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**SUPREME COURT
OF THE STATE OF WASHINGTON**

No. 1008813

Appeal from Court of Appeals No. 37812-8-III

**Stevens County, Washington, ex rel
Tim Rasmussen,**

Petitioners,

vs.

DONALD L. DASHIELL, et al,

Respondents

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTY

This Answer is brought by the Respondents, DONALD L. DASHIELL, et al, (hereinafter, “the Officers”) through their attorney of record, Julie C. Watts. The Officers were the defendants in the trial court and appellants before the court of appeals.

II. ANSWER TO INTRODUCTION

Mr. Rasmussen begins his petition by mischaracterizing the nature of Division III’s decision. Division III did not “grant a license” to future commissioners to “gift public funds.” In fact, Division III did not address Mr. Rasmussen’s claim regarding the alleged unconstitutional gifting of public funds at all. Instead, Division III decided that Mr. Rasmussen had failed to state a claim against the three individual officers named in his lawsuit when he sued them each on their bonds, claiming personal liability for a decision that had been made by the Stevens County Board of Commissioners as a body.

III. ANSWER TO STATEMENT OF THE CASE

In his Petition to this Court, Mr. Rasmussen revives the obfuscation that was so successful for him before the trial court and refers to the Officers collectively as “the Commissioners.” He hopes that this Court, like the trial court, will grant an unprecedented cause of action that no other Washington case has ever allowed by permitting Mr. Rasmussen to pursue claims of strict liability against individual officers for decisions made by a collective legislative body.

As described in the Officers’ *Opening Brief* to Division III:

It appears the trial court was bamboozled through a semantic sleight of hand, specific to this case; this bait and switch began with the Audit, where the Stevens County Board of Commissioners was referenced, not as the “Board,” but as “the Commissioners.” Use of the term “Board” would have correctly signaled the Board’s status as a singular legislative body, but the Audit’s unfortunate use of the term “Commissioners” enabled Mr. Rasmussen to sue each officer in his individual bonded capacity while continuing to reference the three of them collectively as “the Commissioners.” The Audit, however, clearly intended to refer solely to the actions of the *Board*, which is the entity with the authority (and, therefore, the responsibility) for approving the grants in question. Mr. Rasmussen, however, did not sue the *Board*; rather, he sued Mr. Dashiell, Mr. McCart, and Mr. Parker, each in

his individual capacity for the purpose of reaching his individual bond, and then he asserted the liability of each individual for collective Board decisions that no individual had the authority to make alone. The equivocation was irresistible in its simplicity and tragically effective; the duped trial court effectuated a *coup d'état* and summarily unseated the entire duly elected Stevens County Board of Commissioners based primarily on the above-stated semantic switcheroo.¹

ISSUE A: “Whether granting immunity to county commissioners for their unconstitutional gifting of public funds presents an issue of substantial public interest pursuant to RAP 13.4(b)(4).”

The issue as formulated by Mr. Rasmussen is not an issue of substantial public interest, primarily because it is a blatant mischaracterization of Division III’s ruling, and therefore not a legitimate “issue” at all. Division III did not address the merits Mr. Rasmussen’s claim that the Stevens County Board of Commissioners had allegedly gifted public funds in violation of the constitution. Instead, it ruled that no individual official bore personal liability for decisions made by the Stevens County Board of Commissioners as a collective entity.² Because Mr.

¹ *Appellants’ Opening Brief*, pg. 24, filed June 2, 2021.

² *Opinion*, pg. 2.

Rasmussen sued each individual officer personally based on a decision by the Board collectively, the Court of Appeals determined that Mr. Rasmussen had failed to state a claim against the individual officers.³

In its opinion, the Division III specifically pointed out that there *are* appropriate remedies to address concerns about the unconstitutional granting of public gifts, but rather than pursuing those remedies, Mr. Rasmussen chose to pioneer a “novel approach” for which there is no authority in Washington law.⁴ This is confirmed by Mr. Rasmussen’s *Petition for Review*, which cites no authority for his novel interpretation of RCW 36.32.060 as providing an independent cause of action.

