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**SUPREME COURT OF THE
STATE OF WASHINGTON**

STEVENS COUNTY, WASHINGTON, EX REL TIM RASMUSSEN; AND TIM RASMUSSEN, IN HIS OFFICIAL CAPACITY AS PROSECUTING ATTORNEY OF STEVENS COUNTY, WASHINGTON,

Petitioners,

v.

TRAVELERS SURETY AND CASUALTY COMPANY OF AMERICA; UNITED STATES FIRE INSURANCE COMPANY,

Defendants,

DONALD L. DASHIELL, IN HIS PERSONAL CAPACITY; WESLEY LEWIS MCCART, IN HIS PERSONAL CAPACITY; AND STEVEN LYNN PARKER, IN HIS PERSONAL CAPACITY,

Respondents.

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

PETITION FOR REVIEW

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I. INTRODUCTION

This case involves an action against county commissioners and their official bonds for unconstitutional gifting of public funds. Division Three of the court of appeals reversed judgment against the individual commissioners, promising future county commissioners “that they will not be removed from office and subject to financial liability” for making similar illegal gifts. *Stevens County ex rel. Rasmussen v. Travelers Surety and Casualty Company of America*, ___ Wn. App. 2d ___, ___ P.3d ___, 2022 WL 965155 ¶ 28 (Div. III, Mar. 31, 2022) (*Rasmussen*).

In granting this license to gift public funds to future commissioners, Division Three misapplies cases issued by this Court, ignores relevant cases issued by both this Court and Division Two, renders a statute superfluous and void, and frees the office of county commissioner from Const. art. XI, § 5’s strict accountability mandate. Review of this case is proper pursuant to RAP 13.4(b)(1)-(4). Reversal of the appellate court’s decision

is required by the authorities cited herein and in the brief of respondent.

II. IDENTITY OF PETITIONER

Stevens County and Stevens County Prosecuting Attorney Tim Rasmussen (collectively Prosecutor Rasmussen) ask for review of the decision designated in part III. Prosecutor Rasmussen was plaintiff in the trial court and respondent in the court of appeals.

III. COURT OF APPEALS DECISION

The court of appeals reversed the trial court's orders on summary judgment and remanded with instructions to vacate the judgment issued against the three commissioners and to grant summary judgment in their favor in an opinion filed March 31, 2022. A copy of the opinion is in the Appendix.

IV. ISSUES PRESENTED FOR REVIEW

- A. Whether granting immunity to county commissioners for their unconstitutional gifting of public funds presents an issue of substantial public interest? RAP 13.4(b)(4).

- 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).
- 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 County*, 91 Wn.2d 744, 592 P.2d 639 (1979). RAP 13.4(b)(1).
- 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).

V. STATEMENT OF THE CASE

Steven Parker, Wesley McCart, and Donald Dashiell (collectively "Commissioners") were duly elected Stevens County Commissioners. CP 20 ¶¶ 3.5-3.7, 28 ¶¶ 3.5-3.7, 117-169. At the start of their respective terms, each posted the bond required by RCW 36.32.060 and RCW 36.16.050(5). CP 170-

189. Official bonds were in effect at all times relevant to this action. CP 49 ¶¶ 4 & 6, 55 ¶ 4, 170-189, 409-428.

The Commissioners controlled all county funds, including a restricted account dedicated to providing assistance to homeless persons. *See generally* RCW 36.22.178, .179, and .179.1 (affordable housing for all surcharge); RCW 36.32.120(5) and (6); chapter 43.185C RCW. On December 29, 2014, the Commissioners authorized \$50,000 of this restricted account to be paid to Habitat for Humanity—Colville Valley Partners (Habitat). CP 40 ¶ 5.10; CP 436. They approved three separate reimbursement requests, issuing payments that Habitat could use for any purpose it desired. CP 438, 440, 453, 455, 566:21-567:2. The Commissioners authorized an additional \$50,000 of this restricted account for the Casey McKern Pay It Forward Foundation (Foundation) on February 20, 2017, and approved the processing of this gift on June 5, 2017. CP 444, 446, 453. The Commissioners did not seek any legal advice regarding the

propriety of these disbursements of public funds, nor did the County receive any consideration in exchange for these funds.

The foregoing payments were to reimburse Habitat and the Foundation for expenses incurred in construction of the Pay It Forward House (House). Habitat, which participated in the early stages of construction of the House, “is an ecumenical Christian housing ministry working to build simple, decent, affordable houses in partnership with those in need.” CP 325. The Foundation, which was to own and operate the House, was formed for general charitable purposes, described as “[a]ssisting individuals and families experiencing distress and supporting efforts that strengthen communities.” CP 482. Both Habitat and the Foundation are nonprofit corporations. CP 482, 292-501.

The House was intended to be a home for Casey McKern, a Stevens County resident who was rendered quadriplegic in a tragic diving accident. CP 473. When the House was built, Mr. McKern was not homeless, and neither Mr. McKern, Habitat, nor the Foundation intended the House to accommodate additional

residents. *See generally* CP 323, 325, 473, 480, 531, 533:2-12, 534:3-8, 535:11- 536:13, 585:4-24, 586:21-587:2, 587:9-588:9-3. The building permit application for the House described it as a “Residential House,” CP 488, the House was built in an area zoned for “Single Family Residences, CP 489, and the certificate of occupancy is in the name of Mr. McKern himself as “owner of the building” rather than the Foundation. *Id.* Since the House was built, Mr. McKern has hosted several people for short stays so they could go hunting with him, but only one person who “physically lived there” for a longer period of time. CP 542:20-23. There is no indication that any of these individuals were homeless. CP 340, 543:5-546:21.

Nothing prevents the Foundation from changing the purpose or use of the House. CP 532:13-534:1, 539:10- 540:23, 552, 565:22-25. There are no agreements with Stevens County that limit the use of the House in any way. CP 539:10-540:9. The Foundation’s “plan is ultimately to gift the home to [Mr. McKern] at some point in the future.” CP 552:2-3. While the

Foundation currently plans to include a stipulation that the House “comes back to the foundation if something should happen to [Mr. McKern] or he can no longer occupy it[,]” there is nothing that would prevent the Foundation from gifting it to Mr. McKern outright or making another private disposition of the property. CP 552:4-20.

The Commissioners authorized giving \$30,128 from the homelessness account to Joe and Alena Boharski (Boharskis) for reimbursement of expenses they previously paid to move their house on July 9 and 10, 2018. CP 450, 580:20-581:1. The Commissioners authorized giving an additional \$198.25 to the Boharskis for payment of “fees associated with the relocation of [their] residence” on July 23, 2018. CP 451. Both payments were processed on August 2, 2018. CP 351-42. Again, the Commissioners did not seek any legal advice regarding the propriety of these disbursements of public funds, nor did the County receive any consideration in exchange for these funds.

