

Part 11 – INTERIM Integrated Strategic Legislative Advocacy, Communication and Legal Activities Program Policy

Purpose

It is the intent of the WSAC Board of Directors to fully implement the direction of the WSAC members through the prudent and judicious administration of an integrated approach to legislative advocacy, communication, and litigation. Communications and litigation are meant to be used as tools to advance the WSAC policy agenda in coordination with legislative advocacy strategies and actions.

As an organization, WSAC believes that litigation or other legal actions should be used sparingly and as a last resort. WSAC Members and our affiliate organizations desire to develop and maintain positive, collaborative, and respectful partnerships with organizations we conduct business with, in particular our important partnership with the State of Washington's legislature and executive branch agencies. We commit to continuing to build these relationships.

For counties to carry out our constitutional and statutory duties and assure that state policy is effectively implemented, we simply must have adequate resources to do so. The legislature and agencies need to work with county elected and appointed officials to assure adequate resources are available. As currently constructed, counties cannot currently deliver essential programs and services because flaws in the county finance structure make counties fiscally unsustainable. Further, the legislature continually requires counties to buy and deliver new state services without providing money to do so.

The WSAC Board of Directors intends to assure that the organization shall have a complete set of tools available to support and advance its organizational policy objectives. Our actions and resources will be utilized in an integrated, interwoven approach including government relations, communications, and where appropriate legal or litigation activities. These strategies and techniques include:

Government Relations

- Develop and Maintain Relationships with Legislators, Governor's Office and Executive Branch Agencies, and Independently Elected State Officials.
- Annual Adoption and Advocacy to Advance a WSAC Legislative Agenda;
- Regularly Update and Maintain WSAC Policy Statement;
- Support WSAC Legislative Steering Committee Activities;

Communications

- Communications and Public Education that Support Policy Objectives;
- Educational Efforts Explaining Issues Facing County Government;
- Brand Awareness;
- Public Education;
- Issue Specific Information;

- Conduct Public Opinion Research to Develop Key Messages for Communications Work;
- Internal Membership Communication.

Legal Actions

- Maintain a Unified Legal Strategy to Advance Organizational Policy Objectives;
- Confer with Counties Regarding Pending Litigation;
- Submit Amici Curiae Briefs;
- Intervene in Cases Before the Courts as Appropriate;
- Coordinate Litigation with Counties and Partners;
- Seek Formal and Informal Attorney General Opinions;
- Pursue “Friendly Lawsuits” with Other Parties to seek Judicial Recognition of a Settlement to the Issue or Conflict;
- Conduct Research and Analysis Around Potential Litigation, Causes of Action and Strategies;
- Initiate Litigation as a Plaintiff.

Legal Action Process Phases

To incorporate litigation as a tool for achieving its policy objectives, WSAC will utilize a four-tiered structure:

Legal Committee

WSAC will utilize its Legal Committee for vetting ideas and requests for WSAC legal action, and to develop, screen, and make recommendations about potential issues and strategies associated with potential litigation. Initial vetting shall be done to assure that any proposed litigation or legal request for consideration and analysis is consistent with the goal that our government relations, communication, and legal activities are completely harmonized and integrated.

The Legal Committee shall make recommendations for legal action based on the criteria herein. Each recommendation shall include a proposed budget, likely timeline, and may include any dissenting points of view on the merits of a particular course of action, and any recommendations for the Executive Board to consider for members of a case management committee if the Board of Directors approves legal activities.

Legal Committee, as appointed by the WSAC Executive Committee, shall consist of:

- Four members from the WSAC Board of Directors, two from eastern Washington, and two from western Washington. At least two of the members must be members of the WSAC Legislative Steering Committee;

- Four members representing WAPA, two from eastern Washington, and two from western Washington. Two of which shall be Chief Civil Deputies;
- The WSAC President and Vice-President;
- Two members representing separately elected county officials serving as ex-officio, non-voting members;
- An ex-officio member from the Washington Counties Risk Pool staff;
- The Legal Committee may invite the ex-officio participation of other attorneys, county staff, or partner organizations as is deemed appropriate.