ISSUE B: “Whether granting immunity to county commissioners for the unlawful expenditure of public funds violates Washington Constitution article XI, section 5’s requirement to provide for the strict accountability of county commissioners for the public monies they control. RAP 13.4(b)(3).”

³ *Id.*

⁴ *Opinion*, pgs. 2, 9.

Again, as with Issue A above, this issue as formulated by Mr. Rasmussen is a mischaracterization of Division III's ruling, and therefore not a legitimate "issue" at all. Division III did not address the merits Mr. Rasmussen's claim that the Stevens County Board of Commissioners had unlawfully expended public funds. Instead, it ruled that no individual official bore personal liability for decisions made by the Stevens County Board of Commissioners as a collective entity.⁵ Because Mr. Rasmussen sued each individual officer personally based on a decision by the Board collectively, the Court of Appeals determined that Mr. Rasmussen had failed to state a claim against the individual officers.⁶

ISSUE C: "Whether Division Three's opinion conflicts with this Court's robust body of opinions related to official bonds, and with *State v. Levy*, 8 Wn.2d 630, 113 P.2d 306 (1941), and *Miller v. Pacific Country*, 91 Wn.2d 744, 592 P.2d 639 (1979). RAP 13.4(b)(1)."

This issue is addressed in the argument section below.

⁵ *Opinion*, pg. 2.

⁶ *Id.*

ISSUE D: “Whether Division Three’s requirement that a claim against a bond for an unconstitutional gift of public funds requires proof of corrupt or malicious motives conflicts with Division Two’s opinion in *State v. Gallagher*, 15 Wn. App. 267, 549 P.2d 499 (1976), which held that neither must be shown when public funds are used for a purpose not authorized by law. RAP 13.4(2).

First, RCW 42.08.020 indicates that a public officer forfeits his or her bond through “official misconduct or neglect of duty,” which Mr. Rasmussen never alleged, choosing instead to claim that the Officers were subject to strict liability via the independent cause of action contained in RCW 36.32.060.

Second, Mr. Rasmussen cites *State v. Gallagher* for the first time on appeal to this Court; it is addressed in the arguments below.

ANSWER TO ARGUMENT A:

“Actions on Official Bonds are Governed by a Robust Body of Case Law That The Court of Appeals Largely Ignored.”

In his petition, Mr. Rasmussen asserts that Division III’s *Opinion* is “contrary” to a long line of cases that discuss an

individual officer's personal liability related to the handling of county funds. It is true that there are numerous cases that address the liability of an individual officer for the handling of public funds, but those facts were not at issue in this case. In a novel claim, Mr. Rasmussen asserted that each individual officer is personally liable for the decisions made by the Board as a body. There is no case that supports that proposition in all of Washington's history, as Mr. Rasmussen himself admitted in his briefing to the court of appeals, and which Division III recognized when it stated that "there is no authority for the claim that a legislative official, such as a county commissioner, can be sued personally for official legislative actions."⁷ In his petition, Mr. Rasmussen admits that the statutes that require "certain elected officials to post bonds conditions upon the faithful discharge of their duties and permitted actions upon the bonds for misconduct, neglect, and wrongful acts, have remained

⁷ *Opinion*, pg. 9.

largely unchanged through the decades,”⁸ so it is not surprising that Mr. Rasmussen cannot find any authority to support his novel interpretation of that statute.

Mr. Rasmussen claims that the “prosecuting attorney is given the responsibility of bringing actions upon official bonds to recover public funds that were illegally expended or otherwise lost by a public official.”⁹ To support this assertion, he cites to RCW 36.27.020(4), which describes his duty to:

... prosecute all criminal and civil actions in which the state or the county may be a party, defend all suits brought against the state or the county, and prosecute actions upon forfeited recognizances and bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county.”

Simply because a legal proceeding is Mr. Rasmussen’s duty *to prosecute*, however, does not mean that he is empowered to initiate lawsuits unilaterally without the authorization of the Board pursuant to RCW 36.32.120(6).