Before receiving the funds, the Boharskis had already paid to have their house moved, and as a result, they were free to use the money from the county however they wanted. CP 582:7-24, 343-344, 348-49. *See also* CP 599:15-22. They could have used the money to go to Vegas, or they could have sold the house and pocketed the proceeds. CP 582:7-10.

The Boharskis' home, which is located on the bank high above the Kettle River, had to be moved further from the riverbank after subsidence caused by flooding runoff rendered the house uninhabitable. CP 341, 350. The Boharskis never asked or applied for money from Stevens County, and they hired a contractor to move their house before the prospect of receiving county funds was raised. CP 343-45. They did not request the funds. Instead, Commissioner Parker suggested to them that the county might have funds to help pay for the expense of moving their home. CO 576:11-12, 579:23-580:4.

The Commissioners did not review the assets and liabilities of the Boharskis, nor did they do anything to determine

whether they had sufficient resources to complete the moving and other repairs to their house without county funds. CP 581:2-13. In actuality, the Boharskis had resources to move their house and complete the other needed repairs. The Boharskis had equity in the house and the property on which it was located, CP 355, 502, 510:6-9, 511:22-25, significant retirement accounts, CP 511:22-25, 516:3-4, 517:16-18, 518:25-519:1, 525:1-8, proceeds from the sale of an Alaska house, CP 512:1-515:3, and money in a savings account that was controlled by Mrs. Boharski, CP 525:1-8, as well as Mr. Boharski's earnings. CP 522:19-523:12.

Following the payments to Habitat, the Foundation, and the Boharskis, the Washington State Auditor's Office (Auditor) conducted an accountability audit of Stevens County. The Auditor determined that the payments made to Habitat, the Foundation, and the Boharskis from the Stevens County homelessness funds were unlawful gifts of public funds. CP 456 (Report No. 1023305 (Feb. 21, 2019)). The Auditor's Office advised the Commissioners that they could avoid future unlawful

gifts of public funds by seeking legal counsel from the prosecuting attorney “before approving extraordinary or unusual expenditures of homelessness funds.” CP 462. The Commissioners rejected this recommendation, stating that, “While many things can and should be sent to legal counsel for review, it is unusual and inappropriate to send spending requests to the prosecutor for determination.” CP 465.

After the receipt of the audit, Prosecutor Rasmussen formally requested reimbursement to the county of the unlawful gifts. When payment was not forthcoming, he initiated an action pursuant to RCW 36.32.060 and RCW 42.08.020 in the name of Stevens County upon the Commissioners’ sureties and against the Commissioners personally.¹ (Collectively “Defendants.”) CP

¹The county commissioners are personally liable for any judgment in excess of the face amount of the bonds. *See* RCW 42.08.020 (authorizing suit against the public officer individually); RCW 42.08.050 (limiting surety’s liability to the face amount of the bond, but not otherwise limiting public officer’s liability); *Whatcom County v. Schuman*, 12 Wn.2d 290, 294, 121 P.2d 378 (1942) (affirming “joint and several

14-30. Prosecutor Rasmussen's action was mandated by RCW 36.27.020(4),² and brought for proper reasons. *See generally* CP 31, 64, 95-96, 291.

The action on the bonds was resolved in the trial court on summary judgment, with an award to the county against all Defendants. CP 275, 1041, 1062. Only the Commissioners appealed the judgment, not the sureties. CP 1, 1041, 1074. Division Three of the court of appeals reversed the grant of summary judgment and the award solely as to the Commissioners and remanded the case with instructions to enter summary judgment in their favor. *See Stevens County ex rel. Rasmussen v. Travelers Surety and Casualty Company of*

judgment" against county commissioners as well as bonding companies).

² The prosecuting attorney may not bring an action on behalf of the county to recover the funds from the recipients without the legislative authorities' permission. *See generally* RCW 36.32.120(6). An action against the recipients is not required in conjunction with or as a condition precedent to an action on the bonds. *See City of Tacoma v. Peterson*, 165 Wash. 461, 469, 5 P.2d 1022 (1931).

America, ___ Wn. App. 2d ___, ___ P.3d ___, 2022 WL 965155
(Div. III, Mar. 31, 2022) (*Rasmussen*).

VI. REASONS WHY REVIEW SHOULD BE ACCEPTED

A. Actions on Official Bonds Are Governed by a Robust Body of Case Law That The Court of Appeals Largely Ignored

In its opinion, the court of appeals indicates distaste for this action on the Commissioners' bond terming it a "novel approach," and hinting that the action was brought for improper reasons. *See Rasmussen* at ¶ 1, 6 (Prosecutor Rasmussen was "armed with the auditor's report."). Actions upon official bonds, however, have existed since statehood and prosecuting attorneys are charged with asserting claims against the bonds on behalf of the counties and the constituents they serve.

The delegates, who met for Washington's 1889 Constitutional Convention, were selected by a populace which had a general distrust of representative government and a strong fear that government officials would be corrupted through bribes

and other practices. Robert Utter and Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* at 11 (2002). The delegates addressed their concerns within the constitution, adopting strict limits upon the expenditure of public funds and strong deterrents to violating these provisions. *See* Const. art. XI, § 5 (strict accountability by county officers for all public monies); Const. art. VIII, § 7 (prohibiting gifts of public funds or property); Const. art. XI, § 14 (prohibiting using public funds for any purpose not authorized by law by any officer having “possession or control thereof,” and making violations a felony).

Statutes implementing the constitutional anti-corruption provisions were in force shortly after the constitution was adopted. These statutes, which required certain elected officials to post bonds conditioned upon the faithful discharge of their duties and permitted actions upon the bonds for misconduct, neglect, and wrongful acts, have remained largely unchanged through the decades. *Compare* RCW 36.32.060 and RCW 36.16.050 *with* Laws of 1893, ch. 75, § 7; RCW 42.08.020 *with*

Laws of 1877, p. 135, § 656; RCW 42.08.080 with Laws of 1890, p. 34, § 3; and RCW 42.12.010(8) *with* Laws of 1866, p. 28, § 2.³ The bonds protect the local government entity and its constituents from abuse of the extraordinary power vested in public officials by virtue of their office. *Nelson v. Bartell*, 4 Wn.2d 174, 185-86, 103 P.2d 30 (1940).

Despite this Court’s relatively high jurisdictional threshold of \$200 for actions seeking the recovery of money,⁴ Const. art. IV, § 4, many appeals regarding claims against official bonds were heard during the first century of statehood. These cases established that the liability of public officials and their bonds is akin to that of an insurer. *See State ex rel. O’Connell v. Engen*, 60 Wn.2d 52, 55-56, 371 P.2d 638 (1962) (stating “the law is settled that public officials having the official custody of public funds are insurers, act of God or act of a public enemy

³The modern statutes and the historical statutes are both reproduced in the appendix.

