

ADMINISTRATIVE LAW
TOWN HALL MEETING
OCTOBER 1, 2015

REGULATION WITHOUT
LEGISLATION

Thank you for taking time from your busy schedules to preserve your freedoms and liberty.

We invited administrative law judges as speakers, including one who is retired. They all declined. Tonight you may discover why.

We'll begin with some background on the mechanics and history of administrative law and how it affects you. Our other speakers will have comments, followed by your questions. Then land use attorney Mr. Dennis Reynolds will give us some guidance of what to do if you're ensnared by administrative law.

Kitsap Alliance is non-partisan and you'll find tonight's topic affects all citizens equally.

If you picked up a copy of my remarks on the way in, please use it to craft your questions. Paragraphs I'm not going to

include in the interest of time are marked. These sections may still generate good questions.

While it doesn't seem to get much attention in our schools these days, we quietly celebrated Constitution Day, for the 227th time, just two weeks ago today. On July 15th, exactly 800 years ago, the cornerstone of English law and our Constitution was set with the signing of the Magna Carta. This established the rights we enjoy. What you're about to discover is: forces have been diligently at work to destroy those rights.

Today, our country has, in fact two governments. One government you'll recognize as a balanced government with three co-equal branches. They write about 10% of our laws.

At the same time, we have another government that doesn't play by these rules. This is administrative, or agency government. Agencies are a part of the executive branch. They write 90% of our laws, but strip away most of the legal protections we are promised in our Constitution's Bill of Rights.

In Washington State, we have two sets of laws, the Revised Code of Washington, or RCW and the Washington Administrative

Code, the WAC. What's with two sets of laws?

For nearly a decade, I and others here, while members of our County Planning Commission, were totally in shock to find that agencies have gained the authority to write laws that bind our County Commissioners and bind the public.

After several years, we discovered the source of this authority is a set of laws called the Administrative Procedures Acts.

Agency regulations have become voluminous, intrusive, oppressive, fluid and inconsistent. We no longer feel we have the freedoms to explore our creative potentials to create businesses or to use our properties as we would like. These were the very entrepreneurial freedoms that made our country so totally unique and economically strong.

Our County, State and Federal Governments seem to be watching our every move. They are intent on imposing unconstitutional surprise access and inspections. Agency laws are frequently written and changed without our knowledge or participation.

Contrary to the wording in the Administrative Procedures Acts, the lead sentence of Article I, Section 1 of our U.S. Constitution places ALL legislative power in the Congress. That means ALL laws Federal are to be written by Congress. Article II, Section 1 of our Washington State Constitution uses the same wording at the State level.

Our U.S. and State Constitutions specifically state that ONLY our constitutions are the Law of the Land.

While our Constitution forbids delegating their most basic function, that of law writing, Congress did so in 1946 with the Administrative Procedures Act. In 1988, Washington State followed suit with our State's Administrative Procedures Act. These acts created what we now call the fourth branch of government.

The justification for agency law is always one of efficiency, urgency and its just plain easier. It does make control of the people much easier. Some say it's challenging to write laws that survive votes in both houses of Congress, a presidential signature and lawsuits before the U.S. Supreme Court. That difficulty was intended by our founding fathers.

Now our fourth branch of agency government writes the laws, and has created it's own judiciary. Administrative law judges are appointed and controlled by the agencies that appoint them. They then create their own enforcement branches. Agencies have thus become, the de-facto legislature, king, judge, jury and enforcer.

With this centralization of power, we now see the blatant practice of selecting which portions of laws the executive or agencies chose to enforce and which corporations and favored individuals get waivers from the law. These "suspending and dispensing" powers are specifically prohibited. Under our constitutions, a legislative act, once signed into law, mandates the executive branch to enforce the entire law equally on all people.

The Magna Carta guaranteed that laws could only be created with the people's consent.

It's no wonder we feel our government is not playing by the rules under which our country was established. We have come to fear our government. What was to be a government of "We the People" has become a government of the bureaucrat, now a protected and favored class.

Presidents Jefferson and Madison both said -should legislative, executive and judicial powers ever be combined into a single hand, it becomes the very definition of tyranny.

