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SUPREME COURT
STATE OF WASHINGTON
8/1/2018 2:40 PM
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CLERK

No. 95586-7

**SUPREME COURT
OF THE STATE OF WASHINGTON**

THURSTON COUNTY, ex rel., JOHN SNAZA,
THURSTON COUNTY SHERIFF,

Appellants,

v.

CITY OF OLYMPIA, CITY OF LACEY, CITY OF
TUMWATER, and CITY OF YELM,

Respondents,

CITY OF TENINO,

Intervenor.

REPLY BRIEF OF APPELLANT THURSTON COUNTY

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I. ARGUMENT

A. Summary of Respondent/Intervenors Brief

In their briefing filed July 2, 2018, Respondents argue alternatively that: 1) RCW 70.48.130(6) is not ambiguous and their interpretation of legislative intent is the correct one; 2) that if the statute is ambiguous, the Cities' interpretation is supported by concepts of statutory construction and legislative intent; 3) that the County's interpretation would lead to "absurd consequences;" and 4) that the Court should ignore the Attorney General's 2005 AGO No. 8 because it is either "internally inconsistent," brings about "strained and absurd consequences," that the opinion was "repudiated" by legislation that no longer exists, and/or finally that it "conflicts" with prior AGO opinions. These contentions shall be addressed in the order argued.

B. RCW 70.48.130(6) is Not Ambiguous

One of the primary contentions of the Cities, stated in various forms repeatedly in the briefing is that "medical costs for all inmates booked into the County's jail with any connection to a city are ultimately the financial responsibility of that city." [Brief of Respondents/Intervenor at 4] That counties would have "a virtual absolute right to reimbursement" [Respondents Brief at 23]. That "cities would be on the hook for medical costs for all individuals their officers are duty-bound to arrest, *Id.*]. Finally, that "(AGO 2005 No. 8) triggers that officer's agency's obligation to pay

for the inmate's medical care, regardless of the type of charges actually brought" [Respondents Brief at 28]. These overbroad and somewhat hysterical claims are not consistent with the language of the statute. RCW 70.48.130 is specifically crafted to establish the process in which jail cost for certain medical expenses shall be reimbursed. The statute is a literal step-by step process for a county to try and recover costs for these expenses [CP 83-84]. If expenses are not fully reimbursed by the Department of Social and Health Services, counties must first try to recover costs from the inmate and the inmate's insurance provider [CP 83]. If those efforts are unsuccessful, *and in the absence of an interlocal agreement*, a county may obtain reimbursement from "the unit of government whose law enforcement officers initiated the charges on which the person is being held in jail." [RCW 70.48.130(6), *Id.*]

Contrary to the Cities repeated contention, an interpretation of RCW 70.48.130(6) favorable to the County would not result in the Cities being responsible for all costs of their booked felon inmates. They could be responsible for those inmate expenses where every other effort to make recovery from the inmate and insurance has failed. The statute does not give a county immediate access to city coffers. The provision is not mandatory. It allows that a county permissibly may (obtain reimbursement, etc.) seek compensation from a city. The provision regarding interlocal

agreements would seem to encourage a streamlining of this process between the separate units of government yet Thurston County has tried and failed to enter into interlocal agreements with the Respondent/Intervenor cities as to these issues [CP 2-3, 73]. Thurston County's only recourse to collect reimbursement under RCW 70.48.130(6) was to initiate this lawsuit.

The Cities also attempt rather emotional claims that adopting the County's position could "have a chilling effect on the arrest of felony offenders across Washington," [Respondents Brief at 27], citing several times the financial impact to the Cities if the County's interpretation is adopted by the Court. Any issues related to financial impacts are irrelevant to this appeal. The impact of the statute is not at issue. The issue on appeal is one of statutory interpretation - if a county may seek reimbursement from a city for felony arrests under RCW 70.48.130(6) if all other avenues of collection are exhausted and/or do not provide reimbursement. Any arguments related to financial impacts can only be presumed to be an attempt by the Cities to confuse or color the real issue.

As to the actual language of RCW 70.48.130(6), the Attorney General [CP 81-89], and Judge Finlay [CP 292] agree that a prosecuting attorney is not a "law enforcement officer." The Cities, in their briefing, chide the County for "myopically" focusing on this interpretation, [Respondents Brief at 9], yet they do not dispute that the contention is, in

fact, correct. Nowhere in state statute or case law does the term “law enforcement officer” include a prosecuting attorney.

