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Washington State Supreme Court

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NO. 917442

SUPREME COURT OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, a Washington municipal corporation,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESTATEMENT OF THE ISSUES 1

III. RESTATEMENT OF THE CASE 2

A. DNR Filed a Fire Suppression Cost Recovery Complaint Against the PUD Alleging the PUD Negligently Started a Fire. 2

B. The Superior Court and the Court of Appeals Affirmed DNR's Authority to Recover Fire Suppression Costs From the PUD. 3

IV. REASONS WHY REVIEW SHOULD BE DENIED 4

A. The Court of Appeals Properly Applied the Plain Meaning Analysis Developed by This Court to Conclude That the Fire Suppression Cost Recovery Provision of the Forest Protection Act Applies to the PUD as a Municipal Corporation. 4

B. The Court of Appeals Followed Existing Law When It Concluded the Lien Provision of DNR's Fire Suppression Cost Recovery Statute Was Conditional, Did Not Apply to the PUD, and Did Not Affect the Applicability of the Cost Recovery Portion of the Statute. 7

C. The Court of Appeals' Use of RCW 1.16.080(1) to Define "Person" Under the Fire Cost Recovery Statute as Including Municipal Corporations Is Consistent With This Court's Precedent. 9

D. The Court of Appeals Properly Interpreted the Fire Suppression Cost Recovery Provision Within the Context of Other Provisions of the Forest Protection Act in Its Plain Meaning Analysis. 12

TABLE OF AUTHORITIES

Cases

Auto Value Lease Plan, Inc., v. Am. Auto Lease Brokerage, Ltd.,
57 Wn. App. 420, 788 P.2d 601 (1990) ... 7

Cerrillo v. Esparza,
158 Wn.2d 194, 142 P.3d 155 (2006 ... 6

Dep't of Ecology v. Campbell & Gwinn, L.L.C.,
146 Wn.2d 1, 43 P.3d 4 (2002) ... 5, 6

Dep't of Natural Res. v. Pub. Util. Dist. No. 1 of Klickitat County,
No. 31853-2-III (Wash. April 30, 2015) ... passim

Gontmakher v. City of Bellevue,
120 Wn. App. 365, 85 P.3d 926 (2004) ... 11

Jongeward v. BNSF Ry. Co.,
174 Wn.2d 586, 278 P.3d 157 (2012) ... 6

Segaline v. Dep't of Labor & Indus.,
169 Wn.2d 467, 238 P.3d 1107 (2010) ... 10, 11

State v. Engel,
166 Wn.2d 572, 210 P.3d 1007 (2009) ... 5

Statutes

Laws of 1923, ch. 184, § 11 ... 9

RCW 1.16 ... 9

RCW 1.16.080 ... 10

RCW 1.16.080(1) ... 2, 9, 10, 11

RCW 76.04 ... 3

RCW 76.04.105 ... 12

RCW 76.04.115 12

RCW 76.04.390 9

RCW 76.04.475 12

RCW 76.04.495 .... passim

RCW 76.04.495(1) 1, 2, 8

RCW 76.04.495(2) 2, 7, 8

RCW 76.04.610 8

RCW 76.04.610(8) 9

RCW 76.04.760 10

RCW 76.04.760(5) 10

RCW 76.04.760(5)(d) 10

Rem. Rev. Stat. § 5806-1 9

Rules

CR 12(b)(6) 3

RAP 13.4(b) 1, 13

I. INTRODUCTION

Petitioner Public Utility District No.1 of Klickitat County (PUD) seeks review of a court of appeals' decision affirming the trial court determination that the Washington State Department of Natural Resources (DNR) has authority to pursue a statutory fire suppression cost recovery claim against the PUD. RCW 76.04.495 of the Forest Protection Act (Act) holds "any person, firm, or corporation" that negligently starts a forest fire liable for the costs of fire suppression. At issue is whether this cost recovery statute applies to municipal corporations such as the PUD. Both courts below ruled the fire suppression cost recovery statute plainly applies to the PUD. Neither court found the statute ambiguous. Therefore, neither court resorted to interpretive aids such as canons of construction to support their decisions. The PUD simply repeats the same arguments it made below and provides no basis for discretionary review. DNR respectfully requests the Court deny the PUD's Petition.

