

Preventing conflicts and interpreting ethics codes



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Quasi-judicial* hearings: Bases for disqualification

- Bias and prejudice
- Prejudgment
- Violation of Appearance of Fairness Doctrine

* *Quasi-judicial = judge like, such as license revocations and site-specific rezones*



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It is apparent that the Council gave little consideration to the merits of Maranatha's application, and that it disregarded the facts set forth in the examiner's findings. The Council seems to have heard clearly the citizen complaints and the comments of one of its own members while disregarding the record.

We cannot escape the conclusion, in view of the evidence in support ...

(...continued)

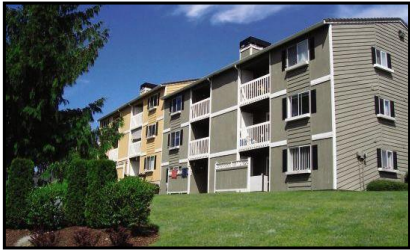


... Of Maranath's application, that the Council based its decision on community displeasure and not on reasons backed by the policies and standards as the law requires.

•*Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805 (1990).



... The motion passed by the Spokane City Council was not legislation generally applicable to the entire community but rather an act directed specifically at Mission. It was administrative or executive in nature, not legislative, and therefore **legislative immunity is not available here.**



Mission Springs v. City of Spokane,
134 Wn.2d 947 (1998).



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Therefore, we have rather a straightforward situation where clear legal rights of the citizen were violated by **city council members acting in excess of their lawful authority** and by a City Manager acting in excess of his own lawful authority but at the urging of the City Council.

Mission Springs v. City of Spokane, 134 Wn.2d at 961.



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Burien slapped with \$10.5 million verdict

Developer alleged project was delayed

BY JAKE ELLISON
P-I reporter

A Federal Way developer has won \$10.5 million in damages from the city of Burien after a 15-year battle over plans to build a housing complex.

A Snohomish County Superior Court jury decided last week that Burien officials illegally dragged out negotiations with Westmark Development Corp. over possible environmental impacts and building permits in the 1990s.

The company had planned to build a 216-unit complex overlooking Seahurst Park and Pigeon Sound, and later revised the project down to 176 units. Company officials said Wednesday they again will seek a building permit for the site.

Burien likely will appeal the verdict, said Lisa Marshall, the city's attorney. She said the court did not allow the city to present evidence it needed to make its case. Any delays in Westmark's permits were caused by the company's failure to file plans and

supporting information on time, Marshall said.

The jury agreed with the company that the delays were designed to thwart the developers and that Burien's "biggest mistake was failure to take any action at all," said Joq Ferguson, the attorney for Westmark.

The Federal Way company is run by four brothers who have developed about 20 housing and hotel projects in Federal Way and are working on a \$3.5-million hotel project in Tacoma, said Badru Sayani, one of the brothers. They also operate hotels and condominium buildings in Vancouver, B.C., he said.

The brothers have developed more than \$200 million worth of property since emigrating from Uganda in 1972, Sayani said. The brothers' other partner in Westmark is 90-year-old Alice Dobson, who owned the property in Burien.

Ferguson told the Snohomish jury that the company was on its way to getting a permit from King County until 1993, when its requests were transferred to the

newly incorporated city of Burien.

At that point, "an anti-growth citizens group that organized itself into the city of Burien" halted the project and sat on it for a year, Ferguson said.

Westmark sued for delay and, in 1998, believed it had a settlement with the city. Westmark sued again when the city denied it had made a settlement. During that suit, Westmark found out the settlement was no good because the city had not followed open meeting laws.

The company sued again in 2003 over the original delay and the delay caused by the open meeting issue, which Burien officials knew about years before they told Westmark, Ferguson said.

"The city was just incorporated and didn't have enough experience," Sayani said. "Someone should have advised them to negotiate (with the company), rather than hiding the files and just not responding."

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Private use of public funds prohibited

Credit Not to Be Loaned. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, . . . except for the necessary support of the poor and infirm. . .



Washington Constitution, Article VIII, Section 7



Private use of public funds prohibited

A two-pronged analysis is used to determine whether a gift of public funds has occurred. *CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996).

> Fundamental purpose of government: No GIFT

> Contracted benefit: No GIFT

See, *Hudson v. City of Wenatchee*, 94 Wn. App. 990, 995 (1999)



Politics and public facilities

Public facilities (any aspect) may NOT be used to advocate a political campaign or any other ballot measure. Exceptions:

1. Individual's candidate endorsement
2. Support for local ballot measure
3. Normal and regular conduct (e.g., city newsletter, public use of facilities)

RCW 42.17.130



Mid-term pay increases/decreases

The State Constitution, Article XI § 8, prohibits officials who fix their own compensation from changing pay applicable to the office during the term of office. BUT – SALARY COMMISSIONS OK.



