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ISLAND COUNTY SUPERIOR COURT CAUSE NO. 15-2-00465-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, on the Relation of Gregory M.
Banks, Prosecuting Attorney of Island County,
Appellant,

vs.

SUSAN E. DRUMMOND, and Law Offices of Susan Elizabeth
Drummond, PLLC; and ISLAND COUNTY BOARD OF
COMMISSIONERS,
Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Brian L. Stiles, Judge

ISLAND COUNTY BOARD OF COMMISSIONERS
ANSWER TO WSAC AMICUS BRIEF

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I. INTRODUCTION

Respondent Island County Board of Commissioners ("Board") provides this Answer to the Brief of Amicus Curiae Washington State Association of Counties ("WSAC") pursuant to Rule of Appellate Procedure 10.2(g).

II. ANSWER

A. WSAC's Unique Perspective

As the statewide organization representing all 39 Washington counties, WSAC has the unique ability to understand and articulate to the Court a broader perspective of the value RCW 36.32.200 provides to all the county boards and legislative bodies around the State, and what negative impacts will be caused by the legal proposition argued by Appellant Island County Prosecutor Gregory M. Banks ("Prosecutor Banks") in this appeal.

B. RCW 36.32.200 is Good Policy

As WSAC's Brief makes plain, there are a wide variety of capabilities and needs among Washington's county boards and legislative bodies, and RCW 36.32.200 has effectively and unobtrusively served those needs without rancor or legal challenge since 1905. In the Board's view, the reason for this lies in the text of RCW 36.32.200, which is broad enough to accommodate the many different ways that county boards handle their legal responsibilities, is clear in its requirements and application so that disputes are infrequent and lawsuits unnecessary, and is respectful of the boundaries between governmental entities.

Viewed as a statement of policy, RCW 36.32.200 efficiently allows county boards and legislative bodies to engage outside counsel when needed to accomplish the board's mission and complete the county's business, while simultaneously respecting the prerogatives of the county prosecutor and her/his focus on criminal prosecutions. The Supreme Court illustrated this balance in describing the boundaries between the legislative and judicial branches under the separation of powers doctrine in Washington:

Both the legislature and the judiciary intrude upon the other's authority cautiously so as not to violate the doctrine of separation of powers. [...] The art of good government requires cooperation and flexibility among the branches. Each must act with a spirit of interdependence.

Hale v. Wellpinit Sch. Dist. No. 49, 165 Wn. 2d 494, 507, 198 P.3d 1021 (2009).

While a prosecutor may not always be acting on behalf of a governmental branch separate from county boards and legislative bodies, a prosecutor must nonetheless heed statutory authority, be mindful of the "art of good government", and respect the boundaries that enable our segmented governmental system to function. Prosecutor Banks' theory will unjustifiably abrogate longstanding legal authority and destroy the balance of powers, substituting an unworkable system that invests him with the power to control the Board's legislative and executive actions, and divests the Board's lawful ability and constitutional right to retain independent counsel when necessary to perform Island County's business.

This Court should not endorse that harmful, unwarranted, and unprecedented change in this State's longstanding and successful balance of governmental responsibilities.

C. RCW 36.32.200 is a Practical Law

WSAC's Brief highlights the many practical reasons why RCW 36.32.200 is good law. In particular, WSAC points to the complexity of counties and modern government, and the wide-ranging demands placed on county boards and legislative bodies to manage the affairs of the county, citing among other things:

- Different geographies, locations, populations, and sizes
- Different legal demands and business requirements
- Unusual or infrequent legal needs and specialization
- Often limited size and capability of prosecutor staffs
- The multitude of county departments requiring legal assistance
- The potential for internal conflict, bias or inconsistent policies

Citing to the several letters submitted to the trial court by county boards and legislative bodies around the State,¹ WSAC correctly notes that RCW 36.32.200 is valuable to every county because it provides a simple and effective means to serve the various needs of its members and the changing demands of the law.

The legislative history of the statute bears out this purpose and intent. As WSAC's Brief notes, the 1983 amendments to RCW 36.32.200

¹ CP 687-695 (Letters from WSAC member counties, describing their use and understanding of RCW 36.32.200)

provide a measured mechanism, devised and clarified by the Legislature, that enables county boards and legislative bodies to obtain needed and independent legal advice when required in the performance of their duties.² This history is entirely consistent with the subsequent legislative history and statutory interpretation discussed in the Board's Response Brief.³

Prosecutor Banks provides no rational basis or justification to change this successful formula, or to abandon its practicalities.

D. Cooperation is the Norm in Using RCW 36.32.200, Not the Exception

WSAC correctly notes that cooperation is the historic norm throughout the State in applying RCW 36.32.200, and that Prosecutor Banks' conduct only highlights the statute's utility:

Disagreements like the one between the Island County Board of Commissioners and Mr. Banks are very rare, and should not be (and do not comprise) a reason to change or eliminate the statutory right to retain legal counsel when needed to perform county business. Instead, the disagreement in the present case actually underscores the importance of preserving the right of the legislative authority to retain counsel pursuant to RCW 36.32.200.⁴

That fact explains why there are only two Washington cases citing to RCW 36.32.200, neither of which takes any issue with its purpose, its utility, its requirements, or its constitutionality.⁵

² WSAC Brief at 10-13.

³ See Corrected Island County Board of Commissioners Response to Appellant's Opening Brief ("Board's Response Brief") at 25-32.

⁴ WSAC Brief at 9-10.

⁵ Corrected Island County Board of Commissioners Response to Appellant's Opening Brief ("Board's Response Brief") at 1, note 1.

Because Prosecutor Banks cannot meet the high bar of proving RCW 36.32.200 unconstitutional beyond a reasonable doubt,⁶ his arguments and proposed changes in the law are a solution in search of a problem. Once again, there is no support or justification for this Court to overrule the trial courts and find in Prosecutor Banks' favor.

III. CONCLUSION

For the reasons outlined in WSAC's Brief, RCW 36.32.200 is a functional, useful, and non-problematic law that serves all of Washington's counties. The two Superior Courts and three Superior Court judges who reviewed this situation recognized that fact, concluding that the statute was and is constitutional, and that the Board's actions taken in undisputed conformance therewith were proper exercises of their lawful authority.

The Board respectfully asks the Supreme Court to reach the same conclusion, affirm the trial court, and deny the appeal.

RESPECTFULLY SUBMITTED this 7TH day of September, 2016.

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⁶ See Board's Response Brief at 17-19.

CERTIFICATE OF SERVICE

I, Linda F. Sutton, certify and declare:

I am over the age of 18 years, make this Declaration based upon personal knowledge, and am competent to testify regarding the facts contained herein.

On September 7, 2016, I served true and correct copies of the document to which this certificate is attached on the parties listed below via email:

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I certify under penalty of perjury pursuant to the laws of the State
of Washington that the foregoing is true and correct.

SIGNED on September 7, 2016, at Seattle, Washington.


Linda F. Sutton

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Subject: State of Washington, ex rel. Banks v. Susan E. Drummond and Island County Board of Commissioners - Supreme Court Cause No. 92749-9

Dear Clerk and Counsel:

Attached for filing is Island County Board of Commissioners' Answer to WSAC Amicus Brief in the above-referenced matter.

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