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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

(Court of Appeals, Division I, Court Cause No. NO. 64838-1-I)

CITY OF AUBURN

Petitioner,

v.

DUSTIN B. GAUNTT,

Respondent,

SUPPLEMENTAL BRIEF OF PETITIONER, CITY OF AUBURN

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A. IDENTITY OF BRIEFING PARTY

The Petitioner, City of Auburn, is a Washington municipal corporation and will hereinafter be referred to as the City. The Respondent, Dustin B. Gauntt, will hereinafter be referred to as the Defendant.

B. STATEMENT OF CASE

The Statement of the Case is as set forth in the City's Petition for Review previously filed with this Court.

C. SUMMARY OF ARGUMENT

The Defendant argued, and the Court of Appeals agreed, that in order for a city to be able to prosecute violations of state law, the city must either 1) adopt the state laws by city ordinance or 2) have been specific statutory authority to do so.

The Defendant also argued, and the Court of Appeals agreed, that RCW 39.34.180 does not authorize or give jurisdiction to a city to prosecute state law. That interpretation essentially invalidates completely the provisions of RCW 39.34.180 that expressly seek to impose upon cities the obligation and responsibility to prosecute non-felony violations occurring within their corporate boundaries. The operative language of RCW 39.34.180 is 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. . . .*
(Emphasis added.)

Also different than the approach taken by the defendant and the court of Appeals, the option to contract with the county is the second option, an option dependant on the county – or on another separate governmental entity. The statute reads - “each city and town must carry out its responsibilities for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses . . . through the use of its own courts, staff, and facilities, *or* by entering into contracts or interlocal agreements under this chapter to provide these services. The statute makes the county contract option the *second* choice. Moreover, particularly since, as pointed out by AGOs 2000 No. 2 and 2006 No. 11, a city cannot force a county [or any other governmental entity] to prosecute on its behalf, if a city did not have a contract with the county and had previously adopt the state laws by reference or adopted comparable provisions in its municipal code, then according to the Court of Appeals’ interpretation, the city is completely unable to prosecute the

violation. The end result is that a city would then be unable to take action as required of it pursuant to RCW 39.34.180.

Additionally, the Court of Appeals' interpretation of RCW 39.34.180 would essentially allow cities to avoid the costs of prosecuting violations of criminal law. A city could, for instance, pare down its criminal code to include only those things for which it wanted to be responsible for prosecution.

D. ARGUMENT

The Court of Appeals ruled that the City did not have the jurisdiction to prosecute violations of the misdemeanor crimes of Possession of 40 Grams or Less of Marijuana filed under RCW 69.50.4014 and Unlawful Use of Drug Paraphernalia filed under RCW 69.50.412 . Both of these charges were filed under state law – rather than under city ordinance. These charges were filed against the Defendant pursuant to the mandate of RCW 39.34.180.

The Court of Appeals reads RCW 39.34.180 as not being a statute that would grant jurisdiction or authority for a municipal court to hear state law violations. The court construed the statute as only dealing with contracts with the county or some other jurisdiction for prosecution, essentially ignoring language that directs cities to prosecute non-felony charges – *whether filed under state law or city ordinance.*

The Defendant argued, and the Court of Appeals acceded to the argument, that the City's prosecution of state law violations was counter to the jurisdiction of Chapter 3.50 RCW. However, there are many statutes granting authority to cities and municipal courts that are also not found in Chapter 3.50 RCW relating to the powers of the municipal court. For instance, RCW 66.44.180, relating to jurisdiction for alcohol related violations, provides that municipal court judges have concurrent jurisdiction with superior court judges on violations of *that title* [state law]. *See also* RCW 69.50.505 relating to search and seizure of controlled substances which authorizes municipal courts to exercise a role in issuance of search warrants. Additionally, RCW 46.08.190, dealing with jurisdiction of judges of district, municipal, and superior courts, states that "[e]very district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, except the trial of felony charges on the merits, and may impose any punishment provided therefor. Furthermore, and more specific to the facts of this particular case, RCW 69.50.500, *expressly authorizes* law enforcement officers and prosecuting attorneys across the state to enforce provisions of Chapter 69.50 relating to controlled substances. None of these statutes are located in Chapter 3.50 RCW. However, similar to RCW 39.34.180, RCW 69.50.500 recognizes a

responsibility and duty to enforce criminal violations. RCW 69.50.500 recites as follows:

69.50.500 Powers of enforcement personnel.

(a) It is hereby made the duty of the state board of pharmacy, the department, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

...

Again, both of the state law violations with which the Defendant was charged were found within that chapter – RCW 69.50, to wit: RCW 69.50.4014 and RCW 69.50.412.