⁴\$200 in 1889 is equivalent to \$6,250.08 in today’s dollars.

alone excepted”; and collecting citations to “a long line of cases” supporting this proposition). The insurer-like standard of liability for public officers serves the “salutary” purpose of safeguarding public funds. *Pierce County ex rel. Dunbar v. Campbell*, 176 Wash. 203, 209, 28 P.2d 785 (1934). Such liability is justified because public officers “know well, on assuming their positions, the hazards to which they are exposed, and they voluntarily assume the risks, and are paid for so doing.” *Fairchild v. Hedges*, 14 Wash. 117, 124, 44 Pac. 125 (1896).⁵

Public officials and their bonds were liable for innocent as well as criminal lapses, regardless of personal gain or the exercise of due care. *See generally Engen*, 60 Wn.2d at 55; *City of Shelton v. Clapper*, 23 Wn.2d 811, 814, 816, 162 P.2d 445

⁵ Public officials liability insurance can provide peace of mind and protect a commissioner’s personal assets should the commissioner authorize, audit, or order, an illegal expenditure. *See* International Risk Management Institute, Inc., Glossary, Public Officials Liability Insurance (available at <https://www.irmi.com/term/insurance-definitions/public-officials-liability-insurance> (last visited Apr. 15, 2021)).

(1945); *Whatcom County v. Schuman*, 12 Wn.2d 290, 295, 121 P.2d 378 (1942); *Campbell*, 176 Wash. at 209; *Fairchild*, 14 Wash. at 119. The *Rasmussen* opinion, at least as to county commissioners, is contrary to these cases. *See generally* 2022 WL 965155 at *4-5 ¶¶ 5-6 (no surety liability absent corrupt or malicious motives).

This Court’s unbroken precedent that corrupt or malicious motives are not required to maintain an action on an official bond is consistent with the plain language of RCW 42.08.020. This statute makes a bond payable for “official misconduct or neglect of duty.” *Id.* The phrase “official misconduct,” which is a synonym for “malfeasance,” is a comprehensive word that includes the commission of an act that is positively unlawful. *Hoflin v. Ocean Shores*, 121 Wn.2d 113,134, 847 P.2d 428 (1993); Webster’s New World Dictionary 857 (College ed. 1986). Malfeasance is punishable regardless of motive or lack of personal gain. *See State v. Gallagher*, 15 Wn. App. 267, 274-

75, 549 P.2d 499 (Div. II 1976) (construing elements of a violation of Const. art. XI, § 14).

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. *See* RCW 36.27.020(4). In discharging this responsibility, prosecuting attorneys are guided by both appellate decisions and attorney general opinions. *See* RCW 43.10.030(4). The attorney general advised that actions upon official bonds were proper when a board of commissioners authorized payment of money in violation of statutes or the constitution, and that a grant or gift to a nonprofit private association violates article VIII, § 7, even though its ultimate purpose might be to benefit persons who are eligible for direct assistance under the constitution. 1973 Op. Att’y Gen. No. 18; 1951 Op. Att’y Gen. No. 114.

Actions on official bonds became rarer as the years passed. Numerous factors contribute to this decrease, including improved accounting systems and technology, greater

availability of insurance policies, voluntary restoration of funds,⁶ and legislative exceptions to strict liability. *See, e.g.*, RCW 39.58.140 (removing strict liability from treasurer for loss of funds deposited in a public depository).

Three additional factors have all but eliminated actions against the official bonds of county commissioners. First, county commissioners are educated regarding the constitutional prohibition upon gifts of public funds.⁷ Second, commissioners have ready access to a legal advisor—the prosecuting attorney. And third, commissioners rarely make expenditures in violation of the constitutional prohibition upon gifts of public funds. *See generally* Office of the Washington State Auditor Accountability

⁶ Voluntary restoration avoids the vacancy in office created by a judgment on the bond. *See* RCW 42.12.010(8).

⁷ *See, e.g.*, Municipal Research and Services Center, *Knowing the Territory: Basic Legal Guidelines for Washington City, County and Special Purpose District Officials* at 16 - 18 (Jan. 2022 e.d.) (available at <http://mrsc.org/getmedia/1e641718-94a0-408b-b9d9-42b2e1d8180d/Knowing-The-Territory.pdf.aspx?ext=.pdf> (last visited Apr. 19, 2022)).

Audit Reports of County Governments from 2005 through April 15, 2022 (gift of county funds found in only one of 591 audits, *i.e.*, No. 1023305, which gave rise to this action).⁸

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

This action upon the Commissioners’ official bonds was brought pursuant to a “commissioner specific” statute, RCW 36.32.060. *See* CP 14-30. While the court of appeals quoted this statute in its opinion, it relied upon RCW 36.16.050, a general bond statute not cited in the complaint, in reversing the trial court. *Compare Rasmussen*, at ¶ 12 (quoting RCW 36.32.060), *with* ¶¶ 11, 15, and 23 (discussing and applying RCW 36.16.050). In doing so, the court of appeals nullifies RCW 36.32.060 and renders it meaningless or superfluous. The court did this by mislabeling the management of county funds a legislative function, and then granting a form of discretionary

⁸ Detailed information in support of this statement may be found in the appendix.

executive immunity or legislative immunity for resolutions ordering the disbursement of funds that are approved by a majority of the board during regular public meetings. *See generally Rasmussen* at ¶¶ 15-19.

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

While a board of county commissioners acts in a legislative capacity in setting budgets and enacting taxes, the approving of specific expenditures is an executive or administrative function:

RCW 36.32, and particularly 36.32.120, reveals that county commissioners perform a variety of functions, including both legislative and executive/administrative duties. General legislative responsibilities include adoption of formal budgetary and taxing enactments and general police power ordinances and resolutions. However, the commissioners also are charged with the executive/administrative functions of managing county funds and accounts, prosecuting and defending actions by and against the county, and overseeing the care and use of county property.

Miller v. Pacific County, 91 Wn.2d 744, 753-54, 592 P.2d 639 (1979) (Utter, C.J., dissenting). *Accord State ex rel. Bain v. Clallam County Board of County Commissioners*, 77 Wn.2d 542, 548, 463 P.2d 617 (1970) (“Within its sphere of responsibility, the board of county commissioners exercises the county’s legislative power along with certain executive and, to a very limited degree, perhaps some judicial authority.”).

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

In recognition that county commissioners are unique, the Legislature discharged its responsibility under Const. art. XI, § 5 by adopting a special bond provision for their office. The bonds that county commissioners post are unrelated to their legislative duties. The 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:

The bond of each county commissioner shall be payable to the county, and it shall be conditioned that the commissioner shall well and faithfully discharge the duties of his or her office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services.