Today, what we call administrative law is that tyranny.

Our Constitution specifically prohibits this combination of powers.

This total remake of our form of government combines the powers of all three branches under the executive. This could only legitimately have become law by amending our constitution. This never occurred, nor would it likely ever receive voter approval. Having not amended our constitutions to allow it, all administrative law patently violates our constitution, and is therefore illegal.

There's a reason our Congress and courts are held in such low regard. Congress doesn't write our laws, while the executive and judicial branches do. Our government is dysfunctional, acting above and outside the law.

What happened to separation of powers?

How has this combination of powers come to be? While some enjoy claiming this is merely modernization of government, it in fact has a long history.

The combination of powers was very common under medieval kings, who issued laws by proclamation. This changed with the signing of the Magna Carta. It gave to ordinary citizens the right to representative government, the rights to due process, to jury trial by 12 of one's peers, and to face one's accuser, protection against self-incrimination and presumption of innocence until proven guilty.

Many English kings tried, and repeatedly did, destroy these rights, through prerogative laws and privy counsels. The kings' acts were then repeatedly overturned by elected representatives in Parliament, three times becoming bloody English civil wars.

In 1535, Parliament passed the Prerogative Act and gave King Henry VIII full lawmaking powers, a close parallel to our Administrative Procedures Acts. Once Parliament realized the danger of giving this much power to the king, they overturned the Prerogative Act in 1547, shortly after Henry VIII died.

Congress began to authorize the existence of agencies in 1887. It began with President Cleveland's approval of the Interstate Commerce Act and its agency, the Interstate Commerce Commission.

In the 1890's many people became enamored with the efficiency of the Prussian model of agency government, including one professor Woodrow Wilson. Other students of the Prussian model included Vladimir Lenin and Adolf Hitler and you know how those governments turned out.

Congress created more agencies under President Wilson, FDR's New Deal, President Johnson's War on Poverty, and President Nixon's establishment of the EPA and OSHA and even more since then. The agencies, on their own, now write "Rules," which have gained the force of law.

Our Constitution places all legal authority with the judiciary. There's no room for administrative law judges.

Administrative law judges are agency employees. Whether by implication or direction, and with rare exception, they rule in favor of the agency.

Under administrative laws, you no longer enjoy an independent

judiciary. Your right to a jury trial of your peers is prohibited. There is no right to face your accuser. There is no protection against forced self-incrimination. You are presumed guilty until you can prove your innocence and you are forced to plead guilty prior to their quasi-legal proceedings. Your only route of appeal is first through their agency's judiciary.

Only after you have exhausted all administrative remedies, and having already been forced to plead guilty in administrative court, are you allowed to appear in superior court and appeal through the State and Federal courts.

To make matters worse, in the infamous 1984 case *Natural Resources Defense Fund v. Chevron*, the U.S. Supreme Court directed lower courts to grant maximum deference to agency decisions. This has become the most widely quoted case in the history of the Supreme Court.

No wonder agencies boast of an 80% success rate in the courts.

Federal and State agencies both use the power of extortion to force subordinate governments to enact their agendas. They often threaten to withhold grant funds if their bidding isn't followed.

These threats have swayed elections right here in Kitsap County.

Combination of powers has become so bold in Washington State, that our Legislature has repeatedly passed "Title Only" bills. They repeatedly have given agencies full authority to fill-in the law and to levy extortive penalties for non-compliance. There is little or no legislative oversight. Congress and the Legislature are shielded from criticism. They merely shift blame to the agencies, who wrote the laws.

You can now better appreciate the power agencies hold over our County Commissioners and city councils. As an example, before our local elected leaders are allowed to adopt environmental ordinances, such as our Critical Areas Ordinances and Shoreline Master Plans, Department of Ecology must first approve them. These ordinances directly impact the usefulness and values of our properties.

This sham is then called "local legislation," when it's anything but local.

We are well aware agency environmental laws do not require peer reviewed science. Under agency law, whatever the

government determines is science, takes precedence.

