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Washington *Coalition for* Open Government

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September 29, 2010

Board of Directors
Monroe Public Schools
200 E. Fremont Street
Monroe, WA 98272-2336

Dear President Accetturo and Directors:

I was contacted recently by Monroe School District Director Debra Kolrud, who, as you know, is a member of Washington Coalition for Open Government, regarding a disagreement over whether the Board's executive session on August 23 was proper under the provisions of the Open Public Meetings Act ("OPMA"), Chapter 42.30 RCW.

According to the minutes of the August 23 meeting, "At 8:15 p.m. the directors entered into an executive session to review the performance of an employee." However, according to information from Director Kolrud, the actual content of the executive session was not a review of the performance of an employee, but a discussion of the methodology that would be used in an upcoming evaluation of the superintendent.

This is inconsistent with the provisions of the OPMA. The plain language of the OPMA does not permit a discussion of performance evaluation plans or methodology in an executive session. RCW 42.30.110(g) permits an executive session "to review the performance of a public employee"; in other words, to conduct the actual review itself, not to discuss the way in which the review will be conducted.

A great source of guidance on the Open Public Meetings Act is the Frequently Asked Questions page on the web site of the Municipal Research and Services Center of Washington at www.mrsc.org. While the MRSC OPMA FAQ does not include a question or answer specifically addressing the discussion of employee review methodology, it does have a very similar question about methodology for interviewing candidates to fill a vacancy on a council:

28. May the council meet in executive session to finalize questions to ask candidates for appointment to fill a council vacancy?

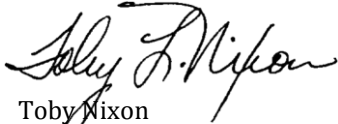
No. There is no provision in RCW 42.30.110, which authorizes executive sessions, that would allow a closed meeting to finalize questions to ask candidates who want to fill a council vacancy. The closest provision would be that which allows an executive session to consider the qualifications of candidates for appointment to fill a council vacancy. However, the exceptions to open meetings are to be narrowly construed, and discussing questions to ask candidates at an oral interview is distinguishable from a discussion of candidate qualifications.

The same principle outlined in this FAQ would apply in the case of your August 23 executive session: “the exceptions to open meetings are to be narrowly construed, and discussing [how to conduct an upcoming review of the performance of a public employee] is distinguishable from a discussion of [the review of the performance of a public employee].” The discussion of how the board plans to conduct the review of the superintendent should have occurred in an open public meeting rather than in an executive session.

We very much appreciate that the Monroe School Board respects and fully intends to obey the provisions of the Open Public Meetings Act, and are committed to vigilance in keeping all aspects of the law. We hope that commitment includes recognizing that the allowed purposes of executive sessions are to be narrowly construed, and that discussions of how to conduct an employee review are not the same as the review itself.

Sincerely,

WASHINGTON COALITION FOR OPEN GOVERNMENT

A handwritten signature in cursive script that reads "Toby Nixon".

Toby Nixon
President

Email: schoolboard@monroe.wednet.edu

CC: Tim Ford, Assistant Attorney General for Government Accountability
Board of Directors of Washington Coalition for Open Government