RCW 36.32.060.⁹

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

RCW 36.32.060 unambiguously applies to the actions and/or decisions of an individual commissioner: “The bond of *each* county commissioner shall be payable to the county, and it shall be conditioned that *the* commissioner shall faithfully discharge the duties of *his or her* office.” [Emphasis added.] RCW 42.08.020, the enforcement mechanism for violations of RCW 36.32.060, similarly applies to “a public officer” and “his or her official bond.”

⁹ Although the official bonds do not contain this language, both the Commissioners and their sureties remain liable for a violation of RCW 36.32.060. *See* RCW 42.08.090.

Under both RCW 36.32.060 and RCW 42.08.020, each commissioner is liable under his bond for his personal vote. A commissioner who does not personally approve, audit, or order paid an unlawful expenditure of public funds has no exposure for the acts of the board. Ratification of a commissioner's improper vote by another commissioner does not relieve the commissioner or his sureties of liability. *Cf. Kittitas v. Travers*, 16 Wash. 528, 529, 48 Pac. 340 (1897) (county commissioners' approval of the treasurer's selected bank did not relieve the treasurer or his sureties from liability).

Here all three commissioners tendered individual votes approving the unconstitutional gifts of public funds. All three commissioners ordered funds to be paid to the Boharskis and to nonprofit corporations for the House out of the restricted homelessness account. All three commissioners audited the claims for reimbursement filed by the Boharskis, Habitat, and the Foundation. All three commissioners, along with their sureties,

were properly required to reimburse Stevens County for the unlawful and unconstitutional gifts of public funds.

The court of appeals voids the unambiguous personal liability language based upon the inapplicable case of *State v. Levy*, 8 Wn.2d 630, 113 P.2d 306 (1941). See *Rasmussen* at ¶ 16. The criminal statute at issue in *Levy*, Rem. Rev. Stat., § 2585 made the failure to make a true entry of any material matter in any public record or account, forgery. *Levy*, 8 Wn.2d at 649. The entries that Levy was accused of not making were required by two statutes. These statutes, however, placed the requirement to make the entry on the board, rather than upon an individual commissioner. *Id.* at 649-50 (quoting Rem. Rev. Stat. (Sup.) § 11294 and Rem. Rev. Stat. § 4072). This Court, while conceding that the sections of the statute *might* support individual liability, applied the rule of lenity to resolve the question in favor of the accused. *Id.* at 651. The rule of lenity, however, has no applicability to unambiguous non-criminal statutes, such as RCW 36.32.060 and RCW 42.08.020.

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

The commissioner's bond statute holds each county commissioner responsible for actions that require ratification of his or her individual vote by a majority of the board. *See generally Stoddard v. King County*, 22 Wn.2d 868, 881-85, 158 P.2d 78 (1945) (board of county commissioners can act authoritatively only by resolutions properly spread upon the minutes and joined in by a majority of the board); RCW 36.32.060 ("approve, audit, or order paid"); RCW 36.32.120(5) (powers of board extends to approving, auditing, and/or ordering paid any claim against the county). 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. The court of appeals, relying upon inapposite opinions, claims that the collective action needed to approve, audit, or order such a gift, confers legislative or discretionary

executive immunity upon the commissioners. *See Rasmussen* at ¶¶ 17-19.

Individual immunity from tort claims for actions by a legislative body was first recognized by this Court in *Miller v. Pacific County*, 91 Wn.2d 744, 592 P.2d 639 (1979). This case involved a “political controversy between elected officials” that the plaintiff sought to “elevate” “into the realm of an intentional tort.” *Id.* at 746. The case was predicated upon actions taken by the commissioners “in their legislative capacity” that were not prohibited by the constitution or statutes. *Id.* at 747. This Court declined tort recovery in this unusual case, holding that public policy bars courts from intervening in the political process in the manner urged by the plaintiff. *Id.* at 748.

Fabre v. Town of Ruston, 180 Wn. App. 150, 321 P.3d 1208 (2014), involved the adoption of two ordinances related to games of chance. *Id.* at 153. After the ordinances were invalidated or repealed, a casino owner filed suit against the town and members of the town counsel for tortious intentional

interference with business expectancy. *Id.* at 156-57. The claim was dismissed on the grounds that the enactment of an ordinance is a purely legislative act for which absolute immunity applies. *Id.* at 162-63. Absolute immunity applies in this situation to preserve separation of powers between the courts and the legislative branch of government. *Id.* at 163 (quoting *Miller*, 91 Wn.2d at 746-48).

The instant case involves executive or administrative acts, not legislative ones.¹⁰ It is an action upon an official bond pursuant to a statute that imposes individual liability akin to an insurer, not tort liability. This action furthers the public policy contained in article XI, § 5, rather than embroiling the courts in legislative branch affairs. The court of appeals' improper reliance upon *Miller* and *Fabre* to immunize the Commissioners

¹⁰ The legislative action taken by the Commissioners with respect to the homelessness account was the adoption of the county's Homelessness Plan. *See* CP 630-46.

and all “future commissioners” must be reversed. *See Rasmussen* at ¶¶ 18-19, 28.

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

Article XI, § 5 directs the Legislature, not the courts, to adopt statutes holding specific county officials, including county commissioners, strictly accountable for all public monies that may “officially come into their possession.” Recognizing that, while commissioners do not personally collect fees, maintain physical custody of county funds, or disburse the same, they bear the ultimate responsibility of all county funds. *See generally* RCW 36.32.120(5) and (6). No money can be paid out from county accounts without the involvement and express approval of the county commissioners. *See* RCW 36.22.050 (county auditor may only draw a warrant on the county treasurer when the claim is allowed by the county commissioner); RCW 36.22.040 (auditor required to present all claims and demands against the county “to the board of county commissioners for

their examination and allowance”); RCW 36.29.010(1) (county treasurers may only disburse money on a warrant issued and attested to by the county auditor). The legislature, therefore, mandated that county commissioners’ official bonds render them and their sureties liable for their “approv[ing], audit[ing], or order[ing] paid any illegal, unwarranted, or unjust claim against the county for personal services.” RCW 36.32.060.

The court of appeals, substituting its judgment for that of the Legislature, nullifies RCW 36.32.060. Ignoring the express language that makes commissioners liable for public monies they constructively control, the court holds that absolute liability only applies to individuals who physically handle or collect public money. *Rasmussen* at ¶ 25. This holding violates separation of powers and presents a significant question under the state constitution that requires further review by this Court.

VII. CONCLUSION

Actions upon official bonds are rare in modern times. Nonetheless, they are appropriate when county commissioners gift public funds. This Court must act to ensure that taxpayer monies paid to operate county government are not misdirected to other purposes.

