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Division III
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NOs. 336221 & 336239

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

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

Respondent,

v.

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

Appellants,

and

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

Appellant.

APPELLANT DEPARTMENT OF REVENUE'S BRIEF

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ASSIGNMENTS OF ERROR AND ISSUES	2
	A. Assignments Of Error.	2
	B. Statement Of Issues.....	3
III.	STATEMENT OF THE CASE.....	4
	A. Background: Constitutional And Statutory Property Tax Requirements.	4
	B. Background: Washington’s Property Tax System In Practice.....	6
	C. The City of Spokane’s Property Tax Exemption Program	11
	D. Proceedings Below.....	16
IV.	STANDARD OF REVIEW.....	19
V.	ARGUMENT	20
	A. Article VII, Section 9 Authorizes Specific Taxing Powers To Municipal Corporations.....	21
	B. The Plain Language Of RCW 35A.11.020 Incorporates The Specific Powers And Limitations Of Section 9.....	24
	C. The City’s Ordinance Fails Constitutional Uniformity Requirements.	26
	1. The Ordinance violates uniformity by applying two different regular property tax rates to real property in the City.	27

2.	The Ordinance violates uniformity by creating different assessment ratios between real property owned by retired persons and other real property.	29
D.	The Legislature Could Not And Did Not Grant To Municipal Corporations Its Limited Powers To Create Exemptions Or Non-Uniform Taxes.....	32
1.	RCW 35A.11.020 contains no language granting cities the authority to create property tax exemptions, and no such power should be inferred.	34
2.	Construing RCW 35A.11.020 as permitting cities to create property tax exemptions produces unlikely and strained results.	36
E.	The Department’s Opinion Letter Was Properly Concerned With RCW Title 84 And Ensuring Uniformity.....	41
F.	The Trial Court Improperly Issued The Writ Of Mandamus Compelling The County To Implement An Unlawful Ordinance.	43
VI.	CONCLUSION	45

TABLE OF AUTHORITIES

Cases

<i>Arborwood Idaho, L.L.C. v. City of Kennewick</i> , 151 Wn.2d 359, 89 P.3d 217 (2004).....	24
<i>Barry & Barry, Inc. v. Dept. of Motor Vehicles</i> , 81 Wn.2d 155, 500 P.2d 540 (1972).....	36
<i>Belas v. Kiga</i> , 135 Wn.2d 913, 959 P.2d 1037 (1998).....	6, 29, 34, 35
<i>Bellevue Assocs. v. City of Bellevue</i> , 108 Wn.2d 671, 741 P.2d 993 (1987).....	23
<i>Boeing Co. v. King County</i> , 75 Wn.2d 160, 449 P.2d 404 (1969).....	11, 26, 27, 42
<i>Caffall Bros. Forest Products, Inc. v. State</i> , 79 Wn.2d 223, 484 P.2d 912 (1971).....	44
<i>Carkonen v. Williams</i> , 76 Wn.2d 617, 458 P.2d 280 (1969).....	6, 23, 24
<i>Cary v. Mason County</i> , 132 Wn. App. 495, 132 P.3d 157 (2006), <i>review denied</i> , 159 Wn.2d 1005 (2007).....	23
<i>Citizens for Financially Responsible Gov't v. Spokane</i> , 99 Wn.2d 339, 662 P.2d 845 (1983).....	22
<i>Citizens for Underground Equality v. City of Seattle</i> , 6 Wn. App. 338, 492 P.2d 1071 (1972).....	23
<i>City of Brown v. Yakima</i> , 116 Wn.2d 556, 807 P.2d 353 (1991).....	39
<i>City of Spokane v. J-R Distributors, Inc.</i> , 90 Wn.2d 722, 585 P.2d 784 (1978).....	35, 38

<i>City of Spokane v. Vaux</i> , 83 Wn.2d 126, 516 P.2d 209 (1973).....	25
<i>City of Wenatchee v. Chelan County Pub. Utility Dist. No. 1</i> , 181 Wn. App. 326, 325 P.3d 419 (2014).....	24, 41
<i>Columbia Irrig. Dist. v. Benton County</i> , 149 Wash. 234, 270 P. 813 (1928)	35
<i>Covell v. City of Seattle</i> , 127 Wn.2d 874, 905 P.2d 324 (1995).....	27
<i>Dep't of Ecology v. Campbell & Gwinn, L.L.C</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	24
<i>Earle M. Jorgenson Co. v. City of Seattle</i> , 99 Wn.2d 861, 665 P.2d 1328 (1983).....	36
<i>Eugster v. City of Spokane</i> , 118 Wn. App. 383, 76 P.3d 741 (2003).....	20, 44
<i>Great Northern Ry. Co. v. Snohomish County</i> , 48 Wash. 478, 93 P. 924 (1908)	43
<i>Hansen v. Hammer</i> , 15 Wash. 315, 46 P. 332 (1896)	23
<i>Hillis Homes, Inc. v. Snohomish County</i> , 97 Wn.2d 804, 650 P.2d 193 (1982).....	22
<i>Ivy Club Investors Ltd. Partnership v. City of Kennewick</i> , 40 Wn. App. 524, 699 P.2d 782 (1985).....	22
<i>King County v. City of Algona</i> , 101 Wn.2d 789, 681 P.2d 1281 (1984).....	35
<i>Larson v. Seattle Popular Monorail Authority</i> , 156 Wn.2d 752, 131 P.3d 892 (2006).....	22
<i>Love v. King County</i> , 181 Wn.2d 462, 44 P.2d 175 (1935).....	21

<i>Mallard v. U.S. Dist. Court for S. Dist. of Iowa,</i> 490 U.S. 296, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989).....	44
<i>Nathan v. Spokane County,</i> 35 Wash. 26, 76 P. 521 (1904)	37
<i>Nollette v. Christianson,</i> 115 Wn.2d 594, 800 P.2d 359 (1990).....	19
<i>Pac. First Fed. Sav. & Loan Ass'n v. Pierce County,</i> 27 Wn.2d 347, 178 P.2d 351 (1947).....	21, 35
<i>Pac. Nw. Conference of the Free Methodist Church of N. Am. v. Barlow,</i> 77 Wn.2d 487, 463 P.2d 626 (1969).....	35
<i>Pacific Tel. & Tel. Co. v. Wooster,</i> 178 Wash. 180, 34 P.2d 451 (1934)	29, 30
<i>Samis Land Co. v. City of Soap Lake,</i> 143 Wn.2d 798, 23 P.3d 477 (2001).....	27
<i>Simpson Inv. Co. v. Dep't of Revenue,</i> 141 Wn.2d 139, 3 P.3d 741 (2000).....	36
<i>State ex rel. Atwood v. Wooster,</i> 163 Wash. 659, 2 P.2d 653 (1931)	34
<i>State ex rel. Morgan v. Kinnear,</i> 80 Wn.2d 400, 494 P.2d 1362 (1972).....	25
<i>State ex. rel. Barlow v. Kinnear,</i> 70 Wn.2d 482, 423 P.2d 937 (1967).....	30, 37
<i>State v. Cameron,</i> 90 Wash. 407, 156 P. 537 (1916)	37, 43
<i>State v. Chester,</i> 133 Wn.2d 15, 940 P.2d 1374 (1997).....	33