The Respondent/Intervenors argue in their briefing that “The legislature is presumed to have understood criminal procedure and its governing statutes when it adopted RCW 70.48.130(6)...” [Respondents Brief at 18, citing *Martin v. Triol*, 121 Wn.2d 135, 148, 847 P.2d 471 (1993) quoting *Bennett v. Hardy*, 113 Wn.2d 912, 926, 784 P.2d 1258 (1990)] in support of their arguments, yet apparently fail to believe that assertion when the legislature made the specific choice to use the term law enforcement officer in the germane portion of RCW 70.48.130(6). This occurs once more in Respondents’ argument when citing *Cockle v. Dept. of Labor and Industries*, 142 Wn.2d 801, 16 P.3d 583 (2001), specifically “where the legislature chooses a term with a specific meaning, the court should enforce the statute so as not to render that term meaningless.” *Cockle* at 804.

During the hearing on summary judgment, Judge Finlay agreed with the conclusion of 2005 AGO No. 8. The error made by Judge Finlay was to continue the analysis. If a prosecuting attorney is not a “law enforcement officer,” it cannot be part of the equation of the disputed clause. Assuming, as the Respondents do, that the legislature is presumed to understand criminal procedure and statutes, this clause in its specific form must have been an intentional insertion. When one removes the prosecuting attorney

from consideration of the disputed clause in subsection (6), the intention becomes clear. The “unit of government whose law enforcement officers initiated the charges on which the person is being held in jail” must mean the arresting agency.

The Cities argue that the legislature intended subsection (6) to refer only to arrested misdemeanants and gross-misdemeanants, of which the County does not house at the jail [Brief of Respondent at 6]. Subsection (6) does not specifically address or distinguish levels of criminality as to reimbursement for medical expenses. Respondents base their entire argument on their interpretation of the terms “initiate” and “charges.”

The Cities, in their briefing, assert that they play “no role whatsoever in the initiating of felony charges [Brief of Respondent at 6] according to their definition of the word “initiate.” According to the Cities, to “initiate” is equal to the drafting and/or filing of a felony Information by a prosecuting attorney.

The County does not dispute that the Prosecuting Attorney drafts and files the Felony Information. RCW 70.48.130(6) would support the Cities’ contention if the key phrase in dispute was “law enforcement officers that filed the charges on which a person is being held in the jail (if you assume as one must to accept the Cities’ argument that a prosecuting attorney is in fact a “law enforcement officer”). The legislature did not

choose the word “filed.” They instead chose the word “initiated,” which in light of the Cities’ previous citation of *Martin v. Triol* that “[t]he legislature is presumed to have understood criminal procedure and its governing statutes when it adopted RCW 70.48.130(6),” it must be assumed that this choice of word was intentional. This makes sense when considering the entire clause of subsection (6). The prosecuting attorney does not operate in a vacuum. As stated in the County’s prior briefing, “[t]he Thurston County Prosecuting Attorney does not file a criminal Information without first receiving a report from a law enforcement agency. Deputy prosecutors do not investigate criminal activity or make arrests” [CP 228]. As the disputed portion of subsection (6) concludes, a “person being held in the jail” is there initially for one reason: a law enforcement officer has made a determination to arrest based upon probable cause or warrant [RCW 10.31.100]. That inmate is being held in the jail specifically due to a prior determination of probable cause. Taken in context, the term “initiated the charges” as drafted by the legislature makes perfect sense. The “initiation” by a “law enforcement officer” upon which “the person is being held in the jail” is that probable cause determination that led to the decision to arrest. At this particular point in the process, the prosecuting attorney has not yet become involved, no referral of investigation or charging decisions have been made or filed.

The Cities argue a different interpretation of statutory construction, but the language cited never quite breaks in their favor. The Cities cite RCW 10.37.015 to support their claim, but the specific language in RCW 10.37.015(1) refers to “an information filed by the prosecuting attorney” [emphasis added]. The Cities also refer to CrRLJ 2.1 and *City of Auburn v. Brooke*, 119 Wn.2d 623, 629, 836 P.2d (1992) which refers to the initiation of prosecutions [Response Brief at 15, emphasis added]. Neither term of art is a match found specifically in RCW 70.48.130(6) and as argued above, the context of the disputed clause in subsection (6) makes the legislature’s meaning clear. The “initiation of charges” occurs at the moment a law enforcement officer makes an arrest decision based upon probable cause.

C. Ambiguity

The County does not agree with the trial court that the contested language of RCW 70.48.130(6) is ambiguous and asserts that the decision was in error. If this Court does find that the relevant portion of subsection (6) is ambiguous, the County agrees with the Cities that “the court resolves ambiguity by resort to other indicia of legislative intent and principles of statutory construction” *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700,708, 153 P.3d 846 (2007) citing *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

It is of paramount importance to look at the framework under which RCW 70.48.130(6) exists. The County does not dispute that the initial financial responsibility for felony inmates within the jurisdiction of Thurston County is primarily and initially the responsibility of the County. This is made clear by the County and Jails Act found at RCW 70.48 and as cited in the Cities' briefing and affirmed in 2004 AGO No. 4 (2004) [CP 340]. The basis for the lawsuit filed by the County is not to abrogate this initial responsibility to the Cities. The County seeks reimbursement for expenses of incarceration already borne for emergency or necessary medical and health care of inmates. RCW 70.48.130 specifically carves out a method for reimbursement for these expenses. One purpose of this Section is contained in the Title – "Reimbursement Procedures." Sections (5) and (6) of that section specifically allow the "governing unit" to specifically seek reimbursement as compensation for the financial burden imposed by RCW 70.48. Clearly, the legislature intended reimbursement for these expenses as a possible outcome for a government unit operating a jail.

