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NO. 52329-9-II

**THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

KITTITAS COUNTY,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Respondent.

BRIEF OF *AMICI CURIAE* KITTITAS COUNTY FARM BUREAU, WASHINGTON STATE FARM BUREAU, AND WASHINGTON CATTLEMEN'S ASSOCIATION

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I. INTRODUCTION

This is a case of statutory construction, which requires the court to interpret statutes, determine the legislative intent, and harmonize two chapters of the Revised Code of Washington (RCW), to wit, Chapters 17.04 and 17.10 RCW.

The Amici are representatives of the farming and ranching families across the State of Washington and specific to Kittitas County, who are the intended beneficiaries of the statutory controls set forth in Chapter 17.04 RCW – Weed Districts, and Chapter 17.10 RCW – Weed Control Boards.[1] The Amici provide the court with a unique perspective on these questions of statutory interpretation as representatives of the individual farming and ranching families in Washington who are intended to be benefited by these two chapters of the Revised Code of Washington.

II. IDENTITY AND INTERESTS OF AMICI

Washington State Farm Bureau is a voluntary, grassroots advocacy organization representing the social and economic interests of farming and ranching families in Washington State. By providing leadership and organizational skills, Washington State Farm Bureau seeks to gain public support on issues affecting farming and ranching families. Kittitas County Farm Bureau is the local chapter of the Washington Farm Bureau and shares

[1] RCW 17.04.010 and 17.10.007.

the mission of the Washington Farm Bureau as it applies to farming and ranching families located in Kittitas County. The Washington Cattlemen's Association provides a unified voice for beef producers, promotes innovative rangeland and livestock management practices, and protects and preserves the cattle industry in the State of Washington. The Washington State Farm Bureau, Kittitas County Farm Bureau, and Washington Cattlemen's Association are hereinafter referred to as the "Agricultural Associations" or the "Amici."

Chapter 17.04 RCW authorizes counties to form weed districts for the following purpose:

> for the purpose of destroying, preventing and exterminating, or to prevent the introduction, propagation, cultivation or increase of, any particular weed, weeds or plants, or all weeds or plants, including Scotch broom, which are now or may hereafter be classed by the agricultural experiment station of Washington State University as noxious weeds, or plants detrimental to or destructive of crops, fruit, trees, shrubs, valuable plants, forage, or other agricultural plants or produce

Chapter 17.10 RCW, which authorizes counties to form weed control boards, specifically exists for the following purposes:

> to limit economic loss and adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic areas in the state.

The Agricultural Associations are representatives of the farming and ranching families in Kittitas County and across the State of Washington, who

the Washington State Legislature intended to benefit when it adopted Chapters 17.04 and 17.10 RCW.

III. STATEMENT OF THE CASE

Kittitas County is primarily an agricultural county in Eastern Washington, which depends heavily on its agricultural economy. Kittitas County, unlike many counties in the State of Washington, is largely owned by the State of Washington, through various branches, and by the federal government. Only 30% of Kittitas County is owned by non-governmental individuals and entities.[2] Kittitas County, like many counties in the State of Washington, is bisected by a number of roads or interstate highways that are owned, controlled, and maintained by WSDOT. Kittitas County, in order to protect its vibrant agricultural economy, has formed five separate weed districts within the County, which are authorized to be formed under Chapter 17.04 RCW.[3] The weed districts are supported by landowners who own land in the district paying a fee because they own property in the district.[4] Agricultural producers in the County, in addition to paying weed district fees, also conduct their own weed control operations much like WSDOT. The Agricultural Associations' members use this "two-pronged" approach to protect their

[2] Clerk's Papers (hereinafter "CP") 350, FN 10, and CP 157-158.
[3] CP 257-266.
[4] CP 268-269.

crops from noxious weeds. If this two-pronged approach fails because the weed districts and weed control board do not have the funds to operate, the Agricultural Associations' members will be harmed.

Kittitas County also has formed the Kittitas County Noxious Weed Control Board (hereinafter referred to as the "Weed Control Board"), as provided for in Chapter 17.10 RCW. Between the weed districts and the Weed Control Board, noxious weeds are controlled and eradicated on a significant portion of the County's agricultural property.

Until 2017, WSDOT paid assessments on its land located in Kittitas County weed districts and/or was subject to assessments by the Weed Control Board.[5] In 2017 WSDOT stopped paying assessments and asserted it was not required to pay the fees it had always paid.[6] The result is that if WSDOT is not required to pay then, by extension, no department of the State of Washington is required to pay and, arguably, no department of the federal government is obligated to pay. The effect of that would be to "defund" and financially decimate the weed districts and the Weed Control Board, causing significant harm to the agricultural economy in Kittitas County.