<i>University Village Ltd. Partners v. King County</i> , 106 Wn. App. 321, 23 P.3d 1090, review denied 145 Wn.2d 1002 (2001).....	27, 29
---	--------

<i>Walker v. Munro</i> , 124 Wn.2d 402, 879 P.2d 920 (1994).....	43
---	----

Constitutional Provisions

Const. art. VII, § 1	4, 8
Const. art. VII, § 2	8, 10
Const. art. VII, § 2 (a)-(b)	10
Const. art. VII, § 9	5, 8, 20, 23
Const. art. VII, § 10	5, 20, 32

Statutes

Laws of 2015, 3d Spec. Sess., ch. 30, § 2.....	40
Laws of 2015, 3d Spec. Sess., ch. 30, § 3.....	40
RCW 7.16.170	44
RCW 27.12.390	13
RCW 35A.11.020.....	passim
RCW 39.36.050	10
RCW 52.04.081	13
RCW 82.03.130	40
RCW 84.04.020-.030.....	6
RCW 84.04.140	6

RCW 84.08	41
RCW 84.08.010	7
RCW 84.08.010 -.020	41, 43
RCW 84.08.010(1).....	11
RCW 84.08.010(2).....	11
RCW 84.08.030	38
RCW 84.08.070	11
RCW 84.08.080	11, 42
RCW 84.08.120	11
RCW 84.36	7
RCW 84.36.005	42
RCW 84.36.381	13, 40
RCW 84.36.381(5)(a)-(b)	13
RCW 84.36.381(6).....	13
RCW 84.36.385	7
RCW 84.36.850	40
RCW 84.40	7, 37, 39
RCW 84.40.020-.040	31
RCW 84.40.030	7, 30
RCW 84.40.040	7, 39
RCW 84.40.175	7, 39

RCW 84.52	37
RCW 84.52.010	6
RCW 84.52.010(2).....	7
RCW 84.52.010(3).....	9
RCW 84.52.020	8, 9
RCW 84.52.030-.040	37
RCW 84.52.040	7, 9
RCW 84.52.043	8, 9, 13, 36
RCW 84.52.043(b).....	37
RCW 84.52.043-.050	9
RCW 84.52.050	9
RCW 84.52.052	10
RCW 84.52.054	10
RCW 84.52.056	10
RCW 84.55	37
RCW 84.55.010	8, 9, 12
RCW 84.55.100	9
RCW 84.55.120	8
RCW 84.56.010	10
RCW 84.56.035	10
RCW 84.56.050	10

RCW Title 84	37, 39, 41, 42
--------------------	----------------

Regulations

WAC 458-07	11
WAC 458-16A-140(2)	13
WAC 458-19	9, 11
WAC 458-19-010	9
WAC 458-19-020	8, 9
WAC 458-19-045	8
WAC 458-19-070	9
WAC 458-19-070(2)(c)	10
WAC 458-19-075	10
WAC 458-53-020	29

Other Authorities

Ass'n of Assessing Officers, <i>Standards on Property Tax Policy</i> , in Assessment Journal, Sept.-Oct. 1979	6
Spokane Municipal Code § 8.18.010	28, 29, 39
Spokane Municipal Code § 8.18.020(E)	28, 29, 30, 39
Spokane Municipal Code § 8.18.020(E)(1)	29, 30, 31
Spokane Municipal Code § 8.18.020(E)(2)	29, 30
Spokane Municipal Code § 8.18.020(F)	29, 30
Spokane Municipal Code § 8.18.070	40

I. INTRODUCTION

This case is about the constitutional restrictions on property taxation and statutory construction. The Spokane City Council promised voters that their taxes would not go up when it put a property tax proposition on the local ballot, but the Council failed to understand that the proposition would impact certain senior citizens and disabled veterans' property taxes. To fix the problem, the City enacted an ordinance creating a partial exemption from the City's regular property tax levy for certain properties. This created the issue at the heart of this litigation. Although the City Council's goal in keeping its promise may have been laudable, the City's Ordinance is invalid and unconstitutional.

The Ordinance violates constitutional limits that ensure equality of taxation and consistency of administration. Article VII, Section 9 of the Washington Constitution authorizes the Legislature to vest municipalities with the power to impose special assessments on property and to levy and collect local property taxes for general purposes. The constitutional provision, however, also requires that such local taxes be "uniform in respect to persons and property." The Ordinance violates this requirement by creating an unequal tax rate and disparities in assessed property values.

The City nevertheless argues, and the trial court agreed, that through RCW 35A.11.020, the Legislature delegated to cities the power to

exempt real property and to avoid the tax uniformity requirements in Article VII. Not so. The Legislature expressly granted cities all powers of taxation “within constitutional limitations.” RCW 35A.11.020. By ruling that the Ordinance was constitutional and a valid exercise of local legislative authority under RCW 35A.11.020, the trial court gave effect to a non-uniform property tax scheme that imposes two different regular property tax rates on real property. This runs contrary to Article VII’s constitutional uniformity requirements, the text of RCW 35A.11.020, and it creates an imbalance in the State’s property tax system and the Department of Revenue’s supervision of that system. On *de novo* review, this Court should reverse the trial court’s Order and Writ of Mandamus.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignments Of Error.

1. The trial court erred in concluding RCW 35A.11.020 expressly delegated to cities authority to exempt retired persons from a portion of the City’s regular property taxes (Order at ¶¶ 19, 20, 21, 24, Writ at ¶ 1).
2. The trial court erred in concluding the City’s Ordinance was a valid exercise of its taxation authority in compliance with Article VII, Sections 1 and 9 (Order at ¶¶ 17, 18, 21, 22).
3. The trial court erred in issuing a Writ of Mandamus compelling the County to implement the City’s Ordinance establishing two different

regular levy rates to real property in the City (Order at ¶¶ 9, 27, 28, 29, 30, 31; Writ at ¶¶ 1-2).

4. The trial court erred in concluding the Department exceeded its authority by instructing the County not to adopt the Ordinance and by ordering that the Department's letter be annulled (Order at ¶¶ 23, 24).

B. Statement Of Issues.

1. Does the City's ordinance violate uniformity requirements under Article VII, Section 1 or 9, by imposing different regular levy tax rates and assessing real property at disparate assessment ratios? (Assignment of Error No. 2).

2. Did the trial court improperly conclude that the City's ordinance, which imposes different regular levy tax rates and assesses real property at disparate assessment ratios, is authorized under RCW 35A.11.020, when the statute requires that all city taxes be "within constitutional limitations?" (Assignment of Error Nos. 1 and 2).

3. Did the trial court erroneously issue a writ of mandamus ordering the County assessor to implement the City's non-uniform system of taxation? (Assignment of Error No. 3).

4. Did the trial court improperly order the annulment of the Department's interpretive letter to the County? (Assignment of Error No. 4).