II. RESTATEMENT OF THE ISSUES

This Court should deny review because the case does not meet any of the RAP 13.4(b) criteria. However, if the Court were to accept review, the following issues would be presented:

A. Whether DNR may recover fire suppression costs from a municipal corporation when RCW 76.04.495(1) authorizes cost

recovery from "any person, firm, or corporation" that is found to be negligently responsible for the start of a fire which spreads on forest land.

B. Whether RCW 76.04.495(2), which allows an optional lien on the property of parties liable for fire suppression costs, is consistent with the plain meaning of RCW 76.04.495(1).

C. Whether RCW 1.16.080(1)'s general definition of "person" may be applied to RCW 76.04.495 when the Legislature did not otherwise define "person" in the Forest Protection Act, and the purpose of the Act is to hold anyone found negligent of starting a forest fire accountable for the costs of suppressing the fire.

III. RESTATEMENT OF THE CASE

A. DNR Filed a Fire Suppression Cost Recovery Complaint Against the PUD Alleging the PUD Negligently Started a Fire.

DNR filed a fire suppression cost recovery complaint against the PUD resulting from a large wildfire originating near power lines owned by the PUD in Klickitat County in August 2010.[1] The fire burned approximately 2,100 acres of grass and forest land and damaged or destroyed several structures. DNR alleged that the fire was caused by the stem of a hazardous double-topped ponderosa pine tree collapsing onto the PUD's

[1] All of the facts are taken from the allegations in the DNR fire suppression cost recovery complaint filed against the PUD. CP 80-86.

electrical lines. The PUD has a duty to properly manage vegetation growth and to timely identify and remove hazard trees that threaten its electrical lines.

The PUD negligently failed to identify and remove the defective hazard tree before the fire started despite the fact that it knew, or through the exercise of reasonable diligence, should have known, of the tree's existence and the hazard it posed to the PUD's power lines. DNR responded to the fire, which it ultimately suppressed at a cost of over $1.6 million. DNR seeks to recover its fire suppression costs from the PUD under RCW 76.04.495.

B. The Superior Court and the Court of Appeals Affirmed DNR's Authority to Recover Fire Suppression Costs From the PUD.

The PUD brought a CR 12(b)(6) motion to dismiss the DNR statutory fire suppression cost recovery claim in April 2013. CP 21-23; 24-45. The trial court denied the motion but certified the question of whether DNR had statutory authority under RCW 76.04.495 to proceed with a fire suppression cost recovery claim against the PUD. CP 72-73.

The court of appeals granted discretionary review and affirmed the trial court's denial of the PUD's CR 12(b)(6) motion. The court held "that a municipal corporation is a 'person' and a 'corporation' within the plain meaning of chapter 76.04 RCW and is subject to a civil action to recover

fire suppression costs." *Dep't of Natural Res. v. Pub. Util. Dist. No. 1 of Klickitat County,* No. 31853-2-III, slip op. at 2 (Div. III, April 30, 2015).

IV. REASONS WHY REVIEW SHOULD BE DENIED

The PUD provides no grounds for this Court's review of the court of appeals' decision that the State's fire suppression cost recovery statute applies to governmental entities such as the PUD. There is no conflict between the court of appeals' decision and any decision of this Court or any other court. The PUD provides no issue of substantial public interest or significant question of constitutional law requiring this Court's review. The court of appeals correctly applied a plain meaning analysis in accord with this Court's precedent to conclude that the Legislature intends to hold municipal corporations such as the PUD accountable for fire suppression costs when they negligently start fires.

