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Also Licensed in
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August 21, 2020

Via U.S. Mail and

Email: gahrend@ahrendlaw.com

George Ahrend
Special Deputy Prosecuting Attorney
100 E. Broadway Avenue
Moses Lake, WA 98837

**RE: Stevens County, et al. v. Travelers, Dashiell, McCart and Parker
Stevens County Superior Court Case No.: 19-2-00122-33**

Mr. Ahrend,

We understand your client is unlawfully ordering or advising that the Stevens County Commissioners be arrested if they return to conduct the business of the County on Monday, August 24, 2020. Prosecutor Rasmussen has (1) instructed Sheriff Manke to arrest the Commissioners if they return to their offices after entry of the order on summary judgment, (2) falsely reported to the local newspaper that the offices are vacated upon entry of the order, and (3) unlawfully threatened the Commissioners with criminal prosecution and advised them that they are subject to a gross misdemeanor for returning to the Commissioners' offices after entry of the summary judgment order.

It is clear that the order signed by Judge Moreno on August 20, 2020, ***is not a judgment and does not vacate the Commissioners' elected offices.*** Prosecutor Rasmussen is falsely reporting and representing that this order is a "judgment," but a judgment must be a "final determination of the rights of the parties in the action" and there are outstanding claims Prosecutor Rasmussen has asserted that remain unresolved according to your recently filed request for judgment. An order determining liability is not a judgment and is not appealable. *Gazin v. Hieber*, 8 Wn. App. 104, 111, 504 P.2d 1178 (1972). The August 20, 2020, order is not a judgment and so cannot trigger RCW 42.12.010(8), which requires "a ***judgment*** shall be obtained against that incumbent for breach of the condition of his or her official bond." (Emphasis added).

This case has shown that Prosecutor Rasmussen is pursuing a personal vendetta and not interested in justice or the interests of the people of Stevens County. Prosecutor Rasmussen is using the threat of criminal prosecution to forward this agenda, and doing so when the law clearly does not allow him to do so.

This matter stems from funding appropriations that the Commissioners approved from the Stevens County Homelessness Fund, which they in good faith believed were valid uses of the fund. The Commissioners never personally benefited from any of these decisions and had no personal

George Ahrend
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Page 2

connection with the individuals who received the funds. Prosecutor Rasmussen seized on these decisions to persecute the Commissioners at the expense of the people of Stevens County. Through legal gymnastics and favorable rulings on novel applications of law, Prosecutor Rasmussen has been empowered with the ability to use a civil suit to remove the Commissioners.

It is clear that Prosecutor Rasmussen's goal is to subvert the will of the voters and remove the duly elected Commissioners by using this bond action instead of a recall petition that is specifically designed to remove public officers from office. This became absolutely clear when Prosecutor Rasmussen chose to continue prosecuting the Commissioners even after they paid more than \$130,000 into the Stevens County Homelessness Fund. Again, they never received any money but then paid over \$130,000 into the Homelessness Fund. They did this because Rasmussen refused to stop his legal action short of their removal from office. They argued that any continued prosecution of the action would be moot, as the funds have been repaid to the Homelessness Fund. In response, you argued that the action is not moot because there is an unresolved claim for prejudgment interest. Now, Prosecutor Rasmussen is claiming that judgment is entered, which contradicts your representations regarding the outstanding interest claim. This lawsuit was never about the funds and was always about removing the Commissioners from office. His recent letter to the Commissioners and public statements show that Prosecutor Rasmussen will not relent until they are removed, and will continue to spend County resources and leverage his position in pursuit of this agenda.

Prosecutor Rasmussen has provided the County Commissioners with legal advice that requires them to either (1) show up to the Commissioners' Offices on Monday and face possible arrest and criminal prosecution, or (2) avoid entering their offices which would jeopardize the continuation of County business. The Commissioners disagree that their offices are vacated. It is vital that Prosecutor Rasmussen rescind his advice to the Commissioners and Sheriff Manke.

Please confirm with my office, no later than 3:00 p.m. today, August 21, 2020, that your client has rescinded the attached notice and will take no further action, civilly or criminally, to have the Stevens County Commissioners removed from office until which time he has a valid basis in the law to do so.



