

NO. 90037-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

JOHN WORTHINGTON,

Petitioner,

v.

WEST NET,

Respondent.

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
May 12, 2014, 1:26 pm  
BY RONALD R. CARPENTER  
CLERK

E CRF  
RECEIVED BY E-MAIL

---

ON DISCRETIONARY REVIEW FROM  
THE COURT OF APPEALS, DIVISION II  
COURT OF APPEALS NO. 43689-2-II  
KITSAP COUNTY SUPERIOR COURT NO. 11-2-02698-3

---

ANSWER TO PETITION FOR REVIEW

---

RUSSELL D. HAUGE  
Prosecuting Attorney

IONE S. GEORGE  
Chief Deputy Prosecuting Attorney

614 Division Street  
Port Orchard, WA 98366  
(360) 337-7174

<b>SERVICE</b>	John Worthington 4500 SE 2 <sup>nd</sup> Place Renton, WA 98059 <a href="mailto:worthingtonjw2u@hotmail.com">worthingtonjw2u@hotmail.com</a>	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, or, if an email address appears to the left, electronically. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED May 12, 2014 at Port Orchard, WA <i>B. A. F. F. F.</i> Original e-filed at the Supreme Court; Copy to party listed at left.
----------------	-------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

 ORIGINAL

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
I. IDENTITY OF RESPONDENT .....	1
II. COURT OF APPEALS DECISION .....	1
III. COUNTERSTATEMENT OF THE ISSUES .....	1
IV. STATEMENT OF THE CASE .....	2
A. Procedural History .....	2
B. Facts .....	3
V. ARGUMENT .....	4
A. This Court Should Deny Review Of The Court Of Appeals Decision Because The Court Of Appeals Properly Affirmed The Trial Court's Order Of Dismissal And This Case Presents None Of The Considerations Governing Acceptance Of Review Set Forth In Rap 13.4(B) .....	4
VI. CONCLUSION .....	7

**TABLE OF AUTHORITIES**

**Cases**

*Telford v. Thurston County Bd. Of Comm'rs*, 95 Wn.App. 149, 974 P.2d 886,  
*review denied*, 138 Wash 2d. 1015, 989 P.2d 1143 (1999).....6

**Statutory Authorities**

Revised Code of Washington 39.39.030(4) .....5, 6

Revised Code of Washington 42.56.550.....4

**Rules**

Washington State Court Rules: Rules of Appellate Procedure, Rule 13.4(b) .....4

## **I. IDENTITY OF RESPONDENT**

The respondent is WestNET. The answer is filed by Kitsap County Chief Deputy Prosecuting Attorney IONE S. GEORGE.

## **II. COURT OF APPEALS DECISION**

The Respondent WestNET respectfully requests that this Court deny review of the Court of Appeals published decision in *John Worthington v. West Net*, No. 43689-2-II (March 11, 2014), a copy of which is attached to the petition for review.

## **III. COUNTERSTATEMENT OF THE ISSUES**

The Court of Appeals, in conformity with well-established principles held that WestNET, a regional task force created to combat drug-related crime in western Washington, is not an entity subject to suit, and thus affirmed the superior court's dismissal of Worthington's claim against it for failure to state a claim. The question presented is thus whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4(b) are met, because:

1. The Court of Appeals decision does not conflict with any

decision of this Court or the Court of Appeals; and

2. The decision fails to present a significant question of law under the Constitution of the State of Washington and of the United States; and

3. The petition fails to present any issue of substantial public interest that should be determined by this Court?

#### **IV. STATEMENT OF THE CASE**

##### ***A. PROCEDURAL HISTORY***

Worthington filed suit against WestNET, complaining of violation of the Public Records Act, RCW 42.45.550. CP 5-6. WestNET moved for dismissal of the action pursuant to CR 12(b)(6), asserting that Worthington had failed to state a claim upon which relief could be granted as the Complaint: a) failed to identify WestNET in any capacity; and b) under no set of facts could Worthington identify WestNET as an entity subject to suit as a public agency. CP 106-109; 110-113. After denial of WestNET's motion, and with the court's leave, WestNET filed a Motion for Reconsideration, providing the Court with the Interlocal Drug Task Force Agreement, which set forth the agreement by which several counties and cities had joined efforts to combat enforcement of controlled

substance laws (WestNET). CP 114-120; CP 123-145 (Docket No. 22). The trial court subsequently granted WestNET's motion for reconsideration and Granted WestNET's Motion for Dismissal Pursuant to CR 12(b)(6); an order from which Worthington now appeals.

***B. FACTS***

As outlined above, Worthington filed a Complaint against WestNET which failed to identify WestNET as an entity that had the capacity to be sued. CP 1-10; 106-109; 110-112. Indeed, other than naming WestNET as a defendant, the Complaint did not identify WestNET in any regard; that is, he did not identify WestNET as an individual, business, public corporation or entity.

Pursuant to the terms of the Interlocal Task Force (e.g. WestNET) Agreement (agreement by which multiple city and municipal agencies joined efforts to combat enforcement of controlled substance laws), each entity joining the task force acted in its individual capacity; NO separate legal entity was intended or created by the Agreement.<sup>1</sup>

---

<sup>1</sup> Specific provisions of the Interlocal Task Force Agreement were set forth in WestNET's Reply in Support of Motion for Reconsideration (Docket No. 26; CP 146-150 and the Agreement in its entirety was attached as Exhibit A to the Declaration of Ione George (Docket No. 22, at p.1; CP 123-145.)