A. The Court of Appeals Properly Applied the Plain Meaning Analysis Developed by This Court to Conclude That the Fire Suppression Cost Recovery Provision of the Forest Protection Act Applies to the PUD as a Municipal Corporation.

The court of appeals followed this Court's precedent in applying a plain meaning analysis to determine the legislative intent underlying RCW 76.04.495**Error! Bookmark not defined.**, the fire suppression cost recovery statute. *Pub. Util. Dist. No. 1,* slip op. at 4-5. If the statute's meaning is plain on its face, the court must give effect to that plain meaning

as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The plain meaning of a statute is not gleaned solely from the words of the provision being scrutinized, but is determined from "all that the Legislature has said in the . . . related statutes which disclose legislative intent about the provision in question." *Campbell & Gwinn, L.L.C.,* 146 Wn.2d at 11. Statutory provisions must be read in their entirety and construed together, not piecemealed. *Id.* To determine a statute's plain meaning, courts look to "the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole." *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009) (internal citations omitted).

The court of appeals closely examined the words of the cost recovery statute and scrutinized the statute in the context of the Forest Protection Act as a whole to conclude that the statute applies to the PUD. It relied on the common-sense proposition that public corporations, like private corporations, can negligently start forest fires. *Pub. Util. Dist. No 1,* slip op. at 14. The court of appeals therefore concluded that the

manifest purpose of the Forest Protection Act can be achieved only if DNR's authority extends to the activities of public corporations.[2] *Id.*

The PUD nevertheless argues that the court of appeals should have applied certain canons of construction to arrive at a different result. However, the court of appeals correctly followed this Court's holdings that the use of interpretive aids such as canons of statutory construction are not appropriate unless the statute is ambiguous. *Jongeward v. BNSF Ry. Co.*, 174 Wn.2d 586, 600, 278 P.3d 157 (2012) (citing *Campbell & Gwinn*, 146 Wn.2d at 12). The PUD never argued that the cost recovery statute is ambiguous, nor did the court of appeals find it so. The PUD simply skips over the plain meaning analysis and jumps to result-oriented rules of statutory construction to support its arguments regarding legislative intent. This is precisely the opposite of the approach provided by this Court which has held that the rules of statutory construction should not be used if the language is plain on its face. *See also*, *e.g.*, *Cerrillo v. Esparza*, 158 Wn.2d 194, 204, 142 P.3d 155 (2006) (It was *error* for the court of appeals to rely entirely on rules of statutory construction as a basis for finding a statute ambiguous) (emphasis added). Here, the court of appeals correctly stated it need not address the PUD's arguments based

[2] Unless otherwise indicated, public corporations and municipal corporations are used interchangeably in this answer.

on canons of statutory construction because the court found the PUD is a "person, firm, or corporation" within the plain meaning of RCW 76.04.495. *Pub. Util. Dist. No. 1,* slip op. at 18-19.

Without citation to authority and inconsistent with the plain meaning analysis, the PUD argues this Court should consider how the Legislature used the phrase "person, firm, or corporation" in all of the bills enacted in the 1923 session because that is when the fire cost recovery statute was passed. However, only one of the session laws is related to forest protection and fire. There is no basis for inferring a legislative intent to import the definition of the term "person" or "person, firm, or corporation" from unrelated bills into the Forest Protection Act simply because they were enacted by the same Legislature. *Auto Value Lease Plan, Inc., v. Am. Auto Lease Brokerage, Ltd.*, 57 Wn. App. 420, 423, 788 P.2d 601 (1990) (A statutory definition does not apply to a different statute which is not in pari materia with the statute in which the definition appears).

B. The Court of Appeals Followed Existing Law When It Concluded the Lien Provision of DNR's Fire Suppression Cost Recovery Statute Was Conditional, Did Not Apply to the PUD, and Did Not Affect the Applicability of the Cost Recovery Portion of the Statute.

