen, Heck, Hine, Isaacson, Jacobsen, Johnson, Kaiser, King P, King R, Kreidler, Lewis, Locke, Long, Lutz, McClure, McDonald, McMullen, Miller, Mitchell, Monohon, Moon, Nealey, Nelson, Niemi, O'Brien, Padden, Patrick, Powers, Prince, Pruitt, Ristuben, Rust, Sanders, Savan, Schoon, Silver, Smith, Smitherman, Sommers, Stratton, Struthers, Sutherland, Tilly, Todd, Van Dyken, Vander Sloep, Vekich, Walk, Wang, West, Williams, Wilson, Zellinsky, and Mr. Speaker - 97.

Absent: Representative King J - 1.

Engrossed Substitute Senate Bill No. 3206, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SUBSTITUTE SENATE BILL NO. 3239, by Committee on Agriculture, sponsored by Senators Hansen, Newhouse, Deccio, Barr, Goltz, Bauer and

Defining "cold storage warehouse" for excise tax purposes.

The bill was read the third time and placed on final passage.

Mr. Kaiser spoke in favor of passage of the bill.

Appendix C

San Juan County Charter, Articles 2 and 3
(effective through December 2012)

SAN JUAN COUNTY, WASHINGTON

HOME RULE CHARTER

Basic Charter Adopted by the Voters on November 8, 2005

First Amendment Adopted by the Voters on November 8, 2005

**Compilation of Basic Charter and First Amendment
Prepared by San Juan County Prosecuting Attorney
P.O. Box 760
Friday Harbor, Washington
(360) 378-4101**

Section 1.50 - Separation of Powers

The powers delegated to County government by the people shall be separated into three branches:

- (a) The Executive Branch,
- (b) The Legislative Branch, and
- (c) The Judicial Branch.¹

Although powers are delegated to the three branches, the right and obligation to oversee the functions of government shall be retained by the Citizens of San Juan County.

ARTICLE 2 - THE LEGISLATIVE BRANCH

Section 2.10 - Composition

The Legislative Body shall consist of six (6) members nominated and voted on by district.

Section 2.11 - Name

The Legislative Body shall also be known as the County Council and its members known as County Council Members.

Section 2.20 - Elections

Members of the Legislative Body are elected pursuant to Article 4 - Elections of this Charter.

Section 2.30 - Powers

(1) The legislative power of the County as granted by the State Constitution and law and not reserved to the people shall be vested in the Legislative Body. The enumeration of particular legislative powers herein shall not be construed as limiting the legislative powers of the Legislative Body.

(2) The Legislative Body shall exercise its legislative power by adoption and enactment of ordinances or resolutions. It shall have the power to:

- (a) Levy taxes, appropriate revenue and adopt budgets for the County.
- (b) Establish the compensation (and benefits, if any) to be paid to all non-elected County officers and employees and to provide for the reimbursement of expenses.
- (c) Establish, abolish, combine and divide by ordinance, non-elective administrative offices and executive departments and to establish their powers and responsibilities unless otherwise limited by law or other provisions of this Charter.

¹ With the exception of the quasi-judicial functions of the Legislative Branch, the duties of the Judicial Branch are outside the purview of this Charter.

- (d) Adopt by ordinance comprehensive plans and development regulations including plans for the present and future development and improvement of the County.
 - (e) Approve contracts or establish by ordinance methods by which any type of contract shall be approved.
- (3) The Legislative Body, as a whole or by committee, may conduct public hearings on matters of public concern.

Section 2.31 - Limitations of Power and Relationship with Other Branches

(1) Except in the exercise of its legislative powers under this Charter, as defined in Section 2.30, the Legislative Body, its staff, and individual Legislative Body members shall not interfere in the administration of the Executive Branch. They shall not give orders to, or direct, either publicly or privately, any officer, or employee subject to the direction and supervision of the County Administrator, Executive Branch, or other elected officials.

(2) Interaction between the Legislative Body, its staff and individual Legislative Body Members, and officers and employees within the Executive Branch shall follow procedures developed by and agreed upon by the Legislative Body and the County Administrator.

Section 2.40 - Organization

(1) The Legislative Body shall annually elect one of its members as chair and another of its members as vice-chair who shall act in the absence of the chair.

(2) The Legislative Body shall be responsible for its own organization, the rules of conduct of its business and for the employment and supervision of persons it deems necessary to assist in the performance of its duties.

(3) A majority of the Legislative Body shall constitute a quorum at all meetings. Unless otherwise provided, action of the Legislative Body shall require the affirmative vote of four (4) members.

