

FILED
SUPREME COURT
STATE OF WASHINGTON
6/21/2022 4:09 PM
BY ERIN L. LENNON
CLERK

NO. 100881-3

**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

RESPONSE TO RESPONDENT'S MOTION TO DISMISS

TIM RASMUSSEN
Stevens County Prosecuting
Attorney
Pamela B. Loginsky
Special Deputy Prosecuting
Attorney
WSB 18096 / OID #91121
930 Tacoma Ave. S, Rm 946
Tacoma, WA 98402
(253) 798-2913

George M. Ahrend
Special Deputy Prosecuting
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I. INTRODUCTION

This case involves an action on county commissioners' official bonds for their unconstitutional gifting of public funds. This action was initiated by the duly elected Stevens County Prosecuting Attorney on behalf of both Stevens County and himself in his official role as prosecuting attorney. The filing of this action was authorized by both statute and order of the superior court.

In a factually inaccurate motion to dismiss, the Respondents seek to substitute their judgment for those authorized to exercise the powers of Stevens County. They, not the duly elected Stevens County legislative authority, want to order the Stevens County Prosecuting Attorney to dismiss his petition for review. Their motion to dismiss must be denied because Stevens County has determined that Prosecutor Rasmussen's appeal to this Court should proceed.

II. IDENTITY OF RESPONDING PARTY

Stevens County and Stevens County Prosecuting Attorney Tim Rasmussen (collectively Prosecutor Rasmussen) respond to the motion to dismiss through their attorneys of record. Prosecutor Rasmussen was plaintiff in the trial court, respondent in the Court of Appeals, and petitioner in this Court.

III. STATEMENT OF RELIEF SOUGHT

Prosecutor Rasmussen requests that this Court deny the Respondents' motion to dismiss the petition for review he filed on April 27, 2022.

IV. FACTS RELEVANT TO MOTION

Timothy Rasmussen is the duly elected and qualified Prosecuting Attorney for Stevens County, Washington. Declaration of Timothy Rasmussen Re: Respondents' Motion to Dismiss (Rasmussen Declaration), App. at 2 ¶ 1. Prosecutor Rasmussen has served in this position since January 1, 2007. *Id.*

Steven Parker, Wesley McCart, and Donald Dashiell (collectively "Respondents") 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.

In 2019, the Washington State Auditor's Office (Auditor) conducted an accountability audit of Stevens County. The Auditor determined that the Respondents unconstitutionally gifted restricted homelessness funds to others. CP 456 (Report No. 1023305 (Feb. 21, 2019)). After the receipt of the audit, Prosecutor Rasmussen demanded reimbursement from the Respondents 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 and in his own name upon the Respondents' sureties and the Respondents personally. (Collectively "Defendants.") CP 14-30. Prosecutor Rasmussen appointed Pam Loginsky and George

Ahrend as special deputy prosecuting attorneys to represent Stevens County and himself in this matter. App. at 3 ¶4, 8, 10.

Although Prosecutor Rasmussen believed the action on the bonds was authorized by RCW 36.27.020(4), he filed an ex parte motion for leave to maintain action on behalf of Stevens County. App. at 12. After the Respondents objected to the motion for leave to proceed being heard ex parte, Prosecutor Rasmussen obtained a hearing date. App. at 19. The hearing on Prosecutor Rasmussen's motion for leave was conducted on May 2, 2019. *See* App. at 29.

During the May 2, 2019, hearing the Respondents took the position that Prosecutor Rasmussen lacked the "independent authority to bring a lawsuit on behalf of the county without the consent of the county commissioners." App. at 35. The Court continued the motion for leave to allow the Respondents an opportunity to respond. App. at 37. The Court directed the Respondents to file their response no later than May 24, 2019. App. at 37-38.

The Respondents did not file an answer to Prosecutor Rasmussen's motion for leave by May 24, 2019. App. 22-23. Pursuant to LR 40(b)(5), their failure to file a response is deemed consent to the entry of an order adverse to the party who fails to file a response. *Id.* Judge Moreno, therefore, entered an order authorizing Prosecutor Rasmussen to maintain the action on the bond. App. at 42-43; CP 64.

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. The award on the bonds created a vacancy in office as to each of the Respondents. *See* RCW 42.12.010(8). The vacancies have all been filled by the electorate. *See generally* Stevens County November 3, 2020

General Election Results;¹ Stevens County November 2, 2021
General Election Results.²

Only the Respondents appealed the judgment. CP 1, 1074, and 1041. In the Court of Appeals, the Respondents did not assign error to Judge Moreno's order authorizing Prosecutor Rasmussen to maintain the action on the bonds on behalf of Stevens County. Appellants' Opening Brief at 1-3; Appellants' Reply Brief at 4-5.

Division Three of the Court of Appeals reversed the grant of summary judgment and the award solely as to the Respondents and remanded the case with instructions to enter summary judgment in favor of the Respondents. *See Stevens County ex rel. Rasmussen v. Travelers Surety and Casualty Company of*

¹ Available at <https://results.vote.wa.gov/results/20201103/stevens/> (last visited June 15, 2022).

² Available at <https://results.vote.wa.gov/results/20211102/stevens/> (last visited June 15, 2022).

America, ___ Wn. App. 2d ___, 507 P.3d 417 (Wn. App. 2022) (*Rasmussen*). Prosecutor Rasmussen filed a timely petition for review in this Court on April 27, 2022.

On or about May 6, 2022, Respondents Steve Parker and Don Dashiell submitted a proposed draft resolution to the Stevens County Board of County Commissioners. App. at 45. The draft resolution ordered the dismissal of the petition for review. *Id.* Prosecutor Rasmussen appointed Walla Walla County Prosecuting Attorney James Nagle as a special deputy prosecuting attorney to provide the Stevens County Board of County Commissioners with independent legal advice regarding Messrs. Parker and Dashiell’s submission. App. at 5 ¶ 8, 49-50.

On May 26, 2022, the Respondents “move[d] for the dismissal of Mr. Rasmussen’s *Petition for Review* filed with this Court on April 27, 2022.” Respondents’ Motion to Dismiss at 1. In their motion, the Respondents claim that the prosecuting attorney is not authorized to prosecute this appeal without the authorization of the Board of County Commissioners. *Id.* at 5.

In a letter dated June 8, 2022, the Stevens County Board of Commissioners informed the citizens of Stevens County that it did not support Prosecutor Rasmussen’s decision to seek review in this case. App. at 52. The Board did not, however, order Prosecutor Rasmussen to withdraw his petition for review. *Id.*

V. GROUNDS FOR RELIEF AND ARGUMENT

The Respondents seek the dismissal of Prosecutor Rasmussen’s petition for review. The Respondents, however, do not claim that Prosecutor Rasmussen’s petition for review was filed late. RAP 18.9(c)(3). They do not claim that Prosecutor Rasmussen has abandoned his request for review. RAP 18.9(c)(1). They do not claim or establish that Prosecutor Rasmussen’s petition for review “is frivolous, moot, or solely for the purpose of delay.” RAP 18.9(c)(2). Their motion to dismiss must, therefore, be denied.

A. Prosecutor Rasmussen and His Duly Appointed Deputies Are Authorized to Represent the Petitioners in This Matter

The Respondents motion to dismiss appears rooted in a belief that Prosecutor Rasmussen lacks the authority to act in this case. Their concern appears limited, however, to only one of the two plaintiffs in the underlying case—Stevens County.

A party may, on motion, and on showing reasonable grounds to question the authority of an attorney to appear in a case, request the attorney produce or prove the authority under which the attorney appears. RCW 2.44.030. An action can be stayed pending production of such authority, but not dismissed.

Id.

In the instant matter, both Stevens County and Prosecutor Rasmussen have filed petitions for review. The Respondents concede in their motion to dismiss that Timothy Rasmussen is the prosecutor for Stevens County. Motion to Dismiss at 1. Prosecutor Rasmussen is clearly authorized to appear on behalf of his office. Prosecutor Rasmussen is, moreover, the legal

representative for Stevens County by virtue of article XI, section 5 of the Washington Constitution and chapter 36.27 RCW. *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 179-81, 385 P.3d 769 (2016). Prosecutor Rasmussen is authorized by RCW 36.27.020(4) to prosecute actions on bonds. Prosecutor Rasmussen was authorized by court order to maintain this bond action on behalf of Stevens County. App. at 42; CP 64.

Prosecutor Rasmussen is authorized to appoint special deputy prosecuting attorneys to assist him in the performance of his duties. RCW 36.27.040. Prosecutor Rasmussen has appointed both George Ahrend and Pam Loginsky to represent Stevens County in all matters arising from the Respondents' expenditures from the homelessness fund. App. 3 ¶ 4, 8. The Respondents' motion to dismiss must, therefore, be denied.

