

Officers

Toby Nixon, President
Former State Representative
Microsoft Corporation

Mike Fancher, Vice President

Gerry Pollet, Secretary
Executive Director, Heart of America NW

Sam Pace, Treasurer
Association of REALTORS®

Board of Directors

William Crittenden
Attorney at Law

George Erb
Editor, Puget Sound Business Journal

Kathy George
Harrison Benis & Spence LLP

Ruth Gordon
Jefferson County Clerk

Rita Hibbard
Investigate West

Anna Jancewicz
Teamsters Union Local No. 117

Scott Johnson
Attorney, ACLU of Washington

Rep. Lynn Kessler
Washington State Legislature

Chris Leman
Seattle Community Council Federation

Barbara Levette
League of Women Voters of Washington

Jason Mercier
Washington Policy Center

Catherine L. Moore
Washington State Bar Association

David Norman
Attorney at Law

Mike Reitz
Evergreen Freedom Foundation

Patience Rogge

David Seago
Retired Editor, The News Tribune

Brian Sonntag
Washington State Auditor

Lucille Walls
Alliance of People with Disabilities

Bill Will
WA Newspaper Publishers Association

Board Emeritus

James A. Andersen
Retired Supreme Court Chief Justice

Alan Thompson
Retired Legislator, Chief Clerk of the House

info@washingtoncog.org
6351 Seaview Ave NW
Seattle, WA 98107-2664

Phone: 206.782.0393 FAX: 206.623.4474

Washington Coalition for Open Government

washingtoncog.org

October 18, 2010

Pierce County Boundary Review Board
2401 S. 35th Street
Tacoma, WA 98409
Via Fax: (253) 798-3680
Via Email: tfairba@co.pierce.wa.us

Re: Potential violation of Open Public Meetings Act

Dear Chairman Vest and Members of the Boundary Review Board:

Washington Coalition for Open Government is a statewide, non-partisan, non-profit organization dedicated to defending the right of citizens to know what their government is doing. We pay particular attention to matters regarding the state Public Records Act and Open Public Meetings Act.

It has come to our attention that the Board intends to meet in secret, behind closed doors, on Tuesday, October 19, to deliberate on the proposed formation of a new county-wide flood control district that could have power to impose new taxes or fees on all property owners in Pierce County. The basis for holding this discussion behind closed doors is apparently that the Boundary Review Board deems itself "a quasi-judicial body", and because of that "our deliberations should be among ourselves" (quoting Chairman Vest, *The News Tribune*, October 17, 2010).

While the BRB may indeed undertake some quasi-judicial matters, the state Open Public Meetings Act, RCW 42.30, does not permit *all* quasi-judicial deliberations to be conducted behind closed doors. RCW 42.30.140(2) says that the OPMA does not apply to "That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties", but it goes on to say that this exception does *not* cover "a matter having general effect on the public or on a class or group".

In *Peninsula's Future v. Clallam County*, 66 Wn. App. 671, 833 P.2d 406 (1992), Division Two of the Washington state Court of Appeals made this amply clear:

RCW 42.30.140(2), a portion of Washington's Open Public Meetings Act of 1971, provides that "this chapter shall not apply to . . . [t]hat portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group". Although the Board of County Commissioners can, on occasion, be considered a quasi-judicial body, *Lejeune v. Clallam Cy.*, 64 Wn. App. 257, 823 P.2d 1144, review denied, 119 Wn.2d 1005 (1992), we do not think that the matter before the commission was a matter of interest only to the named parties. Whether a permit should have been granted to the City of Sequim, which would have permitted it to extend its sewer outfall farther into the waters of the Strait of Juan de Fuca, was clearly a matter of substantial importance to the general public in that region of the state and to a lesser degree all of the citizens of the state.

The court remanded the case to the superior court for awarding of attorney's fees to the plaintiffs.

In the present matter in Pierce County, the creation of a county-wide taxing district most definitely does affect the public at large, and so the exception in RCW 42.30.140(2) does not apply. **Your deliberations on this matter should be conducted in an open public meeting.**

If the Board proceeds with holding this discussion in secret, behind closed doors, excluding the public from a matter of great interest and importance, it will be in violation of the Open Public Meetings Act. A subsequent lawsuit against the BRB would most likely have the same result as *Peninsula's Future v. Clallam County*. RCW 42.30.120 says that the members of the Board would be personally liable for financial penalties for participating in a meeting when you know that it is in violation of the Act, and the Board would be liable to pay the attorney's and court costs of whoever brings the lawsuit.

We remind you of the strongly-worded mandate in RCW 42.30.010 (emphasis added):

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. ***It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.***

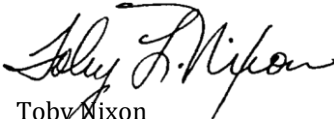
The people of this state do not yield their sovereignty to the agencies which serve them. ***The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.*** The people insist on remaining informed so that they may retain control over the instruments they have created.

We strongly recommend that the Pierce County Boundary Review Board reconsider its plans to hold this discussion in closed session.

We request an immediate reply regarding your plans and whether the meeting will be conducted in the open with regard to matters affecting the public. Legal action may be commenced if the meeting is not conducted in the open.

Sincerely,

WASHINGTON COALITION FOR OPEN GOVERNMENT



Toby Nixon
President

CC: Chief Clerk of the Board
Pete Philley, Deputy Prosecuting Attorney
Mark Lindquist, Pierce County Prosecuting Attorney
Pat McCarthy, Pierce County Executive
Tim Ford, Assistant Attorney General, Open Government Ombudsman
WCOG Board of Directors and Members