

FILED

OCT 31 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 310485

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

STATE EX REL KENNETH J. INGEBO,
Appellant,

v.

KERRY FREEMAN, PAMELA BYRD, JOE CLARNO,
AS AGENTS OF THE
WASHINGTON STATE DEPARTMENT OF LICENSING,
AND THE
WASHINGTON STATE DEPARTMENT OF LICENSING,
Respondents.

BRIEF OF APPELLANT

Kenneth J. Ingebo Pro Se
33 Skookum Flat
Lyle WA 98635
509-369-3333

FILED

OCT 31 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 310485

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

STATE EX REL KENNETH J. INGEBO,
Appellant,

v.

KERRY FREEMAN, PAMELA BYRD, JOE CLARNO,
AS AGENTS OF THE
WASHINGTON STATE DEPARTMENT OF LICENSING,
AND THE
WASHINGTON STATE DEPARTMENT OF LICENSING,
Respondents.

BRIEF OF APPELLANT

Kenneth J. Ingebo Pro Se
33 Skookum Flat
Lyle WA 98635
509-369-3333

TABLE OF CONTENTS

	Page
Table of Authorities	2
Assignment of Error	3
Statement of the Case	3
Argument	5
Conclusion	12

TABLE OF AUTHORITIES

	Page
<i>City of Spokane v. Port</i> 43 Wash. App. 273, 716 P. 2d 945 (1986)	11
<i>Hadfield v. Lundin</i> 98 Wash. 657, 168 P. 516 (1917)	8,9,10
<i>State ex. rel. Schafer v. City of Spokane</i> 109 Wash. 360, 186 P. 864 (1920)	9,10
<i>State v. Washington State Hwy. Comm.</i> 63 Wash. 2d 34, 385 P2d 376 (1963)	11
<i>Thompson v. Smith</i> 155 Va. 367, 154 S.E. 579 (1930)	8,10
Washington State Constitution Article I Section 32	13

RCW 46.20.091 (2)	7
RCW 46.20.120 (3) (a)	7
RCW 46.20.161	6,7,8,9,10,11,12
Wash. Dept. of Licensing Rule 6.7 Driver Licensing Renewal	8,12
Black's Law Dictionary 5 th Edition	10

ASSIGNMENT OF ERROR

The trial court committed reversible error by denying plaintiff's motion for summary judgment and granting defendant's cross-motion for summary judgment.

The issue before this court is whether the issuance of a driver's license can be conditioned on the signature of the applicant on the license or camera card.

STATEMENT OF THE CASE

On September 23, 2011 the appellant, Kenneth J. Ingebo personally applied for the renewal of his expired Washington driver's license at the White Salmon office of the Washington Department of Licensing (Department), before Licensing Service Representative (LSR) Kerry Freeman. (CP 39,40) Ingebo completed the application which was entirely verbal and according to Freeman was qualified for renewal, but Freeman refused to issue the renewed license solely because Ingebo refused to sign the camera card. Ingebo was not asked to sign a renewal application as it was not required by Freeman. (CP 39-41)

On September 30,2011 Ingebo had a telephone conversation with Joe Clarno, an agent of the Department, concerning Ingebo's lack of use of a social security number. (CP 42,43) However there was no evidence presented to show that the Department refused to issue the license because Ingebo refused to disclose his social security number.

Ingebo petitioned the Klickitat County Superior Court for an Alternative Writ of Mandamus to compel the Department to issue the license or to show cause why they have not done so. (CP 1-3) The writ was granted. (CP 6-8) The Department answered the writ claiming that they refused to issue the license because Ingebo did not submit a completed application with his signature. (CP 9-10)

Ingebo proceeded with discovery and the Department responded. (CP 39-50) Ingebo made a motion for summary judgment (CP 16-21) and the Department countered with a cross-motion for summary judgment. (CP 30-36) Ingebo replied with a rebuttal brief. (CP 85-90)