B. The Respondents Waived Any Challenge to Prosecutor Rasmussen's Authority to Bring the Action Upon Their Official Bonds

The Respondents erroneously assert that Judge Moreno entered the order authorizing Prosecutor Rasmussen to maintain

the action upon the bonds on behalf of the county “without hearing.” Motion to Dismiss at 2. Judge Moreno’s order was entered after hearing oral argument on behalf of the Respondents and a continuance to allow the Respondents to carefully brief the issue and file a “formal response.” App. at 34, 36.

The Respondents abandoned their challenge to Prosecutor Rasmussen’s authority to maintain the instant action by not filing a timely response to his motion for leave to maintain action on behalf of Stevens County in the superior court. The Respondents further abandoned any challenge to Prosecutor Rasmussen’s authority to maintain this action on behalf of Stevens County by failing to assign error to Judge Moreno’s order in the Court of Appeals and by not providing argument with citation to legal authority on the issue in their opening brief.

An abandoned or waived non-constitutional issue may not be revived in an appellate court. *See generally* RAP 2.5(a). An issue that was not raised in the Court of Appeals will generally not be considered by this Court. *State v. Clark*, 124 Wn.2d 90,

104-05, 875 P.2d 613 (1994), *overruled in part on other grounds* by *State v. Catlett*, 133 Wn.2d 355, 945 P.2d 700 (1997). Respondents' motion to dismiss the petition for review must, therefore, be denied.

C. The Respondents Lack Standing to Assert the Interests of Stevens County

In their motion to dismiss, the Respondents are attempting to speak for Stevens County. The Respondents are seeking dismissal of Prosecutor Rasmussen's petition on the grounds that Stevens County did not authorize its filing. They lack standing to assert the rights of Stevens County. They lack the authority to speak for Stevens County. Their motion to dismiss must be denied.

In both civil and criminal actions, Washington applies the standing test used by the United States Supreme Court. *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 424 n. 6, 138 P.3d 1053 (2006).

In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a

claim to relief on the legal rights or interests of third parties.... We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an “injury in fact,” thus giving him or her a “sufficiently concrete interest” in the outcome of the issue dispute, ... the litigant must have a close relation to the third party, ... and there must exist some hindrance to the third party's ability to protect his or her own interests.

Powers v. Ohio, 499 U.S. 400, 410–11, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991) (internal citations omitted).

The Respondents fail to satisfy all three requirements. First, the Respondents are here in their private capacity. Private persons have no authority to speak for a county. By statute and constitution, the only persons authorized to speak or act for Stevens County are a quorum of the board of county commissioners or an officer, including the prosecuting attorney, acting under his or her authority at law. Const. art. XI, §5; RCW 36.01.030; RCW 36.16.030; RCW 36.27.020; RCW 36.32.010.

Second, there is no impediment to Stevens County controlling the course of this litigation itself. The petition for review was filed by Prosecutor Rasmussen who is an officer

authorized to exercise Stevens County's powers and to maintain this action by law. RCW 36.27.020(4). A quorum of Stevens County Commissioners considered a request from two of the Respondents to order Prosecutor Rasmussen to withdraw his petition for review and the Board denied their request. App. at 52.

The Respondents dissatisfaction with the litigation choices made by Prosecutor Rasmussen on behalf of Stevens County does not authorize it to control the petitioners' case. Their motion to dismiss the petition for review must be denied.

VI. CONCLUSION

The petition for review in this matter was filed by attorneys authorized to appear on behalf of both Stevens County and Timothy Rasmussen. The petition was filed upon the authority of an officer empowered to exercise the powers of Stevens County with respect to actions upon bonds. The Respondents' motion to dismiss must, therefore, be denied.

This document contains 2170 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 21st day of June,
2022

TIM RASMUSSEN
Stevens County Prosecuting Attorney
/s/ Pamela B. Loginsky
Pamela B. Loginsky
Special Deputy Prosecuting Attorney
WSB # 18096 / OID #91121
Pierce County Prosecutor's Office
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Tacoma, WA 98402
(253) 798-2913
Pamela.loginsky@piercecountywa.gov

/s/ George M. Ahrend
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Special Deputy Prosecuting Attorney
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457 1st Ave. NW
P.O. Box 816
Ephrata, WA 98823-0816
(206) 467-6090
(206) 467-6961 Fax
george@luveralawfirm.com

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.

6-21-22 _____
Date

s/Therese Kahn _____
Signature

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IN THE 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,

[and]

DONALD L. DASHIELL, IN
HIS PERSONAL CAPACITY;
WESLEY LEWIS MCCART,

NO. 100881-3
DECLARATION OF
TIMOTHY RASMUSSEN
RE: RESPONDENTS'
MOTION TO DISMISS

1 IN HIS PERSONAL
2 CAPACITY; AND STEVEN
3 LYNN PARKER, IN HIS
4 PERSONAL CAPACITY,

Respondents.

5
6 The undersigned declares as follows:

7 1. I, TIMOTHY RASMUSSEN, am the duly elected
8 and qualified Prosecuting Attorney for Stevens County,
9 Washington, and have been since January 1, 2007.
10

11 2. In my official capacity as prosecuting attorney, I
12 have the authority and obligation to “[a]pppear for and represent
13 the ... county ... in all ... civil proceedings in which ... the county
14 ... may be a party[.]” RCW 36.27.020(3) (brackets & ellipses
15 added). I also have the specific authority and obligation to
16 prosecute “actions upon forfeited ...bonds and actions for the
17 recovery of debts, fines, penalties, and forfeitures accruing to
18 ...the county[.]” RCW 36.27.020(4) (brackets & ellipses added).
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21 3. In my official capacity as prosecuting attorney, I
22 have the authority and obligation to bring criminal and civil
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1 enforcement actions in response to official misconduct, neglect
2 or duty, or malfeasance.

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4 4. I am authorized to appoint deputy prosecuting
5 attorneys and special deputy prosecuting attorneys to assist me
6 in the performance of my duties. RCW 36.27.040. I have
7 appointed both Pamela B. Loginsky and George Ahrend as
8 special deputy prosecuting attorneys to represent both Stevens
9 County and myself in my official capacity in *Stevens County,*
10 *Washington, ex rel. Tim Rasmussen; and Tim Rasmussen, in his*
11 *Official Capacity as Prosecuting Attorney of Stevens County ,*
12 *Washington, Plaintiffs, vs. Travelers Surety and Casualty*
13 *Company of America; United States Fire Insurance Company;*
14 *Donald L. Dashiell, in his personal capacity; Wesley Lewis*
15 *McCart, in his personal capacity; and Steven Lynn Parker, in his*
16 *personal capacity, defendants, Stevens County Cause No. 19-2-*
17 *00122-33 (hereinafter “action on official bonds”), and all appeals*
18 *related thereto. Attached to this declaration as Exhibit 1 is a copy*
19 *of the Certificate of Appointment of Pam Loginsky as a Stevens*
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1 County Special Deputy Prosecutor. Attached to this declaration
2 as Exhibit 2 is a copy of the Certificate of Appointment of
3 George Ahrend as a Stevens County Special Deputy Prosecutor.
4

5 5. Although not necessary, I obtained an order from
6 the Stevens County Superior Court that authorized me to
7 maintain this action on official bonds on behalf of Stevens
8 County. Attached to this declaration as Exhibit 3 is a copy of
9 my Ex Parte Motion for Leave to Maintain Action on Behalf of
10 Stevens County. Attached to this declaration as Exhibit 4 is a
11 copy of my counsel's letter to Judge Moreno requesting a hearing
12 date for the motion for leave to proceed. Attached to this
13 declaration as Exhibit 5 is a copy of my Reply in Support of Ex
14 Parte Motion for Leave to Maintain Action on Behalf of Stevens
15 County. Attached to this declaration as Exhibit 6 is a partial
16 transcript of the May 2, 2019, hearing on my motion for leave.
17 Attached to this declaration as Exhibit 7 is a copy of Judge
18 Moreno's July 23, 2019, Ex Parte Order Re: Leave to Maintain
19 Action on Behalf of Stevens County.
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1 6. I prevailed on all claims in the superior court in this
2 action on official bonds. The Court of Appeals, however,
3 reversed the judgment as to the three appealing defendants. I
4 filed a timely petition for review in this Court from the decision
5 of the Court of Appeals.

7 7. After I filed the petition for review, Respondents
8 Steve Parker and Don Dashiell sent a letter to the Stevens County
9 Board of County Commissioners requesting that the Board order
10 me to withdraw my petition for review. Attached to this
11 declaration as Exhibit 8 is a copy of the letter sent by Messrs.
12 Parker and Dashiell to the Board.

15 8. I appointed the Walla Walla County Prosecuting
16 Attorney James Nagel as a special deputy prosecuting attorney
17 to provide the Board with independent legal advice regarding
18 Parker and Dashiell's letter. Attached to this declaration as
19 Exhibit 9 is a copy of the Certificate of Appointment and
20 Amended Certificate of Appointment of James Nagel as a
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1 Stevens County Special Deputy Prosecutor to provide
2 independent legal advice to the Board.