⁸ *Petition*, pg. 13.

⁹ *Petition*, pg. 17.

Further, Mr. Rasmussen makes no attempt to explain how the Officers' bonds were forfeited or how he could possibly claim that the Officers owed the County a "debt, fine, penalty, or forfeiture" without there having been any adjudication as to that allegation. In addition to being the prosecutor, Mr. Rasmussen appears to view himself as the judge, jury, and executioner of Stevens County; however, he provides no support for that perspective anywhere in statute or case law.

Mr. Rasmussen argues that "corrupt or malicious motives are not required to maintain an action on an official bond" pursuant to RCW 42.08.020, but he fails to acknowledge that "misconduct or neglect of duty" *are* required to maintain an action on an official bond per RCW 42.08.020. Mr. Rasmussen did not allege misconduct or neglect of duty in his lawsuit; instead, he claimed that the Officers were subject to strict liability. (Mr. Rasmussen cites to a new case, *State v. Gallagher*,¹⁰ for the first time on

¹⁰ 15 Wn.App. 267, 274-75, 549 P.2d 499 (1976).

appeal, which discusses the distinction between the crimes of malfeasance and misfeasance; however, this does not seem helpful given that Mr. Rasmussen never alleged a crime or any type of -feasance.)

ANSWER TO ARGUMENT B:

“The Court of Appeals Rendered RCW 36.32.060, the Statute Upon Which This Action Was Based, a Nullity.”

Mr. Rasmussen claims that Division III’s decision rendered RCW 36.32.060 “meaningless or superfluous.” Here, as throughout this proceeding, Mr. Rasmussen *assumes* that RCW 36.32.060 provides an independent cause of action, but he has never been able to cite to any authority to support that assumption nor has he ever explained how the plain language of the statute could be construed to create one. RCW 36.32.060 merely requires specific language to be included in an officer’s bond; where an officer has posted a bond containing that specific

language RCW 36.32.060 is fulfilled.¹¹ It is undisputed that all three officers posted the appropriate bond. Because Mr. Rasmussen provides no legal authority for his claim that RCW 36.32.060 provides a cause of action independent of RCW 42.08.020, this Court may disregard it.¹²

ANSWER TO ARGUMENT B(1):

“County Commissioners Are Unique Officers Who Possess Both Legislative and Executive/Administrative Functions.”

Mr. Rasmussen makes a new argument for the first time on appeal that individual officers have a fluctuating level of personal liability depending on whether they cast a vote for an issue where the collective Board is serving a legislative function

¹¹ *In re Recall of Sandhaus*, 134 Wn.2d 662, 670-71, 953 P.2d 82 (1998).

¹² “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, as found none.” *Frank Coluccio Const. Co. v. King County*, 136 Wn.App. 751, 779, 150 P.3d 1147 (2007)(quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). “A failure to cite authority constitutes a concession that the argument lacks merit.” *State v. McNeair*, 88 Wn.App. 331, 340, 944 P.2d 1099 (1997).

or an executive/administrative function. Mr. Rasmussen cites (for the first time on appeal) to the dissent in *Miller v. Pacific County*¹³ for this assertion. It can be inferred that no controlling authority exists.

Mr. Rasmussen troublingly fails to disclose, however, that the dissent in *Miller* makes a distinction between legislative functions vs. executive/administrative functions to suggest that the nature of the immunity might vary (in contradiction to the holding of the majority). Justice Utter concludes: “I would hold that the commissioners, acting here in their administrative capacity, hold only a qualified privilege which may be defeated by bad faith or malice.”¹⁴ For the purposes of this case, then, this is a distinction without a difference because no bad faith or malice was ever alleged, and while Justice Utter disagrees with the majority opinion’s decision regarding absolute immunity for legislative actions, arguing instead for qualified immunity, the

¹³ 91 Wn.2d 744, 753-54, 592 P.2d 639 (1979).