ALISON M. TURNBULL
aturnbull@ks-lawyers.com

Enclosure

cc: Clients

Enclosure 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

STEVENS COUNTY, WASHINGTON, EX REL
TIM RASMUSSEN; AND TIM RASMUSSEN,
IN HIS OFFICIAL CAPACITY AS
PROSECUTING ATTORNEY OF STEVENS
COUNTY, WASHINGTON,

NO. 19-2-00122-33

DECLARATION OF DONALD
DASHIELL

Plaintiffs,

v.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; UNITED STATES
FIRE INSURANCE COMPANY; DONALD L.
DASHIELL, IN HIS PERSONAL CAPACITY;
WESLEY LEWIS McCART, IN HIS
PERSONAL CAPACITY; AND STEVEN
LYNN PARKER, IN HIS PERSONAL
CAPACITY,

Defendants.

I, DONALD DASHIELL, declare as follows:

1. I am over the age of 18 and have personal knowledge of the information stated herein and am competent to testify hereto.
2. I have served as a Stevens County Commissioner since January 2011.

DECLARATION OF DONALD DASHIELL: 1

KIRKPATRICK & STARTZEL, P.S.
ATTORNEYS AT LAW
108 N. Washington Street, Ste. 201
Spokane, Washington 99201
Telephone (509) 455-3647

1 3. On Friday, August, 14th, 2020, Stevens County Sheriff Brad Manke informed me that the
2 Stevens County Prosecutor's office told Sheriff Manke he would be required to remove
3 myself, Commissioner Parker, or Commissioner McCart if we arrived at the Stevens
4 County Board of County Commissioner Offices on Monday, August 17th, 2020, in the
5 event an Order on Plaintiffs' Motion for Summary Judgment was signed. Sheriff Manke
6 related to me that he refused to comply with the Prosecutor's directions without a valid
7 court order instructing him to do so.
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11 4. Sheriff Manke provided me, the attached **Exhibit A** which was provided to Sheriff
12 Manke by the Stevens County Prosecutor's Office on August 14, 2020.
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15 **I declare under penalty of perjury under the laws of the state of Washington that the**
16 **foregoing statements are true and correct.**
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19 Signed this 19th day of August, 2020, in Colville, Stevens County, Washington.
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22 DONALD DASHIELL
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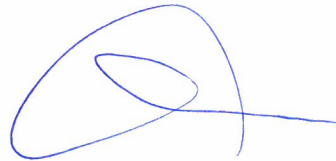
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2020, I caused to be served a true and correct copy of the preceding document to the following attorneys of record as follows:

Attorney for Plaintiff:

George Ahrend
Special Deputy Prosecuting Attorney
100 E. Broadway Avenue
Moses Lake, WA 98837

- Hand Delivery
- Legal Messenger
- U.S. Mail
- Overnight Mail
- Fax Transmission
- Email:
gahrend@ahrendlaw.com



Alison M. Turnbull
Of Kirkpatrick & Startzel, P.S.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Nick,

This email is in follow up to our telephone discussions this week regarding the expected entry of an order granting summary judgment against the official bonds of your county's three commissioners. I have researched our internal inquiry database and other available sources. I have not found where a similar situation has happened with an entire county board becoming vacant at once. I have reviewed this inquiry with our team of legal consultants. We agree that the vacancy likely happens immediately under RCW 42.12.010(8) and logically cannot require waiting until after appeals are exhausted in the underlying case.

One appellate case may be of some assistance. *In Re Simmons*, 65 Wn. 2d 884 (1964) involved a municipal court judge with a felony conviction. Under RC 42.12.010 this conviction resulted in the immediate forfeiture of office and created a vacancy on that date. A quo warranto proceeding confirmed that result. *Simmons*, supra at 94:

By the terms of RCW 9.92.120 and 42.12.010 respondent's conviction, on February 21, 1961, of the felony with which he was charged carried with it the immediate forfeiture of his office as judge of the Municipal Court of the City of Seattle, and then created a vacancy in that office. Quo warranto proceedings were merely ancillary to and in aid of the forfeiture, not a condition precedent thereto.

We did not find case law or other authority specifically regarding RCW 42.12.010(8). By analogy to *In Re Simmons*, just as a felony conviction results in an immediate vacancy, entry of a judgment on the official bond of the commissioners should result in immediate vacancies. I did not find a requirement to wait until available appeals of the judgment are over or to wait until a ruling in a *quo warranto* action.

Regarding how to make sure these commissioner offices will be vacated upon entry of the judgment on the official bond, expected to be entered August 14, the first choice should be to obtain voluntary compliance. You may need to communicate with the commissioners through their attorneys of record in the pending and almost concluded lawsuit. A request based on RCW 42.12.010(8) should be made. Absent voluntary compliance, we suggest the chief executive of the county upon the legal advice of the county prosecuting attorney, direct the relevant county officials such as IT and HR to take the steps necessary to end access to county facilities and computer systems once the judgment on the bond is entered. I understand in Stevens County the Sheriff is the executive officer of the county. This communication could include reference to the judgment entered and legal authority in RCW 42.12.010(8) and also reassurance for the county employees that a new Board of County Commissioners should be appointed soon.