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4 9. On June 8, 2022, the Board sent a letter to the
5 Citizens of Stevens County explaining that while they
6 disapproved of the filing of a petition for review, they would not
7 order me to withdraw the petition. Attached to this declaration
8 as Exhibit 10 is a copy of the Board's letter to the Citizens of
9 Stevens County.
10

11 This document contains 830 words.

12 Signed under the penalty of perjury this 14th day of June,
13 2022, at Colville, Washington.

14 s/ Timothy Rasmussen
15 TIMOTHY RASMUSSEN
16 Stevens County Prosecuting Attorney
17 WSB # 32105
18 215 S. Oak St.
19 Colville, WA 99114-2862
20 (509) 684-7500
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EXHIBIT 1

CERTIFICATE OF APPOINTMENT

COMES NOW, Tim Rasmussen, Prosecuting Attorney for Stevens County, State of Washington, having special confidence in Pam Loginsky, do hereby constitute and appoint Pam Loginsky as Special Deputy Prosecutor pursuant to RCW 36.27.040 of Stevens County, State of Washington to represent Stevens County pursuant to RCW 36.27.020(4), on the matter of the Stevens County Commissioners expenditures from the homelessness fund. This appointment shall be limited to this matter and shall extend for 180 days or until revoked by me, at which time, it shall be null and void unless extended by me.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 22 day of February, 2019.



Tim Rasmussen, #32105
Stevens County Prosecutor

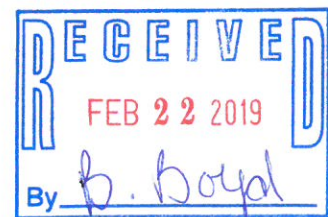


EXHIBIT 2

CERTIFICATE OF APPOINTMENT

COMES NOW, Tim Rasmussen, Prosecuting Attorney for Stevens County, State of Washington, having special confidence in George Ahrend, do hereby constitute and appoint George Ahrend as Special Deputy Prosecutor pursuant to RCW 36.27.040 of Stevens County, State of Washington to represent Stevens County pursuant to RCW 36.27.020(4), on the matter of the Stevens County Commissioners expenditures from the homelessness fund. This appointment shall be limited to this matter and shall extend for 180 days or until revoked by me, at which time, it shall be null and void unless extended by me. This appointment shall be on a reasonable fee basis as ultimately determined by the Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 1 day of February, 2019.



Tim Rasmussen, #32105
Stevens County Prosecutor

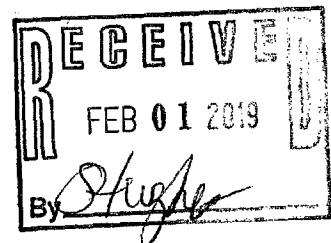


EXHIBIT 3

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FILED
IN SUPERIOR COURT
STEVENS COUNTY

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WILLIAM J. JAMES
COUNTY CLERK

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Motion and Affidavit Declaration
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SUPERIOR COURT OF WASHINGTON FOR STEVENS COUNTY

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

Plaintiffs,

vs.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; UNITED
STATES FIRE INSURANCE COMPANY;
DONALD L. DASHIELL, IN HIS
PERSONAL CAPACITY; WESLEY LEWIS
McCART, IN HIS PERSONAL CAPACITY;
AND STEVEN LYNN PARKER, IN HIS
PERSONAL CAPACITY,

Defendants.

No. 19 2 00122 33

EX PARTE MOTION FOR LEAVE TO
MAINTAIN ACTION ON BEHALF OF
STEVENS COUNTY

I. RELIEF REQUESTED

To the extent necessary, Plaintiff Tim Rasmussen, in his official capacity as
Prosecuting Attorney of Stevens County, Washington, seeks leave to maintain this action
on behalf of the county. This motion is based on RCW 42.08.030 and the affidavit of Tim
Rasmussen, filed contemporaneously herewith.

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1 **II. FACTS RELEVANT TO MOTION**

2 On February 21, 2019, the Washington State Auditor (“Auditor”) issued a report
3 finding that Stevens County Commissioners Donald L. Dashiell (“Dashiell”), Wesley
4 Lewis McCart (“McCart”), and Steven Lynn Parker (“Parker”) used Stevens County funds
5 in violation of applicable law and made unconstitutional gifts of public funds totaling
6 \$121,219. *See Rasmussen Aff., Ex. A.*

7 At times relevant to the Auditor’s report, Dashiell, McCart and Parker had surety
8 bonds to ensure the faithful performance of their duties as Stevens County
9 Commissioners. The premiums for the bonds were paid by Stevens County.

10 United States Fire Insurance Company (“US Fire”) issued two Public Official
11 Bonds to ensure the faithful performance of the duties of Dashiell, both numbered
12 615978818, and both in the amount of \$20,000. One bond covers the period of time
13 beginning January 1, 2011, with no end date, and the second covers the period of time
14 beginning January 1, 2015, and ending January 1, 2019. *See Rasmussen Aff., Ex. B.*

15 Travelers Casualty and Surety Company of America (“Travelers”) issued two Public
16 Official Bonds to ensure the faithful performance of the duties of Parker, both numbered
17 105876234, and both in the amount of \$20,000. One bond covers the period of time
18 beginning January 1, 2013, and ending December 31, 2016, while the other covers the
19 period of time beginning December 31, 2016, and ending December 31, 2020. *See*
20 *Rasmussen Aff., Ex. C.*

21 Travelers also issued two Public Official Bonds to ensure the faithful performance
22 of the duties of McCart, both numbered 105873846, and both in the amount of \$20,000.
23 One bond covers the period of time beginning January 1, 2013, and ending December 31,
24

1 2016, while the other covers the period of time beginning December 31, 2016, and ending
2 December 31, 2020. *See* Rasmussen Aff., Ex. D.

3 Tim Rasmussen is the duly elected Prosecuting Attorney of Stevens County,
4 Washington. *See* Rasmussen Aff., ¶ 1.

5 III. ARGUMENT AND AUTHORITY

6 A. US Fire and Travelers are subject to liability on the bonds and Dashiell, 7 McCart and Parker are subject to personal liability.

8 “Every county official before he or she enters upon the duties of his or her office
9 shall furnish a bond conditioned that he or she will faithfully perform the duties of his or
10 her office[.]” RCW 36.16.050 (brackets added). “The bond of each county commissioner
11 shall be payable to the county, and it shall be conditioned that the commissioner shall
12 well and faithfully discharge the duties of his or her office, and not approve, audit, or order
13 paid any illegal, unwarranted, or unjust claim against the county for personal services.”
14 RCW 36.32.060.

15 “The official bond of a public officer, to the state, or to any county, city, town or
16 other municipal or public corporation of like character therein, shall be deemed a security
17 to the state, or to such county, city, town or other municipal or public corporation, as the
18 case may be, and also to all persons severally, for the official delinquencies against which
19 it is intended to provide.” RCW 42.08.010. “If payment is approved, audited, or ordered,
20 to a person, unauthorized by law, the county commissioners are liable on their bond.”
21 Wash. Atty. Gen. Op. No. 114 (1951). If the bonds are insufficient to cover the full amount
22 of the liability, then the commissioners are personally liable for the balance. *See* RCW
23 42.08.050 (liability of surety limited to face amount of bond).

1 **B. Rasmussen has the authority and obligation to prosecute this action.**

2 In his official capacity as prosecuting attorney, Rasmussen has the authority and
3 obligation to “[a]pppear for and represent the ... county ... in all ... civil proceedings in
4 which ... the county ... may be a party[.]” RCW 36.27.020(3) (brackets & ellipses added).
5 He also has the specific authority and obligation to prosecute “actions upon forfeited ...
6 bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to ...
7 the county[.]” RCW 36.27.020(4) (brackets & ellipses added). The language in RCW
8 36.27.020(4) referring to “actions upon forfeited ... bonds” is sufficient basis for
9 Rasmussen to maintain this action on the bonds, and the language in the same subsection
10 referring to “recovery of debts ... accruing to ... the county” is sufficient to maintain this
11 action against Dashiell, McCart and Parker personally.

12 In addition, “[w]hen a public officer by official misconduct or neglect of duty, shall
13 forfeit his or her official bond or render his or her sureties therein liable upon such bond,
14 any person injured by such misconduct or neglect, or who is by law entitled to the benefit
15 of the security, may maintain an action at law thereon in his or her own name against the
16 officer and his or her sureties to recover the amount to which he or she may by reason
17 thereof be entitled.” RCW 42.08.020 (brackets added). “Before an action can be
18 commenced by a plaintiff, other than the state, or the municipal or public corporation
19 named in the bond, leave shall be obtained of the court or judge thereof where the action
20 is triable.” RCW 42.08.030.

21 To the extent Rasmussen is deemed not to have sufficient authority to maintain
22 this action under RCW 36.27.020(4), out of an abundance of caution, he seeks leave from
23 the court pursuant to RCW 42.08.030. “Such leave shall be granted upon the production
24 of a certified copy of the bond and an affidavit of the plaintiff, or some person in his or

1 her behalf, showing the delinquency.” RCW 42.08.030. In this case, Rasmussen has
2 produced certified copies of the bonds and the Auditor’s report showing the delinquency,
3 and leave should therefore be granted.