III. STATEMENT OF THE CASE

A. Background: Constitutional And Statutory Property Tax Requirements.

Article VII of the Washington Constitution contains numerous taxation and revenue requirements. Three provisions are relevant to the property tax issue here. Article VII, Section 1 provides, in relevant part, that “all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.” Const. art. VII, § 1. Article VII, Section 1 also permits the Legislature to exempt property entirely from taxation. *Id.* The people created another exception to the Section 1 uniformity requirements in Section 10, which authorizes the Legislature to grant retired property owners relief from property taxes and to place restrictions and conditions on such relief:

SECTION 10 RETIRED PERSONS PROPERTY TAX EXEMPTION. *Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:*

The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements.

Const. art. VII, § 10 (italics added). The Legislature adopted property tax relief for retired property owners with limited incomes as contemplated in Section 10. The relevant restrictions and conditions for this property tax relief can be found in RCW 84.36.379 through .389.

In another section of Article VII, Section 9, the people authorized the Legislature to vest municipal corporations with certain powers to tax, including the power to assess and collect property taxes. Like Section 1, Section 9 requires that such taxes be uniform:

SECTION 9 SPECIAL ASSESSMENTS OR TAXATION FOR LOCAL IMPROVEMENTS. The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. *For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.*

Const. art. VII, § 9 (italics added). The Legislature gave effect to this constitutional provision for code cities in RCW 35A.11.020:

Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

(Emphasis added). The interpretation of this statute is a central issue in this case.

B. Background: Washington's Property Tax System In Practice.

The State's property tax system is, at its core, conceptually simple. There are three main components to the regular property tax under RCW Title 84: the *levy*, the *assessed value*, and the *levy rate*. See RCW 84.04.140. The *levy* is the total amount collected from the taxpayers by a taxing district. The *assessed value* and the *levy rate* are the tools used to distribute the property tax burden equally to all taxpayers. See RCW 84.04.020-.030 (definition of assessed value of property). The *levy rate* is calculated by dividing the total levy amount by the amount of taxable property in the district. RCW 84.52.010. It is expressed in terms of a dollar rate per \$1,000 of the assessed value of the property (sometimes expressed as "millage" or "mills" for short).¹

The process of implementing this tax system is not so simple. County assessors and treasurers play key roles. The Legislature invested them "with the power and duty to list, appraise, and revalue or reassess all taxable property within the county and to post, apportion, equalize, levy, and collect virtually all local property taxes at prescribed millage rates for and on behalf of the county." *Carکنون v. Williams*, 76 Wn.2d 617, 628, 458 P.2d 280 (1969). In addition, the Department of Revenue exercises

¹ Millage. "Millage is a tax rate expressed as mills per dollar. One mill is one-tenth of one cent." *Belas v. Kiga*, 135 Wn.2d 913, 936, n.5, 959 P.2d 1037 (1998) (citing International Ass'n of Assessing Officers, *Standards on Property Tax Policy*, in *Assessment Journal*, Sept.-Oct. 1979 at 44).

general supervision and control over the administration of property taxes, as well as over county officers in the performance of their duties related to taxation. RCW 84.08.010.

Valuation and Exemptions. The market value of all property in the taxing district is determined by either the assessor or the Department. RCW 84.40.030. The assessor or Department also determines if property qualifies for one of the statutory property tax exemptions. *See generally*, RCW 84.36. By August 31 of each year, the Department reports to each county assessor the property within the county that the Department has found to be exempt from taxes. RCW 84.36.385.

Assessment. Once the market value of property is determined, each assessor determines the assessable value of the property. *See* RCW 84.40. Real property is currently assessed at one hundred percent of its true and fair value in money. RCW 84.40.030. These assessed values are then placed on an assessment list verified by each assessor. *See* RCW 84.40.040 (listing of real property); *see also* RCW 84.40.175 (listing of exempt property). The total of all non-exempt, assessable property in a taxing district is then used to determine the taxable base or *assessed value* used in calculating the *levy* of each district. *See* RCW 84.52.010(2); RCW 84.52.040.

Budget. Next, each county assessor determines the levy rate imposed by each taxing district, which begins with each taxing district's enacted budget. Most taxing districts, like the City of Spokane, are authorized by statute to levy a certain rate of property taxes each year, up to a monetary rate and percentage of value limit. *See* Const. art. VII, § 2; RCW 84.52.043 (monetary levy limits). Many taxing districts use a preliminary estimate of the assessed value provided by assessors each September to decide how much to request in their budget. *See* RCW 84.52.020.

The Legislature limits taxing districts to a certain percentage by which they can increase their annual regular levy without voter approval. RCW 84.55.010; WAC 458-19-020.² The restriction is known as a “levy-lid,” and a proposition to get voter approval to increase the “levy-lid” is known as a “levy-lid lift.” WAC 458-19-045. Generally, if a taxing

² Regular Levy Limits. Regular levies are not voted on by the public, but remain subject to several statutory limitations such as the budgeting process (RCW 84.52.020), passage of a resolution for any increase (RCW 84.55.120), district dollar rate limitations, and an overall aggregate dollar rate limitation (RCW 84.52.043) (which also prioritizes rates of certain districts if the combined levy rate exceeds the aggregate limit), and a limit on yearly increases to the levy set to inflation. RCW 84.55.010. Regular levies are also subject to constitutional limitations. These include a limit on the overall regular property tax liability of a single property (Const. art. VII, § 2) and uniformity (Const. art. VII, §§ 1, 9).

district wants to exceed this lid, the levy-lid lift proposition must be approved by a simple majority of its voters.³

Taxing districts must then certify their budget request by November 30 of the assessment year so that their county assessor can determine the final levy amounts and rates. *See* RCW 84.52.020.

District Regular Tax Rates and Limits. The assessor then uses the *certified budgets* and *assessed values* to determine the regular levy rate for each taxing district. RCW 84.52.040; WAC 458-19. Before applying the tax to the assessable property, the county assessor must review each district's levy to see if it is below the constitutional and statutory monetary limitations. *See* RCW 84.52.043; RCW 84.52.050; WAC 458-19-010; *see, e.g.*, WAC 458-19-070 (\$5.90 aggregate limit calculation). If a taxing district's individual levy, increase in levy, or the aggregate of all levies exceeds one of these limitations, the assessor lowers the final regular tax rate of the taxing district or districts to the applicable limits. RCW 84.52.010(3); RCW 84.52.043-.050; RCW 84.55.100; WAC 458-19-020.

³ Levy-lids and "levy-lid lifts." Since the 1970s a levy limit or "levy lid" has restricted the growth of regular property tax levies. Initiative 747 in 2001 reduced allowable annual increases in levy amounts from 6 percent to 1 percent. In 2006, the King County Superior Court declared Initiative 747 unconstitutional, but the 1% limitation was reinstated in a 2007 special legislative session. RCW 84.55.010. Under the levy lid, taxing districts may levy only as much as in the preceding year (accounting for inflation), plus an amount for new construction and improvements to property and increases in the value of state-assessed property. A lid lift is simply a means of exceeding the yearly limitation on increasing the regular levy. It does not remove any of the other statutory or constitutional limitations imposed on regular levies.

