



# JACKSON COUNTY

Oregon

## Board of Commissioners

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### I. ACKNOWLEDGMENT OF RECEIPT OF GRIEVANCE

In accordance with Oregon Revised Statute (ORS) 192.705(2)(a), the Jackson County Board of Commissioners acknowledges that it received a “Grievance to the Jackson County Board of Commissioners regarding violations of the Oregon Public Meetings Law on January 11, 2024” (“Grievance”) from Denise D. Krause (“Grievant”) via email to BOC-CAO\_ADMIN@jacksoncountyor.gov at 9:52 AM on February 5, 2024. In accordance with ORS 192.705(2)(b)(A) and (B), the Board hereby responds.

The Jackson County Board of Commissioners is hereafter referred to as the “Board,” and each member, individually, as a “Commissioner.” The January 11, 2024, Staff Meeting of the Board is referred to herein as the “January 11 Meeting.”

### II. RESPONSE TO FACTS AND CIRCUMSTANCES ASSERTED BY GRIEVANT

- A. The Board admits items 1 – 8.
- B. The Board denies item 9.

First, the January 11 Meeting agenda provided notice that “Liaison Committee Reports” would be discussed. Liaison Committee Reports occur weekly, wherein each Commissioner reports to the other Commissioners on various advisory committees, meetings of other governing bodies and community organizations, and community functions they attended in their professional or personal capacity during the preceding week. The portion of the January 11 Meeting during which the Jackson County Republican Central Committee (“JCRCC”) meeting was discussed was during the “Liaison Committee Reports” portion of the meeting and was, therefore, properly noticed pursuant to the Oregon Public Meetings Law.

Second, the Board contests the use of the term “deliberated,” as used by Grievant in item 9. The term “deliberated” is a legal term defined in ORS 192.610(3) as “discussion or communication that is part of a *decision-making* process.” “Decision” is defined in ORS 192.610(2) as “any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure *on which a vote of a governing body is required.*” Any discussion of Jack 23-01, Jack 23-02, and Jack 23-03 (“Initiative Petitions”) are not within the scope of the Board’s authority, as it does not have decision-making authority over an initiative or the petition process. Therefore, there was no “deliberation” as alleged in item 9.

- C. The Board denies item 10.

Grievant asserts that the “BoC provided no notice to the public, to Krause, or to JCFA that the Petitions, JCFA, and the opposition campaign of JCRCC would be deliberated.” This is inaccurate

for two reasons. First, the Board provided statutorily-required notice that "Liaison Committee Reports" would be discussed, as discussed above, which is when the discussion of the JCRCC meeting commenced. Second, the Board did not deliberate on the matter because the matter was not one of decision making for purposes of the Oregon Public Meetings Law, as discussed above.

- D. The Board admits item 11, but notes that Joel Benton was present at the January 11 Meeting in his capacity as County Counsel. Eleven seconds into the January 11 Meeting, Commissioner Dyer said "First item on the agenda is input from County Counsel," and Mr. Benton responded, "Nothing today Mister Chair."

- E. The Board denies item 12.

The Board denies the portion of the "quoted" transcript set forth in the Grievance of the exchange between County Administrator Danny Jordan, Commissioner Colleen Roberts, and County Counsel Joel Benton. Grievant asserts that Mr. Jordan declared "it doesn't matter," when in actuality Mr. Jordan asked, "Does it matter?" to which Mr. Benton responded, "No, it does matter..."

- F. The Board denies item 13.

Grievant states that "JCRCC is not an association within the scope of ORS 192.610(7)(b)," which provides that the "attendance of members of a governing body at any national, regional, or state association to which the public body or members belong" is not considered to be a "meeting" for purposes of the Oregon Public Meetings Law.

This statement by the Grievant is not a fact, but a wholly unsupported legal conclusion. The term "national, regional, or state association" is not defined in the statute, nor has it been interpreted by the Attorney General or evaluated in relevant case law. The Board asserts that the JCRCC is an association.

- G. The Board denies item 14.

JCRCC is not a public body and, therefore, JCRCC meetings are not subject to ORS 192.610 through 192.705.

