

# Pierce County



# Memo

Gerald A. Horne  
Prosecuting Attorney

**To:** Dale Washam, Pierce County Assessor Treasurer  
**From:** Gerald Horne, Pierce County Prosecuting Attorney *Gerry Horne*  
**Date:** 5/11/2009  
**Re:** Your Request for Investigation

In your undated letter received May 5, 2009, you state that you request "upon the directive of the Washington State Attorney General's office . . . [that] the Pierce County Prosecuting Attorney's office should commence a full investigation, into the falsification of the Pierce County Assessor--Treasurer's official record documents from 2001 through 2008." You then list "allegations" concerning three matters occurring during that time frame: the entry of the initials "KMP" upon certain Assessor-Treasurer computer records, the failure to conduct physical inspections of property, and false reports to the Department of Revenue that such inspections had occurred.

The Attorney General's Office did not issue any "directive" concerning the commencement of an investigation by this office. In his April 1, 2009 letter to you, Chief Deputy Attorney General Brian Moran stated:

Because this appears to involve matters of local concern, appropriate legal guidance should be sought from the Office of the Pierce County Prosecutor. In the same way that we serve as the lawyers for state officers and agencies, the Pierce County Prosecuting Attorney's Office is charged with providing legal advice on all legal matters arising out of the actions or omissions by county officials, employees and agencies. (Emphasis added.)

My office has previously responded to your request for legal advice concerning the physical inspections issue; in a January 26, 2009 memorandum you have since made public, Deputy Prosecutor David Prather advised that you have no obligation to correct assessments made in your predecessor's administration that may have been based upon valuations determined without required physical inspections, and, indeed, you "have no legal authority to do so." After reviewing the matter from a somewhat different perspective, Performance Audit Coordinator Matt Temmel concluded as follows in a March 30, 2009 report to County Council: "There is no reason to believe that individual property taxpayers were harmed by missed physical inspections of their homes in the past. Tax revenues are likely to have been lower than if all physical inspections had been conducted as scheduled."

In 2005 you were one of four citizens who brought a recall petition against your predecessor, raising the same three issues: the initials, the failure to conduct physical inspections, and the reports to the DOR. *In re Ken Madsen*, Pierce County Superior Court Case No. 05-2-05329-7.

After a full evidentiary hearing, Judge William Thomas McPhee on April 22, 2005 entered written findings against petitioners in all respects. Of particular interest, in regard to any potential criminal investigation now, is the specific finding on page 2: "The Court further finds that there is a 'legally cognizable justification' for Mr. Madsen's actions and therefore Charge #2 is not legally sufficient." Charge #2 involved the alleged false reports to DOR, and so included elements of both the use of KMP initials and the failure to make the physical inspections. Judge McPhee's order was not appealed. The burden of proof in a criminal case is, of course, much higher than that in a recall matter.

In any event, my office (like other prosecutor offices in this state) relies upon local police agencies to conduct criminal investigations, and we make charging decisions based upon the detectives' investigative work. When the issues involve former and present county elected officials, I would have the option of requesting that another prosecutor's office review a police investigation. However, as per the above discussion, I frankly do not believe that the use of further investigative resources is warranted.

Should you wish to discuss this further please contact me.

Cc: Douglas Vanscoy, Chief Civil Deputy Prosecutor; Roger Bush, Pierce County Council Chair; Executive Pat McCarthy