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Citizens Alliance for Property Rights Legal Fund v. San Juan County

Court of Appeals of Washington, Division 1 - April 28, 2014 - Not Reported in P.3d - 2014 WL 1711768

Citizens Alliance for Property Rights (CAPR) alleged that members of the San Juan County Council violated the Open Public Meetings Act (OPMA) by attending a series of closed meetings as part of a working group known as the San Juan County Critical Area Ordinance/Shoreline Master Program Implementation Committee (CAO Team).

Under Washington case law, a gathering that includes less than a majority of the governing body does not violate OPMA. At all times relevant to this case, the Council had six members. Therefore, a gathering that includes three councilmembers does not constitute a “meeting” of the Council for OPMA purposes, regardless of whether “action” is taken.

CAPR contended that on November 14, 2011, four of six councilmembers held a “meeting” in violation of OPMA by participating in an email and telephone exchange in which they discussed CAO Team matters. The trial court properly rejected this argument. “The OPMA does not require the contemporaneous physical presence of members of the governing body in order to constitute a meeting.” An exchange of emails can constitute a “meeting” for OPMA purposes. However, “the mere use or passive receipt of e-mail does not automatically constitute a ‘meeting.’” Viewed in the light most favorable to CAPR, the record shows that at most three councilmembers participated in the active discussion of issues by phone or email. The fourth councilmember received a copy of the email, but there was no evidence that she responded or actively participated in the discussion.

The court denied CAPR’s request that it should create a new rule and hold that a “meeting” occurs for the purposes of OPMA when the number of members present is sufficient to block action when the matter discussed comes up for a vote before the governing body, thereby constituting a “negative quorum.”

Finally, CAPR argued that it does not matter if a majority of the Council was not present at CAO Team meetings, because the CAO Team itself was a “governing body” subject to OPMA requirements. The court disagreed, holding that a committee “acts on behalf of” a governing body when it exercises actual or de facto decision making authority. Because CAPR submitted no evidence that a majority of the Council attended CAO Team gatherings or that the CAO Team exercised actual or de facto decision making authority, no “meeting” occurred for OPMA purposes.