4 Ordinarily, county commissioners must approve the filing of an action in the name
5 of the county. *See* RCW 36.32.120(6). However, a series of cases related to actions upon
6 the official bonds and against the personal property of Whatcom County commissioners
7 were maintained by the Whatcom County Prosecuting Attorney without explicit
8 authorization from the county legislative authority. *See Whatcom County v. Schuman*,
9 12 Wn. 2d 290, 121 P.2d 378 (1942) (Whatcom County Prosecuting Attorney Edward E.
10 Johnson¹ maintained an action against the majority of members of a board of county
11 commissioners and a surety to recover funds for the county); *State ex rel. Austin v.*
12 *Superior Court for Whatcom County*, 6 Wn. 2d 61, 106 P.2d 1077 (1940) (commissioner
13 could not enjoin prosecuting attorney from maintaining a quo warranto action against
14 him after obtaining a judgment against the commissioner’s official bond for mishandling
15 of public funds); *State ex rel. Hamilton v. Superior Court*, 3 Wn. 2d 633, 101 P.2d 588
16 (1940) (prosecuting attorney could not be enjoined from filing quo warranto actions
17 against county commissioners following the entry of a judgment on the commissioner’s
18 official bond). The prosecuting attorney did not, and was not required to, obtain leave
19 from the court before bringing the action on behalf of the county. *See Schuman*, 12 Wn.
20 2d at 295 (stating the surety “bases its appeal upon the ground that the county failed to
21 obtain leave of court to sue upon the bond”).

22
23
24 ¹ While the opinion does not expressly list Mr. Johnson’s title, historical Whatcom County election records establish that he was the prosecuting attorney.

1 **C. To the extent leave is required to bring this action on behalf of the**
2 **county, leave should be granted on an ex parte basis.**

3 RCW 42.08.030 does not provide for notice or a contested hearing to determine
4 whether the threshold showing necessary to obtain leave to maintain an action on an
5 official bond has been satisfied. Dashiell, McCart and Parker have a vested personal
6 interested in blocking any action to recover on the bonds or from them personally as a
7 result of their unlawful expenditures of county funds. In addition to financial liability,
8 they face the prospect of losing their positions. See RCW 42.12.010(8) (providing
9 judgment for breach of the conditions of an official bond renders elective office vacant).
10 County commissioners are prohibited from using their positions to exempt themselves
11 from the consequences of the unlawful expenditures of funds. See RCW 42.23.070(1)
12 (prohibiting municipal officers from using their position “to secure special privileges or
13 exemptions”). Accordingly, the request for leave to maintain this action should be heard
14 and decided on an ex parte basis.

15 DATED this 18th day of March, 2019.

16 TIM RASMUSSEN
17 Stevens County Prosecuting Attorney

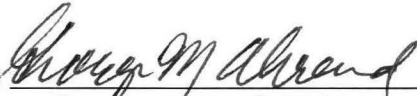
18 By: 
19 George Ahrend, WSBA #25160
20 Special Deputy Prosecuting Attorney
21 100 E. Broadway Ave.
22 Moses Lake, WA 98837
23 (509) 764-9000
24

EXHIBIT 4

AHREND LAW FIRM
a professional limited liability company

100 E. Broadway Ave.
Moses Lake, WA 98837

(509) 764-9000
Fax (509) 464-6290

April 4, 2019

Via email only to: ebrown@spokanecounty.org

Hon. Judge Maryann C. Moreno
Spokane County Superior Court
1116 W. Broadway Ave., Dept. 7, Ctrm. 401
Spokane, WA 99260

Re: *Rasmussen v. Dashiell, et al.*
Stevens Co. Cause No. 19-2-00121-33

Rasmussen v. Travelers Surety, et al.
Stevens Co. Cause No. 19-2-00122-33

In Re: McCart, et al.
Stevens Co. Cause No. 19-2-00084-33

Dear Judge Moreno:

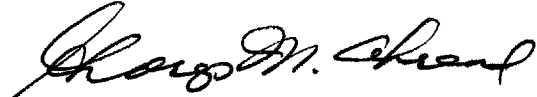
I understand that you have been appointed as judge in each of the above-referenced matters. I have been appointed as a special deputy prosecuting attorney to appear in these matters on behalf of the elected Stevens County Prosecuting Attorney, Timothy Rasmussen.

We have previously corresponded with your judicial assistant regarding a hearing on the motion to dismiss filed in Cause No. 19-2-00084-33, and are awaiting further instructions.

In the meantime, we have filed an ex parte motion for leave to proceed on behalf of Stevens County in Cause No. 19-2-00122-33. I have been informed by Jerry Moberg, who has appeared on behalf of Wes McCart, Steve Parker and Don Dashiell, that he objects to proceeding on an ex parte basis. I told Mr. Moberg that I would notify you of his objection and request a hearing, although we continue to dispute his right to be heard on the matter. Accordingly, we would request a hearing date to address whether the motion for leave to proceed on behalf of the county can be heard on an ex parte basis as well as a hearing on the substance of the motion. As with the motion to dismiss in the other cause, we would request an in-person hearing in Spokane.

Hon. Judge Maryann C. Moreno
Spokane County Superior Court
April 4, 2019
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "George M. Ahrend". The signature is fluid and cursive, with the first name "George" being the most prominent.

George M. Ahrend

GMA:smc

cc: Jerry J. Moberg (via email only)
Timothy Rasmussen (via email only)
Evelyn Bell, Stevens Co. Court Administrator (via email only)
File

EXHIBIT 5

JUN 07 2019

SUPERIOR COURT
STEVENS COUNTY, WA

SUPERIOR COURT OF WASHINGTON FOR STEVENS COUNTY

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

Plaintiffs,

vs.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; UNITED
STATES FIRE INSURANCE COMPANY;
DONALD L. DASHIELL, IN HIS
PERSONAL CAPACITY; WESLEY LEWIS
McCART, IN HIS PERSONAL CAPACITY;
AND STEVEN LYNN PARKER, IN HIS
PERSONAL CAPACITY,

Defendants.

No. 19-2-00122-33

REPLY IN SUPPORT OF EX PARTE
MOTION FOR LEAVE TO MAINTAIN
ACTION ON BEHALF OF STEVENS
COUNTY

Plaintiff Tim Rasmussen, in his official capacity as the Prosecuting Attorney of Stevens County, Washington, filed an ex parte motion for leave to maintain this action on behalf of the county. While he has always maintained that the action should be heard and decided on an ex parte basis, for the reasons stated in the motion, he noted it for hearing on May 2, 2019, at the request of counsel for Defendants Donald L. Dashiell, Wesley Lewis

REPLY IN SUPPORT OF EX PARTE MOTION FOR
LEAVE TO MAINTAIN ACTION ON BEHALF OF
STEVENS COUNTY

Page 1 of 3

George M. Ahrend
Special Deputy Prosecuting Attorney
100 E. Broadway Ave.
Moses Lake, WA 98837
(509) 764-9000

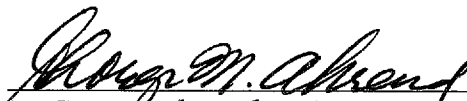
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Appendix 002

1 McCart and Steven Lynn Parker. At the May 2 hearing, the motion was continued until
2 June 14, 2019, without oral argument, again at the request of counsel for these same
3 Defendants. The Court ordered Mr. Rasmussen to serve the other Defendants Travelers
4 Surety & Casualty Company of America and United States Fire Insurance Company, and
5 further ordered any response to the motion by any Defendants should be served and filed
6 by May 24, 2019. Service has been accomplished as directed, and the declarations of
7 mailing and service are on file herein. However, no response from any Defendant has been
8 received by counsel for Mr. Rasmussen. The lack of response should be deemed consent
9 to grant the motion and enter the proposed order submitted on behalf of Mr. Rasmussen.
10 See LR 40(b)(5) (“The failure to file a response may be deemed consent to the entry of an
11 order adverse to the party who fails to file a response”). Another copy of the proposed
12 order is attached to this reply for the convenient reference of the Court.

