



Special Council Meeting, AB 2024-294

April 30, 2024

Items to avoid in an open meeting:

- ▶ The identities of complainants, other accusers, and witnesses must be kept confidential pursuant to privacy provisions of the *Public Records Act*, RCW 42.256.250 (1)(f). We must safeguard the names of the people that asked the County not to disclose their name.
- ▶ Employees that suffer injuries commonly have *HIPPA/HCIA* protection.
- ▶ We should not discuss Whatcom County's remaining potential liabilities in public. Those potential liabilities can be discussed in executive session pursuant to RCW 42.30.110 (1)(i). County employees have legal duties that prevent them from discussing various county-based liabilities in certain public settings.
- ▶ The Whatcom County Code (WCC) of Ethics prohibits the disclosure of confidential information acquired by reason of an official position (official position examples: County Executive, County Prosecutor, County HR staff, and County Councilmembers). The issues before you today are rife with confidential information acquired by reason of an official position. Potential pitfalls are numerous.

WA Counties Riskpool (WCRP) Background

- ▶ WCRP is a quasi-municipal corporation formed by legislative action of the Council in 1988, and formed pursuant to RCW chapters 48.62 (*Local Government Insurance Transactions*) and 39.34 (*Interlocal Act*).
- ▶ As a WCRP member County, Whatcom County purchases a tiered insurance matrix through the WCRP. In fiscal year 2023-2024 Whatcom County obtained liability coverage up to 20 million, property Insurance up to 25 million, cyber liability at combined aggregate of 5 million, and both liability and property coverage for acts of terrorism.
- ▶ The WCRP insurance coverage comprises the vast majority of the insurance purchased by Whatcom County each year, and is integral to the successful operation of Whatcom County as a municipal government.
- ▶ Council's most recent WCRP related Resolution was 2015-034, which assigned the HR Director as our WCRP Director, the Associate Manager of HR as WCRP Alternate Director, and a Civil Deputy Prosecutor as WCRP Alternate Director.

1988 Assignment of WCRP duties

25 3. As required by the proposed Bylaws of the Pool, the Council
26 hereby appoints the County Executive or his/her designee as the
27 County's representative and the Chair of Council Finance Committee
28 as the County's alternate representative to the Board of Directors
29 of the Pool, and appoints the Chief Civil Deputy in the
30 Prosecuting Attorney's office, currently Randall Watts, as the
31 County Risk Manager, and appoints the Safety Director, currently
32 Gail Kelly, as the County Safety Officer. The County's
representatives are hereby authorized to exercise the County's
voting rights in the Pool pursuant to the terms of the Agreement
and Bylaws and to act on behalf of the County with respect to all
matters pertaining to the Pool.

RESOLUTION - 1

1995 Assignment of WCRP duties

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County hereby appoints the Director and Alternative Director to the Washington Counties Risk Pool's Board as follows:

WCRP Position	County Position Title	Department
Director	Human Resources Manager	Administrative Services
Alternate Director	Prosecutor-Designated Civil Deputy	Prosecutor
Alternate Director	Associate Manager, Human Resources	Administrative Services

BE IT FURTHER RESOLVED that this resolution shall become effective upon approval and shall supersede any prior conflicting actions(s); and shall remain in effect for future years without need for further Council action unless amended or rescinded.

APPROVED this 29th day of September, 2015.

ATTEST:

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Council Chair

Legal advice to increase Council involvement at WCRP

- ▶ Pursuant to the Interlocal agreement, and WCRP bylaws, the Council has authority to expand upon the appointments made to represent the County at the WCRP including the appointment of Councilmembers or Council staff to the WCRP board of directors.
- ▶ Appointed Directors and Alternate Directors have greater insight into all business conducted at the WCRP, including settlement decision making.
- ▶ It should be noted, that appointment to the WCRP Board of Directors carries significant time demands. Additionally, WCRP board members are required to attend certain insurance industry educational opportunities, and test in those areas for completion.

WA Counties WCRP & Current County Roles

- WCRP representation from HR and Prosecutor
 - Attend Board/Committee meetings, pre-defense, coordination on claims
- Board of Directors
 - One per Member County plus Alternates, appointed by legislative authority
 - Execution of contracts, ensuring adequate coverage and funding
 - In consultation with WCRP staff, Broker, Actuary
- Executive Committee
 - Eleven members, chosen from Directors and Alternates
 - Approving monthly expenses
 - Authorize claims in excess of Pool authority
 - In consultation with WCRP staff, legal
- Personnel Committee
 - Make recommendations re: WCRP staff policies, classification/compensation, etc.

Defense and Indemnification

- ▶ Pursuant to WCC 2.56 Council takes legislative action to defend and indemnify County employees named in civil lawsuits.
- ▶ State law on executive session allow these conversation to occur with the attorney outside of the public meeting.
- ▶ The overwhelming majority of civil executive sessions in Whatcom County occur in pursuit of defense and indemnification.