- H. The Board denies item 15.

Grievant alleges that matters that may come before the Board were "deliberated" at the JCRCC meeting. Again, the term "deliberate" is legally defined by ORS 192.610(3) as part of a decision-making process of a public body. As discussed above, the matters discussed at the JCRCC were not deliberated by a public body. Thus, the alleged matters at the JCRCC meeting are not "deliberated" as defined under the Oregon Public Meetings Law.

Further, the Grievant alleges that "matters" were "deliberated" without notice; however, as discussed above, the matters discussed were noticed on the agenda for the January 11 Meeting.

- I. The Board both admits and denies item 16.

The Board admits that Grievant appears to have attached a "transcript" from portions of the January 11 Meeting. The Board denies that the "transcript" is an accurate transcription of those

portions of the January 11 Meeting as the “transcript” appears to be abridged, annotated, and contains inaccuracies.

J. The Board denies item 17.

Grievant claims that neither the minutes nor recording of the meeting provide additional information about nonverbal “means of communicating and deliberating” that may have occurred during the meeting. There is no requirement in the Oregon Public Meetings Law to provide information or otherwise memorialize nonverbal/nonwritten “means of communicating.”

Further, pursuant to the definition of “deliberation,” as previously discussed, there was no deliberation at issue. Deliberation is defined as a discussion toward a decision. A “decision” is “anything on which a vote of a governing body is required.” The Commissioners did not discuss or deliberate anything on which a decision of the Board would eventually be required during the discussion of the JCRCC. Therefore, there was no deliberation subject to memorialize.

Further, Commissioner Dyer’s report that he attended a JCRCC meeting was, in fact, memorialized in the minutes. However, there was no decision or discussion by the members of the Board to martial County resources or otherwise “mount a ‘serial’ opposition campaign” as set forth in the Grievance.

Finally, Grievant seems to allege that the fact that the “back and forth about the applicability of the Public Meetings Law, and the decision to mount a ‘serial’ opposition campaign” are omitted from the written minutes is somehow a violation of the Public Meetings Law. ORS 192.650(1) requires the body to provide for recording or written minutes of the meeting, and further requires the minutes or recording to give a true reflection of the matters discussed. The recording provides a full, complete, uninterrupted presentation of the meeting. Therefore, there is no violation of ORS 192.650(1).

K. The Board denies item 18.

Specifically, item 18 appears to be entirely unsupported legal conclusions.

First, the statute to which Grievant cites, ORS 192.680, does not apply to the matter at hand because there was no “decision” made by the Board in the first place, as discussed above. And, only a “**decision** made by a governing body of a public body in violation of ORS 192.610 to 192.705 shall be voidable.” Discussion among Commissioners about an initiative petition—over which the Commissioners have no authority as members of a governing body—cannot lead to a “decision” as defined by the Public Meetings Law. Therefore, there was no “decision” made at the meeting that would be voidable.

Second, the remainder of the statute to which Grievant cites, ORS 192.680(2) et seq., does not apply to the present issue as the Grievant has not commenced a legal action against the Board.

Finally, the Grievant again alleges a legal conclusion as a “Fact” in her Grievance when she claims that County Administrator Jordan and County Counsel Benton are “disqualified from advising the BoC or participating in any way in the written response” to her Grievance. There is no such prohibition in the Oregon Public Meetings Law, nor is there any similar prohibition articulated elsewhere in Oregon law. Grievant claims this “prohibition” with no citation to any legal authority and, therefore, the Board denies such an assertion as being a fact.

L. The Board denies item 19.

Grievant alleges that “Benton will caution a Commissioner whenever they stray beyond those matters properly noticed in the meeting agenda or announcements. He did not do so in this case.” First, County Counsel Benton was present at the meeting in his role as County Counsel as noted in section II.D., above. Second, because there was no violation of Public Meetings Laws, nor occasion for Mr. Benton to redirect the conversation, there was no need for him to “caution” the Commissioners. Finally, no advice given by County Counsel could be “privileged” if it were given at a public meeting, as the presence of the public would waive attorney-client privilege. However, the absence of privileged communication does not mean that Mr. Benton is not acting as County Counsel.