It should also be noted that Chapter 3.50 RCW, the statute that does empower and authorize municipal courts to act, specifically states that municipal courts shall have such power and jurisdiction as are conferred upon this court either by common law or by express statute. *See* RCW 3.50.010 and 3.50.020 set forth below.

3.50.010 Municipal court authorized in cities of four hundred thousand or less.

Any city or town with a population of four hundred thousand or less may by ordinance provide for an inferior court to be known and designated as a municipal court, which shall be entitled “The Municipal Court of (insert name of city or town)”, hereinafter designated and referred to as “municipal court”, which court shall have jurisdiction and shall exercise all powers by this chapter

declared to be vested in the municipal court, together with such *other powers and jurisdiction* as are generally conferred upon such court in this state either by common law or by express statute. [1984 c 258 § 103; 1961 c 299 § 50.]

3.50.020 Jurisdiction.

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. [2008 c 227 § 5; 2005 c 282 § 14; 2000 c 111 § 6; 1985 c 303 § 14; 1984 c 258 § 104; 1979 ex.s. c 136 § 17; 1961 c 299 § 51.]

Emphasis added.

Neither of RCW 3.50.010 or 3.50.020 requires that a statute conferring that jurisdiction or power (the statutes use both terms, ostensibly indicating that there may be a difference between jurisdiction and power), must also set forth in Chapter 3.50 RCW. The clear language

of RCW 39.34.180, the statute that mandates cities taking responsibility for non-felony criminal violations occurring within their jurisdiction, whether under state law or city ordinance, mandates that the city do so through the use of its own facilities or (as a second option) enter into a contract with the county to do so. That is consistent with RCW 3.50.010-020, and it is consistent with RCW 69.50.500.

Again, the Defendant argued and the Court of Appeals construed RCW 39.34.180 as essentially only authorizing contracts with the county for prosecution of state law violations. Under the Court of Appeals interpretation, if a city had not already entered into a contract with the county or any other prosecuting entity, and if the city had not already adopted the violation by ordinance, no prosecution would be available.

The Court of Appeals reads RCW 39.34.180 as only authorizing a city to prosecute violations of state law if adopted by city ordinance. If that were the intention or purpose of the legislation, the statute would not need to mandate that a city prosecuting such violations carry out these responsibilities through the use of their own courts, staff, and facilities. There would have been no other options. But, additionally, if the statute were only referring to state law violations adopted by ordinance, it would not have been necessary or reasonable for the statute to say “whether filed *under state law or city ordinance.*” A violation would be filed under city

ordinance no matter how it is adopted via ordinance, whether the ordinance adopts separate text or whether the ordinance adopts a state law by reference.¹

Also contrary to the Court of Appeals' focus, the "contract with the county" option is the second option; the first option being for the city take on its responsibilities by prosecuting the criminal charges using its own facilities, resources and staff.

It should also be noted that RCW 3.50.010 does not even just use the term "jurisdiction," the focal point of the Court of Appeals. It says "powers *and* jurisdiction." Clearly, that statute was intended to apply more broadly than [just] jurisdiction in what it was empowering municipal courts to do. Again, the language of the statute states as follows:

¹ 35A.12.140 Adoption of codes by reference.

Ordinances may by reference adopt Washington state statutes and state, county, or city codes, regulations, or ordinances or any standard code of technical regulations, or portions thereof, including, for illustrative purposes but not limited to, fire codes and codes or ordinances relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health and sanitation, the slaughtering, processing, and selling of meats and meat products for human consumption, the production, pasteurizing, and sale of milk and milk products, or other subjects, together with amendments thereof or additions thereto, on the subject of the ordinance. Such *Washington state statutes or codes or other codes or compilations so adopted need not be published in a newspaper as provided in RCW 35A.12.160*, but the adopting ordinance shall be so published and a copy of any such adopted statute, ordinance, or code, or portion thereof, with amendments or additions, if any, in the form in which it was adopted, shall be filed in the office of the city clerk for use and examination by the public. While any such statute, code, or compilation is under consideration by the council prior to adoption, not less than one copy thereof shall be filed in the office of the city clerk for examination by the public. [1995 c 71 § 1; 1982 c 226 § 2; 1967 ex.s. c 119 § 35A.12.140.]

3.50.010 Municipal court authorized in cities of four hundred thousand or less.

Any city or town with a population of four hundred thousand or less may by ordinance provide for an inferior court to be known and designated as a municipal court, which shall be entitled "The Municipal Court of (insert name of city or town)", hereinafter designated and referred to as "municipal court", which court shall have jurisdiction and shall exercise all powers by this chapter declared to be vested in the municipal court, together with such *other powers and jurisdiction* as are generally conferred upon such court in this state either by common law or by express statute. [1984 c 258 § 103; 1961 c 299 § 50.]