Reimbursement is not mandatory, as both subsections (5) and (6) allow that the governing unit "may" seek reimbursement from the inmate, his/her insurance, medical benefit programs, private sources, interlocal agreement, or finally from the disputed "unit of government whose law enforcement officers initiated the charges etc."

As stated previously, no such interlocal agreement exists between the County and subject Cities. Again, the County agrees that the initial responsibility for payment of incarceration costs, including emergency or necessary medical expenses belongs to the County. This is supported by the relevant portion of the Interlocal Cooperation Act found at RCW 39.34.180(1) as argued by the Cities in their Response Brief at 21. The Cities argue that “medical costs are costs of incarceration,” [Response Brief, *Id.*] and that the County’s responsibility for inmate costs is absolute and not subject to reimbursement. The simple existence of RCW 70.48.130 disproves this argument. The legislature HAS carved out an exception to RCW 39.34.180(1). It is self-evident.

Thus, as payment for emergency and necessary medical expenses and reimbursement is the primary purpose of RCW 70.48.130, and as no interlocal agreement exists, the argument returns to what the legislature intended by adopting the specific language of subsection (6). As argued above, the Cities claim that if the Court adopts the County’s interpretation of the disputed provision, the result would create “an absolute right to reimbursement” and put the Cities “on the hook for medical costs for all individuals their officers are duty-bound to arrest” [CP 23]. While this is patently untrue, the Cities delve further into hysteria by claiming that the “absurd unreasoned consequences” of this act would be to “cause a city

police officer to decline to arrest a sick or injured felony offender due to the unbudgeted medical expenses that would be incurred by his or her city” [Response Brief at 26], that “the County’s interpretation could discourage City police officers from arresting felony suspects entirely” [Response brief at 27], and that the County’s interpretation “could have a chilling effect on the arrest of felony offenders in Washington” [*Id.*]. While these alleged derelictions of duty directly contradict a previous assertion of the Cities that their officers are “duty-bound” to arrest individuals in spite of the medical costs [Response Brief at 23], it is also irrelevant. The issue of cost and expense if the Court determines that the County can seek reimbursement from the Cities is not an issue for this Court on appeal. The County asserts that the legislature intended RCW 70.48.130 to provide a mechanism for the “governing unit” to recover the costs of certain medical expenses from a City when all other methods of recovery from the inmate and insurance have failed. This is supported by the title and contents of the statute. To put it another way, the legislature has intended for cities to bear a portion of these expenses and the County is finally seeking to recover what is rightfully theirs. The Cities of Thurston County have experienced a budget windfall by failing until now to pay their fair share for the felony inmates arrested and detained by their law enforcement officers.

D. Attorney General Opinions and 2005 AGO No. 8

Respondents/Intervenors cite three separate Attorney General Opinions in support of their argument that AGO 2005 No. 8 [CP 81-89] is “inconsistent” with other opinions. None of the cited opinions are relevant to the question posed by the County and this point is established within the text of AGO 2005 No. 8.

1. AGO 1980 No. 21

This short Opinion stands for the premise that counties, and not cities are “responsible for paying the care, housing and board of such prisoner while he is in the county jail, both before and after arraignment.” [CP 345-347] The County does not disagree with the conclusions of this Opinion, but it does not in any way contradict 2005 AGO No. 8. This is specifically addressed in Footnote 2 of that AGO [CP 85]. The issue before the Court is not who pays initially, but if a County may seek reimbursement of certain medical expenses.

2. AGO 2004 No. 4

This Opinion addresses the issue posed by the question “is a county sheriff obligated to accept custody of arrestees presented by agents of the state?” [CP 338-343]. Easily distinguishable from the case at hand, this AGO concerns those inmates arrested by state agencies (i.e. State Patrol, Department of Fish and Wildlife, etc.) as opposed to municipalities. The

AGO further opines that counties have financial responsibility for “(1) booking and housing of prisoners confined to the county jail before trial and sentencing, and for defendants who are sentenced to a period of confinement in the county jail” [CP 341]. Again, the County does not dispute that it bears the initial and nearly all responsibility to pay for housing prisoners/defendants as described above. The fundamental question asked in this appeal is under RCW 70.48.130(6), may the County seek reimbursement from municipalities of those certain expenses as described in that statute?