As a result, 95% of the parcels in Kitsap County and in our four cities are encumbered by an average of five kinds of wide, restrictive buffers, of dubious protective merit. To get a use permit, each buffer requires it's own technical study and approval by Department of Community Development at great cost in both our time and our money. Buffer requirements vary from community to community.

Now, the cost of permitting often exceeds the construction cost of smaller project.

There are 267 separate and unique critical areas ordinances and 267 shoreline master plans in our state. Critical Areas Ordinances and Shoreline Master Plans have the power of law, but our state legislators never held a vote on any of them. Would our legislature have voted on 267 separate laws for Critical Areas Ordinances and Shoreline Master Plans? Just how unique is the environment in every one of Washington State's jurisdictions to justify different restrictive buffers in each of jurisdiction?

We see pockets of very high density residential construction next to five acre minimum zoning. We see agency

implementation of United Nations Agenda 21, which is specifically opposes ownership of private property. U.N. Agenda 21 was never voted on by Congress, but is being instituted in nearly every county in America.

Here are some examples at the Federal and State level of the problems we face with our executives using their prerogative powers. While these examples reflect those now in office, the power is available to all future office holders, regardless of political party.

Just two months ago, on JULY 22, 2015, the President, having failed to get Congressional approval, directed the Department of Housing and Urban Development to draft regulations for a program called "AFFIRMATIVELY FURTHERING FAIR HOUSING," telling us where to live.

If the appropriate number of people of every possible category are not found to be living in each community, the community becomes ineligible for HUD grant money. This is an incredible invasion of privacy and will force government relocation programs and re-drafting all our zoning and transportation plans before a community can hope to pursue grant money. This could dramatically cause harm on many levels.

AUGUST 4, 2015:

The President, having failed to get Congressional support, directed the Environmental Protection Agency to implement the "CLEAN POWER PLAN" rule. This new law will move the country dramatically onto renewable energy and close down our yet to be paid for U.S. coal plants.

EPA claims the Clean Power Plan has the potential to reduce global temperatures by 0.01 degrees centigrade. Using the President's own words, "This will cause electric rates to skyrocket," and as others have observed, the cost will likely cause our economy to crumble.

The poor will bear the overwhelming burden of this rule. Their cost of living will rise, while more jobs will be eliminated.

On the state level, on AUGUST 13, 2015, our Governor Inslee, after failing to get even a hearing on his CAP AND TRADE BILL before either house in the State Legislature, directed Department of Ecology to write Cap and Trade regulations and enforce them as law.

When our current President famously stated "I have a phone and a pen," indicating

he could do whatever he liked, he was right.

Its now campaign season. I chuckle when candidates shout "I will" do this or that. The proper phrase is "I will propose to the Congress" to do this or that. We seem to be on the road to allowing an elected king to reign.

We now come full circle to Kitsap County's current County Code, Title 2.116 "Civil Enforcement" which relates to building, zoning, environmental health and safety and quality of life. A year ago, a proposed Title 5 for Code Enforcement was drafted as a replacement for existing Title 2.116. Title 5 was so egregious, it was quickly shelved after citizens rose up in opposition after our last town hall meeting in this very room.

Allow me to paraphrase a few sentences from existing Kitsap County Code, Title 2.116:

2.116.040 "While in the process of investigating alleged or apparent violations of this chapter, an authorized official may ENTER UPON ANY LAND..." Note, there is no mention of a required warrant issued by a judge prior to entry.

This directly violates the 1994 decision in *McCready v. City of Seattle*, which requires a judicial warrant prior to government access to private property, with the sole exception of health and safety issues.

2.116.060

D. "(M)onetary penalties" are often assessed prior to proof of guilt and may not be reimbursable. Daily fines are intended to force your compliance, before you have had your day in court.

G. "...(T)he person who has been served with the notice of infraction shall sign (it)..." If you're ever served a subpoena to appear in Superior Court, there is no requirement to sign it. You see here one of the differences between administrative law and common law.

(Signing the notice of infraction forces you to acknowledge the infraction, which violates your right against self-incrimination.) You can only preserve your rights if you are aware enough to sign by adding the phrase "Under duress, RCW 62 A.1-207." You'll find cards with this statement at our entry table. Please carry one in your wallet.

