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NO. 95480-1
Court of Appeals Cause No. 49130-3-II

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

KITSAP COUNTY, Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB, Appellant,

REPLY OF THE KITSAP RIFLE AND REVOLVER CLUB TO
ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This Reply is submitted by the Petitioner Kitsap Rifle and Revolver Club (the “Club” or “KRRC”) in accordance with RAP 13.4(d). The Reply is limited to addressing an issue raised by Kitsap County, not argued by the Club in its Petition for Review, to wit: The State of Washington’s preemption of the entire field of firearms regulation only applies to local criminal ordinances, and not civil ordinances.

The argument of the limitation of RCW 9.41.290 to only local ordinances with criminal penalties has been raised, but not conclusively decided, in: *Cherry v. Mun. of Metro Seattle*, 116, Wash.2d 794 (1991), *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006) and *Chan v. City of Seattle*, 164 Wn.App. 549 (2011).

II. ARGUMENT

A. The State of Washington’s Preemption of the Entire Field of Firearms Regulations pursuant to RCW 9.41.290 and .300 Includes Civil Regulations of Local Governments.

Kitsap County’s Answer to Petition for Review argues that RCW 9.41.290: “[D]oes not purport to impose civil regulation regarding the operations of a shooting facility . . . “This area of regulation is untouched by the State and, thus, left to the local governments.” (Answer to Petition for Review, pg. 2); and “Because KCC 10.25 regulates the operation of shooting facilities, not the use of firearms, and imposes no *criminal*

penalty, it is not preempted by state law.” (Emphasis added) (Answer to Petition for Review, pg. 3).

Kitsap County has premised this argument on the placement of RCW 9.41.290 and .300 under the Washington Penal Code and references to prior conclusions of this Court in *Pac. Nw. Shooting Park Ass'n Pac.*, supra, at 356, wherein this Court held:

“We concluded that the central purpose of RCW 9.41.290 was to eliminate *conflicting municipal criminal codes* and to “advance uniformity in *criminal firearms regulation*.” *Id.* at 801, 808 P.2d 746 (emphasis added).” *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, supra, at 356.

The decisions in *Cherry v. Mun. of Metro Seattle* and *Pac. Nw. Shooting Park Ass'n v. City of Sequim* declined to apply preemption per RCW 9.41.290 when the local government exercises its powers over its property in a similar manner comparable to that of a private party and the rules or regulations are not applicable to the general public.

In *Chan v. City of Seattle*, this Court upheld preemption of local regulations under RCW 9.41.290 when the City of Seattle attempted to regulate the possession of firearms in park areas open to the general public. The City of Seattle argued that its rule was not a criminal firearms regulation and hence did not apply to the City of Seattle’s regulation. Without deciding if RCW 9.41.290 applies to criminal and civil firearms

regulations by local governments, the Court disposed of this argument by finding that the City of Seattle regulation provided for criminal charges.

i. Placement of RCW 9.41.290 and .300 Under Washington Penal Code Does Not Limit the Legislative Scope to Only Criminal Regulations.

The plain and unequivocal language of RCW 9.41.290 provides:

“The state of Washington hereby fully occupies and preempts the entire field of firearms regulation . . . including the discharge . . . or any other element relating to firearms. . . .” Local laws and ordinances that are inconsistent with, . . . state law shall not be enacted and are preempted and repealed, **regardless of the nature of the code**, charter, or home rule status of such city, town, county, or municipality.” (Emphasis added)

The statutory language of RCW 9.41.290 preempting “the entire field of firearms regulation” and local laws “are preempted and repealed, regardless of the nature of the code,” “leaves no question that the legislature was not confined to local firearms ordinances with criminal penalties.

“If the statute is clear and unambiguous on its face, we determine its meaning only from the language of the statute and do not resort to statutory construction principles. A statute is ambiguous only if it can be reasonably interpreted in more than one way, not merely because other possible interpretations exist. “ (Citations omitted) *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, supra, at 354.