Section 2.41 - Rules of Procedure

The Legislative Body shall enact by ordinance rules of procedure governing the time, place and conduct of its meetings and hearings and the introduction, publication, consideration and adoption of ordinances; provided, that the Legislative Body shall meet in open session regularly at least twice monthly.

Section 2.50 - Ordinances

(1) Every legislative act shall be by ordinance except for matters that may be addressed by resolution as provided in Section 2.70 of this Charter. The subject of every ordinance shall be clearly stated in the title, and no ordinance shall contain more than one subject. Ordinances or summaries of them, the places where copies are filed, and the times when they are available for inspection, shall be published when the ordinances are proposed and again upon enactment.

- (a) No ordinance shall be amended unless the new ordinance sets forth each amended section or subsection at full length.

- (b) Ordinances may adopt, by reference, Washington State statutes, any recognized printed codes or compilations in entirety or in part.
- (2) Every ordinance shall be introduced in its entirety in writing.
- (3) Except as otherwise provided in this Charter, all ordinances shall take effect ten (10) working days after the date it is enacted or later if so stipulated in the ordinance.

Section 2.51 - Codification of Ordinances

All ordinances of the County, which are of a general and permanent nature or which impose any fine, penalty, or forfeiture, shall be codified in a code, which shall be adopted by ordinance and shall be known as the San Juan County Code. The code shall be kept current to reflect newly adopted, amended or repealed ordinances. A current copy shall be placed in the public libraries in the County and in such other places as the Legislative Body deems appropriate.

Section 2.52 - Emergency Ordinances

(1) An ordinance necessary for the immediate preservation of the public peace, health, or safety or support of the County government and its existing institutions may be passed by action of the Legislative Body, which shall be effective immediately.

(2) An emergency ordinance shall be introduced and passed in the manner prescribed for emergency ordinances generally, except that the emergency and the facts creating it shall be stated in a separate section of the emergency ordinance.

Section 2.53 - Emergency Ordinances - Limitations

No emergency ordinance may levy taxes, grant, renew or extend a franchise, regulate the rate charged by any utility or authorize the borrowing of money for more than one hundred and twenty (120) days.

Section 2.60 - Confirmations

The Legislative Body shall confirm or reject appointments by the County Administrator within thirty (30) days of the date the name or names of are submitted to it. Failure of the Legislative Body to reject an appointment within thirty (30) days shall result in automatic confirmation of said appointment.

Section 2.70 - Miscellaneous Appointments

The Legislative Branch by action shall appoint members of all boards and commissions except as otherwise provided in this Charter.

Section 2.80 - Resolutions

- (1) The Legislative Body may pass a resolution to:
 - (a) Organize and administer the legislative branch.
 - (b) Make declarations of policy that do not have the force of law.
 - (c) Request information from any other agency of the County government.
- (2) The Legislative Body in passing resolutions need not comply with the procedural requirements for the introduction, consideration and adoption of ordinances.

ARTICLE 3 - THE EXECUTIVE BRANCH

Section 3.10 - Composition

The Executive Branch shall be divided into Executive and Administrative Offices.

Section 3.20 - Executive Offices

(1) The Executive offices shall consist of the following elected officials: County Assessor, County Auditor, County Clerk, County Treasurer, Prosecuting Attorney, and County Sheriff.

(2) These offices shall be re-created by this Charter and, unless amended by this Charter, shall have the same powers and duties as in the past (unless amended by new State statutes whereupon the new statutes shall prevail). Such powers and duties shall be subject to: all ordinances passed by the Legislative Branch or initiatives passed by the voters; and to all personnel, budgeting, expenditure, and any other policies of general application recommended by the County Administrator and adopted by the Legislative Branch.

Section 3.30 - Administrative Offices

The Administrative offices shall consist of all appointed department heads.

Section 3.40 - County Administrator

The County Administrator shall be the chief administrative officer.

Section 3.41 - Selection and Termination Process

(1) The Legislative Body is vested with the responsibility for conducting a professional search to locate and hire a County Administrator qualified to carry out the duties of the office as detailed in Section 3.43 of this Charter.

(2) The County Administrator shall serve under an at-will employment contract. Termination of the County Administrator shall comply with the terms of such a contract.

Section 3.42 - Compensation

The County Administrator shall receive compensation determined by the Legislative Body sufficient to attract a qualified professional.

Section 3.43 - Powers and Duties

(1) The County Administrator shall have all the executive powers of the County that are not expressly vested in other specific elected officers by this Charter. The County Administrator shall:

- (a) Manage all administrative offices and functions.
- (b) Insure that all actions of the Executive Branch are compliant with all Federal, Washington State, San Juan County codes and procedures, and this Charter seeking advice from the County Prosecutor or other sources as necessary.

