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No. 95586-7

SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioners,

v.

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

Respondents,

CITY OF TENINO,

Intervenor.

**Petitioner's Response to Brief of *Amicus Curiae* by Washington State
Association of Municipal Attorneys**

JON TUNHEIM
PROSECUTING ATTORNEY

DONALD R. PETERS, JR. WSBA #23642
Sr. Deputy Prosecuting Attorney
Attorneys for Respondents

Thurston County Prosecuting Attorney
Civil Division, Building 5
2000 Lakeridge Drive SW
Olympia, WA 98502
Phone: (360) 786-5540

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. FACTS RELEVANT TO RESPONSE	1
III. ARGUMENT	1
A. Summary	1
B. Weight of Opions by the Attorney General	2
C. No Error in AGO 2005 No. 8	3
D. The Legislative History of RCW 70.48.130 Provides no Compelling Arguments for the Cities	4
E. Proviso in RCW 70.48.130(6) and Including “Prosecuting Attorneys”	5
IV. CONCLUSION	8

TABLE OF AUTHORITIES

PAGE

Cases

<i>Amalgamated Transit Union Legislative Council v. State</i> , 145 Wn.2d 544, 40 P.3d 656 (2002).....	2
<i>Elovich v. Nationwide Ins. Co.</i> , 104 Wn.2d 799, 805, 707 P.2d 1319 (1985).....	3
<i>Kasper v. Edmonds</i> , 69 Wn.2d 799, 805, 420 P.2d 346 (1966).....	3
<i>WFSE v. OFM</i> , 121 Wn.2d 152, 849 P.2d 1201 (1993).....	2, 3

Statutes/Court Rules

RCW 9.94A.190(1).....	6
RCW 10.31.100	4
RCW 13.50.270(1)(a)	3
RCW 26.44.020	3
RCW 70.40.130	8
RCW 70.48.130	1, 4, 5, 7
RCW 72.02.210	6
RCW 72.09.015(8).....	6
RCW 72.72.010	7
Chapter 13.50 RCW.....	3
Chapter 26.44 RCW.....	3
Washington Annotated Code 137-04-010(3).....	6

Attorney General Opinions

AGO 2005 No. 8.....	passim
---------------------	--------

Other Treatises

<i>Providing High Quality, Affordable Health Care to Washingtonians Based on the Recommendations of the Blue Ribbon Commission on Health Care Costs and Access: House Floor Debate on Engrossed Second Substitute Senat Bill 5390, 60th Legislature, Regular Session (April 12, 2007) (statement of Representative Richard Curtis on House Amendment 760 to E2SSB 5390).....</i>	5
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I. INTRODUCTION

Thurston County seeks Declaratory Judgment allowing the County to seek reimbursement from the Respondent/Intervenor Cities for unpaid medical expenses pursuant to RCW 70.48.130(6). Petitioner Responds to a Brief of *Amicus Curiae* filed by the Washington State Association of Municipal Attorneys.

II. ARGUMENT IN RESPONSE

A. Summary

The Washington Association, in their *Amicus Curiae*, assert four arguments in support of the Respondent Cities. 1) That written opinions of the Attorney general are not binding on the Supreme Court or that the Court should not “blindly accept” [Amicus at page 5] the opinions of our Attorney General in matters of statutory construction; 2) That the Attorney General in 2005 AGO No. 8 was in error when stating that it could not find any examples of the definition of “law enforcement officer” to include a prosecuting attorney; 3) that legislative intent at the time of the 2007 amendments to RCW 70.48.130(6) was to exclude cities from contemplation of reimbursement for felons held in county jails; and 4) that a further reading of RCW 70.48.130(6) provided contextually via proviso that the legislature intended “law enforcement officers” to encompass prosecuting attorneys.

Petitioner agrees that opinions of the Attorney General are not binding upon the Supreme Court and have not argued otherwise. As to assertions 2-4 in the Amicus briefing, the Association of Municipal Attorneys are incorrect and/or read significantly more into the language analyzed than is supported by any other facts.