Ingebo made a motion to amend the Petition for Alternative Writ of Mandamus to a Petition for Declaratory Judgment. (CP 100) The motion was granted. (RP 3-4)

At the motion hearing the court heard arguments and then ruled against Ingebo's motion for summary judgment and ruled for the Department's motion for summary judgment and denied Ingebo's petition for declaratory judgment. (RP 23) (CP 92-94) Ingebo then appealed this judgment to this court. (CP 95-99)

ARGUMENT

The only issue the Appellant Kenneth J. Ingebo brings before this court is his refusal to sign the camera card prior to the Department's issuing him his renewed driver's license. There has been much argument in this case at the trial court level concerning Ingebo's refusal to provide a social security number . All this argument is immaterial because the facts show that the Department refused to issue the license only because Ingebo refused to sign

the camera card and not because Ingebo refused to provide a social security number.(CP 40-41)

THE DEPARTMENT WAS REQUIRED TO ISSUE A DRIVER'S
LICENSE

The Department was required by RCW 46.20.161 to issue Ingebo a driver's license. The pertinent part of this statute reads as follows:

The department, ... shall issue to every qualifying applicant a driver's license. ... The license must include a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

The facts show that Ingebo was qualified to have his license renewed. Freeman stated that every step in the renewal process was completed by Ingebo. (CP 40) The only thing Ingebo would not do is sign the camera card which is not required by the wording of the above statute. (the camera card is what enables a facsimile of the signature to be placed on the license)

The Department claims that they refused to issue the license because Ingebo refused to sign the renewal application. (CP 10, 31) Applications

for renewal are not required to be signed according to Freeman. (CP 40)

And according to RCW 46.20.120 (3) (a) :

“An application for driver’s license *renewal* may be submitted by means personal appearance before the department”

The application for an *original* driver’s license must be signed by the applicant according to RCW 46.20.091 (2). There is no other statute or rule that requires a license application to be signed. When Ingebo applied for his original license years ago he signed the application. (CP 28) When he recently applied for the renewal of his license he was not required by any law to sign a renewal application.

RCW 46.20.161 requires the Department to include certain items on the license. If the Department was not able to include all of the required items they would have an excuse for not issuing the license. The Department was able to include all of the required items. The statute does not require a “facsimile of the signature” if the Department can leave “a space”, which they can. Therefore, the Department has no excuse for not issuing the license with a space for a signature. The arguably required signature can be made in the space on the license *after* the Department issues the license.

It is irrelevant to this case whether or not Ingebo would sign the license or camera card, as this case deals solely with the Department’s duty under

RCW 46.20.161 to issue the license *prior* to any required signature. The issue before this court is not whether the applicant must sign the license or camera card, but whether the Department must issue the license irrespective of the lack of a signature.

Rule 6.7 Driver License Renewal details the process that the Department must follow when renewing a driver's license. (CP 47-50) The rule requires licenses to be renewed, and nowhere in the rule is the licensing service representative (LSR) authorized to request or require an applicant to sign a camera card. Clearly, LSR Freeman violated the rule by refusing to issue the license only because Ingebo refused to sign the camera card.

A REQUIREMENT THAT INGEBO SIGN HIS DRIVER'S LICENSE IS
NOT CONSTITUTIONALLY PERMISSIBLE

The right of a citizen to travel on the highways in the ordinary course of life and business is a common right which he has under his right to life, liberty and property. It includes the right to drive an automobile thereon. It is not a mere license or mere privilege. The state may regulate this right under its police power but it may not arbitrarily or unreasonably prohibit or restrict it. *Thompson v. Smith* 155 Va. 367, 154 S.E. 579 (1930); *Hadfield*

v. Lundin 98 Wash. 657, 168 P. 516 (1917); *State ex. rel. Schafer v. City of Spokane* 109 Wash. 360, 186 P. 864 (1920).

A requirement that Ingebo sign his license is arbitrary and unreasonable because it does not serve a legitimate police power purpose. The only conceivably valid police power purpose would be to aid in the identification of drivers, but this idea fails because a police officer, when he stops a driver, has no authority to require the driver to sign his name for comparison with the signature on the license. There could be no aid in identification.

