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Inside This Issue

THE NEW "OPEN GOVERNMENT TRAININGS ACT"--WHAT DOES IT REQUIRE?

Engrossed Senate Bill 5964, effective July 1, 2014, provided some new sections for the Open Public Meetings Act and the Public Records Act that would be of great interest to local government officials and employees. The purpose of this article is to summarize the seven sections of this very brief statute.

To understand why this law was enacted by the Legislature, you have to read Section 1, the legislative findings. I suspect some of my elected official clients may read that section and strongly disagree with the findings, or even find them offensive. The section includes, for example, the following language: "All too often, however, violations of the requirements of the public records act and the open public meetings act by public officials and agencies result in citizens being denied this important information and materials to which they are legally entitled." Unfortunately, the act does not contain any empirical evidence, data, or statistics to support that conclusion, or allegation.

The findings section continues by stating: "Also, whether due to error or ignorance, violations of the public records act and open public meetings act are very costly for state and local governments, both in terms of litigation expenses and administrative costs." Again, it would be nice to know what evidence supports that allegation. Of course, there have been some reported cases in which attorney fees, costs, and penalties were significant, but when one considers the thousands of PRA requests filed annually with local governments, and the thousands of open meetings held, we question whether these cases are statistically significant. Nonetheless, the law has been enacted and now training on these laws is mandatory instead of just a very necessary practice, so let us examine the statutory requirements.

Section 2 of the law adds a new section to the Open Public Meetings Act (chapter 42.30 RCW). First, it requires that governing body members (elected or appointed) must complete training on RCW 42.30 no later than 90 days after they take the oath of office or assume their duties, whichever occurs first. Second, such officials must complete such training again every four years, as long as they continue so serving.

Third, such training may be completed "remotely" with technology including internet-based training. Presumably, this means actual attendance at classes is optional, as one could train online, such as participating in a webinar.

Section 3 of the new law adds a new section to chapter 42.56 RCW, the Public Records Act. First, each local elected official and statewide elected official must complete training on the PRA and also chapter 40.14 RCW, relative to records retention. Pursuant to this section, officials may even complete their training before assuming office, but must complete training by the same deadline used in Section 2 (see above). The same four-year "refresher training" requirement pertains here too.

But Section 3 goes on to say that training must be consistent with the attorney general's model rules for compliance with the Public Records Act. Those model rules are contained at WAC 44-14. Interestingly, WAC 44-14-00003 provides that the model rules are "advisory only and do not bind any agency." So they are only advisory but you must be trained to be consistent with them, so in effect they are mandatory. Finally, again, training is allowed to be done remotely.

Undoubtedly, some agency will offer webinars or even an online curriculum to save time and money but still facilitate compliance. Indeed, with regard to PRA compliance, the Attorney General web site provides excellent information on the Model Rules and the PRA, so that aspect of the training at least could be done there. Both the AG and the Municipal Research Services Center also have good materials on the Open Public Meetings Act. We think, however, that if you really want to learn and get the questions answered that you really have been presented with in your public service, there is no substitute for a classroom setting with a qualified attorney/teacher who can answer those questions. In that regard, this writer and my son, who is also now an attorney, will be offering a class on this subject on June 28, 2014 (see below).

Section 4 adds another new section to chapter 42.56. This section pertains not to the elected officials but to the "public records officers" (PRO). Local government agencies must have appointed a PRO, pursuant to RCW 42.56.580. And they should also have a designated records officer charged with duties relative to retention of records pursuant to RCW 40.14.040.

Section 4 of the new law sets forth similar training requirements for these records officers and/or PRO's. They have to complete training on the PRA and records retention within 90 days after assuming their duties and complete refresher training at intervals of no more than four years. Again, such training must be consistent with the AG's model rules in the WAC, but training may be done remotely.

Section 5 simply states that the AG may provide information, assistance and training on the PRA; it appears the Attorney General's Office is already doing that. Section 6 provides that the act may be known and cited as the Open Government Trainings Act.

Section 7 provides a July 1, 2014 effective date for this law so that means such training will soon be mandatory. We would recommend that all covered persons get the required training no later than 90 days after July 1, 2014, if not sooner. The law does not really specify when the deadline would be for existing officials who already have such duties, nor does it state whether recent, provable training on these subjects could be used to show compliance. Please note that compliant training on the PRA can be done before taking office, according to section 3, but that option is not listed for the OPMA training set out in section 2.

Some questions remain, which are not answered in the law itself. For example, what training will be deemed to comply with this law? Will only training by approved trainers or approved organizations be deemed compliant? How will compliance--completion of training--be proved? And what agency, if any, will enforce this law? The law does seem to call for simple, cost-effective training and it can be done online using internet-based technology. We would

recommend that certificates of training be developed and provided by the trainers or organizations, such as WFCA or AWC. There does not seem to be any exemption for tiny local government agencies without substantial budgets, so it is fortunate that inexpensive alternatives will no doubt be available and suffice.

