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No. 64838-1-I

King County Superior Court
Cause No. 09-1-05321-5 SEA

IN THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CITY OF AUBURN

Petitioner

v.

DUSTIN GAUNTT

Respondent

BRIEF OF RESPONDENT

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A. STATEMENT OF THE CASE

The Respondent agrees with Petitioner's statement of the case with one caveat. The Petitioner indicates that it charged the Respondent under state law. The Petitioner fails to mention that they had not adopted that state law by reference as part of their criminal code.

B. ARGUMENT

The City cannot prosecute violations of laws that they have not enacted.

The Washington State Constitution requires the City of Auburn to only prosecute for crimes that are codified in its city code. Art. XI, § 11 grants counties, cities and towns the authority to make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. This provision grants the City the authority to make and enforce laws. It is a long standing rule of statutory construction that every word is to be given meaning. State ex rel. Banker v. Clausen, 142 Wash. 450 (Wash. 1927). The City is attempting to enforce law that it has not enacted, and in doing so, fails to give meaning to the phrase "make and enforce" and therefore falls beyond its constitutionally granted authority. See Brown v. Cle Elum, 145 Wash. 588 (Wash. 1927).

RCW 39.34.180 does not grant the City of Auburn the authority to prosecute violations of criminal offenses not adopted by its city code.

RCW 39.34.180 provides as follows:

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the

services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. The City argues that since it has the responsibility under RCW 39.34.180(1) to prosecute, adjudicate, sentence, and incarcerate misdemeanor and gross misdemeanor offenses committed by adults in its respective jurisdictions and referred to its law enforcement agencies, that it has the authority to charge crimes not adopted by its criminal code. It bases this argument on the phrase: “whether filed under state law or city ordinance.” The City is of the belief that “filed under state law” gives it the authority to enforce laws that it has not made.

The petitioner is incorrect in its position. There is no language in this statute that grants cities and towns the authority to enforce any non-felony criminal laws regardless of whether the laws are found in the city code. The absence of such language makes it clear that the intent of the legislature was not to relieve the cities of their constitutional obligation to make laws. Instead as will be examined at length below, the intent of RCW 39.34.180 is to apportion financial responsibility for non-felony

law enforcement with cities.

An examination of RCW 35.20.250 is instructive. This statute grants cities larger than 400,000 people (Seattle) concurrent jurisdiction with the district court. Money collected under this authority is deposited in the county treasury. *Id.* By limiting concurrent jurisdiction to cities of populations in excess of 400,000, the legislature must be understood to have intentionally denied concurrent jurisdiction to the City of Auburn. Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*--specific inclusions exclude implication. Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 571 (Wash. 1999).

RCW 3.50.100(1) is another statute which is at odds with the petitioner's position. It provides as follows:

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or

deposited in such other funds as may be designated by the laws of the state of Washington.

This section authorizes the municipal court to collect money associated with violations of municipal or town ordinances. The legislature, when granting concurrent jurisdiction to the City of Seattle, specifically stated that money collected by Seattle, when exercising concurrent jurisdiction, is to be deposited in the county treasury. Under 3.50.100(1) the Auburn Municipal Court would not be able to collect any fines from the Respondent because he would not be in violation of any municipal ordinance. If the legislature intended for the city to prosecute offenses other than city ordinances, it would have so stated and would have provided guidance in regard to collecting money. Landmark at 571.

The City of Auburn operates its own municipal court, is in possession of a criminal code, and therefore meets the responsibility of RCW 39.34.180. See RCW 3.50.815.

As noted above, it was not the legislative purpose of RCW 39.34.180 to allow cities and towns to prosecute crimes they have not included in their respective criminal codes. In construing this statute, the court should seek to find the legislative intent, and to give effect to the

legislative purpose. Rounds v. Union Bankers Ins. Co., 22 Wn. App. 613, 616 (Wash. Ct. App. 1979). The legislative intent is to be derived from the statute as a whole and not from a single sentence or solitary paragraph. *Id.* Thus, in interpreting statutes, legislative intent is to be ascertained from the statutory text as a whole, interpreted in terms of the general purpose of the act. *Id.*

Every statute and every word within a statute is there for a purpose and is to be given meaning. City of Spokane Valley v. Spokane County, 145 Wn. App. 825, 832 (Wash. Ct. App. 2008). No portion of a statute is to be rendered superfluous. *Id.* Title 39 of the Revised Code of Washington is entitled Public Contracts and Indebtedness. Section 34 is entitled the Interlocal Cooperation Act. The purpose of the Cooperation Act is set forth in RCW 39.34.010 and states as follows:

It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

The various sections of RCW 39.34 provide for and regulate the various agreements that governmental units may enter into.