13 DATED this 4th day of June, 2019.

14 TIM RASMUSSEN
15 Stevens County Prosecuting Attorney

16 By:



17 George Ahrend, WSBA #25160
18 Special Deputy Prosecuting Attorney
19 100 E. Broadway Ave.
20 Moses Lake, WA 98837
21 (509) 764-9000

1 **DECLARATION OF SERVICE**

2 The undersigned, hereby declares under penalty of perjury of the laws of the State of
3 Washington, that on the date set forth below, she served a copy of the foregoing document
4 on the following individual(s) via email and U.S. Mail, postage prepaid, as follows:

5 Jerry J. Moberg
6 Jerry Moberg & Associates, P.S.
7 P.O. Box 130
8 124 3rd Ave. SW
9 Ephrata, WA 98823
10 jmoberg@jmlawps.com
11 mklingenberg@jmlawps.com
12 dseverin@jmlawps.com

13 Paul K. Friedrich
14 Williams, Kastner & Gibbs PLLC
15 601 Union St., Ste. 4100
16 Seattle, WA 98101-2380
17 pfriedrich@williamskastner.com

18 Signed at Moses Lake, Washington on June 5, 2019.

19 
20 _____
21 Shari M. Canet, Paralegal

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SUPERIOR COURT OF WASHINGTON FOR STEVENS COUNTY

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

No. 19-2-00122-33

[PROPOSED] EX PARTE ORDER RE:
LEAVE TO MAINTAIN ACTION ON
BEHALF OF STEVENS COUNTY

Plaintiffs,

vs.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; UNITED
STATES FIRE INSURANCE COMPANY;
DONALD L. DASHIELL, IN HIS
PERSONAL CAPACITY; WESLEY LEWIS
McCART, IN HIS PERSONAL CAPACITY;
AND STEVEN LYNN PARKER, IN HIS
PERSONAL CAPACITY,

Defendants.

I. BASIS

This matter came before the Court upon the ex parte motion of Plaintiff Tim Rasmussen, in his official capacity as Prosecuting Attorney of Stevens County, Washington, to obtain leave to maintain this action on behalf of the county.

1 **II. FINDINGS AND CONCLUSIONS**

2 The Court concludes that leave [] is [] is not necessary to maintain this action
3 under RCW 36.27.020(4) and/or RCW 42.08.030.

4 If leave is required, the Court finds that Plaintiff [] has [] has not satisfied the
5 requirements of RCW 42.08.030, i.e., "production of a certified copy of the bond and an
6 affidavit of the plaintiff, or some person in his or her behalf, showing the delinquency."

7 **III. ORDER**

8 Based on the foregoing findings and conclusions, the Court orders that Plaintiff
9 [] may [] may not maintain this action on behalf of Stevens County.

10 DONE this _____ day of June, 2019.

11 _____
12 Judge

13 PRESENTED BY:
14 TIM RASMUSSEN
15 Stevens County Prosecuting Attorney

16 By: _____
17 George Ahrend, WSBA #25160
18 Special Deputy Prosecuting Attorney
19 100 E. Broadway Ave.
20 Moses Lake, WA 98837
21 (509) 764-9000

EXHIBIT 6

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

IN RE:)	
)	No. 19-2-00084-33
WES McCART, STEVE PARKER,)	
and DON DASHIELL, Stevens)	PARTIAL TRANSCRIPT
County Commissioners,)	OF HEARING
)	
Petitioners.)	
_____)	

DATE OF HRG: May 2, 2019

Before: Honorable Maryann C. Moreno, Superior Court Judge

Appearing for Petitioners:

Mr. Jerry J. Moberg
Jerry Moberg & Associates, P.S.
P.O. Box 130
Ephrata, WA 98823

Appearing for Respondents:

Mr. George M. Ahrend
Stevens County Special Deputy
Prosecuting Attorney
100 E. Broadway Ave.
Moses Lake, WA 98837

Prepared by:
MGE Transcripts
249 N. Hofstetter St.
Colville, Washington 99114
509-675-0796

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

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

No. 19-2-00122-33
PARTIAL TRANSCRIPT
OF HEARING

Plaintiffs,)

vs.)

TRAVELERS SURETY AND CASUALTY)
COMPANY OF AMERICA; UNITED STATES)
FIRE INSURANCE COMPANY; DONAL L.)
DASHIELL, IN HIS PERSONAL CAPACITY;)
WESLEY LEWIS McCART, IN HIS PERSONAL)
CAPACITY AND STEVEN LYNN PARKER, IN)
HIS PERSONAL CAPACITY,)

Defendants.)

DATE OF HRG: May 2, 2019

Before: Honorable Maryann C. Moreno, Superior Court Judge

Appearing for Plaintiffs:
Mr. George M. Ahrend
Stevens Co. Special Deputy Pros. Atty
100 E. Broadway Ave.
Moses Lake, WA 98837

Appearing for Defendants:
Mr. Jerry J. Moberg
Jerry Moberg & Associates, P.S.
P.O. Box 130
Ephrata, WA 98823

Prepared by:
MGE Transcripts
249 N. Hofstetter St.
Colville, WA 99114
509-675-0796

1 THE COURT: Alright, I just want to say I spent considerable time with
2 these matters. I had some really good briefing and I think I've read virtually all of
3 the cases that were cited. There was a lot of - the interplay of the statutes is - can be
4 mind-boggling in terms of Title 36, and 42, and all of the other things that you folks
5 have cited to me, but they all seem to match and they all seem to make a lot of
6 sense to me, and I, I also reviewed the Whatcom County cases, the Whatcom
7 County and Schuman, and Austin vs. Whatcom County, and the Jasmin cases,
8 Drummond, and I think I've got a pretty good handle on it. I'm just gonna
9 summarily give you my findings, here.

10 I tend to agree with Mr. Ahrend, at least in terms of the way these cases
11 were brought as I recall and jotted down. The first motion to proceed with the ex-
12 parte request for counsel was filed, I believe in February, before understanding that
13 there was, you know, likely to be some lawsuits, I guess or some investigations
14 coming down the pike and wanted counsel, but the actual - I think the first suit was
15 actually filed - actually, there were two more after that. One of them was Mr.
16 Rasmussen's request for a declaratory judgment and then the - the actual suit
17 against the board and the bonds, and that suit, of course, among other things
18 involved the unlawful gifting of county funds. So, I think that, you know,
19 procedurally (inaudible) with regard to whether or not there should have been a
20 motion to intervene, but I think they're really consolidatable, if that's a word. The
21 board is asking for the services of the prosecuting attorney. They are contending
22 that he's conflicted, and they believe that the prosecutor's office has representation
23 of them as one of his duties. So, really, they're all - they're all sort of part and
24 parcel of the same series of events here, so I also tend to agree with Mr. Ahrend
25 with regard to the fact that I think the prosecutor has the duty to disband his office,
26

1 if you will, and to assert himself in areas where he believes that either he has a duty
2 or he doesn't have a duty. So, I'm not, you know, inclined - I mean, I'm inclined to
3 allow him to go forward and to be heard on that. And, realistically speaking, even
4 if I didn't allow him to intervene, if you will, still the case law is clear and directs
5 me to what the ultimate issue here is today, and that is whether or not the
6 prosecutor has a duty to defend the board in this action. And, the board spends a lot
7 of time talking about conflict of interest and you only get to the conflict of interest
8 analysis if you find that there is actually a duty, and again, the case law is clear and
9 that statutes are clear that in this situation the allegation - well, first of all, let me
10 back up, I'll just say, so normally the prosecutor's duty is to the county and to bring
11 suits on behalf of the county, and to defend on behalf of the county, and that is
12 36.27.020. The .030, of course, speaks to what happens if there's a conflict of
13 interest. Clearly, there would be a conflict of interest, if indeed the prosecutor had
14 a duty here. And, the way the lawsuit is fashioned, these claims are for gifting or
15 misuse of public funds. That invokes the personal liability of the board of county
16 commissioners as well as the bond, and under those circumstances and in
17 accordance with the case law in Jackson, there's no duty to represent officers in
18 suits where the county officer is not proxy for the county itself. So, clearly, the
19 prosecutor has the right to bring the lawsuit and the board is not entitled to the
20 services of the prosecuting attorney because he does not have a duty to defend
21 them. The duty is to the county. So, I'm not going to appoint - the prosecutor's
22 office are conflict counsel. The board, of course, has the right to counsel, but at this
23 point in time - and I have not done an analysis of whether or not the facts as set
24 forth are true - that's not - was not my call today, and Mr. Moberg explains that
25 there's no showing of bad faith, and I have to find at this stage that it was done in
26

1 the course of their duties and it was in good faith, and I'm not here to make that call
2 whatsoever. So, I'm gonna deny the request for counsel. The prosecutor's office
3 has no duty in that regard in this particular case. I also think with regard to the
4 Gray issue, that matter has been taken care of and Mr. Williams, or whoever has
5 been designated by the prosecutor's office, will continue to represent the board in
6 that particular proceeding. Alright? So, I'll need some findings outlining my
7 ruling, and I think I will just - would we set a presentment? Mr. Ahrend, I'll rely on
8 you for that. How long do you think you'll need?

9 MR. AHREND: I will - I bet we could come to agreement. I'll circulate
10 it by tomorrow.

11 THE COURT: Okay. And, I mean, if you have something with you that's
12 fine too, because I don't have anything I have to do until 1:30, so I know you've all
13 given me some orders. I've got all kinds of things in my file.

14 MR. AHREND: So, I only have one proposed order ...

15 THE COURT: Okay.

16 MR. AHREND: ... that we filed on - we proceeded with the bond action,
17 either to determine whether it was or wasn't necessary, and was or wasn't granted,
18 just kind of a fill-in-the-blank ...