The Firehouse Lawyer, and Firehouse Lawyer 2.0 (aka Attorney Eric Quinn) will be presenting a four-hour seminar on Saturday, June 28, 2014 at the headquarters of Graham Fire & Rescue, covering all three statutory schemes, for members of governing bodies and public records officers. In addition to the seminar, which commences at 9:00 a.m. and ends at 1:00 p.m. that day, there will be extensive written materials on these laws, some court opinions interpreting these statutes, and time for questions. The interactive aspect of this training is something you cannot get on the internet. Come and get your specific questions answered. The cost will be $100 per student, except for "sponsored" Pierce County personnel. (The Pierce County Fire Commissioners Association is underwriting the training, at least partially.)

Oh, by the way, we will be providing certificates so that you can prove you complied with the training requirements of the new law (something which may not be easy with online training).

THE COMMUNITY PARAMEDIC PROGRAM: IMPLICATIONS FOR THE SCOPE OF EMS IN WASHINGTON

The Affordable Care Act and implementing regulations have provisions that create disincentives to health care providers who treat the same patient repeatedly, as for example a hospital that provides repeat care to a patient discharged from the hospital within the last 30 days. Those disincentives may include denial of payment. Under these provisions, ambulance service providers, both public and private, may not be paid their usually allowable charges, for "frequent flyers". These concerns, among others, have given rise to the idea of The Community Paramedic Program. According to the National Conference of State Legislatures, 10-40 percent of EMS responses are for non-emergent situations. Essentially, the Community Paramedic Program works like this: A paid paramedic, currently certified and employed to perform emergency medical services, would be assigned—by his employer—to be a community paramedic (CP), which would allow him or her to render follow-up services to high-risk patients (“repeat offenders” or "frequent flyers"), normally performed by hospitals or other non-emergent care providers.

Under current Washington State law, paramedics--like all EMT's--are certified to render emergency medical care but only within their allowed scope of practice. In other words, for example, they are not doctors or surgeons and not nurses, all of whom have defined scope of practice rules, but they can do certain things that regular EMT-B personnel cannot, such as place an IV or endotracheal tube and/or administer drugs to a patient. Of course, they must stay within the protocols established for the applicable procedure by their county Medical Program Director, a doctor. But the purpose of this article is to point out a concern we have mentioned before at recent conferences in Washington on this subject. RCW 18.73.010 defines “emergency medical service” as “medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.” Thus, an important limitation on the scope of practice that a paramedic in Washington can legally do (without jeopardizing their "license" to practice their profession here) is that the services must be rendered in an "emergency".

So what does "emergency" mean, when that word is used in chapters 18.71 and 18.73 RCW? We actually look to the statutes covering when it is appropriate--or not--to call 911, when faced with what a person perceives to be an "emergency". When one reads that statutory scheme it becomes obvious that one cannot call 911 for frivolous or minor matters, as there are penalties for abusing the 911 system. One can only call the public safety responders for help when

there is a true emergency. By its very nature and purpose, the Community Paramedic program is designed not for emergency responses but to head off the need to call 911.

The Community Paramedic program has great potential to significantly lessen the costs of providing emergency services, by providing preventive—instead of emergent—care. Furthermore, the program has great potential to fill in gaps in patient care. "Frequent flyers" or "repeat offenders" would now be eligible to receive scheduled, or follow-up treatment from a paramedic without dialing 911. However, what implications does that have on the scope-of-service requirements for ambulance services, contained in chapters 18.71 and 18.73 of the Revised Code of Washington, and the scope of practice limitations imposed on paramedics? We believe it has serious implications. Legislation would be required to amend the statutes, including provisions that make it clear that "emergency medical services" includes preventive services and follow-up services designed to decrease the need for repeated medical services to the same persons unnecessarily.

Certain states are taking a lead on the Community Paramedic program. Particularly, Minnesota passed legislation in 2011 that formally recognized the Community Paramedic as a distinct provider. Therefore, the Community Paramedic would not be limited by any scope-of-practice requirement under Minnesota law, because the Community Paramedic—a distinct provider—would be providing medical services in a different setting. PMH Medical Center in Prosser, Washington, was recently given a grant to cover a Community Paramedic program, and is seeing some success in its operation. There is no indication that any fire district or regional fire authority has implemented such a program in Washington. And of course, there is no requirement under Washington law that a fire district must start a Community Paramedic program.

