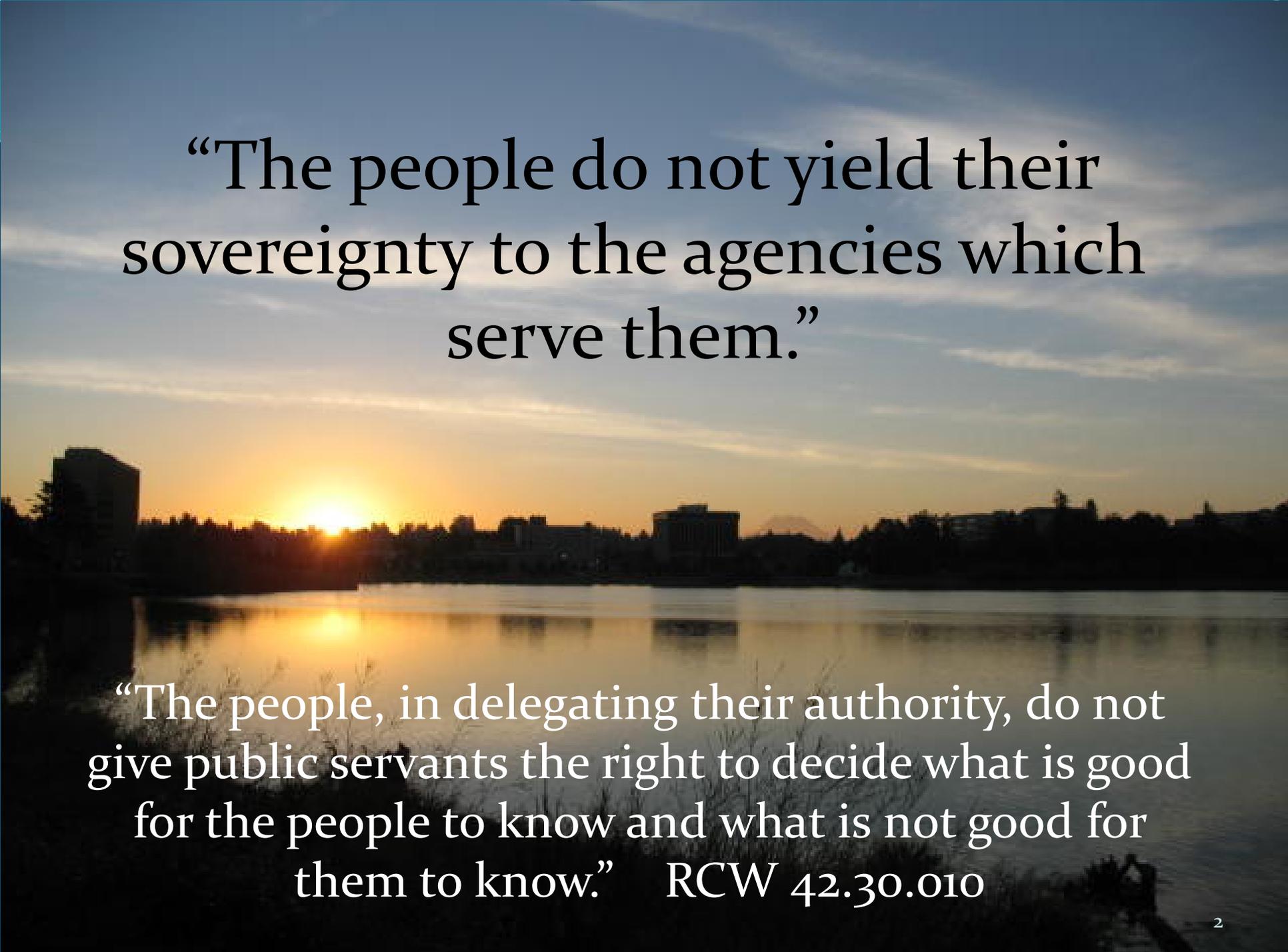


OPEN PUBLIC MEETINGS

Chapter 42.30 RCW The Open Public Meetings Act

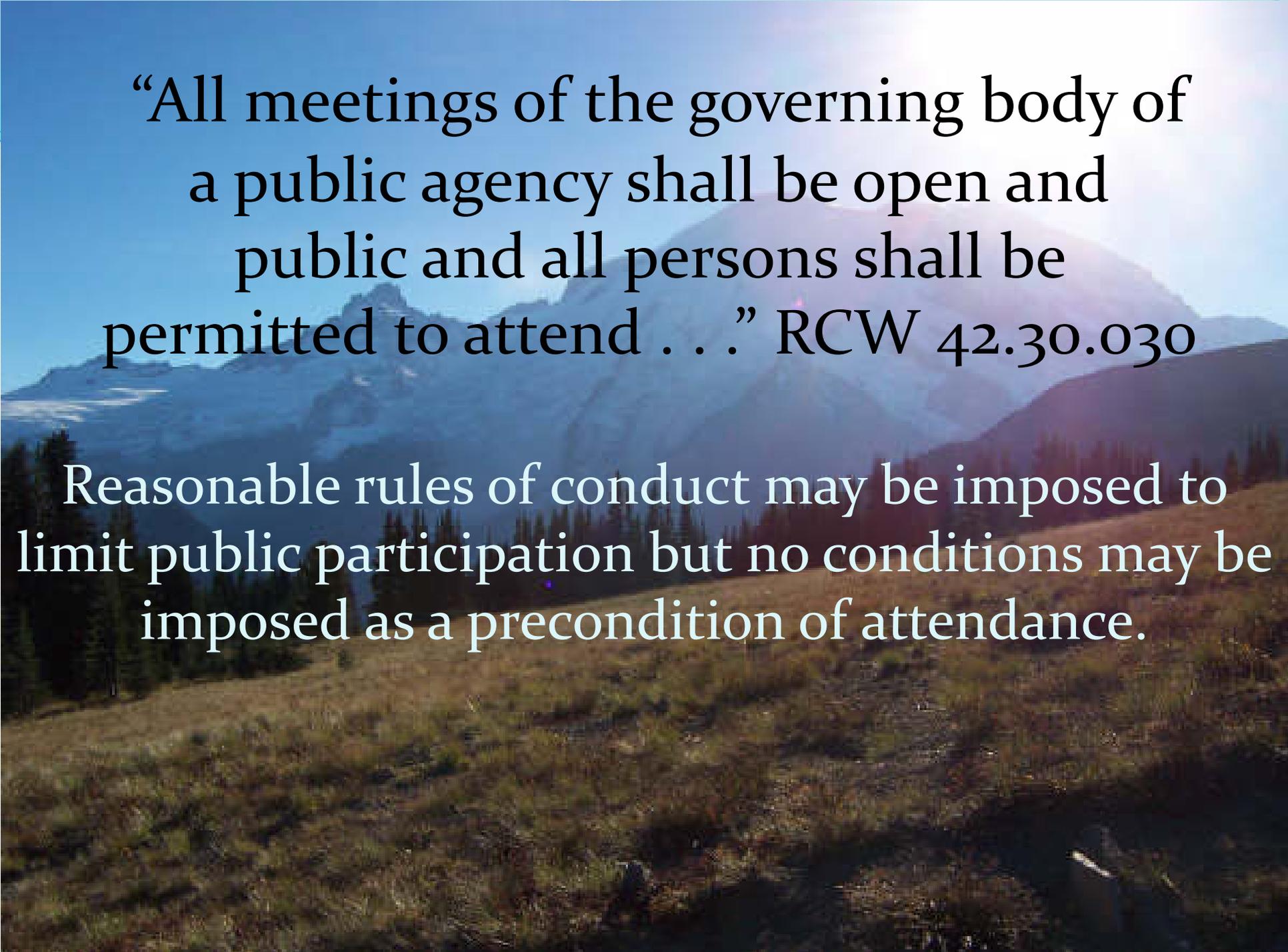
Washington State Attorney General's Office
Agriculture and Health Division

2014

A sunset over a city skyline reflected in a body of water. The sun is low on the horizon, casting a golden glow across the sky and reflecting on the water. The city buildings are silhouetted against the bright sky.

“The people do not yield their
sovereignty to the agencies which
serve them.”

“The people, in delegating their authority, do not
give public servants the right to decide what is good
for the people to know and what is not good for
them to know.” RCW 42.30.010

A scenic landscape featuring a grassy field in the foreground, a line of evergreen trees in the middle ground, and a range of mountains in the background under a clear blue sky. The text is overlaid on this background.

“All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend . . .” RCW 42.30.030

Reasonable rules of conduct may be imposed to limit public participation but no conditions may be imposed as a precondition of attendance.



This law applies to any multimember board, commission, council, committee, subcommittee, or other policy or rule-making body of a public agency.

RCW 42.30.010; 42.30.020(2)

What meetings are subject to the Open Public Meetings Act?

- ✓ Meetings at which action is taken
- ✓ Meetings at which there is a quorum
- ✓ Meetings of any committee of the board when the committee acts on behalf of the board, conducts hearings, or takes testimony or public comment

The Open Public Meetings Act does not apply to:

- ✓ Proceedings involving professional, occupational, and business licensing;
- ✓ Quasi-judicial matters between named parties;
- ✓ Matters governed by the Administrative Procedure Act (RCW 34.05);
- ✓ Collective bargaining sessions or grievance proceedings.

These can be conducted separately or designated on the agenda as “deliberative sessions.”