This document contains 4799 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of April,
2022

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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to the attorney of record for the respondent true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

4-27-22

Date

s/Therese Kahn

Signature

2022 WL 965155

Only the Westlaw citation is currently available.
Court of Appeals of Washington, Division 3.

STEVENS COUNTY, Washington EX REL.
Tim RASMUSSEN; and Tim Rasmussen, in
his Official Capacity as Prosecuting Attorney
of Stevens County, Washington, Respondents,

v.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; and [United
States Fire Insurance Company](#), Defendants,
Donald L. Dashiell, in his Personal
Capacity; Wesley Lewis McCart, in his
Personal Capacity; and Steven Lynn Parker,
in his Personal Capacity, Appellants.

No. 37812-8-III

|

FILED MARCH 31, 2022

Synopsis

Background: County prosecutor sued county commissioners and sureties on their official bonds claiming they were individually liable on their bonds for voting to approve unconstitutional gifts to homeless fund. The Superior Court, Stevens County, [Maryann C. Moreno](#), J., entered summary judgment in favor of prosecutor. Commissioners appealed.

Holdings: The Court of Appeals, [Pennell](#), C.J., held that:

[1] commissioners could not be held individually liable on official bonds, and

[2] constitutional requirement of strict accountability of county officers for public money coming into their possession did not apply.

Reversed and remanded with instructions.


West Headnotes (11)

[1] Appeal and Error  **Extent of Liability**

Whether county commissioners could be held personally liable on their bonds for official action taken collectively as a board was a question of law reviewed de novo.

[2] Statutes  **Language and intent, will, purpose, or policy**

The first and best resource for discerning legislative intent is the language used by the legislature.

[3] Counties  **Accrual or Release of Liability by Breach or Fulfillment of Conditions****Public Employment**  **Extent of liability**

County commissioners who had approved allegedly unconstitutional gift of public money to homeless fund could not be held individually liable on official bonds; commissioners acted as legislative body, bonds covered commissioners in individual capacity, and propriety of their votes could not make them liable under terms of their official bonds. *Wash. Const. art. 8, § 7; Wash. Const. art. 11, § 5; Wash. Rev. Code Ann. §§ 36.16.050, 36.32.010, 36.32.060, 36.32.120(6), 36.32.130, 36.40.100.*

[4] Counties  **Mode of action in general**

A board of county commissioners can act authoritatively only by resolutions properly spread upon the minutes and joined in by a majority of the board. *Wash. Rev. Code Ann. §§ 36.32.010, 36.32.130.*

[5] States  **Privileges and exemptions**

When elected officials make legislative decisions as a governing body, their decisions are immune from civil liability.

[6] States ➔ Privileges and exemptions

Immunity applies even where the government legislates arbitrarily, with improper motivations, in bad faith, or without making a considered and reasoned policy analysis.

[7] States ➔ Privileges and exemptions

When individual members of a legislative body engage in tortious conduct, personal liability can be imposed. *Wash. Rev. Code Ann.* §§ 4.24.470, 42.30.120.

[8] Municipal Corporations ➔ Donations, gratuities, and charitable purposes

In case of unconstitutional gift of public funds, action may be taken to recover funds from their recipient. *Wash. Const. art. 8, § 7; Wash. Const. art. 11, § 5.*

[9] Counties ➔ Limitation on use of funds or credit**Public Employment** ➔ Custody and care of public funds and other property

Constitutional requirement of strict accountability of county officers for public money coming into their possession did not apply to commissioners' involvement in legislatively authorizing allegedly unconstitutional appropriation for homeless fund; commissioners themselves never handled public money so as to expose themselves to absolute liability. *Wash. Const. art. 11, § 5.*

[10] Public Employment ➔ Custody and care of public funds and other property

Outside of act of God or act of public enemy, official responsible for collecting or possessing public funds is strictly liable for loss of those funds. *Wash. Const. art. 11, § 5.*

[11] Counties ➔ Accrual or Release of Liability by Breach or Fulfillment of Conditions**Public Employment** ➔ Acts constituting breach or fulfillment of bond; accrual of liability

Mere errors of judgment or misconstruction of statutes do not meet standard for holding county commissioners individually liable on their bonds for nonministerial acts upon finding of abuse of discretion; instead, liability requires proof not only that official made error or mistake, but that error or mistake was product of corrupt or malicious motives. *Wash. Rev. Code Ann.* § 42.08.020.

Appeal from Stevens Superior Court, Docket No: 19-2-00122-2, Honorable [Maryann C. Moreno](#), Judge

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PUBLISHED OPINION

[Pennell, J.](#)

*1 ¶ 1 The Washington Constitution prohibits gifts of public funds. Historically, challenges to improper gifting have involved predisbursement injunctive actions or post payment requests for disgorgement. But when the Stevens County prosecutor suspected the Stevens County Board of Commissioners of improper gifting, he took a novel approach. He sued the commissioners individually, on their official bonds. At the trial court level, the effort was successful. The court granted summary judgment in favor of the prosecutor and held the three commissioners and their sureties

financially liable. As a result of the judgment on their bonds, the commissioners were statutorily removed from office.

¶ 2 We reverse. The alleged unconstitutional gifting was not something the Stevens County commissioners did in their individual capacities. It was done collectively by the board as a legislative body. As such, individual bond liability was not available. Furthermore, because the commissioners were not alleged to have been involved in collecting or receiving public funds, they could not be held individually liable on their bonds without some sort of culpable misconduct. No such allegation has been made. The commissioners are therefore entitled to judgment in their favor. The orders on summary judgment are reversed. We remand to vacate the judgment issued against the commissioners and for entry of summary judgment in their favor.

BACKGROUND

¶ 3 Donald L. Dashiell, Wesley Lewis McCart, and Steven Lynn Parker served as Stevens County commissioners. Each was elected to office and executed a \$20,000 public official bond. The surety for Mr. Dashiell's bond was United States Fire Insurance Company. Mr. McCart and Mr. Parker were both bonded through Travelers Surety and Casualty Company of America.

¶ 4 The bonds all contained identical language, naming the elected commissioners as principals and obliging them to

faithfully perform the duties of his/her said office or position during the said term, and shall pay over to the persons authorized by law to receive the same all moneys that may come into his/her hands during the said term without fraud or delay, and at the expiration of said term, or in case of his/her resignation or removal from office, shall turn over to his/her successor all records and property which have come into his/her hands, then this obligation to be null and void; otherwise to remain in full force and effect.

Clerk's Papers at 170, 172, 174, 178, 182, 186.

