

No. 93788-5

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation located in the
County of Spokane, State of Washington,

Petitioner,

v.

VICKI HORTON, Spokane County Assessor, and
ROB CHASE, Spokane County Treasurer,

and,

THE STATE OF WASHINGTON, by and through the
Department of Revenue,

Respondents.

**RESPONDENT DEPARTMENT OF REVENUE'S MOTION TO
STRIKE CITY OF SPOKANE'S CONSOLIDATED REPLY IN
SUPPORT OF PETITION FOR REVIEW**

ROBERT W. FERGUSON
Attorney General

Andrew Krawczyk, WSBA No. 42982
Assistant Attorney General
Revenue and Finance Division
P.O. Box 40123
Olympia, WA 98504-0123
(360) 753-5528
OID No. 91027

I. IDENTITY OF MOVANT

Movant is Respondent State of Washington, Department of Revenue.

II. STATEMENT OF RELIEF SOUGHT

The Department's answer to the City of Spokane's petition for review explains why this Court should decline review. Although the answer raises no new issues, the City filed a reply that responds to the arguments made by the Department in opposing review. The City's reply also responds to a new issue raised by Respondents Vicki Horton and Rob Chase (County Respondents) in their answer.

The Court should strike the City of Spokane's Consolidated Reply in Support of Petition for Review (City's reply). RAP 13.4(d) permits a reply "only if the answering party seeks review of issues not raised in the petition for review." Issues II.1 and II.2, and Sections III.A and III.B of the City's reply contain argument improperly responding to the Department's Answer to Petition for Review (Department's answer). Therefore, the Court should strike those issues and sections and order the City to file a new reply that responds solely to the new issue raised by County Respondents in their answer.

III. ISSUE

1. Should the Court strike the City's reply as improper under RAP 13.4?

IV. ARGUMENT

The Department filed an answer arguing that review should not be granted in this matter. County Respondents also filed an Answer to Petition for Review (County's answer) opposing review. The County's answer included a new issue related to the writ of mandamus that was raised in the Court of Appeals but not addressed in the Court's opinion. County's Answer at 1, 17-19.

The City filed a consolidated reply to both answers in support of its petition for review. The City's reply is inconsistent with RAP 13.4(d). RAP 13.4(d) allows a reply "only if the answering party seeks review of issues not raised in the petition for review" and limits the reply "to addressing only the new issues raised in the answer." Notwithstanding that limitation, the City's reply includes *additional argument* regarding the issues raised in its petition, and answered by the Department, under the pretext that the Department seeks review of two new issues. But the Department's answer did not seek review of additional issues. Rather, the Department's argument appropriately responded to the issues raised in the City's petition. Because the City's reply violates RAP 13.4(d), the Court

should grant the Department's motion and strike Issues II.1 and II.2 and Sections III.A and III.B of the reply.

A. Issue II.1 And Section III.A Of The City's Reply Should Be Stricken.

Issue II.1 and Section III.A (City's Reply at 2, 4-7) should be stricken because the Department's argument regarding the statutory interpretation of RCW 35A.11.020 is not a new issue. The City's claim that the Department's answer raises a new issue about the statutory interpretation of RCW 35A.11.020 is incorrect. The Department's answer simply responds to the City's argument that the plenary authority granted by RCW 35A.11.020 "is far broader than the limited authority to assess and collect taxes granted to other legislative bodies."¹ Pet. for Rev. at 10 n.6. Thus, the Department's answer to the City's proposed interpretation of RCW 35A.11.020 as an issue for review did not raise a new issue permitting a reply under RAP 13.4(d).

The Department's statutory construction argument is a proper counter-argument to the City's proposed interpretation of RCW 35A.11.020. Consequently, the Court should reject the City's attempt to provide additional argument in support of its proposed statutory

¹ The Court of Appeals rejected the City's interpretation of RCW 35A.11.020 as a grant of plenary authority. *City of Spokane v. Horton*, ___ Wn. App. ___, 380 P.3d 1278, 1282 (2016) (agreeing with the Department that the City's interpretation of broad authority under RCW 35A.11.020 is not supported by the statute's "caveat" language).

interpretation and strike Issue II.1 and Section III.A as improper under RAP 13.4(d).