## V. ARGUMENT

*A. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION BECAUSE THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S ORDER OF DISMISSAL AND THIS CASE PRESENTS NONE OF THE CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW SET FORTH IN RAP 13.4(B).*

- 1. None of the considerations governing acceptance of review set forth in RAP 13.4(b) support acceptance of review.*

RAP 13.4(b) sets forth the considerations governing this Court's acceptance of review:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This Court should decline to accept review because no such conflict can be shown. In reiterating the same arguments that were rejected by both the trial and appellate courts, Worthington failed to establish that the court's decision is in conflict with any decision of the Supreme Court or Court of Appeals. Neither has he shown any question under the Constitution of the State of Washington or United States, nor has he

shown the existence of a issue of substantial public interest.

***2. Worthington Fails to Identify any oversight or Misapprehension of Law or Fact in the Appellate Court's Decision.***

Worthington filed suit against WestNET alleging violations of the Public Records Act (RCW 42.56.550). WestNET moved for dismissal, arguing that the Complaint had failed to identify WestNET in any capacity and that under no set of facts could WestNET be identified as a separate legal entity subject to suit. Relying primarily upon the Interlocal Agreement that formed WestNET, (pursuant to RCW 39.34.030(2)), and the statutory provision which provided that Interlocal agreements need not establish a separate legal entity (RCW 39.39.030(4)), both the trial court and appellate court appropriately found that under no set of facts could WestNET be identified as a separate legal entity subject to suit.

The Interlocal Agreement clearly indicated that each member agency maintained its independent authority over its employees, and equipment; that each participating member jurisdiction must pay its own costs; that each participating member constitutes an independent contractor that lacks authority to bind the other parties to the agreement or their employees; and that each member agency will abide by their own agency's rules, regulations and disciplinary requirements. CP at 128.

Moreover, the agreement itself specifically declared (as is authorized by statute) that the parties to the agreement “do not intend to create ...a separate legal entity subject to suit.” CP at 127.

Accordingly, the Appellate Court properly found that WestNET is not its own legal entity subject to suit.

In moving for review by this Court, Worthington fails to identify any factual consideration that was overlooked by the court, or any legal principal that was misapprehended. Instead, he simply argues once again that because Interlocal Agreements are authorized by statute, any Interlocal operation must therefore be a state agency, subject to public disclosure laws. Similarly, he argues once again that “functional equivalent” test of *Telford*<sup>2</sup> should be applied.

The Appellate Court properly rejected both of these arguments, noting: 1) that the statute itself allows for Interlocal agreements that do not establish a separate legal entity (RCW 39.34.030(4)); and 2) that Worthington’s reliance on the *Telford* “functional equivalent” test was misplaced because “*Telford* and its progeny analyze whether a *private* entity is the “functional equivalent” of a public entity.”<sup>3</sup> Here the question

---

<sup>2</sup> *Telford v. Thurston County Bd. Of Comm’rs*, 95 Wn.App. 149, 974 P.2d 886, review denied, 138 Wash 2d. 1015, 989 P.2d 1143 (1999).

<sup>3</sup> Opinion of the Court at p. 5.

was not whether WestNET was public or private, but rather, whether WestNET was a separate legal entity subject to suit.

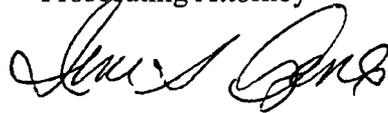
The Appellate court carefully considered the facts presented to it, properly analyzed the law, and rendered a proper decision. Worthington has not shown that Court of Appeals decision was incorrect or in conflict with any other Court ruling, constitutional provision.

## VI. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Worthington's petition for review.

DATED May 12, 2014.

Respectfully submitted,  
RUSSELL D. HAUGE  
Prosecuting Attorney



IONE S. GEORGE  
WSBA No. 18236  
Chief Deputy Prosecuting Attorney

## OFFICE RECEPTIONIST, CLERK

---

**To:** Batrice Fredsti  
**Cc:** Ione S. George; Carrie A. Bruce  
**Subject:** RE: Email Filing for Worthington v. West Net, Case No. 90037-0

Rec'd 5/12/2014

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Batrice Fredsti [mailto:[bfredsti@co.kitsap.wa.us](mailto:bfredsti@co.kitsap.wa.us)]  
**Sent:** Monday, May 12, 2014 1:23 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Ione S. George; Carrie A. Bruce  
**Subject:** Email Filing for Worthington v. West Net, Case No. 90037-0

Hello,

Attached for filing is Respondent's Answer to Petition for Review (prepared by Ione S. George, WSBA No. 18236) for the following case:

John Worthington v. West Net, Supreme Court No. 90037-0

Please let us know if you have any questions. Additionally, please note that we will mail to the clerk's office two copies of the Answer for the judges' review.

Sincerely,

*Batrice Fredsti*  
*Legal Assistant to Ione George*  
*and Neil Wachter*  
Kitsap County Prosecutor's Office  
614 Division Street, MS-35A  
Port Orchard, WA 98366  
Phone: (360) 337-4992  
Fax: (360) 337-7083  
[bfredsti@co.kitsap.wa.us](mailto:bfredsti@co.kitsap.wa.us)