

From: [Even, Jeffrey T \(ATG\)](#)
To: [Young, Alicia O. \(ATG\)](#); [Otto, Wendy R \(ATG\)](#)
Cc: [Trudeau, Yasmin Ayesha \(ATG\)](#)
Subject: RE: Informal Opinion Request: RCW 64.38 and 64.90
Date: Tuesday, June 29, 2021 10:57:12 AM

From: Trudeau, Yasmin Ayesha (ATG)
Sent: Monday, June 28, 2021 9:31 AM
To: Even, Jeffrey T (ATG) <jeffrey.even@atg.wa.gov>
Subject: FW: Informal Opinion Request: RCW 64.38 and 64.90

Below is an AGO Opinion Request from Representative Rule. Let me know if you need anything from me.

Yasmin

Yasmin Trudeau

Legislative Director

Office of Washington State Attorney General Bob Ferguson

1125 Washington Street SE | PO Box 40100 | Olympia | WA | 98504-0100

Phone: (206) 496-9126 | E-mail: yasmin.trudeau@atg.wa.gov

From: Rule, Rep. Alicia <Alicia.Rule@leg.wa.gov>
Sent: Saturday, June 26, 2021 12:35 PM
To: Gregory, Brittany (ATG) <brittany.gregory@atg.wa.gov>; Trudeau, Yasmin Ayesha (ATG) <yasmin.trudeau@atg.wa.gov>
Subject: Informal Opinion Request: RCW 64.38 and 64.90

[EXTERNAL]

To the Office of the Attorney General,

I am writing to request an informal opinion on behalf of a constituent in Semiahmoo (an HOA near Blaine). The constituent is looking for a legal interpretation about whether "personnel" includes volunteer board members, or more specifically, whether personnel issues can be discussed in closed session even when board members are volunteers. Some legal advisors are saying personnel refers only to paid employees, but since HOAs are not-for profit corporations, their Board members are volunteers. The concern is that when an unexpected board vacancy occurs, they would like to be able to have a private discussion of candidates where individual board members can share their interpretations of qualifications and answers to questions while respecting the candidate's privacy and without causing embarrassment, verbal fights, etc.

They are concerned that because candidates who are up for election by the HOA Board are volunteers, interviews must be conducted in open session. Also, because HOAs can operate under either 64.38 OR 64.90, 64.90 includes a little more leeway in what can be discussed in closed session including "Prevent public knowledge of the matter to be discussed if the board or committee

determines that public knowledge would violate the privacy of any person.” Which means there is likely an unintended difference between 64.38 and 64.90 in this matter.

The constituent also points out that under the Open Public Meetings Act, executive session can be used to discuss appointments to vacancies on other state sanctioned boards.

On behalf of this constituent, I would greatly appreciate a clarifying informal opinion.

Thank you for your time.

Sincerely,

Alicia Rule, L.I.C.S.W.

WA State House Representative | 42nd Legislative District
Legislative Cell: (360)318-5381 | Office Phone: (360)746-3744
334 John L. O'Brien Building
Toll Free Hotline: 1-800-562-6000