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[5] CP 42, 44, 154.
[6] *Id*.

IV. ARGUMENT

4.1 Chapters 17.04 and 17.10 RCW – An Introduction.

Chapters 17.04 and 17.10 RCW make it clear that the Legislature intended that every division of the State of Washington that owns land within Kittitas County and is subject to assessments levied as a result of a weed district or the Weed Control Board was obligated to pay those assessments. WSDOT argues that the assessments levied by the weed districts and the Weed Control Board are "special assessments."[7] WSDOT then argues that these "special assessments" may only be imposed when there is a corresponding benefit.[8] In a summary of its argument, WSDOT asserts:

> The Legislature did not expressly grant the counties authority to specially assess state-owned lands for noxious weed control. Nor did the Legislature authorize the County to fix rates and charges for noxious weed control.

WSDOT's analysis ignores settled rules of statutory construction and in order to reach WSDOT's conclusion, a court is required to interpret and construe Chapters 17.04 and 17.10 RCW so that portions of the statutory scheme are rendered meaningless and superfluous. The purpose

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[7] Brief of Respondent Washington State Department of Transportation (hereinafter "WSDOT Brief"), p. 22.
[8] WSDOT Brief, p. 4.

of a statutory enactment should prevail over express wording.[9] Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.[10] This analysis by WSDOT is contrary to the law and, when accepted by the court, defeats the purpose of the statute.

4.1.1 The Plain Meaning of RCW 17.04.180 Mandates the State to Pay Weed District Assessments.

RCW 17.04.180 specifically deals with County and State lands within a weed district. That statute provides as follows:

> Whenever any lands belonging to the county are included within a weed district, the county legislative authority shall determine the amount of the taxes for which the lands would be liable if they were in private ownership, and the county legislative authority shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the appropriate state agency <u>for payment</u> a statement showing <u>the amount of the tax</u> to which the lands would be liable if they were in private ownership, separately describing each lot or parcel and, if delinquent, with interest and penalties consistent with RCW 84.56.020. [Emphasis added.]

Interpretation of a statute is a question of law.[11] The Court's purpose in this case is to ascertain and carry out the Legislature's intent.[12]

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[9] *Id.*; *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wash.2d 451, 462, 869 P.2d 56 (1994).
[10] *Stone v. Chelan County Sheriff's Dep't*, 110 Wash.2d 806, 810, 756 P.2d 736 (1988); *Tommy P. v. Board of County Comm'rs*, 97 Wash.2d 385, 391, 645 P.2d 697 (1982).
[11] *In Re Forfeiture of One 1970 Chevrolet*, 166 Wn.2d 834, 215 P.3d 166 (2009).
[12] *Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wn.2d 1, 9, 43 P.3d. 4 (2002).

If RCW 17.04.180's meaning is plain from the statutory text, then effect must be given to the "plain meaning" of RCW 17.04.180 as an expression of the Legislature's intent.[13] To determine whether the meaning of RCW 17.04.180 is plain, the court must consider the ordinary meaning of words, basic rules of grammar, the statutory context and the statutory scheme as a whole, including related statutes.[14]

In *Cerrillo v. Esparza,*[15] the court concluded that in order to determine the meaning of a statute, it must look to the language in the statute, and if the language is not ambiguous, it is appropriate to give effect to the plain meaning of the language in the statute. The court went on to note that "a statute is not ambiguous merely because different interpretations are conceivable."[16] The *Cerrillo* court did not subject an unambiguous statute to statutory construction and "declined to add language to an unambiguous statute even if it believes the legislature intended something else but did not adequately express it."[17] Similarly, in *In Re Forfeiture of One 1970 Chevrolet* the court made it clear in construing a statute a court must "account for the ordinary meaning of

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[13] *Id.* at 9-10; see also, *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001).
[14] *In Re Forfeiture of One 1970 Chevrolet*, 166 Wn.2d at 838-839; *Campbell & Gwinn*, 146 Wn.2d at 11-12.
[15] *Cerrillo v. Esparza,* 158 Wn.2d 194, 142 P.3d 155 (2006).
[16] *Id.* at 201.
[17] *Id.* at 201.

words, basic rules of grammar, and the statutory context" to determine the meaning of a statute.[18]

This court should give plain meaning to RCW 17.04.180, which is that WSDOT must pay a weed district tax just as all other landowners within the weed district. To do otherwise is to rewrite the statute to exclude the words "…for payment a statement of the tax…". Rewriting of a statute is strictly the provenance of the Legislature.[19]