- (c) Insure that all systems, procedures and use of technology of the departments under the County Administrator's jurisdiction be periodically reviewed and actions taken to insure that optimum practices are being employed.
- (d) Present to the Legislative Branch an annual statement of the governmental affairs of the County and any other report, which the Legislative Branch may deem necessary.
- (e) Prepare and present to the Legislative Branch, operating and capital budgets, accompanied by a budget message setting forth proposals for the county during the next fiscal year.
- (f) Assign duties to administrative offices and executive departments, which are not specifically assigned by this Charter or by ordinance.
- (g) Act as the signing authority, on behalf of the County, on all claims, deeds, contracts and other instruments initiated within the fiscal and budgetary procedures.

(2) The specific statement of particular executive powers shall not be construed as limiting the executive powers of the County Administrator.

Section 3.50 - Appointments by the County Administrator and Confirmation

The County Administrator shall appoint the head of each administrative department. All such appointments by the County Administrator shall be provisional until confirmed by action of the Legislative Body.

Section 3.51 - Qualifications

The heads of the administrative departments shall be appointed based on their abilities, qualifications, integrity and prior experience concerning the duties of the office to which they shall be appointed.

Section 3.52 - Appointments by Department Heads

The head of each administrative department shall appoint all managers and employees of the department complying with the rules of the personnel system when appointing managers and employees to positions covered by the personnel system. All managers that report directly to a department head shall be confirmed by the County Administrator.

Section 3.60 - Administrator Pro Tempore

(1) Between January 1 and February 28 of odd numbered years, the Legislative Body shall designate by action any qualified person, other than a sitting member of the Legislative Body, to serve as Administrator Pro Tempore.

(2) The Administrator Pro Tempore shall hold office at the pleasure of the Legislative Body, and in case of the absence, temporary disability, resignation or termination of the County Administrator, shall perform the duties of the County Administrator until the County Administrator returns or a replacement is hired.

(3) The Administrator Pro Tempore shall not have power to appoint or remove any department head. While the Administrator Pro Tempore is acting County Administrator, the Legislative Body can remove a department head and /or, in the case of a vacancy (caused by removal or resignation), to allow an interim, temporary

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITIZENS ALLIANCE FOR
PROPERTY RIGHTS LEGAL FUND,
a Washington non-profit corporation ,

Appellant,

v.

SAN JUAN COUNTY, et al,

Respondents.

NO. 90500-2-I

CERTIFICATE OF
SERVICE

Cathy S. Korth declares and states:

That I am now, and at all times hereinafter mentioned was, a citizen of the United States and a resident of San Juan County, state of Washington, over the age of 18 years, competent to be a witness in the above-entitled proceeding and not a party thereto; that on December 5, 2014, I caused to be delivered in the manner indicated below a true and correct copy of SAN JUAN COUNTY'S SUPPLEMENTAL BRIEF in the above-entitled cause to:

Mr. Dennis D. Reynolds
200 Winslow Way West, Suite 380
Bainbridge Island, WA 98110

Via Email:
dennis@ddrlaw.com

 ORIGINAL

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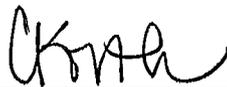
Via Email:
Kgeorge@hbslegal.com

Daniel Brian Heid
City of Auburn
25 W Main St.
Auburn, WA 98001-4998

Via Email:
dheid@auburnwa.gov

I make the foregoing statement under penalty of perjury of the laws of the state of Washington.

Dated this 5th day of December, 2014, at Friday Harbor, Washington.



Cathy S. Korth
Legal Assistant
San Juan County Prosecutor's Office
350 Court Street
Friday Harbor, WA 98250
(360)378-4101

OFFICE RECEPTIONIST, CLERK

To: Cathryn Korth
Cc: Amy Vira; dennis@ddrlaw.com; kgeorge@hbslegal.com; michele@alliedlawgroup.com; dheid@auburnwa.gov
Subject: RE: Email filing in Case 90500-2 by San Juan County

Received 12/5/14

From: Cathryn Korth [mailto:cathyk@sanjuanco.com]
Sent: Friday, December 05, 2014 4:02 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Amy Vira; dennis@ddrlaw.com; kgeorge@hbslegal.com; michele@alliedlawgroup.com; dheid@auburnwa.gov
Subject: Email filing in Case 90500-2 by San Juan County

Hello,

Please accept our electronic filing of San Juan County's Supplemental Brief and our Certificate of Service in *Citizen's Alliance for Property Rights Legal Fund v. San Juan County*; Case No. 90500-2 for Amy S. Vira, WSBA #34197, amyv@sanjuanco.com.

Thank you,

Cathryn S. Korth

Assistant to Randall K. Gaylord and Jonathan W. Cain
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