Under Washington law, "[A]n ambulance service or aid service may not operate in the state of Washington without holding a license for such operation, issued by the secretary when such operation is consistent with the statewide and regional emergency medical services and trauma care plans established pursuant to chapter 70.168 RCW." Because the definition of "emergency medical services" contemplates a "medical emergency," before an ambulance service could legally deploy a community paramedic in Washington, the definition of either "emergency medical services" or "medical emergency" must be changed, and that change cannot be made by a public agency, but only by our legislature. Otherwise, the provision of community paramedics—by an ambulance service—would be inconsistent with the current emergency medical services plan in Washington. That potentially means that while an ambulance service (and by implication a fire district) complies with the Affordable Care Act, the ambulance service may simultaneously violate Washington law.

We have learned that some pilot programs may be operating in Washington already, to try out the concept, so these are permissible under the applicable laws. Also, there may be an effort already underway to amend the necessary RCW's and WAC's to make this a reality. Our purpose is merely to remind those involved that amending the laws is a needed step.

Much of the credit for this article should be given to the following sources:

1. Gary Wingrove, employee of Mayo Clinic Medical Transport in Minnesota and
2. The National Conference of State Legislatures;
http://www.ncsl.org/research/health/expanding-the-primary-care-role-of-first-responder.aspx; and
3. The United States National Library of Medicine;
http://www.ncbi.nlm.nih.gov/pubmed/20586020

UPDATE ON ERIC QUINN

As many of my clients already know, our son Eric Quinn has reached another milestone in his life. He was sworn in during April 2014 as one of the newly-

admitted attorneys who passed the recent Washington State Bar Examination. I am pleased and flattered to announce that Eric has decided to join me in my law practice. He is working hard already in his new profession and learning very fast. Eric contributed mightily to this edition of the *Firehouse Lawyer,* including writing the foregoing article on the community paramedic. He also took the lead in preparing our written materials for the upcoming training. My only complaint: he gives me a dirty look whenever I try to sneak out early to play golf! You can contact him by email at ericquinn@firehouselawyer2.com.

CASENOTE: A SIGNIFICANT APPELLATE DECISION ON TIME LOSS

Recently, the Washington Court of Appeals, Division Two, decided *Board of Industrial Insurance Appeals v. South Kitsap School District* (Cause No. 43688-4-II, decided May 20, 2014). The case dealt with a school district worker who had received 19 years of time loss (really?!), but contracted (via CRSSA, or a claim resolution structured settlement agreement) with the school district not to receive further time loss in exchange for seven monthly payments totaling $60,000. Notably, an attorney represented the worker during this process. The Board of Industrial Insurance Appeals found that the settlement agreement was invalid because the Board could not make a determination that the agreement was "in the best interest of the worker."

For those workers represented by attorneys, no "best interest" standard is contained within RCW 51.04.063, the statute governing the validity of CRSSAs. The opposite is true for those workers not represented by attorneys. In those situations, the Board must make the determination whether the agreement in "in the best interest of the worker." The Superior Court reversed the Board's decision, and the Court of Appeals affirmed the Superior Court. One issue is whether the freedom to contract for the receipt of installment payments in lieu of time loss is preserved within the Industrial Insurance Act. Division Two answered in the affirmative. It should be noted that before this section of RCW 51.04 was enacted in 2011, any agreement purporting to waive a worker's time loss benefits was void as a matter of law under RCW 51.04.060.

IMPACT FEES FOLLOWUP

In the *Firehouse Lawyer* edition of March 2010--already more than four years ago--we wrote about the revised statute allowing fire districts to seek impact fees. It is time to revisit that subject to see how far we have come. About two years ago, the Pierce County Fire Commissioners Association and the Pierce County Fire Chiefs Association agreed to form a joint committee to explore this concept. Since that time, the committee has created a recommended level of service standard for inclusion in the county's comprehensive plan. Also, the committee has created suggested changes to the plan itself (to allow for fire impact fees) and begun helping local fire districts to draft their capital facilities plans. Under the Growth Management Act or GMA, each CFP needs to be adopted as an element of the county comprehensive plan. Several Pierce County fire districts have done considerable work to complete their CFPs. Population projections for the entire county--broken down by fire district--have been obtained from the Puget Sound Regional Council, for use in the CFPs. Now the committee work needs to turn to developing a formula to draft the impact fee ordinance. Of course that county ordinance needs to be drafted by the county officials, but our committee can assist, based on impact fee ordinance models for the fire service already in effect in various cities in Washington. The impact fee adoption plan also includes a public outreach campaign, designed to educate the public and development leaders such as the Master Builders Association. It has been an interesting experience so far, but the work is not nearly done.

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F. Quinn, P.S. and the reader. Those needing legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.