State Supreme Court to hear lawsuit filed by Island County prosecutor

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The state Supreme Court accepted on direct review the Island County prosecutor's lawsuit regarding the county commissioners' use of outside attorneys.

Direct review means that the case will jump past the appeals court and go straight to the high court. Island County Prosecutor Greg Banks said it's rare for that to happen.

The question the justices will settle is whether the commissioners have the right to hire private attorneys for legal work the county prosecutor says he is willing and able to do.

The issue resulted in a power struggle that's pitted prosecutors against county commissioners, both in the state and in Island County.

Members of the Washington Association of Prosecuting Attorneys voted to support Banks and provide him with the group's staff attorney. The state Association of Counties is expected to file an amicus brief on behalf of the commissioners.

In Island County, the lawsuit created tension between the prosecutor and commissioners. It also cost a lot of taxpayer money, though the two sides disagree about who is to blame for that.

So far, the commissioners spent $380,000 on the lawsuit, Budget Director Elaine Marlow said.

Banks said he's spent a couple of thousand dollars.

The disagreement arose last year when the commissioners hired a private attorney, Susan Drummond, to help with the update to the county's comprehensive plan; her contract is for up to $120,000. Banks objected, saying that his staff was willing and able to do the work and that the expenditure was unnecessary.

Banks also argued that the commissioners cannot, without his approval, legally hire an outside attorney to do work he was elected to do. One reason it's a concern, he said, is that outside attorneys are only beholden to their clients — the commissioners — and not county residents.

As the elected prosecutor, Banks said he has obligations to represent the commissioners as well as the community's interests.

"This case concerns the fundamental right of voters to elect and hold accountable the county's attorney," he said.

The commissioners argue that there are times when they need specialized legal help that Banks and his deputy prosecutors aren't able to provide; obtaining good legal advise is what's in the best interests of the residents, they said.

They cite a state law that creates a process for the commissioners to hire outside attorneys with the approval of the presiding Superior Court judge.

Both Island County Superior Court judges sided with the commissioners in a strongly worded letter critical of Banks' position.

Nevertheless, Banks filed the lawsuit against Drummond last year, seeking to oust her from her job as the commissioners' land-use attorney. The prosecutors' association board unanimously voted to have the group's staff attorney represent Banks.

At the time he filed the lawsuit, Banks said the case was over a very specific question of law that needs to be decided by the Supreme Court. He said the litigation should be straight forward and shouldn't be expensive; he emphasized that he wasn't suing the commissioners.

Then things became complicated.

The commissioners knew that Banks might sue, so they indemnified Drummond in her contract. That meant the county would pick up the tab on her legal bills for defending against the lawsuit.

She hired her own private attorney to represent her.

The commissioners also successfully petitioned to join the lawsuit as parties. They hired a firm to defend them.

Banks said he had an early, preliminary agreement with opposing attorneys to agree to a set of facts, which would avoid the lengthy and expensive discovery and deposition process. He argued that the case was a question of interpreting law so there was no reason to spend time gathering other information he deemed irrelevant to the specific question.

Drummond's attorney and the commissioners' attorneys, however, felt otherwise. They decided to move forward with discovery and depositions; Banks spent a day being deposed.

One thing the attorneys were looking for was evidence they could use to question Banks' legal expertise or ethics, court documents show. The attorneys not only argued that the law is on their side, but sought to use the information about Banks to show why they might need an outside attorney, court documents indicate.

The commissioners pointed out that the county commonly hires outside attorney — though it's with Banks' approval.

A judge in Skagit County Superior Court ruled in favor of Drummond and the commissioners.

Banks' attorney asked the state Supreme Court for direct review, arguing that it's an important issue that the high court needs to address. The five justices who considered the request unanimously agreed that the full Supreme Court should hear the case.

Island County Commissioner Jill Johnson said she's pleased that the Supreme Court agreed to hear the case.

"The decisions will ultimately provide certainty to the ability of the future Board of Commissioners to hire outside counsel," she said. "I am thankful this is moving forward so we can resolve the question and get back to work."

Johnson added that she hopes Banks will "calm down" after the verdict and get back to work.

Banks said he anticipates arguments will be delivered this fall and a decision issued next year.

By then, it's likely Drummond's contract with the county will be over.

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