

Gary M. Cuillier
ATTORNEY AT LAW

314 N. SECOND STREET
YAKIMA, WASHINGTON 98901

(509) 575-1800
FAX: (509) 452-4601

June 6, 2022

Jean Mendoza
Executive Director,
Friends of Toppenish Creek
3142 Signal Peak Road
White Swan, WA 98952

Dear Jean Mendoza,

I have been asked to respond to your letter of May 28, 2022.

As to the adequacy of the notice of the Special Meeting of the Yakima Clean Air Agency (YRCAA) scheduled for June 9, 2022, it specifies a time from 8:45 a.m. to 1:30 p.m. for conducting an executive session pursuant to RCW 42.30.110(1)(g). You correctly note that since the meeting announcement uses the word "interview," the public can reasonably expect that interviews will take place, especially in view of the stated number of hours for the executive session. The requirement in Administrative Code Part A and RCW 42.30.080(3) of announcing the purpose and business to be transacted does not require greater detail or different wording for the public to reasonably expect that interviews will take place. This purpose of the executive session and the stated time when it will be concluded will again be publicly announced by the Board Chair before convening the executive session pursuant to RCW 42.30.110(2).

As to the special meeting agenda, the references to convening an executive session where Board members will evaluate applicants for the APCO/Executive Director vacant position as provided by RCW 42.30.110(1)(g) from 8:45 a.m. to 1:30 p.m. likewise allows interviews of candidates to be conducted during the executive session. This is because the Board's authority to "evaluate the qualifications of an applicant for public employment" in executive session includes the authority to interview an applicant as one of the methods of evaluating the qualifications of the applicant for public employment. RCW 42.30.110(1)(g) does not contain the

specific requirements of RCW 42.30.110(1)(h) to the effect that interviews of candidates for appointment to elective office be conducted in a meeting open to the public. The Municipal Research and Services Center (MRSC) which advises municipalities and public agencies throughout the State likewise advises that RCW 42.30.110(1)(g) authorizes meeting in executive session to interview applicants for a nonelective appointive office or employment based on the notion that interviewing comes within the concept of evaluating qualifications. I would also add that this interpretation of RCW 42.30.110(1)(g) at least to some extent minimizes the possibility of jeopardizing an applicant's current employment which is more often not as great a concern relative to candidates for appointment to elective offices which often are not full-time positions. Your observation is well taken to the effect that the Board cannot adequately evaluate the qualifications of applicants without first interviewing the applicants. How the Board conducts those interviews and its evaluations of applicants are matters to be determined within the Board's discretion. Your letter stating your views and requests was directed to the Board for its consideration.

As to Section 2.1 of YRCAA Administrative Code Part A, a quorum is necessary for "deliberation and discussion" to constitute Board "Action" as defined by RCW 42.30.020(3). Any deliberation or discussion among fewer than a quorum of Board members allowed by Section 2.1 would not constitute Board action at a meeting either as stated by that section or as defined by RCW 42.30.020(3). Therefore, at least three YRCAA Board members must be present to convene a Board meeting of any type.

As to the meaning of "Final action" as defined by RCW 42.30.020(3) and as more specifically defined in this context by RCW 42.30.110(1)(g), it specifically consists in this context of final action hiring and/or setting the salary of an employee.

As to the composition of the YRCAA Board of Directors, the two appointed Board members who are not elected officials have been appointed in the manner required by State statute. There is no authority to require a quorum or a majority of Board members at any Board meeting to be elected officials.

As to the executive session requirement of Section 2.8 of YRCAA Administrative Code Part A, that provision will be complied with because "the Chair will announce that the Board is adjourning to a closed session" to interview and otherwise evaluate the qualifications of applicants for the APCO/Executive Director vacant position as provided by RCW 42.30.110(1)(g), or words to that effect, and

Jean Mendoza

June 6, 2022

Page 3 of 3

that the executive session will be concluded at 1:30 p.m. that day. It has been discussed in detail above how the public already can reasonably expect that interviews will take place at the executive session as a result of the advance Special Meeting notice and how the advance Agenda's reference to RCW 42.30.110(1)(g) as the authority for the executive session includes the Board's authority to interview applicants as one of the methods of evaluating their qualifications. No issues will in fact be discussed in executive session other than presented in the executive session announcement as required by Section 2.8 of YRCAA Administrative Code Part A.

In conclusion, it appears that all of the legal issues in your letter have been addressed and that the remainder of FOTC's views and requests submitted to individual Board members by means of its May 28 letter involve matters particularly within the discretion of the YRCAA Board of Directors.

Yours very truly,



Gary M. Cuillier
Attorney for YRCAA

GMC:vs

Cc: Hasan Tahat, YRCAA