In developing their recommendation the Legal Committee shall, as appropriate:

- Communicate with the Washington Association of County Officials (WACO), affiliates representing independently elected or appointed officials as appropriate, or other partner organizations during the development and screening of potential legal action, and should:
 - Include a clear explanation that WSAC is considering potential legal action.
 - Seek fiscal or other impacts of any potential case on their offices.
- WSAC members should seek the views of the other elected officials in their counties but are not required to do so.
- Seek input and advice from the Washington Association of Prosecuting Attorneys (WAPA) on case development and screening.

Legislative Steering Committee

- As provided for herein, the Legislative Steering Committee (LSC) shall review the Legal Committee's recommendation.
- LSC may modify, recommend, alter, or change the recommendation from the Legal Committee.
- Any proposed legal action must receive a 2/3 affirmative vote of the LSC to recommend proceeding with legal action to the Board of Directors.
- No legal action that requires LSC authorization may be considered by the Board without a 2/3 recommendation from the LSC.
- Shall provide, to the Board of Directors, a recommendation that shall include a summary of any views differing from the majority.

Board of Directors

- A legal action recommendation from the LSC may not be voted upon by the Board of Directors without a minimum 10 day notification to WSAC members.
- WSAC Board of Directors may modify, recommend, alter, or change the recommendation from the Legal Committee.

- Unless otherwise provided for herein, the WSAC Board of Directors shall make the final decision on pursuing legal activities.
- Any proposed legal action must receive both a 2/3 majority of the Board of Directors present plus must receive a 50% share of the WSAC total annual dues.
- The WSAC Board shall retain settlement authority, unless otherwise delegated to executive committee with a set of sideboards defining an acceptable settlement.
- WSACs existing Amicus Brief Policy and Process remains in place, until a recommendation can be developed for integration into the Legal Committee.
- The Board may direct staff to serve as a coordinator or facilitator of legal action taken by one or more WSAC members to which WSAC itself is not a party.
- The WSAC Board of Directors, under limited time sensitive conditions, will delegate some legal activities to the Executive Committee as provided for herein.

Case Management Committee

Once legal action is underway, the Executive Committee shall appoint a Case Management Committee for every case or issue. WSAC may invite participation from partner organizations, and affiliates or members as appropriate to the subject matter of the case.

Each specific Case Management Committee appointed by the Executive Committee shall be responsible for engaging with legal counsel, receiving regular reports on the case, discussing case strategy and advise on managing individual case legal action.

Communications within WSAC during Litigation

- The Case Management Committee shall be responsible for engaging with legal counsel, receiving regular reports, and discussing strategy.
- The WSAC Board shall receive quarterly updates at Board meetings in executive session, with budget information.
- WSAC membership shall receive regular process updates without any confidential information (for example, information that is already subject to the Public Records Act such as schedule, timing and court actions, briefs filed, etc.), to protect attorney-client privileged information while keeping members informed.
- WSAC staff shall continue to educate members on how legal action informs overall WSAC objectives through routine communication and will consider using WSAC website to disseminate and maintain available information regarding each case.
- Communication with WSAC Members will be as open and transparent as possible while protecting attorney client privileged communication as necessary

Legal Action Criteria and Evaluation

The Legal Committee, as supported by WSAC Staff or outside counsel, shall thoroughly vet all potential options for legal action, utilizing evaluation and criteria described herein to develop and provide information and a recommendation to the LSC and, the Board of Directors as appropriate, by following the guidelines below for their review when considering legal action.