Once the assessor establishes the final tax rate of each taxing district's regular levy, the assessor sets assessable values of each property and the rate applied by each levy onto a tax roll, certifies it, and delivers it to the county treasurer for collection on behalf of the taxing districts. *See* RCW 84.56.010; .035; .050.

Excess and Bond Levies. Certain taxing districts also have authority, with voter approval, to impose additional taxes over and above a regular property tax levy. *See* Const. art. VII, § 2 (a)-(b); RCW 84.52.052. While they have different requirements for approval, excess levies are not subject to the same statutory limitations imposed on regular levies. *See* Const. art. VII, § 2. Voters approve excess levies in terms of total dollars, and they generally last for only one year. *See* RCW 84.52.054. Bond retirement levies are a subcategory of the excess levy and can be approved for as many as thirty years. The bond is backed by the taxing district's ability to levy tax. RCW 84.52.056; RCW 39.36.050. Most excess levies require a supermajority voter approval. RCW 84.52.052. The county assessor applies excess levies separate from the regular levy on the tax rolls. WAC 458-19-070(2)(c); WAC 458-19-075.

Administration and Supervision. The Department of Revenue supervises the administration of the property tax laws and ensures "that equality of taxation and uniformity of administration shall be secured and

all taxes shall be collected according to the provisions of law.” RCW 84.08.010(1); *see Boeing Co. v. King County*, 75 Wn.2d 160, 165-66, 449 P.2d 404 (1969). The Department conducts rulemaking and adjudicative actions to secure uniform assessment of property of like kind and value in the various taxing units of the state. RCW 84.08.010(2); RCW 84.08.070; *see, e.g.*, WAC 458-07 (valuation regulations); WAC 458-19 (levy rate regulations). The Department also exercises general supervision and control over county assessors and treasurers. RCW 84.08.010(1).

The Department also has authority to “decide all questions that may arise in reference to the true construction or interpretation of [RCW Title 84,] with reference to the powers and duties of taxing district officers... until modified or annulled by judgment or decree of a court.” RCW 84.08.080. And the Department may issue orders when it appears officers have failed in their duties related to the assessment or equalization of assessments of property for taxation or when a levy or collection of taxes fails to comply with the provisions of RCW Title 84 or “with any other law relating to such duties or the rules of the department.” RCW 84.08.120.

C. The City of Spokane’s Property Tax Exemption Program

Over the last decade, the City of Spokane has needed extra revenue to repair and improve City streets. In 2004, the City Council obtained

voter approval for a \$117 million street bond to pay for street projects.

The plan was to complete the street projects over ten years and fully retire the street bond, plus interest, by 2024 under a 20-year bond retirement levy. CP 27; VRP 8:6-18.

In 2014, the City had completed street improvement projects, but still had ten more years to pay off \$84 million in remaining bond debt and interest. Instead of retiring the debt using ten more years of excess levies as planned, City leaders came up with a new strategy to pay off the bonds with their property tax levy, as well as to extend the street program another eleven years to 2035. CP 27. The City would replace \$0.57 per \$1,000 assessed value imposed by the City's bond retirement levy with an equivalent increase of \$0.57 per \$1,000 assessed value in the City's regular property tax rate. CP 27; VRP 8:3-18.

To implement this strategy, the City needed to raise the regular property tax levy by more than the statutory limitation on increases normally allowed (*see* RCW 84.55.010). So the City council referred a levy-lid lift proposition to its voters ("Proposition One"). If approved, Proposition One would allow the City to exceed the limitations on the City's regular levy up to a statutory dollar rate limit of \$3.60 per \$1,000

dollars of assessed valuation.⁴ Proposition One proposed maintaining a levy-lid lift for 20 years. CP 26-27.

When the City referred Proposition One to voters, City officials promised that approving it would not cause a net increase in total property taxes in 2015 because the excess levies imposed on property would be decreased by the same monetary rate the 2015 regular levy was increased. CP 27. Unfortunately, City officials failed to grasp a result of offsetting the excess levy with an increase in the regular levy.

Specifically, the City overlooked how this change impacts low income retired taxpayers who qualify for statutory tax relief under RCW 84.36.381 (hereafter “Seniors”). Those Seniors are entirely exempt from excess levies on their primary residence (like the one used to pay for the City’s street bonds), but are still required to pay the full regular property tax rate on a preferentially assessed value of their primary residence. RCW 84.36.381(5)(a)-(b), (6); WAC 458-16A-140(2). Consequently, increasing the City’s regular levy rate would cause their total property tax liability to increase. CP 64; CP 200; CP 274. For the 2015 tax year, Seniors would be taxed an estimated \$14.22 to \$63.45 more per residence

⁴ Normally cities have a statutory dollar rate maximum of \$3.375 per \$1,000 of assessed value. *See* RCW 84.52.043. However, a city like Spokane may levy up to \$3.60 per \$1000 of assessed value if certain fire district or library annexations occurred. *See* RCW 27.12.390; RCW 52.04.081.

to pay for the City's streets program and bond debt. *See* Supp. Decl. of Hodgson at 10, Ex. B (in support of County's motion to modify).

Proposition One was approved by City voters on November 4, 2014. CP 64. Two months after Proposition One passed, the City realized Seniors' property taxes were going up. CP 28, 64-65, CP 164, 306; VRP 9:13-19. The City contacted the Department of Revenue to discuss the situation and see if it could find a solution that allowed it to keep Proposition One in place but lower taxes for Seniors. *See* VRP 9:13-16. Ultimately, the City elected not to request a formal written opinion from the Department. *See* VRP 9:13-19.

Instead, on February 9, 2015, the City Council passed emergency Ordinance C35231. CP 6, 10, 28. The Ordinance exempts Seniors from the portion of the City's regular levy constituting any voter approved levy lid-lift under RCW 84.55.050. *See* CP 66, 100; VRP 48:10-16; 55:4-8.

Specifically,

A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less is exempt from all excess property taxes approved by the voters pursuant to either RCW 84.52.052 or 84.55.050;

CP 11-13. The City describes the authority for the Ordinance as Article XI,⁵ Section 12, RCW 35.22.195; RCW 35.22.570; RCW 35.22.900; RCW 35A.11.020; and RCW 84.36.005. CP 10, 63. The Ordinance also includes an appeals process. CP 21.

After passing the Ordinance, the City requested the Spokane County Assessor and Treasurer to refrain from mailing tax statements showing an increase in taxes, and to reprint them to reflect the changes made by applying its Ordinance. CP 67; CP 126-27. The County Assessor contacted the Department of Revenue and requested the Department's opinion as to the validity and implementation of the City's Ordinance. CP 149, 256; VRP 10:12-14. The Department interpreted the Assessor's question as: whether a city can expand the parameters of the state exemption program by a city ordinance, and if the City's Ordinance is consistent with Washington's laws and constitution. CP 124, 128.