B. Issue II.2 And Section III.B Of City's Reply Should Also Be Stricken.

Issue II.2 and Section III.B (City's Reply at 2, 7-8) also do not address a new issue raised by the Department.

The City argued in its petition that two public interests would be served by accepting review under RAP 13.4(b)(4). Pet. for Rev. at 8-9, 14 (relief for seniors and sending a strong message about local authority). In answer, the Department identifies preserving the uniform administration of the property tax system as a countervailing public interest concern that supports denying the petition for review. Department's Answer at 19. Accordingly, the Department did not present a new issue for review; it merely responded to the public interest reasons offered by the City by offering another public interest to consider.

The City mischaracterizes the Department's answer as a new issue so it can respond to the public interest concerns identified by the Department. But again, RAP 13.4(d) limits a reply to *new issues* not raised in the petition for review. Because the argument under Issue II.2 and Section III.B in the City's reply is improper under RAP 13.4(d), it should be stricken.

C. Portions Of The Introduction And Pages 3 And 4 Should Be Stricken.

The City's reply contains an introduction and a general argument section that summarizes the responsive arguments made in Sections III.A, III.B. *See* City's Reply at 1-2, 3-4. For the reasons articulated above, the improper responsive argument in the introduction and general argument section also should be stricken.

V. CONCLUSION

Respondent Department of Revenue respectfully requests that this Court strike the City's reply as improper under RAP 13.4(d), and require the City to refile a revised reply limited solely to the new issue raised in the County's answer.

RESPECTFULLY SUBMITTED this 14th day of December,
2016.

ROBERT W. FERGUSON
Attorney General



Andrew Krawczyk, WSBA No. 42982
Assistant Attorney General
Attorneys for Department of Revenue

PROOF OF SERVICE

I certify that I served a copy of this document, via electronic service,
per agreement, on the following:

Laura D. McAloon
Workland & Witherspoon, PLLC
601 W. Main Avenue, Suite 714
Spokane, WA 99201
LMcAloon@workwith.com
JMcPhee@workwith.com
JDrake@workwith.com

Elizabeth Louise Schoedel
Office of the City Attorney
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3333
ESchoedel@spokanecity.org

Ronald P. Arkills
James Emacio
Prosecuting Attorney
Spokane County
W. 1115 Broadway Ave.
Spokane WA 99260
RArkills@spokanecounty.org
JEmacio@spokanecounty.org

Michael F. Connelly
Etter, McMahon, Lamberson, Van Wert & Oreskovich, P.C.
618 W. Riverside Ave., Ste 210
Spokane WA 99201
MFC@ettermcmahon.com

I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 14th day of December, 2016, at Tumwater, WA.


Julie Johnson, Legal Assistant

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

December 14, 2016 - 9:02 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 93788-5
Appellate Court Case Title: City of Spokane v. Spokane County, et al.

The following documents have been uploaded:

- 937885_20161214085802SC620064_5393_Motion.pdf
This File Contains:
Motion 1 - Strike
The Original File Name was DORsMotToStrike.pdf

A copy of the uploaded files will be sent to:

- scpaappeals@spokanecounty.org;rarkills@spokanecounty.org
- jemacio@spokanecounty.org
- jdrake@workwith.com
- mfc@ettermcmahon.com
- revolyef@atg.wa.gov
- lmcloon@workwith.com
- AndrewK1@ATG.WA.GOV
- ESchoedel@spokanecity.org
- juliej@atg.wa.gov

Comments:

Sender Name: Julie Johnson - Email: juliej@atg.wa.gov

Filing on Behalf of: Andrew J Krawczyk - Email: AndrewK1@ATG.WA.GOV (Alternate Email: revolyef@atg.wa.gov)

Address:
7141 Cleanwater Ln SW
PO Box 40123
Olympia, WA, 98104
Phone: (360) 586-9674

Note: The Filing Id is 20161214085802SC620064