Settlement Authority Non-WCRP Liabilities

- ▶ The County is exposed to certain liabilities that exceed the scope of our insurance coverage. Most notably: Public Records, ADA, and the Retaliation Act.
- ▶ For those claims that we cannot tender by contract to WCRP, the settlement authority reverts to the Whatcom County Code (WCC) 3.05. Under Code, the Prosecutor can settle those non-insured claims up to a maximum value of \$5,000, and the Executive can settle those non-insured claims up to a maximum value of \$25,000. Any settlement of non-insured claims above \$25,000 requires Council approval.
- ▶ Over the last several years, the Council has been educated on this distinction in Executive Sessions where the Council granted settlement authority, those cases were all settled, and are listed as follows:
 - ▶ Carney v. Whatcom (23-2-03703-31)
 - ▶ Morse v. Whatcom (18-2-07421-31)
 - ▶ Kortlever Et. Al. v. Whatcom (2:18-cv-00823)

Settlement Authority WCRP Liabilities

- ▶ Pursuant to our Interlocal, Bylaws, and Memorandum of Liability, the WCRP holds settlement authority through both its Executive Board and Claims personnel (Executive Board approval is required for claims in excess of \$350,000). Whatcom County's board members participate in these discussions.
- ▶ In exchange for this contracted grant of settlement authority, and consideration in the form of premiums, Whatcom County receives up to 20 million dollars in liability coverage for those claims.
- ▶ For WCRP tendered claims, the County retains \$250,000 in deductible losses, the WCRP holds 3 million dollars in self-insured retention, and outside insurance contracts provide a tiered insurance matrix up to the 20 million dollars in limits.
- ▶ Whatcom County would not be able to purchase this insurance in absence of the WCRP.

Code amendment?

- ▶ Current code does not prohibit contractual exchanges of tort liability with WCRP, but may benefit from more clarity in language. WCC 3.05 could be amended to exclude cases tendered to an insurer.
- ▶ Current code does prohibit employees and officials from exposing confidential information, but may benefit from more clarity in language. Code 2.104 could be amended to further enforce confidentiality requirements.

Reporting misconduct

- ▶ Taking Disciplinary Action (AD142200Z) tasks department heads with decision-making authority, supported by both HR and Prosecutor.
- ▶ Reporting & Resolving Complaints AD113100Z in conjunction with Reporting Improper Governmental Action & Protecting Employees Against Retaliation (AD111051Z) provide employees the proper procedures for reporting issues caused by a department head.

Separation of Powers in Employment Law

- ▶ The Council only possesses the employment law decision-making authority within its own branch of government.
- ▶ The Council possesses no direct authority (such as employment supervision or discipline) over Judicial or Executive employees.
- ▶ The Public Works Director serves exclusively at the will of the County Executive. See WCC 2.75.020.
- ▶ Pursuant to the Charter: “the County Council, its staff, and individual councilmembers shall not interfere in the administration of the executive branch. They shall not give orders to or direct, either publicly or privately, any officer, or employee subject to the direction and supervision of the County Executive, executive branch, or other elected official.”

Employment separation agreements

- ▶ Separation agreements set contractual terms between an employer and a separating employee.
- ▶ Employers cannot always stop employees from resigning their employment.
- ▶ Many of the clauses contained in settlement agreements operate to protect the employer from employees that are aggrieved in their separation.
- ▶ Employees can sometimes secure certain consideration in their separation agreement (Examples: severance, accrued leave cash out, non-disparagement, recommendations, and ongoing health benefits).

Whatcom County Employee's Personnel Handbook

- Revised and adopted by Resolution 2021-028 of the County Council
 - Posted on InsideWhatcom; each policy shows creation and revised dates
- Establishing Standards of Conduct Policy
- Prohibiting Harassment Policy
- Reporting Discrimination Policy
- Reporting & Resolving Complaints
- Taking Disciplinary Action Policy
 - Facilitation offered by HR Staff,
 - Authority for decision making resides with Department Heads or Elected
- Reporting Improper Governmental Action (Whistleblower)

County Investigation Procedures & Resources

- Complaints are reviewed with HR Manager, Prosecuting Attorney, and outside counsel provided by WCRP
 - Pre-Defense Services provided by WCRP allow for comprehensive evaluation with skilled, neutral employment law experts
 - Recommendations are made to Department Head or Elected
- HR staff may handle investigation or may work with outside investigator provided by WCRP
- Benefits of outside investigator through WCRP:
 - Unbiased,
 - Thorough,
 - Protected under attorney-client privilege

County Training

- ▶ New Hire Orientation
 - ▶ Prohibiting Harassment training in-person up until pandemic
 - ▶ Currently required, one hour Respectful Workplace interactive video with 15-minute sexual harassment component
- ▶ Enhanced New Hire Orientation coming June 2024 with Onboard software deployment
 - ▶ Written acknowledgment of review and understanding of Prohibiting Harassment Policy
 - ▶ Addition of one hour interactive Stopping Sexual Harassment training - ALL New Hires
 - ▶ Addition of one hour interactive Stopping Sexual Harassment training - Supervisors/Managers
- ▶ All County leaders completed Stopping Sexual Harassment Training in March 2024
- ▶ All Public Works employees attended in person Sexual Harassment Training in April 2024
- ▶ Additional training for individual departments coordinated with HR as requested
- ▶ WCRP Sponsored Trainings on several topics offered regularly:
 - ▶ Supervisor's Guide to Resolving Conflicts Among Subordinates
 - ▶ Supervisory Challenges: Navigating Risky Scenarios and Best Practices
 - ▶ Just Cause Principles to Strengthen Discipline

QUESTIONS?