RCW 39.34.180 is entitled Criminal justice responsibilities — Interlocal agreements — Termination. This section consists of 5 subsections. Subsection 1, which is the section that the City is relying upon, is the section that places of the burden on counties, cities and towns to be responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions¹. The statute goes on to state that these responsibilities may be met through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Subsection 2 sets out what principles must be followed in entering into interlocal agreements. Subsection 3 sets out the procedures to be utilized if an agreement cannot be reached between the contracting entities. Subsection 4 discusses how these agreements are to be terminated. Subsection 5 makes it clear that any city or town that has not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, must either enter into an interlocal agreement or adopt a criminal code by July 1, 1998. There is nothing in this enactment that specifically authorizes a city or town to enforce laws that they have not made. This

provision is not intended to confer jurisdiction but to delineate monetary responsibility. RCW 39.34 et. seq. is, after all, the Interlocal Cooperation Act².

The legislature is clearly stating that jurisdictions that are trying to avoid their economic obligations for all stages of law enforcement are not going to be allowed to do so. In fact, RCW 3.50.815 clearly states for courts not operating their own municipal court, that a city may meet the requirement of RCW 39.34.180 by entering into an agreement with the county or one or more city. Cities and towns either need to operate their own courts or enter into an interlocal agreement with the county or other cities and towns for court services. In the situations where the city chooses to not operate its own court or/and adopt a criminal code, it needs to make arrangements to pay for the costs for those things that are outlined in RCW 39.34.180(1). In situations where there is no criminal code, the city or town must enter into an interlocal agreement with the local county to pay for criminal justice services, i.e. cases filed under state law. Auburn is not a jurisdiction trying to avoid its responsibilities to pay for its share of the criminal justice system and therefore RCW 39.34.180(1) is not applicable to this case³.

Every word in every statute is presumed to be there for a reason. Statutes are not to be read in a manner inconsistent with the legislative purpose. City of Kent v. Beigh, 145 Wn.2d 33, 40 (Wash. 2001); Rounds v. Union Bankers Ins. Co., 22 Wn. App. 613, 616 (Wash. Ct. App. 1979). The legislative intent is to be derived from the statute as a whole and not from a single sentence or solitary paragraph. Rounds at 616. Thus, in interpreting statutes, legislative intent is to be ascertained from the statutory text as a whole, interpreted in terms of the general purpose of the act. *Id.* If the city is correct, and the legislature intended for the city to enforce state statutes that have not been incorporated into the city code, there would be a host of statutes rendered superfluous. The legislative intent under the circumstances here is abundantly clear.

RCWs 35.22.425, 35.23.555, 35.27.515, 35.30.100, and 3.50.805 all mandate that a city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county (Chapter 39.34 RCW) under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the

terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. If the city may enforce criminal violations that are not part of its code, why would the legislature enact a statute requiring cities not to repeal their respective codes? The legislative intent and purpose is clear. The legislature does not want cities and towns to shirk their criminal justice responsibilities by attempting to pass the costs off to other jurisdictions.

The City of Auburn's municipal court was created pursuant to RCW 3.50. ACC 2.14.020.⁴

RCW 3.50.020 provides as follows:

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original

criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Clearly this statute requires that cities prosecute individuals for violations of city ordinances. If the city's position were well-founded, the legislature could have simply said that the municipal court shall have exclusive original jurisdiction over traffic infractions and criminal violations, not amounting to felonies, occurring within the city's boundaries. This, of course, would render parts of the above-referenced statutes superfluous.