¶ 5 In early 2019, the Office of the Washington State Auditor published a report on a routine accountability audit of Stevens County's financial affairs for the years 2016 and 2017. The auditor opined that three transfers of funds under the county's homeless plan were unallowable gifts of public funds or unallowable uses of restricted funds. The funds had been

approved by the Stevens County Board of Commissioners pursuant to a public vote.

¶ 6 Armed with the auditor's report, Stevens County Prosecuting Attorney Tim Rasmussen sued on behalf of the county against the commissioners in their personal capacities, and each commissioner's bond surety. The prosecutor alleged the commissioners were individually liable on their bonds for voting to approve unconstitutional gifts.

*2 ¶ 7 The trial court agreed with the prosecutor's allegations and concluded on summary judgment that the commissioners and their sureties were liable. The court entered judgment against the commissioners and their sureties for \$130,326.25, plus prejudgment interest, taxable costs, and attorney fees. As a result of the judgment against the bonds, the commissioners were statutorily removed from office.

¶ 8 The commissioners now appeal. No appeal has been initiated by the sureties.

ANALYSIS

[1] [2] ¶ 9 The central issue before us is whether the county commissioners can be held personally liable on their bonds for official action taken collectively as a board. This is a question of law that we review de novo. *Riddle v. Elofson*, 193 Wash.2d 423, 430, 439 P.3d 647 (2019) (plurality opinion). The Washington Constitution and several statutes are relevant to our analysis. When analyzing statutes, our overarching goal is to discern legislative intent. The first and best resource for discerning legislative intent is the language used by the legislature. *In re Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wash.2d 489, 498, 210 P.3d 308 (2009).

Governing legal provisions

¶ 10 The Washington Constitution provides that “[t]he legislature ... shall provide for the strict accountability of [county] officers for all fees which may be collected by them and for all public moneys which may be paid to them, or officially come into their possession.” Wash. Const. art. XI, § 5. Our state constitution further prohibits counties and other municipalities from gifting public moneys “except for the necessary support of the poor and infirm.” Wash. Const. art. VIII, § 7.

¶ 11 The legislature has adopted multiple statutes guarding against misuse of public funds by county officials. Under [RCW 36.16.050](#), all elected county officials are required to furnish public bonds before entering office, obliging the official to

faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office, and that he or she, or his or her executors or administrators, will deliver to his or her successor safe and undefaced all books, records, papers, seals, equipment, and furniture belonging to his or her office.

The statute sets required bond amounts for various county officials. The amount required of county legislative officials ranges from \$5,000 to \$25,000, depending on county population. [RCW 36.16.050\(5\)](#).

¶ 12 [RCW 36.32.060](#) further addresses the conditions of a county commissioner's official bond, specifying that the bond shall be payable to the county and "it shall be conditioned that the commissioner shall well and faithfully discharge the duties of his or her office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services."

¶ 13 [RCW 42.08.020](#) identifies a method for injured parties to sue a public officer who has forfeited their official bond, providing that an injured party may sue the officer and their surety when the officer forfeits the bond "by official misconduct or neglect of duty."

¶ 14 Under [RCW 42.12.010\(8\)](#), an elected official shall be removed from office when a judgment is obtained against the official "for breach of the condition of his or her official bond."

Bond liability unavailable for actions taken by the board

[3] ¶ 15 The terminology in the bonds at issue in this case incorporates the conditions required by [RCW 36.16.050](#). Under the language used, a commissioner is bonded in their individual capacity. Separate bonds are taken out for each commissioner. And the language in both the bonds and [RCW 36.16.050](#) discusses actions taken by commissioners with the singular pronouns "his or her" and "he or she."

*3 [4] ¶ 16 This reference to the commissioners in their individual capacities is significant. Washington case law has long recognized that actions taken by a legislative

body are distinct from those taken by individual legislative officials. In *Stoddard v. King County*, 22 Wash.2d 868, 158 P.2d 78 (1945), our Supreme Court held that an individual county commissioner could not bind a board of county commissioners to a contract. "[A] 'board of county commissioners can act authoritatively only by resolutions properly spread upon the minutes and joined in by a majority of the board.'" *Id.* at 882, 158 P.2d 78 (quoting *Kelly v. Hamilton*, 76 Wash. 576, 583, 136 P. 1148 (1913)). Conversely, in *State v. Levy*, 8 Wash.2d 630, 649-50, 113 P.2d 306 (1941), the court held that an individual county commissioner cannot be held liable for actions taken by the board as a body.

¶ 17 The current statutory scheme governing county commissioners reflects the distinction between individual commissioners and the board acting as a legislative body. Under Washington law, boards of county commissioners are generally¹ made up of "three qualified electors, two of whom shall constitute a quorum to do business." [RCW 36.32.010](#). A board of county commissioners cannot decide a matter with only one vote. [RCW 36.32.130](#). The care for county property and management of county funds is the responsibility of the board as a legislative authority. [RCW 36.32.120\(6\)](#); [RCW 36.40.100](#). Nowhere under Washington law are individual commissioners authorized to make official appropriations.

[5] [6] [7] ¶ 18 This is also consistent with how Washington law treats the issue of immunity from suit. When elected officials make legislative decisions as a governing body, their decisions are immune from civil liability. *Miller v. Pacific County*, 91 Wash.2d 744, 747-48, 592 P.2d 639 (1979). Immunity applies "even where the government legislates arbitrarily, with improper motivations, in bad faith, or without making a considered and reasoned policy analysis." *Fabre v. Town of Ruston*, 180 Wash. App. 150, 162, 321 P.3d 1208 (2014) (citing *Miller*, 91 Wash.2d at 746-48, 592 P.2d 639). But when individual members of a legislative body engage in tortious conduct, personal liability can be imposed. *See, e.g.*, [RCW 4.24.470](#); [RCW 42.30.120](#).

¶ 19 Here, the actions complained of were taken by the commissioners as a legislative body. The commissioners approved of the homeless fund expenditures during a regular public meeting, by legislative vote. The commissioners were not acting in their individual capacities when placing their votes. Thus, regardless of whether their votes were ill advised or even unconstitutional, their votes did not constitute actions taken by the commissioners in their personal capacities. As

such, the propriety of their votes is not something that can make them liable under the terms of their official bonds.

[8] ¶ 20 If members of a legislative body vote on a measure that turns out to be illegal, the law allows for remedies. Various measures may be taken to test the constitutionality of legislative action. *See, e.g., Barde v. State*, 90 Wash.2d 470, 584 P.2d 390 (1978) (declaratory action); *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wash.2d 175, 492 P.2d 1012 (1972) (mandamus). In the case of an unconstitutional gift of public funds, an action may be taken to recover funds from their recipient. *See, e.g., State v. Guar. Trust Co. of Yakima*, 20 Wash.2d 588, 593, 148 P.2d 323 (1944). It may also be possible to recall an elected official based on an unconstitutional discretionary or legislative act. *See, e.g., In re Recall of Burnham*, 194 Wash.2d 68, 78-79, 448 P.3d 747 (2019). But there is no authority for the claim that a legislative official, such as a county commissioner, can be sued personally for official legislative actions.