The PUD argues that, because under RCW 76.04.495(2) DNR may place a lien on the property of the "person, firm, or corporation" found

liable for fire suppression costs and because the property of governmental entities is not subject to liens, it must necessarily follow that the fire cost recovery statute cannot apply to governmental entities.[3] The court of appeals rejected this argument as being based on a false premise. *Pub. Util. Dist. No. 1,* slip op. at 15-16. The PUD's argument arbitrarily limits fire suppression cost recovery for a reason entirely unrelated to a party's liability. The argument also ignores the plain meaning analysis requiring that RCW 76.04.495(1) and (2) be construed together in context and in a manner consistent with the nature and the purpose of the Act. The two sections make up a complete and logical statutory framework: RCW 76.04.495(1) identifies potentially liable parties, while RCW 76.04.495(2) identifies a discretionary, non-exclusive option for cost recovery.

The PUD also makes a related argument that the Legislature's exclusion of public entities from the lien mechanism in RCW 76.04.610, the forest fire protection assessment statute, indicates a legislative intent to exclude public entities from liability under the fire cost recovery statute. However, RCW 76.04.610 makes public bodies responsible for costs of fire

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[3] As the court of appeals recognized, it is a general rule that these types of liens cannot be placed on public property absent express authorization by the Legislature. It would therefore be unnecessary for the Legislature to draw a distinction between public and private property unless it clearly intended to apply the lien authority to public property. *Pub. Util. Dist. No. 1,* slip op. at 15 n.4.

suppression incurred by the State if the public body fails to pay the forest protection assessment and fails to suppress a fire on a public entity's forest lands. RCW 76.04.610(8). Therefore, contrary to the PUD's argument, the forest fire protection assessment statute manifests consistent legislative intent to hold public entities accountable for fire suppression costs incurred by the State.

C. The Court of Appeals' Use of RCW 1.16.080(1) to Define "Person" Under the Fire Cost Recovery Statute as Including Municipal Corporations Is Consistent With This Court's Precedent.

The PUD argues that the court of appeals' reliance on RCW 1.16, the RCW general definitions statute, contradicts this Court's precedent. The PUD provides no support for this contention and also ignores the plain wording of the relevant laws.

RCW 1.16.080(1) provides that the term "person"

> may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual.

The fire suppression cost recovery statute has existed in substantially the same form since 1923 and provides no definition for the word "person."[4] As the court of appeals found, the absence of such a definition coupled with the use of the all-inclusive term "any" preceding "person" makes it

[4] Laws of 1923, ch. 184, § 11; Rem. Rev. Stat. § 5806-1 was later codified as RCW 76.04.390 and currently exists as RCW 76.04.495.

appropriate to apply the RCW 1.16.080 definition of "person" to give meaning and effect to the term whenever it appears in the Act.[5] There is nothing in the Act, including the fire suppression cost recovery statute, to indicate the Legislature intended to limit its application to only private or natural persons and private corporations as the PUD suggests. *See Pub. Util. Dist. No. 1,* slip op. at 12-14.

As this Court found in *Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 474, 238 P.3d 1107 (2010), the definition of "person" in RCW 1.16.080(1) should be construed to include any public corporation when the nature and the purpose of the statute indicate the Legislature's intent to do so. Given that the purpose of the Act is to protect private and public forest lands from damage caused by uncontrolled fire, the court of appeals found no textual basis for concluding the references to "person" and "any corporation" should exclude municipal corporations such as PUDs. *Pub. Util. Dist. No. 1,* slip op. at 14. The PUD offered no explanation to this Court or the court of appeals why the Legislature would exclude municipal corporations from the operation of the Act. *Id.*

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[5] This principle applies throughout the Act except in one limited circumstance. RCW 76.04.760(5)(d), which was enacted in 2014, defines "person" for purposes of that particular statute. *See* RCW 76.04.760. As the statute specifically notes, application of the definition is limited to "this section relating to the specification of damages for fire damage to public and private forested lands, unless the context clearly requires otherwise, and do not apply to and are not intended as a source for interpretation of other sections of this chapter." RCW 76.04.760(5).