Public Notice

- ✓ Date, time, and place of Regular Meetings must be filed yearly with the Code Reviser by January 1.
- ✓ The Schedule/Agenda for Special Meetings must be provided at least 24 hours in advance, by:
 - ✓ Sending it by mail, fax, e-mail or in person to all board members, and each local newspaper, radio, and TV station which has requested notice; and
 - ✓ Posting it on the agency website, if it has one.

The Agenda



- ✓ In a Regular Meeting, the board can take action on any matter, as notice has been published in the State Register.
- ✓ In a Special Meeting, final disposition shall not be taken on any matter not on the agenda. Posted times on the agenda should be honored as much as possible because the public may have relied on the published schedule.

What is “action”?

"Action" means the transaction of the official business of the board or commission and includes:



- ✓ Public testimony
- ✓ Deliberations
- ✓ Discussions
- ✓ Reviews
- ✓ Evaluations
- ✓ Final Action . . .

“Final action” is a final vote by a majority of the Board or Commission or a “committee thereof.”

- ✓ Must be taken in public, even if deliberations were in closed session.
- ✓ Secret ballots are not allowed.

A meeting occurs whenever there is action, including the discussion, deliberation, or evaluation that may lead to a final decision—*whether or not* final action is taken.

Are subcommittees subject to the requirements of the open public meetings act?

It depends. A task group or subcommittee composed of less than a quorum that merely makes recommendations does not have to conduct a public meeting as long as the board is not a “rubberstamp,” but fully discusses the issue at an open public meeting.

If the subcommittee conducts hearings, takes testimony or public comment, or is empowered to “act” on behalf of the board, it must conduct a public meeting.

E-mail conversations can be a meeting if:



- ✓ A quorum of the members of the Board or Commission participate in the e-mail exchange;
- ✓ Members collectively intend to transact official business; or
- ✓ Members communicate about issues that may or will come before the body for a vote.

Hint: Don't click "Reply All" because that creates a quorum!

This also applies to
conversations by
telephone or in person



Do not attempt to avoid the intent of the
open meeting requirement by meeting in
smaller groups to discuss board issues.



Successive, separate “meetings,” held
in private to resolve issues which are
then voted on in public, have been
held to be a violation of the law.

Wood v. Battle Ground School Dist., 107 Wn. App.
550, 5621 (2001).

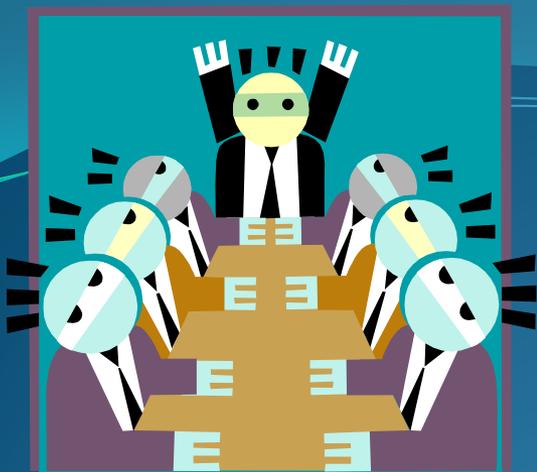


Executive Session

RCW 42.30.110

The public may be excluded to allow the governing body to convene in an executive session only for very specific purposes.

The purpose of the executive session and the time it will end must be announced by the presiding officer.



An executive session may be held to address such matters as:

- The selection, acquisition, sale or lease of real estate
- Review of negotiations on the performance of publicly bid contracts
- Evaluation of the qualifications of applicants for public employment
- Meeting with legal counsel regarding enforcement actions, litigation, or potential litigation



But—executive session is not permitted just because legal counsel is present.

“Potential litigation” means:

- Litigation which has been specifically threatened or the board believes will be commenced by or against the agency, board, or member;
- Litigation or legal risks of proposed action or current practice that the agency has identified when public discussion is likely to result in adverse legal or financial consequences.



And—once in executive session, action is limited to what is authorized by the relevant exception.

Miller v. City of Tacoma, 138 Wn.2d 318, 324 (1999).

For example, if an executive session is convened to *discuss* terms of a settlement with its attorney and to receive legal advice , when discussion ends, so must the executive session. The collective decision to accept or reject the terms must occur in open session.

What's OK and what's not?



Can we meet privately in groups smaller than a quorum to solve issues before the meeting?

No. Discussion of official business would be action, triggering the requirements of the Act.

Can we travel or eat together?

Yes, as long as no action is taken.

Penalties for Violating the Law

- ✓ A Superior Court can impose a \$100 civil penalty against each member (a violation is civil in nature, so not considered a crime)
- ✓ Judge will award costs and attorney fees to a successful party seeking the remedy
- ✓ Action taken at an improperly closed meeting can be declared null and void

Consider also the potential publicity and effect on your reputation.