The City of Auburn is a Non Charter Code City, pursuant to RCW 35A.02. ACC 1.08.010. The City is a mayor-council government. Id. RCW 35A.11 sets out the laws governing non charter cities. RCW 35A.11.020, in its pertinent part, states that a legislative body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and

may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. This statute raises two issues in regard to the petitioner's position. One is a separation of powers issue. The second issue involves superfluous words in a statute. If RCW 39.34.120 removes the requirement of a city to adopt an ordinance, why did the legislature require the city to provide for the same penalty for the same crime under state law?

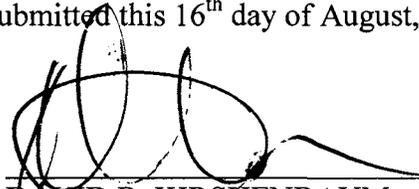
Finally, the Washington State Constitution does not contain a formal separation of powers clause, but the very division of our government into different branches has been presumed throughout our state's history to give rise to a vital separation of powers doctrine. Putman v. Wenatchee Valley Med. Ctr., PS, 166 Wn.2d 974, 980 (Wash. 2009). The doctrine of separation of powers divides power into three coequal branches of government: executive, legislative, and judicial. *Id.* The doctrine does not depend on the branches of government being hermetically sealed off from one another but ensures that the fundamental

functions of each branch remain inviolate. Id. If the activity of one branch threatens the independence or integrity or invades the prerogatives of another, it violates the separation of powers. Id. In this case, if the city's position were adopted, the city prosecutor, representing the executive branch of government, would be impinging on the city council's ability to determine which crimes it wants prosecuted within the city limits of Auburn. This would be a violation of the separation of powers doctrine.

C. CONCLUSION

Respondent's interpretation of the various statutes involved with this case is consistent with the state Constitution, does not render any word in any statute superfluous, and gives effect to the legislative purpose of RCW 39.34.180. The Superior Court should be affirmed.

Respectfully submitted this 16th day of August, 2010.



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¹ RCW 39.34.180 provides as follows: Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, **and referred from their respective law enforcement agencies** [emphasis added], whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

² See also RCW 39.50.800 which provides If a municipality has, prior to July 1, 1984, repealed in its entirety that portion of its municipal code defining crimes but continues to hear and determine traffic infraction cases under chapter 46.63 RCW in a municipal court, the municipality and the appropriate county shall, prior to January 1, 1985, enter into an agreement under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs incurred after January 1, 1985, associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. If the city is operating a municipal court, and petitioner's argument has merit, why would the city need to enter into an agreement with the county? Shouldn't they simply be able to start prosecuting people for violations of non felony crimes listed in the RCWs since according to petitioner they do not need to adopt a criminal code because they have the "responsibility" to prosecute under RCW 39.34.180. This interpretation of course would render all of RCW 3.50.800 superfluous.

³ There is nothing in the language of RCW 39.34.180(1) that grants a city or town the authority to enforce RCWs. The legislature is presumed to know the law. Since there is a statute that grants concurrent jurisdiction to the City of Seattle (which enables the City to prosecute violations of RCW occurring within the city limits of Seattle, and there is no similar provision for any other city or town) the presumption is that the legislature specifically intended not to grant this authority. See City of Seattle v. Briggs, 109 Wn. App. 484 (Wash. Ct. App. 2001) and RCW 35.20.250.

⁴ A. The municipal court shall have jurisdiction and shall exercise all powers enumerated in this chapter and in Chapter 3.50 of the Revised Code of Washington, existing or amended at or after the effective date of the ordinance codified in this chapter, together with such other powers and jurisdiction as are generally conferred upon such court in the state of Washington either by common law or by express statute.

B. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city. The municipal court shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by state statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. ACC 2.14.020.

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CERTIFICATE OF SERVICE OF BRIEF OF RESPONDENT

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I, Jack Orewiler of ACTION SPECIAL DELIVERY, do hereby certify that on the 17 day of August, 2010, I served a copy of the BRIEF OF RESPONDENT, by delivering a copy to the following addresses:

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Dated this 17 day of August, 2010.

ACTION SPECIAL DELIVERY



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