PROSECUTING ATTORNEY | ANTHONY F. GOLIK

SCOTT D. JACKSON
Chief Deputy

CAMARA L. J. BANFIELD
Chief Criminal Deputy

CHRISTOPHER HORNE
Chief Civil Deputy

SHARI JENSEN
Administrator

MEMORANDUM

DATE:	October 19, 2015
TO:	Board of County Councilors
FROM:	Chris Cook
SUBJECT:	PBTA conference

The Clark County Board of Councilors will convene a public transportation improvement conference for the purpose of revising the service area boundaries for the public transportation benefit area (PBTA) within the county. You have asked me to determine the number of attendees to which Clark County is entitled at the upcoming PBTA boundary conference. Matters relevant to this question are governed by Chapter 36.57A RCW.

RCW 36.57A.020 states, in part, as follows:

> "The county legislative authority of every county with a population of forty thousand or more shall *** convene a public transportation improvement conference to be attended by an elected representative selected by the legislative body of each city, within such county, and by the county legislative authority."

RCW 36.57A.030 sets out the processes by which the conference may work, primarily with the county legislative authority, to revise the PBTA boundaries.

RCW 36.57A.010(4) provides the following definition, which applies throughout the chapter:

> "County legislative authority" means the board of county commissioners or the county council."

Reading the statutory language for its plain meaning within the context of Chapter 36.57A, and after searching for applicable case law, I have concluded that Clark County's representation at the PBTA conference is intended to include all of its county councilors.

1. **The plain meaning of the statute is that all members of the county council are to attend the PBTA conference.**

The governing statute is not a model of clarity. It is conceivable that the phrase "by the county legislative authority," in RCW 36.57A.020, above, could modify either "to be attended" or "selected by." If the statute should be read as providing that the conference is "to be attended ***

by the county legislative authority," each member of the county council would be a conference attended, entitled to vote. But if the conference is "to be attended by an elected representative selected by *** the county legislative authority," the county, like each city, would have only one conferee. These inartfully drawn phrases, in the context of statutes that govern the same subject throughout Chapter 36.57A, are more easily construed. That is because in these related statutes, the legislature has distinguished between the authority assigned to a county and that assigned to cities within the county in the establishment and governance of a PBTA.

RCW 36.57A.020, for example, assigns more discretion to the county legislative authority to convene a PBTA conference than is given to a city, which must act with at least one other city to call a conference. The same pattern repeats in RCW 36.57A.030. That statute provides that the county legislature alone (or two or more cities) may fix the date for a hearing on boundaries, and the county legislative authority is solely empowered to delineate a proposed transportation benefit area, although cities may, within stated limitations opt for inclusion or not in the PBTA. Ultimately, the work of the boundary conference, after one or more public hearings and the involvement of each city and the county, may be entirely voided by the county legislative authority – but not by any number of cities. RCW 36.57A.030.

The degree of power assigned to county governments by these statutes is not surprising, as the PBTA is clearly authorized to provide regional transit service, extending beyond city boundaries, and even across county boundaries. RCW 36.57A.020. The county is the regional governmental jurisdiction, and therefore plays a more active role in the formation and revision of the PBTA. RCW 36.57A.050 concerns governance of the PBTA after its formation or revision. It is clear that in setting up the PBTA governing body, each member of the county legislative authority has one vote, while each city legislature has only one vote.

> "Within sixty days of the establishment of the boundaries of the public transportation benefit area **the members of the county legislative authority and the elected representative of each city** within the area shall provide for the selection of the governing body of such area***" RCW 36.57A.050 (emphasis added).

RCW 36.57A.055 contains the same wording. Note that the reference is to plural "members" of the county legislative authority and to the singular "representative" of each city. Note also that, like RCW 36.57A.020, this statute lists in similar terms those with authority to act for the jurisdictions that establish a PBTA. It would be odd to construe these statutes together to conclude that the legislature intended different meanings by these references in RCW 36.57A.020-30 and RCW 36.57A.050-055. The result would initially give each city co-equal power with the county, and then greatly shift the balance of power toward the county when the PBTA actually begins operations. It makes more sense to construe the statutes harmoniously to have given the more regional jurisdiction more votes – more attendees at the PBTA conference – from the beginning.

When called to construe RCW 36.57A.050, the Washington Court of Appeals recently set forth the method of statutory interpretation: look first to the plain meaning of the language within context.

> "We interpret a statute to carry out the legislature's intent. To determine legislative intent, we look to the "plain and ordinary meaning of statutory

> language." We determine the plain meaning from " 'all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.' " " *Amalgamated Transit Union Local No. 1576 v. Snohomish County Public Transportation Benefit Area*, 178 Wn. App. 556, 574, 316 P.3d 1103 (2013) (citations omitted).

In the context of the statutes in Chapter 36.57A RCW that relate to formation or revision of a PBTA, the legislature intended for all members of a county legislative authority to participate in the processes. RCW 36.57A.020, concerning establishment of the PBTA, is most correctly read within this context to mean the same thing. All members of the county council are authorized to attend the PBTA boundary conference.

2. The Washington courts do not appear to have construed the language at issue.

Although the statutes at issue were adopted 40 years ago, research did not uncover case law that answered the question presented here. In *Fakkema v. Island County Public Transportation Area,* 106 Wn.2d 347, 722 P.2d 90 (1986), the Washington Supreme Court held that county residents living outside the boundaries of a PBTA were not entitled to vote on a sales tax to fund the transit agency. The court also held that a conference that revised those boundaries had substantially complied with RCW 36.57A.020-030, and 36.57A.050, and that substantial compliance with those requirements was sufficient to validate actions taken pursuant to the conference. *Fakkema,* 106 Wn.2d at 352. The court did not address the number of conference attendees from each jurisdiction.

Amalgamated Transit Union, 178 Wn.App. 566, construed RCW 36.57A.050 in the context of a dispute regarding the role of the union's non-voting member of the PBTA Authority. It did not concern a boundary conference, let alone the number of attendees.

I was unable to find other cases that reviewed the statutes in Chapter 36.57A concerning establishment or revision of a PBTA. Amanda Migchelbrink has similarly searched for illuminating legislative history, without success.

3. **Conclusion.**

Finding no authority to the contrary, and giving effect to the plain meaning of the statutory language within its context, I conclude that RCW 36.57A.020 authorizes every member of the county legislative authority to attend a PBTA conference as a voting member of the conference.