*4 ¶ 21 The fact that an individual commissioner cannot be held liable for legislative actions taken by the board of commissioners does not mean their bonds serve no purpose. Throughout our state's history, public officials have been known to inappropriately receive or possess public funds, despite having no authority to do so. *See Pierce County ex rel. Dunbar v. Campbell*, 176 Wash. 203, 28 P.2d 785 (1934); *Skagit County v. Am. Bonding Co. of Baltimore*, 59 Wash. 1, 6-7, 109 P. 197 (1910). In those situations, the public was protected by actions taken against the officials' bonds.

¶ 22 The lone reported case involving county commissioners being sued on their bonds follows this historic line of precedent. *See Whatcom County v. Schuman*, 12 Wash.2d 290, 121 P.2d 378 (1942). In *Schuman*, two of Whatcom County's commissioners were involved in backroom sales of county property to private individuals. The sales did not take place through any official vote or appropriation process. The funds received from the sales were never deposited into the county treasury. The two commissioners were found liable on their individual bonds for illegally converting county property.

¶ 23 The Washington Legislature appears to have understood the limited potential of liability for individual county commissioners when setting the amounts of official bonds. RCW 36.16.050(5). Although county boards of commissioners are responsible to legislate over sizeable budgets,² individual commissioners must post bonds only in the amount of \$5,000 to \$25,000, depending on county

population. *Id.* This contrasts with bonds of other elected county officials who are responsible for accepting and maintaining public funds. A county clerk and county treasurer are required to post bonds in an amount deemed to be “double the amount of money liable to come into his or her hands.” RCW 36.16.050(3); *see also* RCW 36.16.050(8).

Constitutional strict accountability for public funds is not implicated

[9] [10] ¶ 24 The Stevens County prosecutor argues the commissioners must be held liable on their bonds because the Washington Constitution requires “strict accountability” for moneys that come into their possession. *See Wash. Const. art. XI, § 5.* Our cases have long held that, based on this constitutional provision, “public officials having the official custody of public funds are insurers.” *State ex rel. O’Connell v. Engen*, 60 Wash.2d 52, 55, 371 P.2d 638 (1962). Thus, outside of an “act of God or act of a public enemy” an official responsible for collecting or possessing public funds is strictly liable for a loss of those funds. *Id.*

¶ 25 But as relevant here, the Stevens County Board of Commissioners was not a collector or custodian of public funds. The commissioners were involved in legislatively authorizing appropriations, but they themselves never handled public money so as to expose themselves to absolute liability. *Kittitas County v. Travers*, 16 Wash. 528, 529, 48 P. 340 (1897) (The county treasurer “and not the county commissioners, is the custodian of the county money.”); *O’Connell*, 60 Wash. 2d at 57-58, 371 P.2d 638 (Absolute liability applies to a clerk and treasurer as the collector and custodian of funds, but not to a finance commissioner.). *Cf. City of Shelton v. Clapper*, 23 Wash.2d 811, 814, 162 P.2d 445 (1945) (Absolute liability applies to a deputy city treasurer responsible for collecting water rentals.); *Grays Harbor Constr. Co. v. Paulk*, 179 Wash. 300, 301-02, 37 P.2d 584 (1934) (A county clerk is absolutely liable for moneys received per court order and held during pendency of litigation.); *Dunbar*, 176 Wash. 203, 28 P.2d 785 (Absolute liability applies when a deputy auditor wrongfully collects money owed to the county treasurer.); *Fairchild v. Hedges*, 14 Wash. 117, 44 P. 125 (1896) (Absolute liability applies to a county treasurer.).³ The constitutional requirement of strict accountability does not apply here.

No surety liability against individual commissioners absent misconduct

*5 [11] ¶ 26 Because the county commissioners were not alleged to have directly handled public funds, they could be held individually liable on their bonds only for nonministerial acts upon a finding of abuse of discretion. RCW 42.08.020; *Berge v. Gorton*, 88 Wash.2d 756, 762, 567 P.2d 187 (1977) (Surety liability under RCW 42.08.020 “can only be based upon an abuse of discretion.”). Mere errors of judgment or misconstruction of statutes do not meet this standard. *Whatcom County v. Langlie*, 40 Wash.2d 855, 859, 246 P.2d 836 (1952). Instead, liability requires proof not only that the official made an error or mistake, “but that the error or mistake was the product of corrupt or malicious motives.” *Berge*, 88 Wash.2d at 762, 567 P.2d 187.

¶ 27 The complaint against the individual commissioners does not allege an abuse of discretion as defined above. Instead, the complaint claims the commissioners are subject to strict liability. Thus, even if the complaint had alleged activities taken individually by each commissioner (which it does not) it would be insufficient to justify an action against the commissioners’ bonds.

CONCLUSION

¶ 28 The trial court's orders on summary judgment as to the three county commissioners are reversed. We remand with instructions to vacate the judgment issued against the three commissioners and to grant summary judgment in their favor. Our disposition cannot remedy the fact that the three commissioners were improperly removed from office, but they can at least receive financial relief. Furthermore, future commissioners can be assured that they will not be removed from office and subject to financial liability simply because a court disagrees with the legality of their legislative determinations. While the commissioners are entitled to judgment in their favor, the judgment against the sureties stands as they are not parties to this appeal.

WE CONCUR:

Lawrence-Berrey, A.C.J.

Staab, J.

All Citations

--- P.3d ----, 2022 WL 965155

Footnotes

- 1 Five member commissions are permitted in limited circumstances. See RCW 36.32.055-.0558.
- 2 For example, the Stevens County budget for 2021 featured revenues of almost \$71 million and expenditures of over \$78 million. Stevens County Resolution No. 112-2020 (Dec. 31, 2020), <https://stevenscountywa.municipalcms.com/files/documents/112-2020Adopting2021BudgetFixingLeviesforCalendarYear2021andprovidingforothermattersproperlyrelatingthereto1374> [https://perma.cc/2HMG-D8EW].
- 3 It stands to reason that county clerks and county treasurers have higher bonding requirements than other county officials under RCW 36.16.050 precisely because unlike other county officials they are routinely tasked with collecting and possessing public funds.

