

Attorney squabble may lead to High Court showdown

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Island County Prosecutor Greg Banks (right), and Chief Civil Prosecutor Dan Mitchell listen to commissioners during a March meeting about the board's plan to hire outside legal counsel to assist with the comprehensive plan update. Despite Banks objections, commissioners agreed to hire Kirkland attorney Susan Drummond as special counsel on Tuesday.

— *image credit: Jessie Stensland / The Record*

The Island County prosecutor, county commissioners and a land-use attorney may be headed for a constitutional showdown. In addition, the deputy prosecutor's union is exploring the possibility of filing a grievance against the board.

The kerfuffle follows the commissioners' decision Tuesday to hire Kirkland attorney Susan Drummond as special counsel to advise the board on the ongoing update to the county's comprehensive plan, which guides growth and development in the county.

Maximum fees for up to two years of work are limited to \$120,000, or \$4,000 per month, without further authorization. In an added wrinkle, the contract indemnifies Drummond against any lawsuit that the county prosecutor may file against her.

Vickie Churchill and Alan Hancock, the county's Superior Court judges, approved the contract for special attorney services in a letter that addressed and brushed aside concerns raised by Prosecutor Greg Banks. They wrote that his objection — and threat of a lawsuit — are puzzling.

“Such special counsel will actually aid his own office in carrying out its duties,” the letter said, “and is being appointed because, among other things, the prosecutor is apparently unwilling or unable to provide some of the legal advice and services that the board is requesting, and has every right to request.”

Banks asked the commissioners not to hire the outside attorney, laying out two general concerns about the contract. He argued that hiring outside counsel over the objection of the prosecutor is unconstitutional. He contends that the action amounts to hiring someone else to do the job of an elected official, which is contrary to the state constitution.

The commissioners, he said, are relying on a statute — RCW 36.32.200 — which he believes is unconstitutional, but untested in court.

Banks said his office is capable of and has been preparing to work on the comprehensive plan update. He said he has two talented land-use attorneys on staff and that the outside expenditure is a waste of taxpayer money.

He criticized the commissioners for quietly squirreling away hundreds of thousands of dollars for the comprehensive plan update while denying his office a “modest increase” in moving a half-time paralegal to full time. Then the commissioners asserted that his office was under-resourced as a justification for not hiring outside counsel, he said.

Deputy Prosecutor Chris Anderson, head of the deputy prosecutor’s union, said that the members also aren’t happy with the hiring of outside counsel. He said the action basically amounts to hiring someone to do their job.

Anderson said the union is exploring its options, which may include filing a grievance.

“Ideally, it would result in the work coming back to the office,” he said.

Island County Commissioner Helen Price Johnson said one of the reasons she sought outside legal help is that Banks told the board that he can’t give them “strategic legal advice.”

The judges also criticized Banks for refusing to provide strategic advice to the board.

“This is troubling,” the judges wrote, “because at their best, legal services represent, figuratively speaking, not only the ambulance providing services to someone who has fallen off a cliff, but also the guardrail preventing someone from falling off the cliff in the first place.”

Banks said it's simply not the case that he's unwilling to provide strategic advice. In a meeting with the commissioners, he questioned what "strategic advice" means and asked what the commissioners want from his office that they are not getting; the issue was not resolved.

He also said it was puzzling to him that the judges were relying on "the commissioners' false claims" about his office.

Price Johnson said this week that the hiring of Drummond should be seen as an opportunity.

"I will continue to reach out to Greg Banks," she said, "and hope he will work collaboratively with the commissioners to achieve the best possible outcome for the community."

Banks previously said he may file a lawsuit against Drummond if the contract is approved.

Banks said he hasn't decided what he'll do, but he hasn't ruled that out. If he does sue, the county will pay Drummond's legal fees because the commissioners indemnified her in the contract. There is a chance, he said, that the case could end up in the Supreme Court in order to settle the constitutionality of RCW 36.32.200.

In their letter, the judges opined that they believe a court of competent jurisdiction would find the statute constitutional, but Banks is not so sure.

"At least we would get a final answer," he said, "one way or the other."

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