B. Weight of Opions by the Attorney General

The Amicus writers point out to the Court what is presumed that it knows well, that the Supreme Court has the final say on issues of statutory construction and/or meaning. The Petitioner, in its briefing, has never stated that the Court has to “blindly defer” to the 2005 AGO opinion. Petitioner relied on AGO 2005 No. 8 as a guide, when filing suit in this matter, as that opinion had been a) unchallenged; b) not repealed; and c) not corrected by legislative action. The *Amicus* writers rely upon Accord *Amalgamated Transit Union Legislative Council v. State*, 145 Wn.2d 544, 40 P.3d 656 (2002) to assert that the Supreme Court gives “little deference” to AGO opinions on issues of statutory construction. The Amicus writers somehow fail to include the citation for the case that Amalgamated Transit quoted from, *WFSE v. OFM*, 121 Wn.2d 152, 849 P.2d 1201 (1993). The beginning of the paragraph in *WFSE* quoted by the *Amicus* writers in Amalgamated Transit states: “[O]pinions of the Attorney General are entitled to *considerable* weight, but are not

controlling upon this court.” *WFSE* at 164 citing *Elovich v. Nationwide Ins. Co.*, 104 Wn.2d 799, 805, 707 P.2d 1319 (1985) in turn citing *Kasper v. Edmonds*, 69 Wn.2d 799, 805, 420 P.2d 346 (1966) (emphasis added). In the following sentence, *WFSE* includes the cited quote regarding less deference for issues of statutory interpretation. The Court acknowledges in *WFSE* the benefit of AGO opinions as guidance to be given weight when determining even issues of statutory construction.

C. No Error in AGO 2005 No. 8.

The Amicus writers claim that the AGO was in error when claiming that it could find “no examples in which this term (law enforcement officers) includes prosecuting attorneys.” [CP 84.] The writers “A-ha” moment comes in citing both RCW 26.44.020(15) and 13.50.270(1)(a). These assertions of error do not actually define the term “law enforcement officers” but instead define “law enforcement agency.” Further, RCW 26.44.020, titled “Abuse of Children” limits the definition of law enforcement agency to that specific chapter: “The definitions of this section apply throughout this chapter unless the context clearly requires otherwise.” RCW 26.44.020 preamble. Chapter 13.50 regards the “Keeping and Release of Records” and 13.50.270 “Destruction of Records” includes the prosecuting attorney as an agency that could be a possessor of juvenile records. Neither Chapters 26.44 nor 13.50 defines

the term “law enforcement officer,” as the language of 70.48.130(6) specifically states and both definitions of “law enforcement agency” are specifically limited to the focus of their respective chapters. The *Amicus* assertions regarding 2005 AGO No. 8 resting its “entire conclusion” on a “false underlying premise” are misleading at best and entirely incorrect at worst.

D. The Legislative History of RCW 70.48.130 Provides No Compelling Arguments for the Cities

The *Amicus* writers provide a small portion of legislative history as argument that RCW 70.48.130 does not contemplate reimbursement by the Cities. The argument discusses text from Representative Richard Curtis who argues that agencies that make arrests for warrants should not have to be responsible for medical costs. This argument is wholly specious and should carry no weight as 1) the statutory language remained and remains intact with the term “law enforcement officer” and has been so since those 2007 debates, and 2) Representative Curtis’s argument contains only arguments for arrest warrants and does not contemplate arrests based upon probable cause (RCW 10.31.100 “Arrest without warrant”).

One enlightening provision of Representative Curtis’s comment provides quite clearly the underlying basis of the County’s suit. “[W]e have a problem...this particular problem is with our local governments

who can no longer really provide healthcare to the people that they incarcerate. However, they do have the responsibility to do that by law.” *See Cities Amicus* Brief at 9, Statement of Rep. Curtis on Amd. 760 to ESSB 5390 (Apr. 12, 2007). RCW 70.48.130 is partially entitled “Reimbursement Procedures” and that is exactly what the County is seeking from the cities for taxpayer monies already spent for healthcare of inmates they have brought to the County jail.

