



# Whatcom County

COUNTY COURTHOUSE  
311 Grand Avenue, Ste #105  
Bellingham, WA 98225-4038  
(360) 778-5010

## Agenda Bill Master Report

File Number: AB2019-137

---

<b>File ID:</b>	AB2019-137	<b>Version:</b>	2	<b>Status:</b>	Approved
<b>File Created:</b>	02/12/2019	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Resolution		
<b>First Assigned to:</b>	Council Finance and Administrative Services Committee				
<b>Agenda Date:</b>	02/26/2019	<b>Next Mtg. Date:</b>		<b>Hearing Date:</b>	

---

### TITLE FOR AGENDA ITEM:

Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions

---

### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	HELD IN COUNCIL	Council
02/26/2019	Council Finance and Administrative Services Committee	RECOMMENDED FOR APPROVAL	
02/26/2019	Council	APPROVED	

---

**Attachments:** Resolution Requesting AG's Opinion Re Filling Vacancies, Related Opinions

**Final Action:** 02/26/2019  
**Enactment Date:** 02/26/2019  
**Enactment #:** RES 2019-013

**RESOLUTION NO. 2019-013**

**RESPECTFULLY REQUESTING THAT THE WHATCOM COUNTY PROSECUTOR ASK THE  
WASHINGTON STATE ATTORNEY GENERAL TO REVIEW AND UPDATE OPINIONS  
PREVIOUSLY PROVIDED RELATED TO THE ELIGIBILITY OF COUNTY COUNCIL  
MEMBERS AND COMMISSIONERS TO BE APPOINTED TO VACANT LEGISLATIVE  
POSITIONS**

**WHEREAS**, there is no law prohibiting sitting county councilmembers and commissioners from standing for nomination for vacant positions in Washington State House of Representatives or Washington State Senate; and

**WHEREAS**, over the last 30 plus years Washington Attorney General Opinions numbered AGO 1965-66 No. 20, AGO 1973 No. 101, AGO 1985 No. 1, AGO 1985 No. 15 and AGO 1987 No. 21 (attached) have been individually or collectively been used by one or more political parties to rule sitting county councilmembers and commissioners ineligible to stand for nomination for vacant positions in Washington State House of Representatives and/or Washington State Senate unless they resign prior to being nominated; and

**WHEREAS**, over the last 30 years subsequent Washington State Supreme Court cases have provided further clarity on this issue; and

**WHEREAS**, a recent review by Pacifica Law Group (attached) conducted on behalf of the Washington State Association of Counties concluded:

*"A sitting county commissioner or councilmember should be eligible for appointment to a vacant state legislative position. The Constitution enumerates the exclusive eligibility requirements and process for filling a legislative vacancy and does not preclude the appointment of a sitting commissioner or councilmember. No statutory provision prohibits such appointment either. The Attorney General's earlier conclusion that a common law rule would bar such appointments is in retrospect mistaken."* and

**WHEREAS**, a recent review by the Skagit County Prosecuting Attorney's office (attached) concluded:

*"To require that a candidate not be a sitting Commissioner or Councilmember runs contrary to the rule that the constitution sets the exclusive requirements for eligibility and the strong presumption favoring eligibility. Any issues that may arise due to incompatible offices would be resolved by a candidate's withdrawal from an incompatible office after appointment."* and

**WHEREAS**, the Whatcom County Council recognizes that fair democratic practices allow any sitting City Council Member, Port Commissioner, Public Utility District Commissioner, County Council Member, Conservation District Board Member, or other local elected official who seeks nomination should be eligible for such, provided they recuse him or herself from any vote and discussion about filling that legislative vacancy; and

**WHEREAS**, a political party that denies eligibility for appointment of any city council member, port commissioner, public utility district commissioner, county council member, conservation district board member, or any other local elected official who is a member of that party, or who affiliates with that party, or has been certified by that party as a candidate of that party, is denying those people of equal protection of the laws of this country; and,

1           **WHEREAS**, Article II, Section 7 of the Washington Constitution establishes the  
2 qualifications for state legislative office: such persons must be a citizen of the United States  
3 and a qualified voter in the district where he or she is selected; and  
4

5           **WHEREAS**, in *Gerberding v. Munro* and *Parker v. Wyman*, the Supreme Court held  
6 that the Constitution establishes the exclusive qualifications for state legislative offices and  
7 may not be added to by statute, and furthermore that no provision of the Constitution  
8 prohibits a sitting county commissioner or councilmember from being eligible for  
9 appointment nor precludes county commissions or councils from appointing one of their own  
10 members; and  
11

12           **WHEREAS**, therefore any rule prohibiting a sitting county council member from  
13 being appointed to the State Legislature often eliminates the most qualified candidates from  
14 consideration for appointment, and is not in the best interests of the county's constituents;  
15 and  
16

17           **WHEREAS**, the Whatcom County Council represents citizens in the 40<sup>th</sup> and 42<sup>nd</sup>  
18 Districts and could be required to deal with another legislative appointment again in the  
19 immediate future for any number of reasons.  
20

21           **NOW, THEREFORE, BE IT RESOLVED** that Whatcom County Council respectfully  
22 request that the Whatcom County Prosecuting Attorney ask the Attorney General for the  
23 State of Washington to review and update its previous opinion letters on the matter without  
24 delay.  
25

26           **BE IT FINALLY RESOLVED** that if such review does conclude that there any  
27 additional limitations or considerations (beyond the need for the nominee to recuse him or  
28 herself from any vote and discussion about filling that legislative vacancy) that would  
29 impact the eligibility of a sitting county council member from being nominated for  
30 appointment, that any and all options for curing such limitations or considerations are  
31 identified and included in the Attorney General's response.  
32

33           **APPROVED** this 26th day of February, 2019.

34  
35  
36 ATTEST:

37  
38  
39 Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

40  
41  
42 Rud Browne, Council Chair

43 APPROVED AS TO FORM:

44  
45  
46  
47 Civil Deputy Prosecutor  
48  
49  
50  
51