If the Legislature had intended to exempt municipal corporations or any other governmental entities from the Forest Protection Act, it could easily have done so in the Act itself. *Segaline*, 169 Wn.2d at 483. *See also Gontmakher v. City of Bellevue*, 120 Wn. App. 365, 371, 85 P.3d 926 (2004) (if the Legislature intended to employ a limited definition of "person," the normal and expected practice would be for it to expressly do so.) Here, there is clear legislative intent to make "any person, firm or corporation," including municipal corporations, subject to the Forest Protection Act in general, and the fire suppression cost recovery statute in particular.

The PUD also argues the courts have not yet used the RCW 1.16.080(1) definition of "person" to define the term "person" where a statute, like RCW 76.04.495, uses a list of terms to describe the subjects to which it applies. A plain reading of RCW 1.16.080(1) does not restrict the use of this definition to only those statutes where "person" is used as a stand-alone term within the statute, nor is this use of the definition inconsistent with any of this Court's decisions. As pointed out by the court of appeals, the PUD ignores the fact that many other provisions of the Act do use the stand-alone term "person" without a definition. *Pub. Util. Dist. No. 1,* slip op. at 10. It is neither unusual, nor fatally defective, for an older Act with multiple amendments to have some

inconsistency in its terms. The court of appeals found strong support for a permissively broad reading of "person" in the Forest Protection Act in general, and the fire cost recovery statute in particular. *Pub. Util. Dist. No. 1,* slip op. at 12. The court went on to find nothing in the nature and the purpose of the Act that requires the exclusion of municipal corporations from the meaning of "person." *Pub. Util. Dist. No. 1,* slip op. at 14.

D. The Court of Appeals Properly Interpreted the Fire Suppression Cost Recovery Provision Within the Context of Other Provisions of the Forest Protection Act in Its Plain Meaning Analysis.

The PUD argues that the court of appeals failed to reconcile the fire suppression cost recovery provision with other provisions of the Forest Protection Act wherein the Legislature distinguished between private and public corporations. To the contrary, the court relied on these other provisions to conclude that the Act applies to both private and public corporations. *Pub. Util. Dist. No. 1,* slip op. at 11.

The Legislature explicitly addresses both public and private corporations in the Act. *See* RCW 76.04.105, .115 (addressing DNR's authority to contract with "private corporations" for the protection and development of forest lands); RCW 76.04.475 (authorizing any corporation, public or private, to obtain reimbursement for fire

suppression costs subject to certain conditions). The Legislature used the unambiguous term "any" in the fire cost recovery statute prior to the phrase "person, firm, or corporation" to mean "every" and "all" persons and corporations without exception. *Pub. Util. Dist. No. 1,* slip op. at 11. The word "any" does not expand the meaning of "person" as the PUD argues, but rather provides context to the words that follow it, i.e., describing the broad and unqualified nature of the "person, firm, or corporation" subject to the statute.

V. CONCLUSION

The court of appeals' decision affirming the superior court's ruling that municipal corporations such as the PUD are subject to the fire suppression cost recovery provision of the Forest Protection Act is well reasoned, consistent with this Court's prior cases, and correct. None of the criteria for accepting review in RAP 13.4(b) are satisfied. Therefore, DNR respectfully requests that the Court deny the PUD's Petition for Review of the court of appeals' decision.

RESPECTFULLY SUBMITTED this 23rd day of June, 2015.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on June 23, 2015, as follows:

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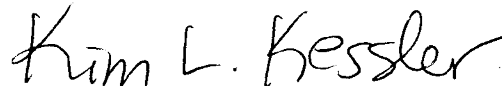
I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 23rd day of June, 2015, at Olympia, Washington.



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