III. STATEMENT OF LAW

The intention of the Oregon Public Meetings Law is to ensure that “decisions of governing bodies be arrived at openly.” ORS 192.620. The Board takes its responsibility to maintain open discussion, deliberation, and decision-making very seriously, and at all times endeavors to act in compliance with these laws.

The terms “deliberation,” “decision,” and “meeting” as they apply to public meetings have been defined intentionally by the legislature. Deliberation is “discussion or communication that is part of a decision-making process.” ORS 192.610(3). A decision is anything “on which a vote of a governing body is required, at any meeting at which a quorum is present.” ORS 192.610(2). A meeting is “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” ORS 192.610(7)(a). Importantly, the definition of meeting expressly excludes “the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong.” ORS 192.610(7)(b).

The Oregon Court of Appeals has interpreted the Public Meetings Law, and has held that the gathering of members of a governing body—even a quorum of members—is not a “meeting” under the Oregon Public Meetings Law if there is no “‘convening’ of the body ‘for which a quorum is required in order to make a decision or deliberate toward a decision.’” *Harris v. Nordquist*, 96 Or App 19, 24 (1989).

IV. RESPONSE TO CLAIMS

The Grievant makes three claims: (1) failure to give notice to the public; (2) failure to give notice to Krause and JCFA; and (3) the JCRCC meeting violated ORS 192.610 to 192.705. The first two claims arise from the same legal issue—the notice requirement under ORS 192.640. The third claim arises from a more general claim under the Public Meetings Law as a whole. Because the first two claims arise from the same legal theory, they will be addressed together. The third claim will be addressed separately.

A. Any notice required pursuant to ORS 192.640 was met and appropriate.

In accordance with ORS 192.640, a governing body must “provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting. ORS 192.640(1).

In 1984, the Office of the Attorney General published an opinion in which it offered some guidance into what a “principal subject” of discussion:

In 1981, the law was amended to require the notice of any meeting to ‘include a list of the principal subjects anticipated to be considered at the meeting.’ ORS 192.640(1). This list should be specific enough to permit interested persons to recognize the matters in which they are interested. The requirement, which applies to regular, special and emergency meetings, would ordinarily be met by dissemination of an agenda, but ‘public works contracts’ is not a sufficient description in a case in which the public body intends to let a contract for demolition of a landmark city hall. There is no requirement that each proposed item of business be particularly described—a reasonable effort to inform the public and interested persons of the nature of the more important (‘principal’) issues coming before the body is sufficient. And the governing body may take up additional ‘principal subjects’ arising too late to be mentioned in the notice.

Thus, the “principal” subjects are considered to be the “more important” issues coming before a governing body. The “more important” issues before a governing body are issues or items on which the body may decide. Therefore, specific identification of the discussion of subjects over which the governing body does not have authority is not among the “more important” issues.

1. Jackson County gave appropriate statutory notice to the public of the items discussed in its Staff Meeting on January 11, 2024.

Grievant claims that the Board failed to “give notice to the public.” In support of this claim, Grievant asserts: “The Commissioners gave no notice that they would deliberate on behalf of JCRCC and explicitly reach a mutual decision to launch an orchestrated opposition campaign against the Petitions and JCFA.”

First, the County gave appropriate notice of the January 11 Meeting in accordance with ORS 192.640(1). The County provided broad notice of its meeting on January 11, 2024, via multiple channels, including public posting of the meeting time and agenda on its website, and posting of the agenda in public locations including at the County Courthouse located at 10 South Oakdale in Medford, Oregon. Second, the County provides notice to “interested persons . . . [that] have requested notice” directly via email listserv to those interested individuals who have requested notice. Third, when applicable, the County takes all required steps to notify specific parties directly interested in topics that are up for decision or deliberation, for example providing notice to an applicant and applicable land owners when considering a land use application.

As to the subject of the notice, the agenda for the January 11 Meeting indicated that the Board would discuss Liaison Committee Reports. The JCRCC meeting was discussed during this topic. In line with the opinion of the Attorney General, general discussion among the Commissioners about matters over which they do not have any decision-making authority is not a “principal subject” subject to being specifically placed on an agenda for purposes of this statute.