19 THE COURT: Well, there was also, I think noted for today was the
20 Motion with regard to leave to maintain action on behalf of Stevens County.

21 MR. AHREND: That's the order I'm talking about.

22 THE COURT: Okay.

23 MR. MOBERG: And, we probably should resist that, because I think
24 that's the matter of county commissioner's decision, not the prosecutor's, so...

25 THE COURT: You can (inaudible) speak to it, but, um ... I ...

1 MR. AHREND: May I address that?

2 THE COURT: Yeah. Go ahead.

3 MR. AHREND: So, you're right. I think we probably both referenced it
4 in passing. I think Mr. Moberg suggested that you didn't need to reach it, and I was
5 - I should have talked about it more in my presentation. So ...

6 THE COURT: Well, it's actually - it's actually set as a separate trial -
7 separate file.

8 MR. AHREND: You're right. It's - do need me to announce the number
9 for that one?

10 THE COURT: No. I have it here. I have it. It's 19-2-00122-33, I
11 believe.

12 MR. AHREND: Correct. We brought this - and, this is George Ahrend
13 again, for the the record, on behalf of Mr. Rasmussen. We brought this motion for
14 leave to maintain the action on behalf of the county on an ex-parte basis. Mr.
15 Moberg objected to it being heard ex-parte, and so we noted it for hearing today
16 along with the other motions. And, our position really is that RCW 36.27.020,
17 subsection 4, authorizes prosecuting attorneys to maintain actions on bonds. And,
18 that that's all the authority that we need, but we recognize that RCW Chapter 42.08,
19 and it's .030 in that statute, it says that, "If an action on a bond isn't maintained in
20 the name of the county, that there's a procedure there that would say that notice and
21 an opportunity to be heard is required." There's a procedure there to obtain leave
22 from the Court, kind of a typical exparte-sort of break in the procedure there to
23 obtain leave from the Court to maintain the action on behalf of the county and
24 obviously in light of - if RCW 36.27.020 (4) isn't enough, it would seem like the
25 prosecutor is in the best position of anybody to obtain that leave to proceed on
26

1 behalf of the county. And, so in light of that we proposed an order that just says,
2 either leave – and either checkbox – these are not necessary, and if leave is
3 required, the Court finds that it is or is not necess- and, so then we filed a proposed
4 order that would allow you to check the boxes on that. Either way, if leave isn't
5 necessary, we can proceed, if leave is necessary and it's granted, we can proceed.
6 With that, I don't have anything to add unless you have any particular questions.

7 MR. MOBERG: I'd like to respond to that.

8 THE COURT: Of course.

9 MR. MOBER: So, this is a catch-22. The parties to that action are the
10 bonding companies who have not been given notice to respond, and the county
11 commissioners who are told that they cannot have counsel to represent them in the
12 matter. And, it was - while I think it may have been noted that the commiss- there
13 were no pleadings filed in this Court to specifically address that motion to leave. I
14 would then request for leave. In passing, they both fil- I filed cases that - and with
15 statute that said that the county only has the authority to elect which lawsuits it will
16 bring and which it will not bring, and therefore I think that to that extent, we take in
17 the position from the county commissioners that there is no authority to grant the
18 prosecutor leave. So, what I would ask the Court to do given the Court's rulings at
19 this point is to defer on that issue and allow - I've had communication with the
20 bonding company, and allow the commissioners individually, if that's the status
21 that they're in, to file a formal response to that motion for leave to proceed so that
22 the Court could have a justiciable issue here that is fairly argued. I don't think the
23 Court needs to reach that issue today (inaudible.)

24 THE COURT: Was that - I don't - was that even set for today? I don't -
25 I'm not - I don't think so. I only have notes for hearings in two of the files - and, I

1 have it in the 0084-33, and in the – I do have it in the 122-33. I’m just making sure
2 that its noted up correctly. I guess the question would be that if it was noted up for
3 today, there should have been a response. Yeah, it is noted up in the 00122-33, that
4 was noted up for today.

5 MR. MOBERG: I don’t think the bond company was served, I don’t think
6 individually...

7 THE COURT: Do you represent the bonding company?

8 MR. MOBERG: No, I don’t. They’re a separate - they’re a separate
9 entity.

10 THE COURT: I guess my question is, and I reviewed this, and I’m not
11 necessarily making a ruling right this minute, but I don’t - my thought is that the
12 statute is clear to me with regard to the duties of the prosecutor, and in my mind I
13 don’t believe he needs leave to proceed.

14 MR. MOBERG: Well, if that’s ...

15 THE COURT: So, what am I missing?

16 MR. MOBERG: I’m sorry.

17 THE COURT: No, go ahead.

18 MR. MOBERG: We address that in the issue of his authority to bring
19 lawsuits on behalf of the county. It’s premised on the county’s - the county
20 commissioners, legislative body, giving them the authority to bring those civil
21 lawsuits on behalf of the county. I don’t think he has an independent authority to
22 bring a lawsuit on behalf of the county without the consent of the county
23 commissioners. They need to not have that in this case. And, that’s the issue I
24 think that needs to be fully addressed.

25 MR. AHREND: Normally that is the case, but then there wouldn’t be
26

1 need to specifically call out authority to bring bond actions separate from civil suits
2 on behalf of the county, maybe recognizing that sometimes the legislative authority
3 would be a potential defendant here. But, recognizing that that argument could be
4 made, that's why we brought the request for leave. You could make an alternative
5 finding that leave isn't necessary, the "to be extended is necessary, it is granted,"
6 because who else would bring it or be in the position to bring it other than the
7 prosecutor?

8 THE COURT: And, that's - I think practically speaking, I just - I mean,
9 the board would have to say - yes, you can sue me. Right? Is that - that's not what
10 the argument - I mean, basically, isn't that what the argument is?

11 MR. MOBERG: Well, certainly, I (inaudible) - for this Court to make the
12 decision, but the board might have a perfectly legitimate reason to not bring an
13 action against the bonds. And, that reason might well be that there was no violation
14 of law or any issue that triggered a claim against the bonds. That decision rests
15 with the board. So, yeah, they certainly could. They certainly could say - no, we
16 don't think there's any basis. Or, we can - even if the prosecutor disagrees with
17 them, they can say - we don't think there's any basis or reason to bring that action.
18 The legislative authority - the commissioners have the authority to make that
19 decision and that's why I at least implore the Court not to rush to judgment here,
20 and it hasn't been fully - been carefully briefed, and ...

21 THE COURT: Alright. And, let me ask you, Mr. Ahrend, was the
22 bonding company served the (inaudible) notice of the ...

23 MR. AHREND: The bonding companies have been served with the
24 *Summons and Complaint*. The bonding company, or Traveler's, their representative
25 who is a lawyer, but who has not appeared for them in this matter, named Mark
26

1 Chrohn, was sent a copy of the *Motion for Leave for Proceed*. I haven't heard from
2 U.S. Fire, and so I don't - I have not notified U.S. Fire.

3 THE COURT: Why don't we do that? Let's re-note that, give proper
4 notice to the bond, let Mr. Moberg the opportunity to respond, and then I can
5 certainly, um, if we don't need - necessarily need oral argument, I took some good
6 notes here, I could just issue a ruling. I'll call you on the phone and give you my
7 ruling if that's acceptable?

8 MR. AHREND: Sure, that would be fine.

9 THE COURT: Okay. So, I don't know if you want me to give you - or,
10 basically a date for that hearing without oral argument and then we would work
11 backwards?

12 MR. MOBERG: Whatever the Court ...

13 MR. AHREND: Well, that - that sounds fine.

14 THE COURT: Okay, so if I set this - we'll say June - I'm just picking a
15 day - June 21st for - the hearing would be set that day, and that would be without
16 oral - if we work backwards, then the initial pleadings were already in the file, so
17 maybe May 24th for any responses?

18 MR. AHREND: Okay.

19 THE COURT: And, then replies no later than June 7th?

20 MR. MOBERG: June 7th?

21 THE COURT: Uh-huh.

22 MR. MOBERG: Okay.

23 THE COURT: Does that work?

24 MR. AHREND: It works for my schedule, Your Honor, I'm just worried
25 that it's a little bit long out there.

1 THE COURT: Okay.

2 MR. AHREND: It took us awhile to get this. I'm thinking that this could
3 be heard on the normal motion schedule which in Stevens County is just five
4 business days, and set this without oral argument.

5 THE COURT: Well, it's not necessarily - I can set it anywhere you like.

6 MR. MOBERG: (Inaudible) bonding company. Then, one of 'em hasn't
7 yet been served, so I think that we set it too quickly, we're not gonna - then we're
8 not trying to (inaudible).

9 THE COURT: I'll back up the hearing without oral to June 14th, and all
10 the pleadings will need to be in by the 7th. That would be the reply pleading.
11 Okay?