The courts in the above cases recognized the fundamental distinction between the state's limited right under the police power to regulate the citizen's common right to drive in the ordinary course of life and business, and the state's plenary or complete right to arbitrarily legislate the citizen's mere privilege to drive in the extraordinary course of life and business, such as in using the highways as a place of business. Ingebo did not request a special license to drive in an extraordinary way. For him a signature requirement is not permitted where it would be permitted for a person requesting a special license. To maintain the constitutionality of RCW 46.20.161 it must not be interpreted to require Ingebo's signature on the license.

RCW 46.20.161 states in part:

“... the licensee *shall* write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

The word “shall” may be construed as merely permissive or directory (as equivalent to may), to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. *Black’s law dict. 5th ed.* (shall)

If a person intends to drive in an extraordinary way, he has no right in it, it is a mere privilege, and the state has the right to impose any condition on its exercise no matter how arbitrary or capricious. *Thompson v. Smith supra*. Then the state has the right to require the signed license. This right of the state then depends that the word “shall” as used in the statute, be taken the imperative sense, and the state’s right is impaired if the word is taken in the permissive sense.

It must be presumed that Ingebo applied for a license to drive in the ordinary way because there is no evidence to show that he applied for an extraordinary license. Since the state’s legislative power over his right to drive in the ordinary way is limited to reasonable regulation under the police power, (see *Thompson, Hadfield, State ex. rel. Schafer*) and a signature requirement would not be allowed under that power, the state has

no right in such a requirement. The word “shall” can now be taken in the permissive sense to mean “may” because this interpretation impairs no right of the state.

If a statute is subject to two interpretations, one rendering it constitutional and the other unconstitutional, the legislature will be presumed to have intended a meaning consistent with the constitutionality of its enactment. *State v. Washington State Highway Commission* 63 Wash. 2d 34, 385 P2d 376 (1963) To maintain its constitutionality the statute must be read in this case to mean: “...the licensee *may* write his or her usual signature...”

The final wording of RCW 46.20.161 reads:

“No license is valid until it is so signed by the licensee.”

This declaration relates only to those licenses that are required to be signed. If the license is not required by the law to be signed, as in this case, the license must be considered valid without a signature.

By definition a license is a grant of authority by the state to do an act. If the state issues the license it is in fact valid even if the statute says it isn't. How could or why would the state issue a license that is not valid?

What is known as a driver's license is substantially equivalent to a certificate of competence. *City of Spokane v. Port* 43 Wash. App. 273, 716 P.2d 945 (1986). A certificate of competence such as a diploma or a

degree is valid when signed only by the party issuing the certificate. A signature by the one being certified is never necessary.

THE SUPERIOR COURT SHOULD HAVE GRANTED THE
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

There was no genuine issue of material fact. The undisputed fact that Ingebo would not sign the camera card is immaterial to this case because RCW 46.20.161 as properly interpreted and Rule 6.7 do not require the signature as a prerequisite to the issuance of the license. The fact that Ingebo was a qualified applicant is undisputed. There was no evidence to show that the Department was not able to include all of the required information on the license. With these facts RCW 46.20.161 requires the Department to issue Ingebo a driver's license. Without an issue of material fact the Plaintiff, Ingebo, was entitled to summary judgment as a matter of Law.

CONCLUSION

The applicable statute and rule required the Department to issue the license. The Department was not justified in refusing to issue the license.

PROOF OF SERVICE

I Kenneth J. Ingebo certify under penalty of perjury and the laws of the State of Washington

That I served a copy of the **Appellant's Brief** on counsel of the Respondent, on the date below,

by US Mail addressed to:

Masako Kanazawa
Assistant Attorney General
800 5th Ave. Suite 2000
Seattle, WA 98104

Dated this 29th day of October, 2012, at Lyle, Wash.



Kenneth J. Ingebo