Second, the Board rejects Grievant’s unfounded assertion that the Commissioners “deliberate[d] on behalf of JCRCC and explicitly reach[ed] a mutual decision to launch an orchestrated opposition campaign against the Petitions [*sic*] and JCFA.” The Board, as a governing body, and Jackson County are not associated, in any way, with JCRCC. Any matter before JCRCC is not a matter of import to the County in that there are no

“decisions” that can be made by the JCRCC that would have any bearing on or bind the actions of Jackson County, as an entity.

Further, as to the attendance of the Commissioners at the JCRCC, it is not unlawful for Commissioners to discuss, outside of a noticed meeting of the Board, what is going on at or related to the County, so long as there is no discussion that is deliberation toward a decision. *See Harris*, 96 Or App at 25; ORS 192.690(m)(A). As the initiative petition process is completely out of the Board’s authority to make a decision, discussion of the petitions is, by definition, not subject to decision-making or deliberation. Despite Grievant’s implications to the contrary, the Board specifically does not have authority over initiative petition matters. See Or. Const. Art. IV, Sec. 1(5); see also Jackson County Charter Chapter CII, Sec. 28(2) – (6). The initiative process firmly situates the deliberative and decision-making power to the people and electors within the County, and wrests any decision-making authority out of the hands of the governing body.

2. Jackson County did not fail to give notice to Grievant or her associated group.

Grievant alleges that the County failed to give notice to her and JCFA because “Dyer expressly referred to JCFA” and asserts that she and “JCFA are ‘interested persons’” under ORS 192.640(1), and that the “BoC made no effort to give actual notice” to Grievant directly.

As discussed above, ORS 192.640(1) requires governing bodies of a public body to provide, in addition to general public notice, “notice, reasonably calculated to give actual notice to interested persons.” Although “interested persons” is not defined in statute, it has been interpreted by the Office of the Attorney General as follows: “Interested Persons—If a governing body is aware of persons having a special interest in a particular action, those persons generally *should* be notified. If this suggestion would be unduly cumbersome or expensive, use common sense.” Attorney General’s Public Records and Meetings Manual, A.G. Opinion No. 8158, September 1984 (underline emphasis added) (Note: this same language and guidance is provided in the most recently published Public Records and Meetings Manual, from June 2019, which is available at [https://www.doj.state.or.us/wp-content/uploads/2019/07/public\\_records\\_and\\_meetings\\_manual.pdf](https://www.doj.state.or.us/wp-content/uploads/2019/07/public_records_and_meetings_manual.pdf).)

As discussed throughout this response, any mention of the Grievant or the group with which she is associated, as part of the discussion of the JCRCC during the Commissioner Liaison Reports agenda topic, was not related to a decision or deliberation of the Board. The discussion was just that — a discussion. Not deliberation toward a decision, not a decision of the Board, not any kind of substantive action involving the Grievant or any group with which she is associated. Thus, common sense would not indicate that an interest person entitled to notice pursuant to ORS 162.640(1) would be a person whose name or group affiliation was referenced during a discussion of a topic outside of the authority of the Board to make a decision. Such a standard for providing notice to interested persons would defy, as the Attorney General advised, “common sense” as both being cumbersome, as the entire list of any person whose name or group may come up in a discussion cannot be known until after the discussion itself occurs, and would be extraordinary expense to attempt to notice any possible person or group who could ever potentially be merely mentioned during any discussion of the Board or other governing body.

- B. The JCRCC meeting attended by Commissioners was not subject to ORS 192.610 to 192.705.

Grievant alleges that “[t]he JCRCC meeting violated ORS 192.610-192.705” because “[a]ttendees at the January 11 meeting reached consensus that no more than one Commissioner could attend an AOC meeting. Both Dyer and Dotterrer attended the JCRCC meeting. They thus constituted a quorum of the BoC and the requirements of the Public Meetings Law became applicable. Those requirements were not complied with.” The Grievant is incorrect for two reasons, set forth below.

