

1
2
3 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
4
5 IN AND FOR YAKIMA COUNTY

6 TIMOTHY SCHOENROCK, a Washington
resident,

7 Petitioner,

8 vs.

9 RICK ENSEY a Washington resident; MICAH
10 CAWLEY, a Washington resident; BILL
11 LOVER, a Washington resident; KATHY
COFFEY, a Washington resident; and, the City
of Yakima, a Washington municipal
corporation.

12 Respondents

Case No.: 09-2-01619-3

ALTERNATIVE WRIT OF MANDAMUS
AND ORDER TO SHOW CAUSE

13
14 WHEREAS, on Petitioner's motion, the undersigned Judge of the Yakima County Superior Court
15 issued an order granting Writ of Mandamus. You, Councilmembers Rick Ensey, Bill Lover,
16 Micah Cawley, Kathey Coffey, individually and as part of the Yakima City Council, are to desist
17 and refrain from further proceedings which utilize the policies and procedures of budgeting
18 process approved on April 14, 2009. Additionally, each of you are ordered to attend a show cause
19 hearing set for May 15, 2009 at 1:30 pm in the Superior Court for Yakima County.
20

21 WITNESS THE HONORABLE

22
23 _____
24 Judge for the Superior Court, and seal

Date

25 **Schoenrock Law, LLC**

6 South 2nd Street, Suite 316
Yakima, WA 98901
Phone 509.901.8263
Fax 509.463.0881

Alternative Writ of Mandamus - 1

Kim Eaton
Clerk for Yakima County

By: _____
Deputy

Schoenrock Law, LLC
6 South 2nd Street, Suite 316
Yakima, WA 98901
Phone 509.901.8263
Fax 509.463.0881

1 Defendants Richard Ensey, William Lover, Micah Cawley, and Katherine Coffey illegally
2 conspired with one another, discussing and forming opinions on a matter of public importance,
3 so that they could ensure a majority of votes to approve the City's accounting change without
4 having to endure the public scrutiny that this change would have undoubtedly occasioned. The
5 Defendants' blatant violations of the most basic requirements of state law, so infuriated fellow
6 Council member Niel McClure that he resigned from his office in protest directly after the vote.
7 In a series of interviews with television news reporter Mellisa Wagner, conducted the afternoon
8 of the the vote and Councilman McClure's resignation, Defendants Ensey, Lover, and Coffee all
9 admit to taking actions that violate the law.¹

10 11 **II. PARTIES**

12 2.1 Petitioner Timothy Schoenrock is a resident of the City of Yakima. He is also an
13 attorney, licensed to practice in Washington State.

14 2.2 Defendants Richard Ensey, William Lover, Micah Cawley, and Kathey Coffee are all
15 residents of the City of Yakima and all members of the Yakima City Council.

16 17 **III. JURISDICTION**

18 3.1 This Court has jurisdiction pursuant to RCW 7.16 and Article IV, Section 6 of the
19 Washington State Constitution. Additionally, RCW 42,30.130 provides that a writ or
20 mandamus is the appropriate relief for this action.

21
22
23
24 ¹ .

\

IV. FACTS

4.1. Prior to April 14, 2009, Yakima City Council officially decided to study the possibility of implementing Yakima County's policies and procedures for budgeting.

4.2. On April 14,, 2009, the City convened a regularly scheduled meeting regarding the City budget. Part of the scheduled agenda for the meeting was a discussion about the possibility of adopting Yakima County's budget policy and procedures.

4.3. Instead of having such discussion, Councilman Rick Ensey opened the meeting by saying: "I'm gonna make this short and simple, I have a motion to immediately adopt t the county's policies and procedures on their budget."

4.4. In an interview with KIMA-TV news reporter Melissa Wagner, Councilman McClure alleged that Respondent Rick Ensey orchestrated the majority vote with the help of co-Respondents Bill Lover, Kathey Coffey, and Micah Cawley before the public meeting so that he was sure that he had the commitment of enough votes to guarantee the success of his motion.

4.5. In a separate recorded interview with Ms. Wagner, Respondent Rick Ensey admits to talking privately with fellow Council members and co-Respondents Bill Lover, Kathy Coffey and Micah Cawley prior to the public meeting that was specifically

Schoenrock Law, LLC

6 South 2nd Street, Suite 316

Yakima, WA 98901

Phone 509.901.8263

Fax 509.463.0881

Alternative Writ of Mandamus - 4

1 designated for discussion of the topic. A section of the interview proceeds as
2 follows:
3

4 Melissa Wagner: "So does this then become your mission, to do what you want to do
5 regardless what other council members want to do?"
6

7 Rick Ensey: "Well, I don't know if it's my mission because I didn't start it. Bill has
8 been the one looking to change the budget system since he's been on
9 council, Micah Cawley is the same way, Kathy Coffey has wanted
10 to do this for the 2009 budget, so it's been going on for a long time. It's
11 just no one's taken the initiative to get it moving, and I decided if I've
12 got three other people then I'm going to do it."
13