12 MR. AHREND: The 14th's the hearing.

13 THE COURT: Right.

14 MR. AHREND: The responsive brief is due when?

15 THE COURT: Responsive brief would be due - I think I said May 24th?

16 MR. MOBERG: 24th. Yes.

17 THE COURT: And, then any reply on May 7th - Uh, June 7th.

18 MR. AHREND: Okay.

19 THE COURT: That work?

20 MR. AHREND: Yes. It's fine. Thank you.

21 THE COURT: Alright. Anything else today, then? You're gonna work
22 on an order?

23 MR. MOBERG: We'll get an order submitted, Your Honor. I don't think
24 (inaudible.)

25 MR. AHREND: I'm sure we'll come to something. We'll file that maybe
26

1 in the next couple days - hopefully agreed. If it's not, can I just file a note for
2 presentment on the 7th? Or, on the June 14th, when you're gonna hear this matter?

3 THE COURT: I don't do presentments with oral argument.

4 MR. AHREND: No.

5 THE COURT: So, we can set the presentment without oral for May 24th,
6 at 9:00. I'm sure you'll agree on an order. If not, you'll file any objections. Okay?

7 MR. AHREND: Okay.

8 MR. MOBERG: I don't think there will be a problem.

9 THE COURT: Alright. Anything else?

10 MR. AHREND: No, thank you, Judge.

11

12 (Whereupon matter was adjourned.)

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27 *In re: Stevens County Commissioners*
and Stevens County ex rel vs. Travelers Surety et al
Partial Transcript of Hearing
28 05/02/2019 - Page 12

MGE Transcripts
249 N. Hofstetter St.
Colville, WA 99114
509-675-0796

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CERTIFICATE

I, Michelle Gagnon-Enright, as MGE Transcripts, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;
2. I received the electronic recording directly from the trial court conducting the hearing;
3. This transcript is a true and correct record of the proceedings to the best of my ability, including any changes made by the trial judge reviewing the transcript;
4. I am in no way related to or employed by any party in this matter, or any counsel in this matter; and
5. I have no financial interest in the litigation.

Signed May 5, 2019, at Colville, Washington.



EXHIBIT 7

JUL 23 2019

SUPERIOR COURT
STEVENS COUNTY, WA

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SUPERIOR COURT OF WASHINGTON FOR STEVENS COUNTY

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

Plaintiffs,

vs.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; UNITED
STATES FIRE INSURANCE COMPANY;
DONALD L. DASHIELL, IN HIS
PERSONAL CAPACITY; WESLEY LEWIS
McCART, IN HIS PERSONAL CAPACITY;
AND STEVEN LYNN PARKER, IN HIS
PERSONAL CAPACITY,

Defendants.

No. 19 2 00122 33

EX PARTE ORDER RE: LEAVE TO
MAINTAIN ACTION ON BEHALF OF
STEVENS COUNTY

I. BASIS

This matter came before the Court upon the ex parte motion of Plaintiff Tim Rasmussen, in his official capacity as Prosecuting Attorney of Stevens County, Washington, to obtain leave to maintain this action on behalf of the county.

COPY

1 **II. FINDINGS AND CONCLUSIONS**

2 The Court concludes that leave [] is [] is not necessary to maintain this action
3 under RCW 36.27.020(4) and/or RCW 42.08.030.

4 If leave is required, the Court finds that Plaintiff [] has [] has not satisfied the
5 requirements of RCW 42.08.030, i.e., "production of a certified copy of the bond and an
6 affidavit of the plaintiff, or some person in his or her behalf, showing the delinquency."

7 **III. ORDER**

8 Based on the foregoing findings and conclusions, the Court orders that Plaintiff
9 [] may [] may not maintain this action on behalf of Stevens County.

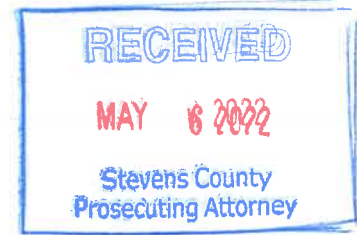
10 DONE this 17 day of ^{July}~~March~~, 2019.

11 Maryann C Moreno
12 Judge

13 PRESENTED BY:
14 TIM RASMUSSEN
15 Stevens County Prosecuting Attorney

16 By: George M. Ahrend
17 George Ahrend, WSBA #25160
18 Special Deputy Prosecuting Attorney
19 100 E. Broadway Ave.
20 Moses Lake, WA 98837
21 (509) 764-9000

EXHIBIT 8



To the Stevens County Board of County Commissioners:

Re: Ongoing litigation

Commissioners, in an effort to bring an end to Prosecutor Rasmussen's suit against us as former Board Members we submit the following draft resolution for your consideration.

Whereas: Stevens County has been engaged in litigation regarding the recovery of certain funds and the bonds of former elected Commissioners; and

Whereas: The expense of time and money and reputation incurred by Stevens County now far outweighs any potential benefit to the citizens of Stevens County; and

Whereas: The Washington State Court of Appeals has rendered a unanimous decision that reverses the lower court ruling regarding this matter and states that the former Commissioners were removed from their position in error thereby placing additional liabilities on county resources; and

Whereas: The Prosecutor failed to consult the current Board of County Commissioners and failed to get concurrence from the Board to pursue an appeal to the Supreme Court as required by RCW 36.32.120(6); and

Whereas: In *Prentice v. Franklin County*, 54 Wash. 587 (1909), the Supreme Court ruled that "the board of county commissioners are entitled to direct dismissal of the appeal, if they determine such procedure to be for the best interests of (Franklin) county" under current RCW 36.32.120(6); and

Whereas: The Board finds that it is not advisable, expedient, or in the best interests of Stevens County and its citizens in pursuing an appeal to the unanimous findings of the aforementioned Court of Appeals (Case No. 37812-8-III) and that no appeal to the Supreme Court should proceed.

Now Therefore: It is ordered that any and all appeal or other proceedings instituted to seek judicial review of the March 31, 2022, decision of the Court of Appeals under No. 37812-8-III be dismissed and discontinued and the prosecuting attorney of this county is hereby directed to dismiss and discontinue of record any and all proceedings now commenced for the purpose of having said decision reviewed or set aside by the Washington State Supreme Court.

Commissioners;

This is a time sensitive matter and we ask for your earliest consideration and to put an end to what the appeals court deemed a 'novel approach' utilized by Prosecutor Rasmussen. The damage to legitimate county function and to our personal reputations cannot be undone. We can make a course correction and restore a proper balance between county offices and authorities. Relevant case law regarding this matter is attached.

Sincerely,

Steve Parker & Don Dashiell

54 Wash. 587
Supreme Court of Washington.

PRENTICE
v.
FRANKLIN COUNTY et al.

Synopsis

En Banc. Appeal from Superior Court, Franklin County; W. W. Zent, Judge.

ACTION BY JOHN PRENTICE AGAINST FRANKLIN COUNTY AND ANOTHER. JUDGMENT FOR PLAINTIFF AND DEFENDANTS APPEAL. DISMISSED.

Attorneys and Law Firms

**832 *587 W. D. Schutt, Prosec. Atty.

A. C. Routhe, and John Sharpstine, for appellants.

Opinion

By the court.

In June, 1902, a general delinquent tax foreclosure judgment was entered in the superior court in and for Franklin county under which that county acquired tax titles to a large number of town lots and other tracts of land. On October 13, 1906, this action was commenced by John Prentice, as plaintiff, against Franklin County and C. S. O'Brien, its treasurer, as defendants; to vacate the tax foreclosure and judgment, to set aside the sales made to Franklin county thereunder, and to enjoin the county treasurer from selling a number of the lots and tracts of land, to which the plaintiff claimed title. On January 14, 1907, a written stipulation was filed, reading as follows: 'It is hereby stipulated that the judgment and decree of foreclosure in the complaint in this case described be set *588 aside, and the sales of the property made under said judgment and decree of foreclosure be set aside, and that the plaintiff pay to the treasurer of Franklin county, in full of all taxes, interest and penalties upon said property to date, the sum of \$2,000, apportioned equally to the years where taxes have accrued and are assessed against said property and unpaid at this time. Said decree shall be entered by the judge of the superior court of Franklin county at North Yakima upon and under this stipulation; and it is agreed that this matter shall come up before Hon. H. B. Rigg, judge of the superior court of Franklin county, Wash., upon this stipulation; for the entry of the decree and judgment upon this stipulation at North Yakima, Wash., at the chambers of said judge, on the 19th day of January, 1907, at the hour of 10 o'clock a. m., or as soon thereafter as council can be heard. This stipulation only applies to the lots which have not been sold by the county, and which have been acquired by the county in virtue of said foreclosure proceedings. The lots sold by the county acquired under said proceedings are excluded from this stipulation, and are to be in no wise affected thereby, but are by this stipulation to be withdrawn from said suit, and to be considered as never having been included therein. The decree herein provided for shall be entered within three days after it is signed by the judge rendering it, and the said money shall be paid within 20 days after the decree has been filed with the clerk of this court. The county shall make a quitclaim deed also to the plaintiff within the 20 days aforesaid, to be delivered to the plaintiff upon his demand, after payment or at the time of the payment of said money. Neither party shall recover costs. This done by way of settlement of said pending suit, and is done by authority and direction of the board of county commissioners. In witness whereof, said commissioners and all other parties hereto have affixed their names. Dated this 14th day of January, 1907. Henry J. Snively, Attorney for Plaintiff. John Prentice, Plaintiff. E. T. Juvenal, W. T. Johnson, A. W. Kane, County Commissioners Franklin County. W. D. Schutt, Prosecuting Attorney of Franklin County.' *589 On January 18, 1907, an attempt was made by

the board of county commissioners to revoke the stipulation, and on February 4, 1907, their attorneys served and filed a motion herein, asking that it be withdrawn from the files, vacated, set aside, and canceled, claiming that it had been obtained by mistake and fraudulently. This motion, being resisted by the plaintiff, was by order of the court set for hearing upon oral and documentary evidence, but not upon affidavits. On such hearing, subsequently had, the trial court found that no mistake of law or fact had entered into the execution of the stipulation, and denied the motion to vacate. On June 13, 1908, final judgment was entered on the stipulation in accordance with its terms, and from that judgment this appeal is prosecuted.