B. "... (T)he infraction is a noncriminal offense FOR WHICH IMPRISONMENT SHALL NOT BE IMPOSED AS A SANCTION."

H. & I. "... (R)efusal to sign the infraction as directed in subsection (G) .. or failure to respond (to it)... are misdemeanors and may be punished by a fine and/or imprisonment IN JAIL."

How can you be imprisoned for a non-criminal offense? Would you be held in jail until you signed the statement of infraction?

2.116.120.A "A hearing to determine that an infraction has occurred shall be without a jury." Under our Constitution all legal proceedings are delegated to the courts, this "hearing" is, in fact, a trial, including the right to call and cross-examine witnesses, etc. The prohibition of a jury violates Amendment 7 to the U.S. Constitution, which guarantees the right to a jury of one's peers. Why would our Department of Community Development prohibit a jury?

2.116.130.A "... hearing shall be an informal procedure." Informal hearings under administrative law do not require creation of a formal verbatim court record.

2.116.160 Costs are levied on the non-prevailing party and attorney fees can be levied on either side. So here we have tort reform, which I believe has yet to be passed by the Congress or our Legislature.

Now, consider; our county policy on code violations is only to investigate a neighbor's complaint of an alleged code violation. The case now becomes you, the citizen v. the county.

What we now have today is a scenario which equates to an anonymous neighbor's phone call becoming a game of "let's watch you and the county fight."

County staff, who wrote this are a protected class. You can't learn who is the author, much less sue or fire them.

Under Washington State's Constitution, we elect our judges and it is patently unfair for the Hearing Examiner, who acts as an administrative law judge, to effectively be an employee of our County Commissioners and the Department of Community Development.

Is administrative law even legal?

Our great experiment of "government of, by and for the people" seems to be running on the rocks. As you can see, we no longer have control of our government. Our government has control of US and our Constitution is out the window.

What to do?

At the local level, we must demand our County Commissioners make our Hearing Examiner an elected, impartial judge and demand our rights to due process and to a jury trial.

Let me suggest a better scenario of code compliance than what we have currently:

If a neighbor were to lodge a complaint against you, the dispute should be decided as a lawsuit between the affronted neighbor and the alleged violator in Superior Court. The county staff could be called to testify during due process. A real, impartial judge should rule on the legality of the law. During trial, county staff might serve as witnesses and to present the governing County regulation, but not be the de-facto legislature, king, judge, jury and enforcer.

At the State and Federal levels, we must lobby our legislators and congress

people to abolish the
Administrative Procedures Acts.

This would result in all laws
once again being voted on by
our elected officials, as our
constitutions require.
Agencies may still propose
rules in the form of
legislative bills, but in
order for them to become law,
representatives of the people
must bring them to a vote.

The rule of constitutional law
is the very glue that holds
the fabric of our country
together. Without the
consistent rule of law,
anarchy and social chaos
absolutely will prevail. The
only way to avoid this
calamity is to find and
support candidates of either
party who are committed to
enforce our constitutions. If
you are that person, run for
public office NOW!

So there you have it. We have
all of government in bed with
the agencies, who write laws
directed by the President or
on their own. Congress takes
no part and the courts are
directed to approve of it all.
We've gone full circle to a
government that precedes the
Magna Carta. Our children
aren't taught civics and
shortly they won't even
recognize that we had
guaranteed rights.

It is our civic responsibility
to teach our children the
foundations of our government.
All our rights can easily
disappear in a couple
generations if we aren't
diligent.

A couple hundred years ago,
our forbearers fought
a revolution over "Taxation
without Representation." We
now have "Regulation without
Representation." It is time
for another revolution to
force our government to behave
in accordance with our
Constitution.

Today, we stand in fear of our
government. Do we want this
for ourselves and our children
and grandchildren?

In a few minutes, we will
address your questions. But
first, we would like to
collect your tickets for our
door prize drawing.

Thank you for your attention.

Presented by :

Michael Gustavson
(360) 871-1906