In a letter dated February 17, 2015, the Department advised the County officials not to implement the City Ordinance. CP 124-25. Specifically, the Department stated two reasons for not implementing the Ordinance and generally described the Department's role:

Washington's constitution vests in the legislature the exclusive authority to exempt property and also allows the legislature to provide property tax relief for retired persons.

⁵ The Ordinance included a typo in the original, citing "Article IX" of the Washington Constitution as authority.

No similar authority for a city to exempt individuals from property tax is provided in the constitution. Even if the legislature could delegate its constitutional authority to exempt property or provide property tax relief for retired persons, it has not enacted any law that delegates to cities that authority.

In addition, a well-established principle of Washington's property tax system requires all taxes within the taxing jurisdiction to be uniform on the same class of property. Indeed the courts have held that uniformity is the highest and most important of all requirements in our property tax system. To be uniform the tax must be imposed at the same rate and applied equally to property valued at the same assessment level. An exemption from a portion of the City's regular property tax that is applied to only some property owners would not be uniform.

Chapter 84.08 RCW sets forth the responsibilities of the Department of Revenue (Department) with respect to the property tax system. The Department is required to decide questions of interpretation of the provisions of Title 84, with the advice of the attorney general. The Department is also responsible to exercise general supervision over the administration of the tax laws to ensure property taxes are administered uniformly and applied equally.

CP 124.

D. Proceedings Below.

Before the Department had responded to the County Assessor's request, the City commenced this lawsuit against Spokane County and the Spokane County Assessor, initially seeking an emergency temporary restraining order enjoining the mailing of property tax assessment notices.

CP 5-7. The Spokane County Superior Court issued an emergency order

enjoining the County's mailing of property tax assessments until February 23, 2015. CP 29-31. Upon receipt of the Department's letter, the City and County stipulated to dissolution of the temporary restraining order. CP 40-41. On February 20, the County and Assessor answered the City's Complaint, asserting a counterclaim against the City and naming the State of Washington and Department of Revenue as interested parties. CP 46, 49-50. The Department filed a notice of appearance on March 10, 2015. CP 129-30.

Meanwhile, the City filed an amended complaint on March 5, 2015, adding a request for a writ of mandamus. CP 58-59, 61. The Complaint removed the County as a named defendant, and added the County Treasurer. Two weeks later, the County Assessor and Treasurer (hereafter "County") amended its answer, adding third-party claims against the State of Washington "by and through the Department of Revenue." CP 181-82, 185, 191-93.

Judge Harold Clarke held a show cause hearing on April 2, 2015, on why a writ of mandamus should not issue. *See* CP 318; *see briefing*, CP 163-79, 198-250, 279-313. Three weeks later, Judge Clarke issued a memorandum decision indicating he would grant mandamus. CP 319-22. Specifically he indicated that he would issue an order finding the Ordinance constitutional, issue a writ, and direct the parties to meet and

resolve the “2015 situation.” CP 321. In his memorandum, Judge Clarke also accepted the County’s argument that the Department’s letter constituted a “binding directive” under RCW 84.08.080 and ordered that the Department’s letter be annulled. CP 321. The Judge’s memorandum decision also discussed the Department’s role in the mandamus proceeding, noting that the Department occupied a “unique” position of “what amounts to amicus curie.” CP 320.

The City presented a proposed Order or Writ to the trial court on June 1, 2015, and Judge Clarke entered the Order and Writ on June 12, 2015. CP 374. The final language of the Writ expressly requires the County Assessor to apply different assessed values and millage rates:

1. Implement City of Spokane Ordinance No. C-35231 by *creating separate mill rates for the City’s voted and non-voted regular property tax levies* and applying the exemption set forth in Ordinance No C-35231 to the City’s voted regular property tax levy effective with City property taxes levied and paid in 2015 and to the City’s voted regular property tax levy in every succeeding year for so long as the exemption remains in effect; provided the exemption shall only be applied to the City’s voted levy on eligible persons under Ordinance No. C-35231.

CP 486 (emphasis supplied). The Writ and portions of the Order became final for purposes of appeal, pursuant to Civil Rule 54(b). CP 450.

Before the final order was presented, the County filed a motion to clarify or join the Department as a party. CP 331-33. The Department

joined in the motion to clarify its status as a party. CP 331-32, 334-40, 348-49. The Court heard this motion on June 1, and denied the motion on June 12. CP 374-76. Later, the Department moved to intervene in the mandamus proceeding post-judgment. CP 405-17, 428 (July 2, 2015). The trial court granted the motion for intervention and made the Department a party to the mandamus proceeding solely for purposes of appeal. CP 561.

Both the County and the Department timely filed appeals of the Order and Writ. CP 434-35; 469-70. The County also requested the Court stay implementation of the Writ pending appeal. This Court consolidated both appeals in its August 6, 2015, scheduling order. On September 2, 2015, the Court Commissioner denied the County's request for a stay of the writ. The County moved to modify the Commissioner's decision, and on November 23, 2015, this Court granted the motion to modify and stayed the trial court's decision. The City sought clarification of the order, which this Court denied.

IV. STANDARD OF REVIEW

A trial court's conclusions of law involving the interpretation of the constitution, statutes, and municipal ordinances are reviewed *de novo*. *Nollette v. Christianson*, 115 Wn.2d 594, 600, 800 P.2d 359 (1990). Any conclusion that a clear legal duty exists or that the action mandated is

lawful or required is also a question of law reviewed *de novo*. *Eugster v. City of Spokane*, 118 Wn. App. 383, 405-06, 76 P.3d 741 (2003). All issues the Department raises are reviewed by this Court *de novo*.

V. ARGUMENT

When the Washington State Department of Revenue told the Spokane County Assessor to not implement the City's Ordinance, it was correct. The City's Ordinance violates the uniformity requirement in Article VII, Section 9 because it imposes an unequal rate and creates a disparity in the valuation of real property between persons who qualify for the Ordinance and all other taxpayer's property subject to the City's regular levy. The Legislature entrusted the Department to ensure uniformity among the various taxing jurisdictions, and the Ordinance clearly violates this important constitutional restriction on property taxes.

The City argued that RCW 35A.11.020 delegated to it all powers of taxation, permitting it to exempt property from its regular levy as it sees fit. But while the Constitution permits the *Legislature* to create a non-uniform property tax exemption for "retired persons," the Constitution does not permit municipal corporations to create such exemptions. *See* Const. art. VII, §§ 9, 10. The trial court failed to recognize this constitutional limitation when it held that the City had authority to pass the Ordinance. The trial court also gave no meaning to RCW 35A.11.020's

qualification that the City's powers of taxation are granted "within constitutional limitations," which do not include the power to authorize non-uniform property taxes. Even though the trial court may have sympathized with the City's desire to keep its promise to voters, the court had no authority to permit a uniformity violation.

The trial court also failed to recognize how the Ordinance creates a city property tax system in conflict with the property tax system described under RCW Title 84. Nothing in the language of RCW 35A.11.020 suggests the Legislature intended these strained consequences. The trial court should have interpreted RCW 35A.11.020 in a manner which avoided statutory conflicts, as a grant of authority to tax, but not including any grant of authority for cities to create local exemptions.

