



AG REQUEST LEGISLATION – 2009 SESSION

PUBLIC RECORDS: OPMA TRAINING

**BACKGROUND:**

The Legislature passed the Open Public Meetings Act (“OPMA”), chapter 42.30 RCW in 1971 as a part of a nationwide effort to make government affairs more accessible and, in theory, more responsive. The OPMA was modeled on a California law known as the “Brown Act” and a similar Florida statute.

While the Legislature has clarified some of its provisions, the OPMA is substantially unchanged. Soon after its passage, the Attorney General issued a comprehensive opinion which continues to be a useful resource but, because there has been little litigation regarding its interpretation, many gray areas exist.

**THE PROBLEM:**

According to the state auditor, from Jan. 1, 2004 to Nov. 13, 2007, there were roughly 460 instances where Open Public Meetings Act violations were an issue. These issues have varied from illegal executive sessions to improper notice. Recent examples of questionable OPMA compliance include:

- The Port Angeles City Council was criticized for making the final hiring decision on its new City Manager behind closed doors on Dec. 9, 2008, nearly a month before holding a public meeting on the matter, and signing their contract with the new manager a week before the public meeting.  
(<http://www.peninsuladailynews.com/article/20081221/news/312219992>)
- The Olympia City Council recently came under fire for emailing one another on their council laptops to discuss business before the Council during Council meetings rather than discussing it in open, public dialogue.  
(<http://www.theolympian.com/southsound/story/716442.html>)

A more notorious example was the public scandal over the Port of Seattle’s post-retirement payout to former Chief Executive Mic Dinsmore that the port staff started to prepare absent an official vote by the commission. The decision was allegedly made in executive session, according to one commissioner but the other commissioners did not recall discussing or agreeing to it.

**LEGISLATION:**

The Attorney General and State Auditor have jointly requested legislation:

- Requiring training and certification in the Open Public Meetings Act including curriculum based on model rules developed by the AG and SAO with input from the public and local government.
  - Current elected officials are required to complete the certification within 90 days of adoption of the model rules;
  - Newly elected officials are required to complete certification within 90 days of taking office after adoption of the model rules.
- Providing a safe harbor for actions taken in an illegal executive session:
  - If the government body self-discloses the violation at the first regular meeting after the illegal session;
  - If the body has taken no final action related to the illegal session prior to the self-disclosure; and
  - If there is no actual or anticipated litigation related to the illegal executive session.
- Allowing permissive recording of executive sessions by government entities, exempt from disclosure unless specifically authorized by a resolution of that entity.
- Requiring mandatory recording of executive sessions, triggered by a judicial finding of any “intentional” OPMA violation and ordered by a court. Recording is only required for two years from the court order and recordings are retained for two years, but exempt from disclosure under the PRA.