14 4.6. In his own separate interview with Ms. Wagner, Respondent Bill Lover also
15 admits to violating the law by having worked for some time to persuade and
16 solidify the necessary votes through private conversations with fellow Council
17 members, thereby avoiding the possible complication that might come with
18 open public meetings. Respondent Lover states: "This wasn't an absolute
19 blind side. Maybe council member McClure thought there'd be more study but
20 that was the problem with some of us - more study would put it off for another
21 year."
22
23
24

1 4.7 In her own separate interview with Ms. Wagner, Respondent Kathey Coffey also
2 admits to discussing the matter with fellow Council members prior to specified
3 meeting for it and outside of public scrutiny.
4

5 4.8. Respondent Coffey admits to colluding with co-Respondent Micah Cawley to have
6 discussions of on the matter and attempting to contact newly appointed
7 Councilwoman Sonia Rodriguez for the same reason.

8 **V. ARGUMENT**

9 **General Law**

10
11 A writ of mandamus may be issued to “compel the performance of an act
12 which the law especially enjoins as a duty resulting from an office.” RCW
13 7.16.160. A writ is appropriately granted in cases where there is not a “plain,
14 speedy and adequate remedy in the ordinary course of law,” upon affidavit of a
15 beneficially interested party. RCW 7.16.170; Paxton v. City of Bellingham, 118
16 Wn. App. 439, 444, 119 P.3d 373 (2005).
17

18 Courts possess inherent power to protect individual citizens from arbitrary actions that occur
19 when governing statutes and policies are not followed, even though a constitutional right is not
20 violated by the arbitrary actions. Williams v. Seattle Sch. Dist. No. 1, 97 Wn.2d 215, 222, 643
21 P.2d 426 (1982). DOC'S "compliance with requirements of a statute affecting [an inmate's]
22 release is a protected liberty interest." Dutcher, 114 Wn.App. 744, 758 (2002). Mr. Burd has a
23 legitimate expectation of freedom from arbitrary and capricious actions by the DOC because he
24

25 **Schoenrock Law, LLC**

6 South 2nd Street, Suite 316
Yakima, WA 98901
Phone 509.901.8263
Fax 509.463.0881

has a fundamental right to be treated consistent with the law, including RCW 72.09.370. DOC violated Mr. Burd's rights by failing to complete the DM10 assessment prior to his release.

The right of mandamus "to protect the rights, interests, and franchises of the state, and the rights and interests of the whole people, to enforce the performance of high official duties affecting the public at large" State ex rel. Malmö v. Case, 25 Wn.2d 118, 123, 169 P.2d 623 (1946)). In order to determine whether mandamus will lie, we must determine not only whether the duty is discretionary, but also the authorized boundaries of discretion.

Mandamus issues to compel an officer to perform a purely ministerial duty. It can not be used to compel or control a duty in the discharge of which by law he is given discretion. The duty may be discretionary within limits. He can not transgress those limits, and if he does so, he may be controlled by injunction or mandamus to keep within them. The power of the court to intervene, if at all, thus depends upon what statutory discretion he has. Under some statutes, the discretion extends to a final construction by the officer of the statute he is executing.

Work v. United States ex rel. Rives, 267 U.S. 175, 177, 45 S. Ct. 252, 69 L. Ed. 561 (1925).

Schoenrock Law, LLC

6 South 2nd Street, Suite 316
Yakima, WA 98901
Phone 509.901.8263
Fax 509.463.0881

The Open Public Meetings Act

The basic mandate of the Open Public Meetings Act (hereinafter “the Act”), RCW is simple: government meetings must be both open and public. The Act contains a statement of purpose as follows:

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

RCW 42.30.020(1)(b). The Act applies to “meetings” of a “governing body” of a “public agency.” A “public agency” includes a city, county, and special purpose district. RCW 42.30.020(1)(b). A “governing body” is defined in the Act 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.” RCW 42.30.020(1)(c).

There must be a “meeting” of a governing body for the Act to apply. Sometimes it is very clear that a “meeting” is being held that must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the Act's definitions. The Act defines “meeting” as follows: “‘Meeting’ means meetings at which action is taken.” RCW 42.30.020(4).

“Action,” as referred to in that definition of “meeting,” is defined as follows:

“Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.

Schoenrock Law, LLC

6 South 2nd Street, Suite 316

Yakima, WA 98901

Phone 509.901.8263

Fax 509.463.0881

Alternative Writ of Mandamus - 8

1 “Final action” means a collective positive or negative decision, or an actual vote
2 by a majority of the members of a governing body when sitting as a body or
3 entity, upon a motion, proposal, resolution, order, or ordinance. RCW
4 42.30.020(3).