E. Proviso in RCW 70.48.130(6) and Including “Prosecuting Attorneys”

The Amicus writer’s final argument is that a “proviso” contained in RCW 70.48.130(6) is evidence that the legislature considered Prosecuting Attorneys to be “law enforcement officers.” While the Petitioner disagrees with the ultimate conclusion reached by the trial court, Trial Judge Amber Finlay, in her oral ruling did not dispute the AGO’s conclusion that a “prosecuting attorney” is not a “law enforcement officer.” [CP 291-92.] It was this conclusion that led to her ultimate determination of ambiguity with the rest of the statute. The Respondents in their briefing also do not challenge the AGO conclusion that a “prosecuting attorney” is not a “law enforcement officer,” instead arguing over other issues with 2005 AGO No. 8 creating ambiguity. The issue of the prosecuting attorney as a “law enforcement officer” is first proffered by the Amicus writers in their briefing.

The essence of that argument is that the State shall reimburse costs for “state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.” This puzzling argument has no merit and simple understanding of the hierarchy of the state penal system completely invalidates this claim.

Statutes and regulation are clear that the state has jurisdiction over the inmates held in their institutions. “Any offender convicted of an offense punishable by imprisonment...shall...be sentenced to imprisonment in a penal institution *under the jurisdiction of the department...*” RCW 72.02.210 (emphasis added).

“Department” means the department of corrections. RCW 72.09.015(8).

“Inmate” or “offender” means any person committed to the custody or *under the jurisdiction* of the department. WAC 137-04-010(3).

“A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state...” RCW 9.94A.190(1).

The “proviso” offered by the Amicus writers as proof of legislative intent specifically provides that the state, not a county, is responsible for reimbursement for violations occurring under their jurisdiction. “That reimbursement for the cost of such services shall be by the state for state

prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.” RCW 70.48.130(6). The logic behind this “proviso” is clear. An inmate in a state institution is under state jurisdiction. If transport is required to prosecute a law violation occurring within the state’s jurisdiction, the state accepts all responsibility for unpaid medical expenses under 70.48.130 when housed in a county jail. This is no different than a city making an arrest in their jurisdiction and transporting the accused to a county jail to await a probable cause determination and possible prosecution. If the state is responsible for these costs, why not the cities?

This argument offered in the *Amicus* bolsters the County’s contention that it is owed reimbursement for these unpaid medical expenses. The state has also recognized the need for reimbursement not only in the existence of RCW 70.48.130, but in 72.72.010 “Legislative Intent,” which states:

The legislature finds that political subdivisions in which state institutions are located incur a disproportionate share of the criminal justice costs due to criminal behavior of the residents of such institutions. To redress this inequity, it shall be the policy of the state of Washington to reimburse political subdivisions which have incurred such costs.

To accept the Cities and *Amicus* writers’ arguments regarding RCW 70.48.130(6), this Court would also have to accept that the legislature specifically omitted any recourse for a County who has already paid these

medical expenses to recover those costs for a City's felons. This logic is contrary to the title and intent of RCW 70.40.130, as related to reimbursement, and contrary to the legislatures clear understanding of the burdens these expenses place upon local jurisdictions who must provide jails.

IV. CONCLUSION

The Brief of *Amicus Curiae* filed by the Washington State Association of Municipal Attorneys is not helpful to the Respondent Cities. Said briefing actually bolsters the arguments of the Petitioner County by emphasizing through the testimony of a State Representative and state law the legislature's understanding that reimbursement for medical costs is a necessary part of government functioning, so that counties who provide jails do not bear the "disproportionate share" of the "particular problem" of unpaid inmate medical expenses.

RESPECTFULLY SUBMITTED this 5th day of February 2019.

JON TUNHEIM
PROSECUTING ATTORNEY

/s/ Donald R. Peters, Jr.
DONALD R. PETERS, JR, WSBA #23642
Sr. Deputy Prosecuting Attorney
Attorney for Thurston County Respondents
petersr@co.thurston.wa.us
olsenl@co.thurston.wa.us
joneshn@co.thurston.wa.us

I hereby certify that the date indicated below I electronically filed the foregoing documents 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: 5 February 2019

Signature: /s/ Nancy Jones-Hegg

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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Filing on Behalf of: Donald R. PetersJr. - Email: petersr@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

Address:
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Phone: (360) 786-5540

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