Comparison of Contemporary and Historical Statutes

County Commissioner Bonds

Contemporary Statutes	Historical Statute
<p data-bbox="391 596 649 632">RCW 36.16.050:</p> <p data-bbox="488 680 860 1738">Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office, and that he or she, or his or her executors or administrators, will deliver to his or her successor safe and undefaced all books, records, papers, seals, equipment, and furniture belonging to his or her office. Bonds of elective county officers shall be as follows:</p>	<p data-bbox="878 596 1263 632">Laws of 1893, ch. 75, § 7</p> <p data-bbox="976 680 1325 1774">Each county commissioner in this state, before he enters upon the duties of his office, shall give a bond to the county, with at least two sureties thereon, in the amount hereinafter specified; which bond and the sureties thereon shall be approved by the clerk of the superior court of the proper county. The said bond, when so approved, shall be filed and recorded by said clerk in his office. Said bond shall be payable to the county, and the same shall be conditioned that such commissioner shall well and faithfully discharge the duties of his office, and not</p>

<p>...</p> <p>(5) Members of the proper county legislative authority: Sureties to be approved by the county clerk and the amounts to be:</p> <p>(a) In each county with a population of one hundred twenty-five thousand or more, twenty-five thousand dollars;</p> <p>(b) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand, twenty-two thousand five hundred dollars;</p> <p>(c) In each county with a population of from forty thousand to less than seventy thousand, twenty thousand dollars;</p> <p>(d) In each county with a population of from</p>	<p>approve, audit or order paid any illegal, unwarranted or unjust claim against the county for personal services: Provided, That the county commissioners heretofore elected, and who shall have already entered upon the duties of their office, shall have ninety days from and after the day this act goes into effect in which to make and file their bonds. The amount for which said bonds shall be given is as follows:</p> <p>In counties of the first, second, third, fourth and fifth classes, twenty thousand dollars (\$20,000).</p> <p>In counties of the sixth, seventh, eighth, ninth and tenth classes, fifteen thousand dollars (\$15,000).</p> <p>In counties of the eleventh, twelfth,</p>
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<p>eighteen thousand to less than forty thousand, fifteen thousand dollars;</p> <p>(e) In each county with a population of from twelve thousand to less than eighteen thousand, ten thousand dollars;</p> <p>(f) In each county with a population of from eight thousand to less than twelve thousand, seven thousand five hundred dollars;</p> <p>(g) In all other counties, five thousand dollars;</p> <p>RCW 36.32.060:</p> <p>The bond of each county commissioner shall be payable to the county, and it shall be conditioned that the commissioner shall well and faithfully discharge the duties of his or her</p>	<p>thirteenth, fourteenth and fifteenth classes, ten thousand dollars (\$10,000).</p> <p>In counties of the sixteenth, seventeenth, eighteenth, nineteenth and twentieth classes, seven thousand five hundred dollars (\$7,500).</p> <p>In counties of the twenty-first, twenty-second, twenty-third and twenty-fourth classes, five thousand dollars (\$5,000).</p> <p>In counties of the twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth and twenty-ninth classes, two thousand dollars (\$2,000).</p>
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office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services.	
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Actions on Official Bonds

Contemporary Statute	Historical Statute
<p>RCW 42.08.020:</p> <p>When a public officer by official misconduct or neglect of duty, shall forfeit his or her official bond or render his or her sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his or her own name against the officer and his or her sureties to recover the amount to which he or she may by reason thereof be entitled.</p>	<p>Laws of 1877 p. 135, § 656:</p> <p>When a public officer by official misconduct or neglect of duty, shall forfeit his official bond or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.</p>

Contemporary Statute	Historical Statute
<p data-bbox="391 338 651 373">RCW 42.08.080:</p> <p data-bbox="488 422 849 1304">Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the state of Washington, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer, in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his or her own name without an assignment thereof.</p>	<p data-bbox="872 338 1247 373">Laws of 1890, p. 34, § 3:</p> <p data-bbox="969 422 1330 1304">Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the State of Washington, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer, in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his or her own name without an assignment thereof.</p>

Vacancies Created By A Judgment on an Official Bond

Contemporary Statute	Historical Statute
<p data-bbox="391 1499 695 1535">RCW 42.12.010(8):</p> <p data-bbox="488 1583 862 1745">Every elective office shall become vacant on the happening of any of the following events:</p>	<p data-bbox="881 1499 1256 1535">Laws of 1866, p. 28, § 2:</p> <p data-bbox="979 1583 1323 1789">Every office shall become vacant on the happening of either of the following events before the expiration</p>

<p>...</p> <p>(8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond.</p>	<p>of the term of such officer:</p> <p>...</p> <p>8. Whenever a judgment shall be obtained against such officer for a breach of the condition of his official bond.</p>
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Washington State Auditor Accountability Audit Summary

The Office of the Washington State Auditor makes all audit reports since 2005 available for search and download as PDFs.¹ This collection includes 591 accountability audit reports of county governments.² A search of this collection using the keyword “gift” yielded 21 reports.³ Of those 21 reports, the auditor issued findings of unconstitutional gifts of public funds on only two occasions. Of the two audits with findings, only Stevens County involved the unrestricted gifting of public funds

¹Available at <https://sao.wa.gov/reports-data/audit-reports/> (last visited Apr. 15, 2022).

² “An accountability audit evaluates whether a local government has adhered to applicable state laws, regulations and its own policies and procedures. We audit records to ensure public funds are accounted for and controls are in place to protect public resources from misappropriation and misuse. We are required to examine the financial affairs of all local governments at least once every three years.” Office of the State Auditor, *About Local Government Audits* available at <https://sao.wa.gov/about-audits/about-local-government-audits/> (last visited Apr. 15, 2022).

³See Auditor Report Nos. 1022735, 1005229 (Benton County), 1005028 (Columbia County), Nos. 1017743 (Cowlitz County), 1022795 (Douglas County), 69958 (Grant County), 74469, 1028381, 1026372, 1016419, 1001690 (King County), 1027992, 10004885 (Kitsap County), 1016024, 1013385 (Pierce County), 1020726, 1005992, 1027425 (Snohomish County), 1023305 (Stevens County), 1010232 (Thurston County), and 1002441 (Whatcom County).

to a private citizen and to a non-profit organization. *Compare* Office of the Washington State Auditor, Accountability Audit Report Stevens County, Report No. 1023305, at 7 (Feb. 21, 2019)⁴ *with* Washington State Auditor’s Office, Accountability Audit Report Grant County, Report No. 69958, at 8 (Nov. 23, 2005) (“Failure to monitor contract payments can lead to gifts of public funds.”).⁵

⁴ This report may be found at CP 456.

⁵ This audit report is available at <https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=69958&isFinding=false&sp=false> (last visited Apr. 15, 2022).

PIERCE COUNTY PROSECUTING ATTORNEY

April 27, 2022 - 2:39 PM

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Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37812-8
Appellate Court Case Title: Stevens County, Washington, ex rel Tim Rasmussen v. Travelers Surety and Casualty Co., et al
Superior Court Case Number: 19-2-00122-2

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