3. AGO 1988 No. 9

This Opinion [CP 349-354] was cited by AGO 2004 No. 4 and again addresses the responsibilities of counties when cities present misdemeanants for booking, which is easily distinguishable from the current controversy as Respondents/Intervenors have noted multiple times that the County does not house the Cities’ misdemeanants [Response Brief at 6]. This Opinion also cites AGO 1980 No. 21 for the premise that counties are initially and mostly responsible for care, housing and board of prisoners, which is distinguishable from the argument in front of this Court as argued twice before above.

4. AGO 2005 No. 8

As argued by the County in the initial Petition for Review and Briefing, what distinguishes AGO 2005 No. 8 from the above AGO opinions and why it is germane to this proceeding is that the Attorney General specifically considers RCW 70.48.130 and its relevance to the issue of reimbursement for medical expenses. This Opinion provides a step-by-step analysis of RCW 70.48.130 before reaching the conclusion asserted by the County that “in the absence of such a contract (between arresting agency and custodial agency), the responsibility ultimately falls upon the unit of government whose officers made the arrest” [CP 83-84].

The Cities urge the court to decline to follow this Opinion for obvious reasons: it utterly defeats their arguments. The argument that the Opinion is “internally inconsistent” due to the “undue weight” given to the term “law enforcement officers” and recognition that a prosecuting attorney is not included in that definition of the phrase. The Cities argue that not giving the same weight to the phrase “initiate the charges” is the inconsistency. While the AGO does reach the conclusion argued by the County as to the term and application of law enforcement officer, it also considered the phrase “initiated the charges” and concluded “that the agency whose officers made the arrest has ‘initiated the charges’ for purpose of applying the statute” [CP 84]. It seems that the Cities find this

interpretation to be “internally inconsistent” because this AGO does not agree with their definition of the clause.

Despite the careful reasoning and analysis within 2005 AGO No. 8, the Cities’ argue again that the Opinion promotes “strained and absurd consequences” [Response brief at 31]. This assertion at its essence implies that the “absurd consequences” are that if the AGO is upheld, the City must begin to pay their share of the specific medical expenses as provided in RCW 70.48.130.

Finally, the Cities argue that the AGO was “repudiated” by ESSSB 5930 (2007) [attached to Brief of Respondents/Intervenor as Appendix A]. This argument is misleading based upon the following: 1) the term “whose law enforcement officers” currently exists in the statute and is the subject upon which this suit is based; 2) the apparent consideration and rejection of repeal of the provision clearly provides proof of the legislative intent to leave it as part of the statute; 3) the Cities claim that the provision’s reinsertion in the statute as “likely inadvertently” [CP 34] without a scintilla of proof, which is also a direct contradiction and repudiation of their prior argument regarding *Martin v. Triol* in that “[t]he legislature is presumed to have understood criminal procedure and its governing statutes when it adopted RCW 70.48.130(6);” and finally 4) is entirely irrelevant to this proceeding and can only be inserted into their argument as a desperate

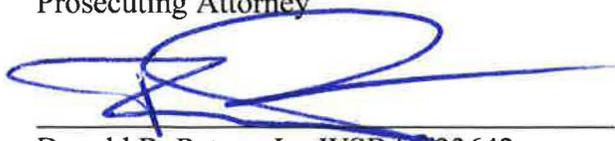
attempt to cloud the issue due to the definitive conclusions of 2005 AGO No. 8.

II. CONCLUSION

The legislative intent in adopting the specific language of RCW 70.48.130(6) was clearly intended to be a mechanism for counties/ governing units to recover emergency or necessary medical expenses from inmates, insurance, public programs or finally the cities if every other attempt has failed. The language is unambiguous and in consideration of 2005 AGO No. 8 and the arguments contained in the Petition and Reply herein establish that the trial court was in error granting Summary Judgment to the Cities. If the Court believes the statute is ambiguous due to conflicting terms, the ultimate intent of RCW 70.48.130 is to provide relief for the governing unit from these certain medical expenses and the conclusions of 2005 AGO No. 8 should stand.

Respectfully submitted this 1st day of August, 2018.

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DECLARATION OF SERVICE

I hereby certify that the date indicated below I electronically filed the foregoing document with the Clerk of the Court using the Appellant's Court Portal utilized by the Washington State Supreme Court for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: August 1, 2018

Signature: *Linda L. Olsen*

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

August 01, 2018 - 2:39 PM

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Filed with Court: Supreme Court
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Appellate Court Case Title: Thurston County, et al. v. City of Olympia, et al.
Superior Court Case Number: 16-2-04768-5

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