The dictionary definition of "payment" is:

> … something that is paid; an amount paid; compensation; recompense…

https://www.dictionary.com. This language in RCW 17.04.180 cannot be any more clear. Splitting hairs over whether this is an "assessment," "special assessment," a "payment in lieu of a tax," or a "tax," is irrelevant because in RCW 17.04.180 the Legislature has clearly and unequivocally required the State to pay the weed district "tax." Tax is the term used when the Legislature commanded State agencies to pay money to the weed districts. The word "tax" is defined as:

> a sum of money demanded by a government for its support or for specific facilities or services, levied upon incomes, property, sales, etc. …

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[18] *In Re Forfeiture of One 1970 Chevrolet*, 166 Wn.2d at 839.
[19] *Kim v. Pollution Control Hearing Bd.,* 115 Wn.App. 157, 163, 61 P.3d 1211 (2003).

https://www.dictionary.com. Thus, with its use of the term "tax," the Legislature rendered moot the debate over whether the weed district tax was a "fee," a "charge," an "assessment," a "special assessment" or a "payment in lieu of taxes." Simply put, RCW 17.04.180 requires WSDOT, as an agency of the State, to pay the weed district money based on the land WSDOT owns in the district.

The Legislature's use of the words "for payment" means just that – payment by the State of Washington – is supported by AGO 1958 No. 199.[20] In AGO 1958 No. 199, the question posed to the Attorney General was, "Are State highway right-of-ways subject to taxes or assessments of weed districts," which is the very issue before this court. In response, the Attorney General concluded as follows:

> Accordingly, when any such right of ways are within a weed district the statute requires the county treasurer to certify annually to the commissioner of public lands a statement showing the amount of the taxes for which said lands would be liable if privately owned. Ultimately the legislature must appropriate sufficient money from the state general fund to pay such charges to the weed district. In so far as 1931-32 OAG 113 [[to C. W. Clausen, Supervisor of Municipal Corporations on May 18, 1931]]is in conflict herewith, it is overruled.

The 1958 Attorney General Opinion is directly opposite of the Thurston County Superior Court's ruling. Attorney General opinions, although not controlling, should be given considerable weight in

[20] See Brief of Kittitas County, pp. 23-25.

interpreting a statute.[21] This is especially true in this case where the Legislature has chosen not to modify RCW 17.04.180 in view of the 1958 Attorney General Opinion. An Attorney General's opinion is notice to the Legislature of that interpretation of the law and when the Legislature does not act on that interpretation then the Attorney General's Opinion is entitled to even greater weight.[22]

Because the Legislature has had ample opportunity to amend the statute to remove the obligation of the State to pay the "tax" and has not done so, the Legislature has acquiesced to the AGO's interpretation.[23]

Thurston County Superior Court erred when it concluded that WSDOT was not obligated to pay the "tax." This court on review should conclude the opposite and rule that WSDOT is obligated to pay the tax assessed by a weed district. That ruling, especially in an agricultural county like Kittitas County, where the government owns 70% of the land, ensures a viable functioning weed control program which will protect Kittitas Counties' agricultural economy.

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[21] *Bates v. City of Richland*, 112 Wn.App. 919, 51 P.3d 816 (2002); *Everett Concrete Products, Inc. v. Department of Labor & Industries*, 109 Wn.2d 819, 828, 748 P.2d 1112 (1988).

[22] *Washington Educ. Ass'n v. Smith*, 96 Wn.2d 601, 606, 638 P.2d 77 (1981); *Grabicki v. Department of Retirement Systems*, 81 Wn.App. 745, 755, 916 P.2d 452 (1996); see also *Bowles v. Washington Dept. of Retirement Systems*, 121 Wn.2d 52, 63, 847 P.2d 440 (1993).

[23] *Five Corners Family Farmers v. State*, 268 P.3d 892, 173 Wn.2d 296, 308 (2011).

4.1.2 The Plain Meaning of RCW 17.10.145 Mandates the State to Pay Weed Control Board Assessments.

The Legislature has indicated that Chapter 17.10 RCW should be liberally construed and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by the specific provisions of this chapter and other state and federal laws.[24] The purpose of this liberal construction is to ensure that the purpose of the statute, protection from economic loss and adverse affect on Washington's agricultural lands and economy, is ensured.