This Court should reverse the trial court's order granting the writ of mandamus. County officers have no legal duty to implement an unlawful ordinance or undertake an unlawful action.

A. Article VII, Section 9 Authorizes Specific Taxing Powers To Municipal Corporations.

Cities have no inherent tax authority. *Pac. First Fed. Sav. & Loan Ass'n v. Pierce County*, 27 Wn.2d 347, 353, 178 P.2d 351 (1947); *Love v. King County*, 181 Wn.2d 462, 467, 44 P.2d 175 (1935). Cities possess only such tax powers as have been granted to them by general laws of the

state within the bounds of the state constitution. *Citizens for Financially Responsible Gov't v. Spokane*, 99 Wn.2d 339, 343, 662 P.2d 845 (1983); *see also Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 809, 650 P.2d 193 (1982) (municipalities cannot look to a general grant of police powers for taxation authority). Thus, if the Legislature or Constitution has not authorized a municipal tax, it is invalid no matter how necessary it might be. *Ivy Club Investors Ltd. Partnership v. City of Kennewick*, 40 Wn. App. 524, 528, 699 P.2d 782 (1985) (City of Kennewick had no authority to exact a fee as a condition to approving conversion of apartment complex to condominiums).

Article VII, Section 9 permits the Legislature to grant specific taxing powers to municipal corporations. *Larson v. Seattle Popular Monorail Authority*, 156 Wn.2d 752, 757, n.4, 131 P.3d 892 (2006).

Specifically:

SECTION 9 SPECIAL ASSESSMENTS OR TAXATION FOR LOCAL IMPROVEMENTS. The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. *For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.*

Const. art. VII, § 9 (emphasis added). Section 9 permits the Legislature to grant municipal corporations taxation authority in two distinct clauses: (1) to make “special assessments” for a local improvement and (2) to impose and collect a tax in the district for “corporate purposes.”

The term “special assessments” refers to a user charge that allocates the cost of public improvements that increase the value of property to the owner of that property. *Cary v. Mason County*, 132 Wn. App. 495, 500, 132 P.3d 157 (2006), *review denied*, 159 Wn.2d 1005 (2007).⁶ The term “corporate purposes” means general purposes “affecting all of people within the taxing district.” *Hansen v. Hammer*, 15 Wash. 315, 319, 46 P. 332 (1896).

Section 9 permits the “state legislature to vest county and other municipal authorities with the power to levy and collect taxes for local purposes subject to such conditions and *limitations as the constitution or the legislature may prescribe.*” *Carkonen v. Williams*, 76 Wn.2d 617, 627, 458 P.2d 280 (1969) (emphasis supplied). Thus, Section 9 requires uniformity and expressly limits the powers in the second clause to levying

⁶ Notably, special assessments for local improvements are not subject to Section 9’s requirement of uniformity of local taxation. *See Citizens for Underground Equality v. City of Seattle*, 6 Wn. App. 338, 342, 492 P.2d 1071 (1972). Rather, special assessments must “relate directly to the cost of the improvements, relate to the value of the improvements to the property assessed, and be deposited in special accounts for the particular improvements.” *Bellevue Assocs. v. City of Bellevue*, 108 Wn.2d 671, 674-75, 741 P.2d 993 (1987).

and collection. Accordingly, for a city to levy a non-uniform tax for corporate purposes would be in derogation of Section 9.

B. The Plain Language Of RCW 35A.11.020 Incorporates The Specific Powers And Limitations Of Section 9.

Section 9 is not self-executing “in the sense that county, city, and other municipal bodies are automatically invested with tax levying power.” *See Carkonen*, 76 Wn.2d at 627. “The legislature may give such authority or it may withhold it,” and it may prescribe limitations. *Id.*; *City of Wenatchee v. Chelan County Pub. Utility Dist. No. 1*, 181 Wn. App. 326, 335, 325 P.3d 419 (2014). The fundamental objective in interpreting a statute is to ascertain and carry out the Legislature’s intent. *Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217 (2004). Here, the trial court determined that when it included “all powers of taxation for local purposes” in RCW 35A.11.020, the Legislature intended to grant general plenary powers of taxation to the City. But the trial court never gave effect to the corresponding constitutional limitation found within the same text. In doing so the trial court failed to give effect to the statute’s plain language and meaning. *See Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

Contrary to the trial court's reading, the Legislature granted cities all of the powers *permitted by Article VII, Section 9*, not all general taxation powers. RCW 35A.11.020 states:

Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits *all powers of taxation for local purposes* except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

RCW 35A.11.020 (emphasis added). By including the phrase “[w]ithin constitutional limitations,” the Legislature signaled that it was giving effect to the local taxing powers authorized in Article VII, Section 9. RCW 35A.11.020. Thus the Legislature plainly intended to grant cities authority to do all that the constitutional provision permits: (1) to impose special assessments for local improvements that are limited to specific properties benefited by the improvement, and (2) to impose and collect taxes in the district for “corporate purposes” that are limited by uniformity across all persons and property within the district.

The trial court had a duty to adopt a construction of the statute sustaining its constitutionality. *City of Spokane v. Vaux*, 83 Wn.2d 126, 129-30, 516 P.2d 209 (1973). Where a statute is susceptible to several interpretations, some of which may render it unconstitutional, a court must adopt a construction that will sustain its constitutionality. *State ex rel. Morgan v. Kinneer*, 80 Wn.2d 400, 402, 494 P.2d 1362 (1972). Here, the

trial court's construction of RCW 35A.11.020 would render it unconstitutional because the constitution neither permits the Legislature to grant local authorities plenary taxing powers nor permits local governments to impose a non-uniform system of taxation for general purposes. *See* CP 384 (¶20).

RCW 35A.11.020 includes all the powers grantable to cities under Article VII, Section 9 and subject to the limitations therein. RCW 35A.11.020 cannot provide the authority for a non-uniform city tax. The trial court erred when it construed the statute as authorizing all powers of taxation in a general or plenary sense. This Court should reverse the trial court, and construe RCW 35A.11.020 as intending to grant cities only those taxing powers within constitutional limits.

C. The City's Ordinance Fails Constitutional Uniformity Requirements.

The City's Ordinance fails the uniformity requirements of Article VII, Section 9. Tax uniformity is generally described as the "highest" and "most important" of the constitutional property tax limitations on taxation authority. *Boeing Co. v. King County*, 75 Wn.2d 160, 165, 449 P.2d 404 (1969). Uniformity essentially means that the burden of tax is equally imposed amongst all of its subjects. *Id.*

Uniformity has two required components: (1) the application of an equal tax rate, and (2) equality in valuing the property being taxed. *See Covell v. City of Seattle*, 127 Wn.2d 874, 878, 905 P.2d 324 (1995); *University Village Ltd. Partners v. King County*, 106 Wn. App. 321, 23 P.3d 1090, *review denied* 145 Wn.2d 1002 (2001). If equality is lacking in either area of the tax spectrum (i.e., either the rate of taxation or the assessment ratio), there will be a lack of uniformity in the tax burden. *Boeing*, 75 Wn.2d at 165. The City's Ordinance causes the regular levy to violate both components of uniformity.