¹⁴ *Miller*, 91 Wn.2d at 757 (Utter, C.J., dissenting).

dissent surely does not advocate the strict personal liability argued by Mr. Rasmussen.

ANSWER TO ARGUMENT B(2):

“A Special Bond Statute Protects the County and Its Constituents From Official Misconduct With Respect to the Administration and Management of County Funds and Accounts.”

Mr. Rasmussen, in another new argument on appeal, claims that “[t]he bonds that county commissioners post are unrelated to their legislative duties,” and “[t]he bonds secure only the proper performance of their executive/administrative functions of managing county funds and accounts, and overseeing the care and use of county property.” Mr. Rasmussen cites to no legal authority for this interpretation of the statutes, either, beyond simply asserting that this interpretation is inherent in RCW 36.32.60; therefore, this Court may disregard it.¹⁵

¹⁵ *Frank Coluccio*, 136 Wn.App. at 779; *McNeair*, 88 Wn.App. at 340.

ANSWER TO ARGUMENT B(3):

“RCW 36.32.060 Creates Individual Liability For Illegal Gifts of Public Funds.”

In this section, Mr. Rasmussen simply repeats the same contention that he has repeatedly failed to support throughout this proceeding. On page 23, he claims, “Under both RCW 36.32.060 and RCW 42.08.020, each commissioner is liable under his bond for his personal vote.” He cites to no authority.

Mr. Rasmussen argues that *State v. Levy*,¹⁶ cited by the *Opinion* is inapplicable because the ultimate decision as to the individual in the case was based on the rule of lenity as applied to criminal statutes; however, this was not the basis for Division III’s reference to this case. *Levy* was cited for the proposition that “an individual county commissioner cannot be held liable for actions taken by the board as a body.”¹⁷ Mr. Rasmussen sidesteps that point (which is the only relevant point) in order to

¹⁶ 8 Wn.2d 630, 113 P.2d 306 (1941).

¹⁷ *Opinion*, pg. 7.

discuss the irrelevance of lenity, which was not referenced by Division III in its *Opinion*.

ANSWER TO ARGUMENT B(4):

“Immunity is Not Conferred Upon a Commissioner or the Sureties on the Official Bond for Ordering the Illegal Payment of Public Funds by a Majority Vote of the Board in a Public Meeting.”

On page 25, Mr. Rasmussen claims, “RCW 36.32.060 imposes personal liability for an individual’s vote to deter a majority of the board from ordering, approving, or auditing an illegal gift of public funds.” As ever, he cites to no authority.

In this section, Mr. Rasmussen appears to argue that the decision at issue was an executive/administrative action by the Board, not a legislative one, but he does so rather half-heartedly without reaching the conclusion necessitated by that assertion, because to do otherwise would require him to argue that qualified immunity (rather than absolute immunity) would apply, and his claim is based on strict liability, which is not served by a conclusion in favor of *any kind* of immunity.

ANSWER TO ARGUMENT B(5):

“Commissioners Are Liable Upon Their Official Bonds Despite Not Physically Handling Public Funds.”

Once again, Mr. Rasmussen merely asserts that RCW 36.32.060 is an independent cause of action that does not require the operation of RCW 42.08.020, but he cites to no authority for this conclusion, and instead simply asserts that Division III’s *Opinion* “violates separation of powers” without further explanation.

IV. CONCLUSION

Despite the sound and fury of Mr. Rasmussen’s *Petition for Review* (including a variety of new arguments made for the first time to this Court), the fact remains that Mr. Rasmussen provides no support for his theory that individual members of governing bodies are strictly and personally liable for the collective decisions of the body as a whole.

Division III’s *Opinion* does not conflict with any decision of this Court or any other court of appeals. It does not raise a

significant question under the Constitution of the State of Washington or the United States. It does not involve an issue of substantial public interest. Therefore, this Court should deny Mr. Rasmussen's *Petition for Review*.

The undersigned certifies that the foregoing brief contains 2,712 words not including the appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and this certification of compliance.

Respectfully submitted this 26th day of May, 2022,

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