Emphasis added,

That is also consistent with the Washington State Constitution. Municipal, or inferior, courts are created pursuant to the authority granted by Article IV, § 12, which states that "[t]he legislature shall prescribe by law the *jurisdiction and powers* of any of the inferior courts which may be established in pursuance of this Constitution." (Emphasis added.) Along with that, cities themselves are [also] creatures of the sovereign state, as may be seen from Article XI, § 10, of the state constitution which says that the legislature shall provide for the incorporation and organization of cities and that all city charters shall be subject to and controlled by general laws. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676, 409 P.2d 458 (1965).²

² Article XI, § 10 of the state constitution states, in pertinent part, as follows:
Article XI, § 10. Incorporation of Municipalities

Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and

If the Legislature or the Constitution had intended that the authority of municipal courts or cities should be restricted, it would not have allowed that authority to be expanded by action of the legislature in prescribing additional action. For that matter, it makes no sense for a city or a city court to be required to prosecute, or handle prosecution of, state law violations if that is mandated, even if only an option – one of two options.

Again, RCW 39.34.180 gives two options for cities to address criminal violations of law committed within their jurisdictions when charged under state law, rather than city ordinances;

(1) prosecute the violations using the city's own resources and facilities, charging the violations under state law (either under state law or under city ordinance).

or

(2) enter into a contract with the county in which the city is located (in which the violation occurred) for the prosecution of such violations, whereby the county would prosecute and the city would pay for prosecution;

The purpose of the statute was to make sure that the responsibility for charging violations occurring within city jurisdictions fell upon those

classification in proportion to population, of cities and towns, *which laws may be altered, amended or repealed*. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. (Emphasis added.)

cities, either providing the prosecution directly or contracting with the county for prosecution.

RCW 39.34.180 carries a very strong mandate. Every city, including Auburn, 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, regardless of *whether filed under state law or city ordinance*. Essentially, that statute makes unnecessary or relieves cities from even enacting criminal codes as the jurisdiction and responsibility is conveyed without the need of adopting any ordinance.

RCW 39.34.180 was promulgated in response to the experience of several cities that were choosing to repeal or significantly pare down their criminal codes, ostensibly leaving the responsibility for prosecution on counties. The **FINAL BILL REPORT - SSB 5472 Ch 68 Laws of 2001** (relating to terminating municipal courts) gave a brief description of the history of RCW 39.34.180, as follows:

Background: In the early 1980s there was concern that some municipalities were terminating their court system, or repealing those portions of their criminal codes that were expensive to enforce while retaining portions of the civil code that generated moneys for the city, and in effect transferring the cost of prosecution, adjudication, and sentencing of criminal cases to the counties.

Furthermore, HOUSE BILL REPORT ESSB 6211, as passed by the House -- amended February 29, 1996, gave as a summary of ESSB 6211 the following:

Summary of Bill: It is clarified that each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanors committed by adults within their respective jurisdictions who are referred from their respective law enforcement agencies. *This responsibility applies if the action is filed under state law or city ordinance.*

Each county, city, or town **must carry out this responsibility through the use of its own courts, staff, and facilities**, or enter into contracts or interlocal agreements to provide these services.

Emphasis added.

The Court of Appeals' ruling undoes the very purpose of the statute, in that it creates the situation where a city could delete from its criminal code certain violations, which, according to the court of Appeals it could not prosecute, and leaving them to be prosecuted if at all by the county regardless of the fact that there was no contract between the county and the City.

Again, RCW 39.34.180 states that:

[e]ach ... city ... 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.

RCW 39.34.180, emphasis added. In this regard, the word “or” necessarily implies an option or choice; prosecute *or* contract, state law *or* ordinance.

Also, per Attorney General Opinions - AGO 2000 NO. 2 and AGO 2006 NO. 11, RCW 39.34.180 does not obligate a county [or any other entity] to enter into a contract with a city or town to handle, through the county’s court system, misdemeanor cases referred from the city or town’s law enforcement officers.

This, perhaps, gives rise to one of the most compelling arguments in favor of the City’s position with respect to the statute. If, as the Court of Appeals has ruled, a city cannot prosecute violations under state law in its own court, then if the city had not already adopted the criminal statute by ordinances, and if the county was unwilling to prosecute the violation on the city’s behalf, such violations would be completely immune from prosecution. Even if the city should be obligated to adopt the state law

provisions (if the city hasn't already adopted the statute by reference), subsequent adoption would not apply ex post facto to the prior violations.³

Particularly since the city would not have authority to charge a violation of law under city code that was not within its city codes when the violation occurred, in such an instance, the only choices available to the city to address such violations would be to either contract with the county or charge under state law, using its own municipal court and resources.