1. The Ordinance violates uniformity by applying two different regular property tax rates to real property in the City.

The City's Ordinance clearly violates the first component of uniformity by imposing two different rates of taxes on real property within the taxing jurisdiction. Application of an "equal tax rate" simply requires the property in the jurisdiction imposing the tax to be taxed at the same rate. *See, e.g., Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 815, 23 P.3d 477 (2001) (\$60.00 standby charge without regard to each land's worth was nonuniform property tax); *Covell*, 127 Wn.2d at 878 ("the tax rate on a \$60,000 house is 40 times higher than the rate on a \$2,400,000 mansion").

Here, taxpayers in the City would pay one of two rates: either the full regular rate or a preferred rate (which is calculated by taking the full regular rate and subtracting the amount of the levy-lid lift). *See* CP 11, 13 (§ 8.18.010, § 8.18.020(E)); CP 392 (§ 1). This is obvious when looking at how the County Assessor would implement the ordinance.

For example, starting at Year 0, city A's regular levy was set to \$3.03 per \$1,000 assessed value for real property. Ordinarily the city could only increase the levy rate to \$3.06 per \$1,000 assessed value without voter approval. *See* RCW 84.55.010. But this city wants a greater increase in its regular levy and gets voter approval for a \$0.57 levy-lid lift setting the real property regular tax rate to \$3.60 per \$1,000 assessed value for one year. The city also enacts an ordinance that results in exempting a portion of the regular levy for retired persons' primary residences based on the amount above the lid-lift. Consequently, the next year, the assessor sets the rate to \$3.03 per \$1,000 assessed value for qualifying persons' primary residences and \$3.60 per \$1,000 assessed value for all other taxable real property.

As the example demonstrates, the ordinance causes taxation of real property at different rates (\$3.60 and \$3.03 per \$1,000 assessed value). The simple fact that the same tax sets two different rates on real property violates the application of an "equal rate" component of uniformity. This

is the express purpose and effect of the City's Ordinance. *See* CP 11, 13 (§ 8.18.010, § 8.18.020(E)). On this basis alone, the City's Ordinance is unconstitutional under Article VII, Section 9 and violates RCW 35A.11.020 by failing to comply with "constitutional limitations."

2. The Ordinance violates uniformity by creating different assessment ratios between real property owned by retired persons and other real property.

The City's Ordinance also violates the second requirement of uniformity by creating disparities in the assessed value of real property. *See* CP 11, 13 (§ 8.18.010, § 8.18.020(E)(1), (2), (F); CP 392 (§ 1). Equality in valuing the property taxed requires that the basis for valuation be applied to "all alike." *Pacific Tel. & Tel. Co. v. Wooster*, 178 Wash. 180, 184, 34 P.2d 451 (1934).

Courts use the "assessment ratio" to test whether this requirement is met. *Belas v. Kiga*, 135 Wn.2d 913, 923, 959 P.2d 1037 (1998). The "assessment ratio" is the fractional relationship the property's assessed value bears to the market value of the property in question, traditionally expressed as a percentage of fair market value. WAC 458-53-020; *University Village*, 106 Wn. App. at 325 (e.g., if one property is assessed at 80 percent of fair market value, then similar properties must also be valued at the same percentage). A disparity in assessment ratio between the same class of property within a jurisdiction is a violation of the second

component of uniformity. *See, e.g., State ex. rel. Barlow v. Kinnear*, 70 Wn.2d 482, 487-88, 423 P.2d 937 (1967). If “the assessment is higher than that of property of like character and similar in situation, the assessment cannot be sustained, even though it be based on the true market value of the property.” *Pacific Tel. & Tel. Co.*, 178 Wash. at 184 (principle applies regardless of whether the basis of valuation is 100 percent of the true market value or a specified percentage of that value).

The City’s Ordinance results in different assessment ratios for the City’s regular levy. For non-Senior real property, RCW 84.40.030 requires property be assessed at one hundred percent of its true and fair value in money unless otherwise provided by law. For Seniors, the Ordinance reduces that value by a specific amount or percentage using a formula. If the Senior has a combined disposable income between \$25,000 and \$30,000, the primary residence value is reduced by “fifty thousand dollars or thirty-five percent” of its fair market value. CP 13-14 (§ 8.18.020(E)). If the Senior’s combined disposable income is less than \$25,000, the primary residence value is reduced by “sixty thousand dollars or sixty percent” of fair market value. CP 13-14 (§ 8.18.020(E)(1)-(2)).

Additionally, under the City’s ordinance, Seniors making less than \$35,000 have the assessed value of the residence frozen to the first tax year in which they applied. CP 15 (§ 8.18.020(F)). As a consequence, if

market value increases, the assessment ratio decreases. CP 15 (also note that freezing works only one way, if market value decreases the assessed value is adjusted down).

For example, two residences, one owned by Richard and one owned by Wanda, are valued at \$100,000 true and fair market value on Year 1, and \$110,000 true and fair market value on Year 2. Richard, a Senior, is approved for the City's ordinance under § 8.18.020(E)(1) for Year 1. Wanda, a working person, does not apply, and the assessed value is set pursuant to RCW 84.40.020-.040.

In Year 1, the Assessor would assess Richard's primary residence at \$50,000 as compared to his normal market value of \$100,000. The assessment ratio for Richard's property is 50% of true and fair value in Year 1. In Year 2, the Assessor would assess Richard's primary residence at \$50,000 (frozen) value as compared to his normal market value of \$110,000. Thus, the assessment ratio for Richard's property is 45.5% of true and fair value in Year 2.

In Year 1, the Assessor would assess Wanda's property at \$100,000 value as compared to her normal market value of \$100,000. The assessment ratio for Wanda's property is 100% of true and fair value. In Year 2, the Assessor would assess Wanda's property at \$110,000 value as

compared to her normal market value of \$110,000. The assessment ratio for Wanda's property is 100% of true and fair value.

Because the assessment ratios in year 1 and in year 2 are calculated differently and result in dissimilar assessment ratios, the City's ordinance violates the application of an "equal rate" requirement of uniformity. The Ordinance creates a non-uniform property tax scheme in the City of Spokane, contrary to the Uniformity requirements of Article VII, Sections 1 and 9, and contrary to the limitations in RCW 35A.11.020. The Department requests this Court reverse the trial court's ruling that the Ordinance was valid, constitutional and did not violate uniformity.

D. The Legislature Could Not And Did Not Grant To Municipal Corporations Its Limited Powers To Create Exemptions Or Non-Uniform Taxes.

As discussed above in the property tax overview (Part III.A.), Article VII, Section 10 permits the Legislature to create a non-uniform property tax system under certain circumstances, but the provision does not allow the Legislature to extend such authority to municipal corporations, like the City. Const. art. VII, § 10 ("*Notwithstanding the provisions of Article 7, section 1 . . . The Legislature shall have the power . . .*") (emphasis supplied). The City argued below that Section 10 granted the Legislature plenary authority to create a non-uniform tax system, and, by extension, grants the City the same power. CP 297-98. It does not.