1. The JCRCC meeting is not a meeting of the Board under public meetings laws because it did not involve a deliberation or decision by a governing body subject to ORS 192.610 to 192.705.

ORS 196.630(1) and (2) provide that all meetings of a governing body of a public body shall be open to the public and a quorum of a governing body may not meet in private for purposes of deciding on or deliberating toward a decision. “Meeting” is defined as a convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate a toward a decision on any matter.” ORS 192.610(7)(a). ORS 192.610(3) defines “deliberation” as “discussion or communication that is part of a decision-making process.” “Decision” means “any determination, action, vote or final disposition... on which a vote of a governing body is required.” ORS 192.610(2).

Here, Ms. Krause states that she is the Chief Petitioner of a slate of Initiative Petitions, which she and her organization, Jackson County For All (“JCFA”), intend to put forth amending the Jackson County Charter to change the number, salaries, and partisanship of the Jackson County Commissioners.<sup>1</sup> However, if the Initiative Petitions ultimately qualify for the ballot in Jackson County, the Jackson County Clerk is solely responsible for conducting the election and, more importantly, the *Jackson County electorate* will make the “determination, action, vote or final disposition” of the matter—not the Jackson County Board of Commissioners.

Because the Commissioners’ discussion of the Initiative Petitions does not relate to a “deliberation or decision” by the Board of Commissioners as a governing body, the Commissioners in attendance at the JCRCC did not convene a “meeting” of the Board under ORS 192.610 and, thus, did not violate Oregon Public Meetings Law.

2. The JCRCC meeting is not a meeting of the Board under public meetings laws because JCRCC is a regional or state association of which the Commissioners are members.

Grievant takes note of County Counsel’s advice to the Commissioners regarding attendance at Association of Oregon Counties (“AOC”) meetings, but appears to completely misapply that reasoning to JCRCC.

ORS 192.610(7)(b) carves out an exception to the definition of “meeting” for “attendance of members of a governing body at any national, regional or state

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<sup>1</sup> As of the date of this Response, the Petitions designated as Jack 23-01, Jack 23-02, and Jack 23-03 have not qualified for any election.

association to which the public body or the members belong.” Historically, Jackson County was a member of AOC, which permitted a quorum of Commissioners to attend and participate in meetings under the ORS 192.610(7)(b) exception. However, beginning with the 2022-2023 fiscal year, Jackson County declined to renew its AOC membership. Thereafter, Jackson County Counsel began cautioning Commissioners that a quorum should be avoided at AOC meetings because the ORS 192.610(7)(b) exception no longer applies, and AOC meetings may involve deliberation on matters that may eventually come in front of the Board.<sup>2</sup>

Meanwhile, Mr. Dotterrer and Mr. Dyer are both members of the Oregon Republican Party and Precinct Committee Persons for the Oregon Republican Party. Because Commissioner Dotterrer and Commissioner Dyer are both members and precinct committee persons, their attendance at a JCRCC meeting falls under the ORS 192.610(7)(b) exception, discussed above, and does not constitute a “meeting” of the governing body of Jackson County, as defined in ORS 192.610.

V. CONCLUSION

For all of the reasons articulated herein, the Board respectfully rejects each of the claims made by Grievant in accordance with ORS 192.705(2)(b)(A) and 197.705(2)(b)(B).

Sincerely,

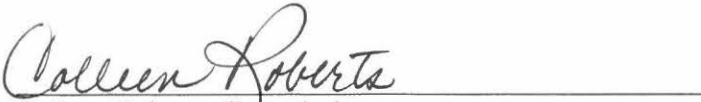
JACKSON COUNTY BOARD OF COMMISSIONERS



Rick Dyer, Chair



Davé Dotterrer, Commissioner



Colleen Roberts, Commissioner

:jb/lb

By: Email Only (denisekrause4jc@gmail.com)

Oregon Government Ethics Commission, 3218 Pringle Road SE, Suite 220, Salem OR, 97302

<sup>2</sup> It should be noted that information gathering is different than deliberating. A quorum of Commissioners merely observing an AOC meeting would not violate ORS 192.630 because ORS 192.690(m)(A) excepts communications that are “[p]urely factual in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body.”