Regardless of the placement of RCW 9.41.290 under Washington’s penal code, the plain, express and unequivocal language of RCW 9.41.290

leaves no doubt as to the State of Washington's intent to preempt the entire field of firearms regulation.

ii. Prior Decisions and Statutory Construction Affirm the Legislative Intent for the State of Washington to Fully Occupy and Preempt the Entire Field of Firearms Regulations.

This Court's prior decision in *Cherry* implies that all local government firearms regulations, civil or criminal, are preempted by RCW 9.41.290. "We hold that RCW 9.41.290 is intended to preempt regulatory city, town or county firearms laws and ordinances," *Cherry v. Municipality of Metro. Seattle*, *supra*, at 798.

To limit the State of Washington's preemption of local firearms regulations (RCW 9.41.290) to local regulations with criminal provisions, creates an exception contrary to the express words of the statute.

"We narrowly construe exceptions to statutory provisions. Narrow construction ensures that we give effect to the legislative intent underlying the general provisions." *City of Union Gap v. Washington Dept. of Ecology*, 148 Wn. App. 519, 527 (2008).

"We adhere to the rule of expression unius est exclusio alterius – specific inclusions exclude implication. In other words, "[w]here a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions." (citations omitted) *In re Hopkins*, 137 Wn.2d 897, 901 (1999).

“However, exceptions to the general rule, especially when the general rule is unambiguous, should be strictly construed with any doubts resolved in favor the general provision, rather than the exception.”
(Citations omitted.) *Converse v. Lottery Commission*, 56 Wn. App. 431, 434 (1989).

An exception to civil regulations of firearm regulations may not be created by a claimed omission.

B. KCC 10.25 Provides for Criminal Penalties.

KCC 10.25.090(1) states:

Failure to obtain a range operational permit will result in closure of the range until such time as a permit is obtained. Ranges that operate without a permit are subject to code compliance enforcement, including but not limited to injunctive relief.

KCC 10.25 must be considered in light of Kitsap County Code’s general enforcement provisions.

KCC Chapter 1.12, the general penalty relating Code compliance, provides in pertinent part:

1.12.010 Adopted.

Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the resolutions or ordinances of Kitsap County is guilty of a misdemeanor. Any person convicted of a misdemeanor under the resolutions or ordinances of Kitsap County shall be punished by a fine of not more than one thousand

dollars, and/or by imprisonment not to exceed ninety days, unless otherwise required by the laws of Washington. . . .

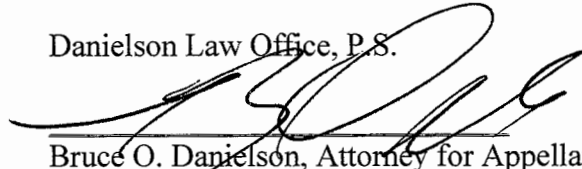
By the express terms of Kitsap County's code, KCC 10.25 allows for the imposition of criminal penalties for violations of the ordinance via KCC 1.12.010.

III. CONCLUSION

The fact that Kitsap County raised the argument of the preemption of local firearms regulations, civil versus criminal, 27 years after the decision in *Cherry*, supra, underscores the importance accepting the Petition for Review and for this Court to clarify and firmly establish the scope and application of RCW 9.41.290 with regards to local firearms regulations.

DATED: this 20th day of March 2018

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CERTIFICATE OF SERVICE

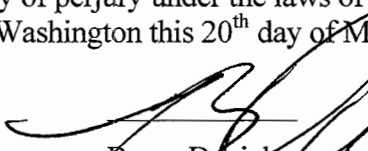
I, the undersigned, hereby certify that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein. I further certify that on this 20th day of March, 2018, I caused the document to which this certificate is attached to be delivered for filing as follows:

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Via Court's JIS-Link Electronic Filing System

The original will be maintained in the files of the Danielson Law Office. I further certify that on this date, I caused a copy of the document to which this certificate is attached to be delivered to the following by e-mail:

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Declared under penalty of perjury under the laws of the State of Washington at Port Orchard, Washington this 20th day of March 2018.


Bruce Danielson

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Transmittal Information

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