Here is an excerpt from an earlier MRSC Inquiry Response for a city:

For the *quo warranto* proceeding, the person bringing the action could be the prosecuting attorney or any other person, including a person who believes he or she is the rightful holder of the office. Someone needs to go to court and file a *quo warranto* action. RCW 7.56.010 provides for an action of *quo warranto* that can be filed against any person who "unlawfully" holds a public office. Evidence would need to be presented to the court establishing the reason. If the issue is residency, that evidence might include address information from a driver's license, tax records, enrollment of a child in school showing an out-of-city address, etc. If facts are proved to the court, the court could enter a judgment of ouster or forfeiture. See RCW 7.56.010.

We discussed the issues of payroll and benefits. For the next monthly payroll compensation, it makes sense to pro-rate the compensation to include only the time before the offices are vacated. I believe this is how other employees' terminations would be handled. COBRA notices under federal law about continuing any health care benefits should also be provided by HR. Regarding issues of potential impermissible gifts of public funds, I suggest erring on the side of not providing additional compensation or county resources not clearly required.

I understand you are also consulting with the State Auditor's Office (SAO) and they should be able to provide further guidance about the specifics they would want to see during an audit of these decisions.

I trust this is useful to you. Please let me know if you want to further discuss.

Linda Gallagher

Legal Consultant

206.625.1300 ext 112 | MRSC.org | Local Government Success

Disclaimer: MRSC is a statewide resource that provides general legal and policy guidance to support local government entities pursuant to RCW 43.110.030. This communication should not be construed as legal advice or as creating an attorney-client relationship. This communication is not confidential or privileged.

Received by Sheriff Brad Manke from the
Stevens County Prosecutors Office on 8-14-20.



Brad A. Manke

Enclosure 2



Statesman Examiner Newspaper

13h · 🌐



Spokane Superior Court Judge Maryann Moreno has signed an order against the Stevens County Commissioners and their bonding company for unconstitutional gifts of public funds. With the signing of the order, their offices are now vacant. Even if they appeal, it does not stop the existence of the vacancy, according to state law.

On Sept. 25, Moreno will consider arguments about whether pre-judgement interest, costs and statutory attorney fees are owing.

RCW 42.20.030 provides, in part, that every person... who, having been an executive or administrative officer, shall willfully exercise any of the functions of his or her office after his or her right to do so has ceased...shall be guilty of a gross misdemeanor.

Stevens County Prosecutor Tim Rasmussen said of Moreno's decision: "This is not a happy day for the county but it is a good day for justice. It is a day when people can be reassured that laws will be enforced so people will be held accountable for their conduct, no matter who they are or what position they hold. It is a day that proves no one is above the law."

The above article was retrieved from the Statesman Examiner Facebook page at 10:00 AM on August 21, 2020.

Enclosure 3

STEVENS COUNTY PROSECUTING ATTORNEY

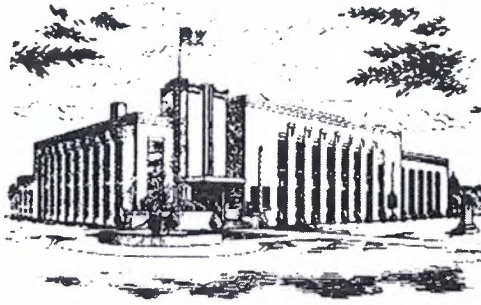
FILE
COPY

Tim Rasmussen
Prosecuting Attorney

Kenneth Tyndal
Chief Criminal Deputy

Nicholas Force
Chief Civil Deputy

Michele Lembcke
Office Administrator



Deputies

Andrew Patrick

Erika George

James Irwin

Kyle Treece

Tabitha Denning

August 21, 2020

To Stevens County Board of Commissioners:

Pursuant to my duties as recited in RCW 36.27.020, I must inform you that RCW 42.12.020(8) provides that your offices are vacant due to the entry on August 20, 2020, of the judgement in Superior Court file number 19-2-00122-33. The vacancies will be filled pursuant to RCW 36.32.070 and RCW 42.12.040. Any actions taken by the Board of Commissioners after August 20, 2020 after 10:45 a.m. are likely void.

Sincerely,

Tim Rasmussen
Prosecuting Attorney

Received

AUG 21 2020

STEVENS COUNTY BOCC