

Tuesday, August 8, 2017

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“Tortured logic” used in recent AG opinion on Open meetings law

Seattle--Calling a State Attorney General’s Opinion a “death blow to accountability,” the Washington Coalition for Open Government says the state’s open-meetings law will be turned into a mandate for secrecy if an AG ruling on closed-door sessions is allowed to stand. The ruling, sought by two state lawmakers, says public officials who talk about executive sessions they believe to be improper, face criminal prosecution if the closed-door session was allowed under the OPMA.

The state’s Open Public Meetings Act allows governmental bodies to meet in private under very specific and exceptional circumstances such as discussing active or potential litigation or national security and a very few other sensitive issues. But if a public official believes a discussion or decision was improperly closed to the public, should they be able to discuss that information? WCOG President, Toby Nixon, says yes.

“There is nothing in the OPMA that prohibits a public official from discussing what transpired behind closed doors if that official believes the closed door session was improper. But now, the Attorney General’s office seems to be saying that a public official could be violating the law if they do not remain silent. And the opinion uses the OPMA itself to justify the secrecy by implying the OPMA demands silence from our elected officials following an executive session. That is not how we interpret that section of the law.”

Nixon says the opinion gives officials the discretion to decide something was outside the narrow scope of executive sessions, but then threatens criminal prosecution if they get it wrong. He says while the OPMA ALLOWS closed door sessions under narrow exceptions, it certainly does not mandate closed-door sessions.

“The AG’s opinion uses tortured logic at its best claiming the release of information about a closed-door session is prohibited by the OPMA. The OPMA does not demand closed-door sessions nor does it prohibit discussion of those sessions if a public official feels the sessions were improper. Under this ruling, agencies could go into executive session improperly with officials too afraid of prosecution to blow the whistle. This is the worst kind of ruling for transparency.”

The opinion was requested by Washington State Senator Sam Hunt of Olympia and State Representative Marcus Recilli of Spokane. Nixon says WCOG will be asking the legislature to address this issue in the next session.