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Conflicts of interest

Well established principles of common law and state statute prohibit a councilmember from participation in a matter that will benefit specifically the member. In some circumstances, the interest is such as to prohibit the act or disqualify the councilmember.

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Code of ethics

No municipal officer shall be beneficially interested, directly or indirectly, in any contract...

or



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Code of ethics

accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract...

RCW 42.23.030



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In spite of well-intentioned attempts to avoid a prohibited conflict of interest, Runyon nonetheless violated the plain language of RCW 42.23. The City's contract for the sewer extension was entered into after Runyon was elected and began serving his term.

(...continued)

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(continued...) Under this contract, Roglin's, the contractor, bought \$11,917.80 worth of rock from Runyon in 1996. That Runyon did not vote on this contract does not shield him from statutory violation.

City of Raymond v. Runyon, 93 Wn. App. 127, 137 (1998).



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Citizens for City of Des Moines v. Gary Petersen



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125 Wn. App. 760 (2005)

... the trial court ruled all the individual towing “contracts” between the city of Des Moines and Pete’s Towing since Petersen took office to be void, ordered Petersen not to permit Pete’s Towing to accept any additional “contracts” with the city of Des Moines while Petersen remained in office.

The Court of Appeals reversed. The City of Des Moines did not make any contract, express or implied, with Pete’s Towing. All a matter of Police referrals.

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Code of ethics

Certain exceptions

RCW 42.23.030

[Example, 2020 Legislature raised from \$200 to \$1,000 monthly for day labor exception]

Remote interest exception

RCW 42.23.040

See Knowing the Territory



42.23.070. Prohibited Acts

- (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

See, Hubbard v. Spokane County, 146 Wn.2d 699 (2002).

(...continued)



Hubbard v. Spokane County

RCW 42.23.070(1) clearly prohibits municipal officers from using their positions to secure special privileges or exemptions for others. Thus, its plain language **does not limit the prohibition to only conflict of interest situations.** Furthermore, the express purpose of the act was to ensure that government officials conducted business in a "manner that advances the public's interest." . . . We therefore hold that RCW 42.23.070(1) creates a valid public policy in favor of prohibiting municipal officers from granting special privileges or exemption to others. In so holding, we recognize the burden this may place on public officials. However, because public officials serve the interests of the citizens of Washington, consistent with the Ethics in Public Service Act, we find it appropriate to hold them to a high standard.



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Barry v. Johns, 82 Wn. App. 865 (1996)



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Barry v. Johns (cont.)

... We conclude, therefore, that RCW 42.23.030 applies only to municipal contracts involving business transactions, employment matters and other financial interests and cannot be read to apply to the Neutral Zone contract.



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Barry v. Johns (cont.)

... in a representative democracy, we elect our legislators precisely to carry out agendas and promote causes with full knowledge that “their own personal predilections and preconceptions” will affect their decisions. *Evergreen Sch. Dist. 114 v. Clark County Comm. on Sch. Dist. Org.*, 27 Wn. App. 826, 833, 621 P.2d 770 (1980). As long as these predilections do not lead them to line their pockets or otherwise abuse their offices, we leave the wisdom of their choices to the voters. If the voters do not like their representatives’ agendas or voting decisions, they are free to vote them out of office.



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42.23.070. Prohibited Acts

- (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.



(...continued)



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42.23.070. Prohibited Acts

- (3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.



(...continued)



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42.23.070. Prohibited Acts

- (4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

•See *Attorney General Opinion 2017 No. 5*



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Further conduct controls

35A.42.050 Public officers and employees—Conduct.

In addition to provisions of general law relating to public officials and others in public administration, employment or public works, the duties and conduct of such officers and other persons shall be governed by [many other statutes].



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Local ethic codes?

- <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/January-2021/Ethics-Codes-for-Local-Governments-Part-1.aspx>
- And
- <https://mrsc.org/Home/Explore-Topics/Personnel/Policies/Codes-of-Ethics.aspx>



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Refresher?

- Knowing the Legal Territory
- Basic Legal Guidelines for Washington
- City, County and Special Purpose District Officials (Revised October 2023)

<http://www.mrsc.org/publications.aspx>



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