The set of evaluation questions, criteria and decision making process may be different for six possible legal or litigation applications:

Recommendation of the Legal Committee to be submitted to the WSAC Board of Directors or as delegated to the WSAC Executive Committee:

- Submit Amici Curiae Briefs
- Coordinate litigation with counties and partners (but not have WSAC intervene on its own behalf)
- Seek formal and informal Attorney General Opinions
- Proceed with friendly lawsuits with other parties to seek judicial recognition of a settlement to the issue or conflict

Recommendation of the Legal Committee to be submitted directly to the WSAC Legislative Steering Committee to execute legal action decision making procedure as described herein:

- Intervene in cases before the courts as appropriate
- Initiate litigation proceedings

It is recognized that WSAC has a significant interest in many legal issues, but shall use any legal tools in a prudent and judicious manner. WSAC desires to identify legal issues and arguments that recognize that counties have unique and identifiable authorities and powers as defined by the state constitution, statutes, and regulations.

WSAC's primary legal interest is to assure counties have the resources and ability to deliver high-quality public services that are required by our constitution, statutes, administrative rules or our citizens. It is clear that counties cannot currently meet this goal because flaws in the county finance structure make counties fiscally unsustainable. In general, WSAC shall focus its legal program on the following:

- Instances that relate to county structure;
- Organic powers;
- Fiscal impacts affecting long term fiscal sustainability;
- Pre-emption of authorities;
- Unfunded mandates.

The WSAC Legal Committee shall consider and provide analysis regarding three broad evaluative criteria:

- Legal issues;

- Communications and public relations;
- Case management and administration.

The Legal Committee shall consider, at a minimum, the following questions in developing their recommendation:

Legal Issues

- Do we understand the current case law?
- Do the facts support a good case? Will the case provide an answer and some certainty, irrespective of whether we prevail?
- What is our analysis of the public policy issues involved in the case?
- Can we shape the argument around which aspects of the case will we pursue?
- Do we understand the facts and law the opponents will use?

Communications and Public Relations

- Can we win the public relations battle – what will the public perception be on the case specifically and the general, larger narrative around the function of government?
- Can we explain what we're doing?
- How will legislators react and respond to the case?
- Have we fully considered the consequences of the case beyond the obvious initial impacts?
- What are other hot button issues or case studies that we can use to strengthen the public relations narrative?
- What internal stories do our members have that can help us with public relations?

Case Management and Administration

- What is the likelihood of success?
- What are consequences of winning and losing?
- Is this case a candidate for an alternative to litigation, i.e., Attorney General Opinion?
- Who are our allies and our opponents? Can we expect them to join or oppose in the case?
- Coordination, friendly lawsuit simply to settle the law?
- What does success look like, both short and long term?
- Is this case supportive of our long term strategy?
- What parameters would we be comfortable settling on?
- What will be the discovery or public records request requirements?
- Will the case require outside counsel, and if so what scrutiny should we give to the hiring decision?
- Can we avoid losing attorney's fees?
- What the likelihood of opposition within the county family – and who and why?

- Do we have the financial and human resources to follow the case to its conclusion?
- Have we tried other strategies to resolve the issue?
- Have we thought through the entire arc of the case (e.g. are we trying to settle, or go to Supreme Court)?

Legal Committee Recommendation

The Legal Committee recommendation shall be accompanied by the following information:

- 1) A brief summary of issues and findings associated with the proposed action:
 - a. Legal Issues
 - b. Communications and Public Relations
 - c. Case Management and Administration
- 2) Case history and current status if applicable;
- 3) Probably timeline and schedule;
- 4) A concise and brief statement of the issue or issues on which argument is desired;
- 5) A brief and succinct statement as to whether and how the decision will broadly affect Washington counties;
- 6) State in particular how the results sought would be of benefit to the counties;
- 7) Is there any county that is, or might be, party on the other side of the case and/or that would oppose or would be expected to oppose WSAC's participation in this legal activity? Are there members of the Legal Committee that have a differing view than the majority of members? If yes, please list, and state the known or anticipated bases for opposition.