

From: [Kathleen Otto](#)
To: [Rebecca Messinger](#)
Subject: FW: OPMA and RCW 43.03.310(6). and the courts - Washington Attorney General response
Date: Thursday, February 22, 2024 8:34:08 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)



Kathleen Otto
County Manager

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From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Wednesday, February 21, 2024 11:11 PM
To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>; Carol Levanen <cccuinc@yahoo.com>; sprazz@outlook.com
Subject: Fw: OPMA and RCW 43.03.310(6). and the courts - Washington Attorney General response

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FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN UPDATE

Submitted by:

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----- Forwarded Message -----

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
To: susan rasmussen <sprazz@outlook.com>; Carol Levanen <cccuinc@yahoo.com>
Sent: Friday, October 6, 2023 at 05:02:29 PM PDT
Subject: Fw: OPMA - court

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail
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----- Forwarded Message -----

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
To: Carol Levanen <cccuinc@yahoo.com>
Sent: Thursday, March 9, 2023 at 10:52:41 AM PST
Subject: OPMA - court

A regular meeting of the Commission where each member participates by telephone can comply with the requirements of both the OPMA and RCW 43.03.310(6). For example, one or more specific locations can be designated as the meeting place; notification of the meeting place(s) and time can be provided in the manner outlined in RCW 42.30.075; the agenda can be posted online if required by RCW 42.30.077; and a speaker phone can be provided at the designated meeting place(s) to enable those attending to hear the public discussions and to provide testimony. If these steps are taken, those members of the public present at the designated meeting location(s) can hear all discussions, provide testimony, and generally observe the steps employed by the Commission in taking its official action. This process satisfies the requirements of both the OPMA and RCW 43.03.310(6). *Accord Tuzeer*, 29 A.3d at 1035 (Maryland’s open meetings act construed to allow remote participation by telephone conference call as long as the call is audible to members of the public); *Goode v. Dep’t of Soc. Servs.*, 143 Mich. App. 756, 759-60, 373 NW.2d 210 (1985) (an adjudicative hearing subject to the Michigan open meetings act could be held by teleconference calls without violating that act).

Our opinion on this issue is not without risk. RCW 42.30.060 provides that actions taken by a governing body are “null and void” unless the meeting is open to the public and proper

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notice has been given. Additionally, a member of the public could conceivably bring legal action under RCW 42.30.120 to enforce civil penalties against Commission members for an alleged violation of the OPMA’s requirements. *See, e.g., West v. Seattle Port Comm’n*, 194 Wn. App. 821, 826, 380 P.3d 82 (2016) (OPMA authorizes “any person” to “bring an action to enforce civil penalties against members of a governing body who attend meetings in violation of the OPMA”). Such a result is unlikely for the reasons stated above, but we cannot entirely discount it. Clarifying legislation could address the subject and eliminate this risk. As mentioned above, several states have addressed by statute the parameters governing public meetings using teleconference and video conference technologies.

We trust that the foregoing will be useful to you.

ROBERT W. FERGUSON
Attorney General

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