The respondent, assigning several grounds therefor, has moved to dismiss the appeal, but we will only consider his contentions that the appeal has been taken without any order of the board of commissioners, that they have directed its dismissal, and that the controversy has ceased. In support of these contentions the respondent has filed in this court, under the certificate of the county auditor, a transcript of certain proceedings had by the board of county commissioners, on July 8, 1908, at their regular session, from ~~**833~~ which it appears that the litigation, the stipulation, the judgment of the trial court, and this appeal were then considered, and that the board made findings and orders relative thereto which in part read as follows: 'We find, further, that it is not advisable, nor expedient, nor to the best interests of said county, to incur further expense on account of said case in taking and perfecting and prosecuting an appeal from the order entered by the superior court of this county, and that no appeal to the Supreme Court should be prosecuted. It is therefore ordered by this board that a deed be executed, acknowledged, and attested by this board under and in accordance with the provisions of the decree of the superior ~~*590~~ court, entered June 13, 1908, conveying and quitclaiming the property in question, and the county auditor is hereby directed to enter and record said deed. It is further ordered that any appeal or other proceedings instituted, looking to a review of the order above mentioned, be dismissed and discontinued, and the prosecuting attorney of this county is hereby directed to dismiss and discontinue of record any and all proceedings now commenced for the purpose of having said case reviewed or said decree set aside by the Supreme Court.' The auditor's certificate further shows that a deed for the lots and tracts of land has been executed by Franklin county and delivered to the respondent John Prentice in satisfaction of the judgment and decree of the superior court, and that he has paid to the county treasurer the sum of \$2,000 in full settlement of the delinquent taxes. These facts are not disputed, nor does it appear that the appeal was authorized or ordered by the board of county commissioners.

The controversy having ceased, and the judgment having been satisfied, there is nothing before this court for consideration. The board of county commissioners are entitled to direct a dismissal of the appeal, if they determine such procedure to be for the best interests of Franklin county. Subdivision 6, § 342, Ballinger's Ann. Codes & St. (section 4098, Pierce's Code), confers upon boards of county commissioners the following authority: '(6) To have the care of the county property and the management of the county funds and business, and in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law.' The interests of the defendants in this litigation, prosecuted against Franklin county as the real party in interest, are subject to the orders and control of the board of county commissioners. Although the prosecuting attorney is the legal adviser of the county, he is not authorized to prosecute this appeal in opposition to the orders of the board of ~~*591~~ county commissioners. County of Spokane v. Bracht, 23 Wash. 102, 62 Pac. 446.

The appeal is dismissed.

RUDKIN, C. J., and CHADWICK, MOUNT, DUNBAR, and GOSE, JJ., concur. FULLERTON, J., took no part.

All Citations

54 Wash. 587. 103 P. 831

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EXHIBIT 9

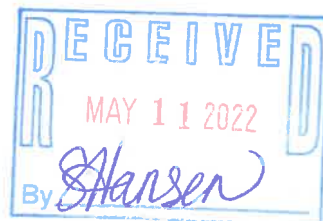
CERTIFICATE OF APPOINTMENT

COMES NOW, Tim Rasmussen, Prosecuting Attorney for Stevens County, State of Washington, having special confidence in James Nagle, do hereby constitute and appoint James Nagle as Special Deputy Prosecutor pursuant to RCW 36.27.040 to provide only civil legal advice pursuant to RCW 36.27.020(1) to Stevens County Commissioners Mark Burrows and Greg Young on the issue of a requested resolution. This appointment is on the basis of providing independent advice for 30 days or until extended upon request or until revoked by me, at which this appointment shall thereafter cease and be null and void.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 11 day of May, 2022.



Tim Rasmussen, #32105
Stevens County Prosecutor



AMENDED CERTIFICATE OF APPOINTMENT

COMES NOW, Tim Rasmussen, Prosecuting Attorney for Stevens County, State of Washington, having special confidence in James Nagle, do hereby constitute and appoint James Nagle as Special Deputy Prosecutor pursuant to RCW 36.27.040 of said County, State of Washington to provide only civil legal advice pursuant to RCW 36.27.020(1) to the Stevens County Commissioners on the issue of a requested resolution. This appointment is on the basis of providing independent advice for 30 days or until revoked by me, at which this appointment shall thereafter cease and be null and void.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 11 day of May, 2022.



Tim Rasmussen, #32105
Stevens County Prosecutor

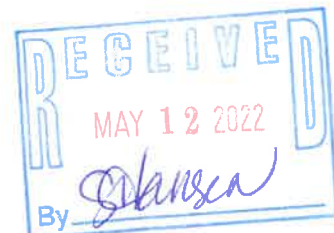
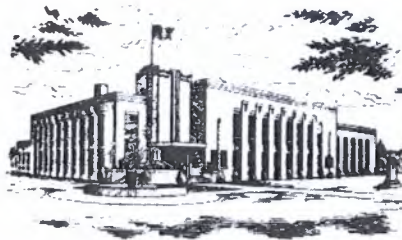


EXHIBIT 10

Wes McCart
District No. 1

Mark Burrows
District No. 2

Greg Young
District No. 3



Jonnie R. Brown
Clerk of the Board

Karla Hood
Assistant Clerk of the Board

Tammi Renfro
Administrative Assistant

Stevens County Commissioners

Mailing Address: 215 South Oak St; Colville, WA 99114-2861

Location Address: 230 East Birch, Colville

Phone: 509-684-3751 Fax: 509-684-8310 TTY 800-833-6388

Email: commissioners@stevenscountywa.gov

June 8, 2022

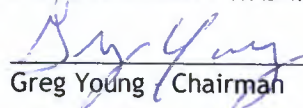
TO: The Citizens of Stevens County

As reported in the newspapers, the Court of Appeals ruled in favor of the prior Board of County Commissioners regarding the spending of Homelessness Funds. Our Elected Prosecutor has decided to appeal this decision to the Supreme Court of Washington. This decision was never discussed with us in advance. We were never provided an opportunity to review the financial impact that further litigation would have on our county resources.

We have been advised that Mr. Rasmussen has the legal right to pursue an appeal. However, as duly elected Commissioners whom you have entrusted to act in your best interests and to be financially responsible, we cannot support the decision to continue litigation. To date, our county has expended over \$120,000.00 for a conflict attorney to handle this case for Mr. Rasmussen. Given the current state of our economy, the financial impact this litigation has already had, and the anticipated additional costs to pursue this appeal, continued litigation is not in the financial best interests of Stevens County. These funds could be better spent serving the needs of the citizens of this County.

Thank you,

BOARD OF COUNTY COMMISSIONERS
STEVENS COUNTY WASHINGTON


Greg Young Chairman

Recused
Wes McCart - Commissioner


Mark Burrows - Commissioner

PIERCE COUNTY PROSECUTING ATTORNEY

June 21, 2022 - 4:09 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,881-3
Appellate Court Case Title: Stevens County, Washington, ex rel Tim Rasmussen v. Donald L. Dashiell, et al
Superior Court Case Number: 19-2-00122-2

The following documents have been uploaded:

- 1008813_Answer_Reply_20220621160220SC432098_1758.pdf
This File Contains:
Answer/Reply - Other
The Original File Name was Final Response w appendix.pdf

A copy of the uploaded files will be sent to:

- george@lustralawfirm.com
- jhartsell@ks-lawyers.com
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- lobannan@ks-lawyers.com
- pcpatcecf@piercecountywa.gov
- pcpatvecf@piercecountywa.gov
- scanet@lustralawfirm.com
- swiley@ks-lawyers.com
- tstartzel@ks-lawyers.com

Comments:

Response to Motion to Dismiss

Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us

Filing on Behalf of: Pamela Beth Loginsky - Email: pamela.loginsky@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

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Tacoma, WA, 98402
Phone: (253) 798-7400

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