Chapter 17.10 RCW specifies how a noxious weed control board is formed.[25] It give noxious weed control boards certain powers and then it specifically provides that "All state agencies' lands must comply with this chapter, regardless of noxious weed control efforts on adjacent lands."[26] The statute defines the owner as a person in actual control of the property. WSDOT, as a department of the State in actual control of its property, must pay assessments levied by the Weed Control Board.[27]

As Kittitas County points out in its opening brief, RCW 17.10.240 authorizes the Weed Control Board to "levy an assessment against the land." As Kittitas County correctly argues in its opening brief, at pages

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[24] RCW 17.10.007.
[25] RCW 17.10.020.
[26] RCW 17.10.145(2).
[27] RCW 17.10.010(3) and (4).

15-16, lands owned by WSDOT in Kittitas County are subject to the assessments levied by the Weed Control Board.

No provision of Chapter 17.10 RCW exempts State lands from payment of weed control board assessments and to conclude otherwise requires the court to rewrite the statute.

4.1.3 WSDOT's Argument that Chapter 79.44.010 Exempts WSDOT From Paying Weed District Assessments is Misplaced.

WSDOT attempts to circumvent the plain meaning of RCW 17.04.180, RCW 17.10.145(2), and RCW 17.10.240 by arguing that RCW 79.44.010 excludes State lands, essentially rendering those statutes superfluous. WSDOT states that "[t]he parties dispute whether RCW 79.44 is applicable to this case."[28] WSDOT's reasoning is that the "common law requires the same criteria as Chapter 79.44 RCW … statutory authority, and a special benefit."[29] However, the court should review Chapter 79.44 RCW, as the plain language of that statute supports[30] the interpretation that WSDOT is obligated to pay weed district and weed control board fees.

RCW 79.44.004 defines an assessment as follows:

> any assessment, rate or charge levied, assessed, imposed, or charged by any assessing district as defined in RCW

[28] WSDOT Brief, p. 30.
[29] *Id.*
[30] See Section 4.1.2 above for a discussion of the rules of statutory construction.

> 79.44.003, and which assessments, rates or charges by statute are expressly made applicable to lands of the state.

RCW 79.44.003(8) provides that an assessing district is:

> [a]ny municipal corporation or public agency having power to levy local improvement or other assessments, rates, or charges which by statute are expressly made applicable to lands of the state.

County weed districts and weed control boards are public agencies or subdivisions of public agencies and fit within the definitions of RCW 79.44.003(8).

In RCW 17.040.180, the Legislature specifically said:

> Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the appropriate state agency <u>for payment</u> a statement showing the amount of the tax to which the lands would be liable…" (Emphasis added.)

RCW 17.10.145 requires a State agency to comply with the chapter, including RCW 17.10.240(1)(a), which authorizes a tax to be levied against the land. RCW 79.44.060 requires that assessment to be paid. Because WSDOT is obligated to comply with the chapter, WSDOT is required to pay the tax levied, just as a private agricultural landowner would.

What the Thurston County Superior Court failed to do is to harmonize Chapters 17.04 and 17.10 RCW to ensure that the statutes' purposes of protection of Washington State's agricultural economy from

damage and economic loss resulting from noxious weeds is carried out. As the Washington State Supreme Court has articulated, courts are required to read legislation as a whole and determine the intent of a statute from more than a single sentence.[31] Similarly, effect should be given to all the language used, and the provisions must be considered in relation to each other and harmonized to ensure property construction.[32] The Thurston County Superior Court, in its analysis of the statutes, failed to harmonize the statutes and the effect of its error was to render RCW 17.04.180 and 17.10.145 meaningless, to the detriment of the State's agricultural community.

V. CONCLUSION

For these reasons, the Thurston County Superior Court's decision should be reversed and WSDOT should be required to pay weed district and Weed Control Board taxes and assessments. To do otherwise ignores

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[31] *Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 459, 869 P.2d 56 (1994) (quoting *Service Employees v. Supt. of Instruction*, 104 Wn.2d 344, 348-49, 705 P.2d 776 (1985); *King County v. Central Puget Sound Growth Management Hearings Bd.*, 91 Wash. App. 1, 951 P.2d 1151 (1998).

[32] *Royal*, 123 Wn.2d at 459.

the purposes of the statutory controls on invasive and noxious weeds damaging Washington's agricultural economy.

DATED this 31st day of January, 2019.

Jeff Slothower, WSBA #14526
Attorney for Washington Cattlemen's Association, Washington State Farm Bureau, and Kittitas County Farm Bureau (together the "Agricultural Associations")

CERTIFICATE OF SERVICE

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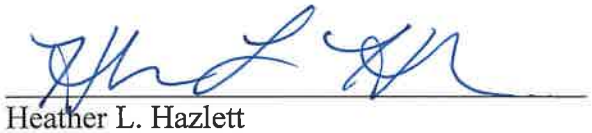
Signed at Ellensburg, Washington this 31st day of January, 2019.



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