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(360) 647-7661**

January 5, 2009

Mr. Pete Kremen  
County Executive  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225-4082

Dear Mr. Kremen:

While we recognize your authority to fill the vacancy on the County Council, we question the legality of the Ward Nelson appointment. We urge you to seek a definitive legal opinion, such as from the State Attorney General, to ensure that decisions of the Council, going forward in 2010, are not subject to a challenge on the grounds that Mr. Nelson was not legally appointed to the Council. The integrity of Whatcom County government requires that this issue be settled.

We recognize that you made the appointment of Mr. Nelson with a good faith expectation that the nominees forwarded to you by the County Council were all legally eligible for appointment. But you also have a fiduciary responsibility to the citizens and voters of Whatcom County to make sure your choice is a legal one. You have commented that you wished, by this appointment, to “depolarize the community.” Please consider how polarizing it would be if in the aftermath of a controversial vote by the County Council, someone challenged the validity of that vote, and all the other votes they’ve made in 2010. This would strike at the very core of the Council’s legitimacy to govern.

The legal issue in question only applies to Mr. Nelson's nomination, because he was unique among the 25 nominees as being a member of the County Council. The legal point in question is whether Mr. Nelson was eligible to be appointed on December 8, 2009, the date the County Council considered applicants for the position, made formal nominations, and voted to appoint one of the nominees to fill the vacancy.

The County Charter states: “The County Council, Executive, Assessor, Auditor, Treasurer, Sheriff and Prosecuting Attorney shall hold no other office or employment within County government.” [Section

4.30 Conflict of Interest] If Mr. Nelson was not eligible to serve in two council positions simultaneously, then he was not eligible to be nominated for appointment, and his name should not have been on the list of Council nominees forwarded to you for consideration.

Additionally, an Attorney General opinion in 1965 states there is an inherent conflict of interest for a body to appoint one of it's own.

"An officer intrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public, for it is the policy of the law to secure the utmost freedom from personal interest in such appointments. So, it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." (Emphasis added.)

Writing in the same opinion, the Attorney General wrote:

"The cases ground the public policy prohibition on the need for impartial official action, without suspicion of bias which may be against public interest. They say the appointing board cannot absolve itself of ulterior motives if it appoints one of its own, whether or not his vote was necessary to the appointment, since the opportunity improperly to influence the other members of the board is there. The necessity that public bodies be free from personal influence in making appointments to office cannot be secured when the appointee has the real opportunity his associations and relations afford to place his colleagues under obligations they may feel require repayment." (Emphasis added)

(AG 1965 No. 20) cited 42 Am Jur, Public Officers 97 (p955): <http://www.atg.wa.gov/opinion.aspx?section=archive&id=8348>

There is, of course, a simple remedy if Mr. Nelson's appointment is deemed not legal. There are 24 other nominees to consider, many of them eminently qualified.

Since the County Council will begin it's 2010 term next week, time is of the essence. If I have not heard from you by Thursday, January 7<sup>th</sup>, I will give you call to discuss this issue and your plan of action.

Sincerely,

Natalie McClendon  
Chair  
Whatcom Democrats