Again, if the Court of Appeals were correct, and the only option available to a city [that had not adopted an ordinance] would be to contract with the county for prosecution services, if the county declined to enter into such a contract (if for what ever reasons the city and the county could not reach an agreement, including the county's decision that it did not want to enter into such agreements, a choice it could make, as noted by the State Attorney General) the violations of law would be unable to be prosecuted. That does not make sense; it defeats the clear language of the statute, ignoring the language mandating that cities prosecute crimes -

³ A law violates the federal and state Ex Post Facto Clauses if it (1) is substantive, as opposed to merely procedural; (2) is retrospective; and (3) disadvantages the person affected by it. U.S. Const. Art. 1, § 10, cl. 1; Washington Const. Art. 1, § 2; *State v. Ward*, 123 Wn.2d 488, 498, 869 P.2d 1062 (1994); *In re Pers. Restraint of Powell*, 117 Wn.2d 175, 184, 814 P.2d 635 (1991).

whether filed under state law or city ordinance, carrying out these responsibilities through the use of their own courts, staff, and facilities.

In interpreting statutes, courts give effect to *all statutory language*, considering statutory provisions in relation to each other and harmonizing them to ensure proper construction. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000). In this case, the court of Appeals just ignores the language that does not fit its interpretation – language that says a city shall prosecute crimes – whether filed under state law or city ordinance – and must carrying out these responsibilities through the use of their own courts, staff, and facilities.

Again, it makes no sense for the legislature to mandate that cities must carry out the prosecution responsibilities through the use of their own courts, staff, and facilities if the prosecution only relates to offenses adopted by reference [ignoring the “whether filed under state law or city ordinance” language]. Courts avoid construing a statute in a manner that results in “unlikely, absurd, or strained consequences.” *Glaubach v. Regence BlueShield*, 149 Wn.2d 827, 833, 74 P.3d 115 (2003). *See also Cannon v. Dep’t of Licensing*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002).

When interpreting a statute, “the court’s objective is to determine the legislature’s intent.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). The court strives to ascertain the intention of the legislature by

first examining a statute's plain meaning. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If the statute's meaning is plain on its face, then the court gives effect to that meaning as an expression of legislative intent. *Id.* "Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007) (citing *Campbell & Gwinn*, 146 Wn.2d at 9–12). *See also State v. Jacobs, supra*. An undefined term is "given its plain and ordinary meaning unless a contrary legislative intent is indicated." *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920–21, 969 P.2d 75 (1998). If after this inquiry the statute is susceptible to more than one reasonable interpretation, it is ambiguous and we "may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent." *Christensen v. Ellsworth, supra*.

If the language of RCW 39.34.180 *could* be construed to mean something different than what the City reads it to say, the legislative history clearly supports the legislative intent that it means what the City reads it to say.

E. CONCLUSION.

For all of the reasons set forth above and as argued by the Petitioner's briefing filed heretofore, it is respectfully requested that the decision of the Court of Appeals be reversed, and the language of RCW 39.34.180 be interpreted as authorizing cities to take the action it mandates of them.

Respectfully submitted this 8th day of September, 2011.



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No. 85892-6

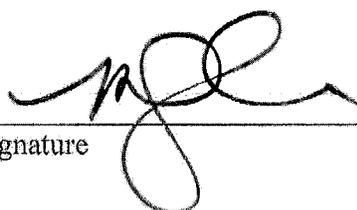
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OF CITY OF BOTHELL AND
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I, MEGHA STOCKDALE hereby certify and declare under penalty of perjury under the laws of the State of Washington, that on the date below set forth, I sent, postage pre-paid, a true and correct copy of the Supplemental Brief of Petitioner City of Auburn, concerning the above entitled matter to:

David Kirshenbaum
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1314 Central Ave S; Ste 101
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at the above postal address and e-mail address, on the 8 day of September, 2011.

SIGNED at Auburn, Washington, this 8th day of September, 2011.



Signature

OFFICE RECEPTIONIST, CLERK

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The Honorable Ronald R. Carpenter, Supreme Court Clerk:

Attached hereto please find an electronic copy of the City of Auburn's Supplemental Brief in the above-referenced case. Also attached is my cover letter. Please note that the Certificate of Service for the Brief is appended to the Brief. If you have any questions of me in these regards, please let me know.

Thank you for your attention to these matters.

Dan Heid

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