5 Since a governing body can transact business when a quorum (majority) of its members
6 are present, See, e.g., RCW 35A.12.120; 35.23.270; 35.27.280; 36.32.010, it is conducting a
7 meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its
8 members meet together and deal in any way with city, county, or special purpose district
9 business, as the case may be. This includes simply discussing some matter having to do with
10 agency business. Because members of a governing body may discuss the business of that body
11 by telephone or e-mail, it is not necessary that the members be in the physical presence of each
12 other for there to be a meeting subject to the Act. Wood v. Battle Ground School Dist., 107 Wn.
13 App. 550, 562 (2001). Lastly, the governing body must take “final action” for a “meeting” to fall
14 under the Act. RCW 42.30.020(3) defines “final action” as “a collective positive or negative
15 decision, or an actual vote by a majority of the members of a governing body when sitting as a
16 body or entity, upon a motion, proposal, resolution, order, or ordinance.” 22 RCW 42.30.070; In
17 re Recall of Roberts, 115 Wn.2d 551, 554 (1990). 23 Wood v. Battle Ground School Dist., 107
18 Wn. App. 550, 562-63 (2001). 24 Though, at least one local government in this state has held an
19 online meeting of its governing body, providing notice under the Act and giving the public the
20 opportunity to “attend.” 25Id. At 564-65. Open Public Meetings Act 7

21 It does not matter if the meeting is called a “workshop,” a “study session,” or a
22 “retreat”, so long as a quorum of the board is addressing the business of the municipality, a
23 meeting is subject to the Open Public Meetings Act. However, if a governing body just meets
24 socially or travels together, it is not having a meeting subject to the Act as long as the members
25 do not discuss agency business or otherwise take “action.”22

Schoenrock Law, LLC

6 South 2nd Street, Suite 316

Yakima, WA 98901

Phone 509.901.8263

Fax 509.463.0881

Alternative Writ of Mandamus - 9

1 Whenever a majority of the members of a governing body discuss official business by
2 telephone or e-mail, those actions can qualify as a “meeting” subject to the Act. Wood v. Battle
3 Ground School Dist., 107 Wn. App. 550, 562-63 (2001). Since the members of a governing body
4 can discuss city, county, or district business together by telephone or by e-mail so as to be taking
5 “action” within the above definition, the governing body can conduct a meeting subject to the
6 Act even when the members are not in the physical presence of one another. Id. The type of
7 meeting may take many different forms, from a conference call among a majority or the board to
8 a telephone “tree” involving a series of telephone calls, or an exchange of e-mails. Unless the
9 public is noticed and allowed to attend these types of “meetings,” they must be held as violating
10 the Act. See Municipal Research and Service Center, The Open Public Meetings Act: How it
11 Applies to Washington Cities, Counties, and Special Purpose Districts (2008).

12
13 Based upon the language discussion of the Open Public Meeting Act and its interpretation
14 by the Courts, it is clear that Respondents Rick Ensey, Bill Lover, Micah Cawley, and Kathy
15 Coffey violated the Act by conducting meaningful discussions about budget accounting process
16 and procedures in the time period leading upon to the Council meeting and vote of April 14,
17 2009. The discussions between Council members occurred outside the public view, without
18 public notice, and met none of the qualifications for a closed executive session under the Act.
19 Yakima City Council clearly falls under the ambit of the Open Public Meetings Act. As such, the
20 Council is *already* subject to a mandate that its “meetings” must be open to public. The
21 Petitioner seeks a writ from the Court compelling Yakima City Council to comply with its
22 preexisting mandate to follow the laws of the state while making important decision and
23 conducting official business.

24
25 **Schoenrock Law, LLC**

6 South 2nd Street, Suite 316
Yakima, WA 98901
Phone 509.901.8263
Fax 509.463.0881

1 **Clear Entitlement to the Writ**

2 As the facts demonstrate, the Yakima City Council should have held meeting with
3 discussion on April 14, 2009 as intended. Instead, Respondents violated the Act and came to a
4 final action of the budgetary issue in private discussion.

5 **No Alternative Means of Relief**

6
7 There is no alternative mean of relief for the violation other than the writ as is before the
8 court.

9 **Preliminary Injunction**

10 A party seeking relief through a temporary injunction must show a clear legal or equitable
11 right, that there is a well-grounded fear of immediate invasion of that right, and that the acts
12 complained of have or will result in actual and substantial injury. *Tyler Pipe Indus., Inc. v.*
13 *Department of lievenue*, 96 Wn.2d 785,792,638 P.2d 1213 (1982). Also, since injunctions are
14 within the equitable powers of the court, these criteria must be examined in light of equity,
15 including the balancing of the relative interests of the parties and the interests of the public,
16 if appropriate. *Id. Rabon*, 135 Wn.2d at 284.

17
18
19 **VI. RELIEF REQUESTED**

20
21 6.1 Petitioner seeks the issuance of a writ of mandate that the Yakima City Council
22 shall hold open and public hearings on the budgetary issue.

23 6.2 Petitioner seeks that a preliminary injunction be issued forestalling the use of the
24 budgetary policies and procedures that were illegally apporved on April 14, 2009.

1 6.3 Petitioner seeks that an order to show cause be issued for the Respondents for May 5th,
2 2009 if they fail to comply with the above two conditions.

3 6.4 All other reasonable and equitable relief as the Court shall see fit.

4 4.1.1.1.

5 Dated this May 1, 2009

6
7
8 Timothy Schoenrock
9 WSBA #40029
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 **Schoenrock Law, LLC**

6 South 2nd Street, Suite 316
Yakima, WA 98901
Phone 509.901.8263
Fax 509.463.0881