The City's argument should be rejected because a court may not add language or meaning to a constitutional provision that does not exist on the face of the provision even if it believes something else was intended, but merely inadequately expressed. *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). In holding that the Ordinance did not violate the uniformity requirement under Section 9, it is apparent the trial court agreed with the City's interpretation of Section 10. CP 385 (§ 22). The trial court committed error by extending Article VII, Section 10 beyond its plain language.

The trial court also inexplicably held that the Legislature delegated its property exemption powers in Article VII, Section 1 to cities. CP 321, 384-85. But this conclusion equates the power to tax with the power to exempt property from taxation, without considering whether that is a valid conclusion. CP 384-85. It is not. Because the express language of RCW 35A.11.020 fails to unambiguously support the broad proposition that cities may create property tax exemptions, the trial court should have construed it conservatively against the City and ruled that the Legislature granted cities no such power.

1. **RCW 35A.11.020 contains no language granting cities the authority to create property tax exemptions, and no such power should be inferred.**

No published case in Washington has directly addressed whether property exemption authority is included in the phrase “all powers of taxation” in RCW 35A.11.020. However, case law on exemption authority in other contexts supports a conclusion that exemption authority necessarily demands a separate expression. Our Supreme Court first distinguished these powers when it first considered the amended language of Article VII, Section 1 and found that “such property as the Legislature may by general laws provide shall be exempt from taxation” was wholly independent of the text of the amendment dealing with the power to tax. *See State ex rel. Atwood v. Wooster*, 163 Wash. 659, 665, 2 P.2d 653 (1931). In other words, the general power to exempt property from tax does not necessarily follow from a grant of authority to tax property.

Later, in *Belas v. Kiga*, the Supreme Court elaborated on this principle while it analyzed whether the drafters of a referendum were using either the legislative power to tax or a legislative power to exempt property from taxation. *Belas*, 135 Wn.2d at 929-30. The Court noted that the drafters of the referendum knew what language should be used to invoke their exemption authority, in contrast to their tax authority, which was to use the word “exempt” within the language of the referendum. *Id.*

at 934. It also instructed courts to conservatively construe the Legislature's use of the exemption authority. Any intention to legislate in this area "should be expressed in unambiguous terms." *Belas*, 135 Wn.2d at 934; *see also Pac. Nw. Conference of the Free Methodist Church of N. Am. v. Barlow*, 77 Wn.2d 487, 492, 463 P.2d 626 (1969) (the legislature is presumed not to create exceptions to tax); *Columbia Irrig. Dist. v. Benton County*, 149 Wash. 234, 240, 270 P. 813 (1928) (exceptions to property tax are construed narrowly).

Similarly, the Legislature must use clear and express language before a court may conclude it intended to grant its legislative authority to municipalities. *See King County v. City of Algona*, 101 Wn.2d 789, 791-92, 681 P.2d 1281 (1984) (RCW 35A.11.020 contains no express authority to levy a tax on the state or another municipality). Courts will not expand the powers of local government beyond express delegations. *See City of Spokane v. J-R Distributors, Inc.*, 90 Wn.2d 722, 726, 585 P.2d 784 (1978) (abating a "moral nuisance" under a city ordinance was beyond City of Spokane's authority). If doubt exists as to whether or not a power has been granted, the power must be denied. *Pac. First Fed. Sav. & Loan Ass'n*, 27 Wn.2d at 353. It follows that, even if the Legislature could grant municipalities the power to create a non-uniform system by exempting properties from taxation—which it cannot—it would have done so through

an expression of that power by clearly saying so. The trial court's conclusion that it did is incorrect.

2. Construing RCW 35A.11.020 as permitting cities to create property tax exemptions produces unlikely and strained results.

If the Legislature had intended to grant authority to cities to create tax exemptions, it would have provided guidelines on how cities should do that within the complex statutory framework of the property tax system. *See generally Barry & Barry, Inc. v. Dept. of Motor Vehicles*, 81 Wn.2d 155, 163-64, 500 P.2d 540 (1972) (standards for grant of legislative power); *Earle M. Jorgenson Co. v. City of Seattle*, 99 Wn.2d 861, 868-69, 665 P.2d 1328 (1983) (the fact that the grant is to an elected body does not negate the requirement for guidelines and procedural safeguards). Allowing each taxing district to enact an exemption under RCW 84.36.005, as it sees fit, creates absurd consequences when the assessors undertake the processes used to determine assessed value and levy rates for their taxing districts. RCW 84.52.043. Courts should avoid interpretations that produce “unlikely, absurd or strained” results. *Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741 (2000).

First, the property tax system was not designed to manage district-by-district or levy-by-levy exemptions. State exemptions are implemented

across all of the district levies no later than the stage at which the assessed value is determined. *See* RCW 84.52.030-.040; *see, e.g., State v. Cameron*, 90 Wash. 407, 412-15, 156 P. 537 (1916) (homestead deduction must be applied to the property before taxation); *see also Nathan v. Spokane County*, 35 Wash. 26, 37-38, 76 P. 521 (1904) (Article VII does not authorize the Legislature to make any deductions from the amount of any tax after the assessment or levy). The statutory process is not designed to implement an exemption for one taxing district's levy, but not others.

The trial court's ruling essentially expands the City's role beyond what the Legislature set forth by statute for its property tax scheme. RCW Title 84 gives taxing districts a limited role in the process. *See also State ex. rel. Barlow v. Kinnear*, 70 Wn.2d 482, 488, 423 P.2d 937 (1967) (the county is the authority levying the tax, not the individual taxing units). Specifically, taxing districts can: (1) pass and certify a budget; (2) vote to increase taxes by less than 1%; (3) refer a ballot proposition to increase taxes by more than 1%; and (4) refer a ballot measure to impose an excess levy. *See* RCW 84.40, RCW 84.52, RCW 84.55.

Construing RCW 35A.11.020 as permitting exemptions, as the trial court does, modifies the process provided in the statute. Specifically, under RCW 84.52.043(b), assessors would need to consider how each

property in the district would reach the aggregate limit. Each exemption enacted multiplies the complexities of the aggregate determinations beyond what the Legislature provided for in the system.

If the Legislature intended this result, it would have also provided a mechanism for state agencies to recognize local exemptions. Otherwise, local exemptions lead to conflicts within the systems of the supervising and reviewing bodies. For example, the Department oversees and audits the levy rates set by each county assessor under RCW Title 84. RCW 84.08.030. The Department is duty bound to issue supplemental assessments if it discovers taxable property was omitted. *Id.* But as the City admitted, it had no authority to bind the Department. CP 304, 311. So when the Department audits this County Assessor's calculation of the City levies and assessments in 2015, it arrives at a different result than the Assessor. This is an absurd result not intended by RCW 35A.11.020.

Another unlikely result of interpreting RCW 35A.11.020 to give cities power to create property tax exemptions is that cities are likely to create exemption programs that are in conflict with the property tax statutory scheme, as the City's Ordinance is here. A city has no authority to enact an ordinance which conflicts with state statutes and a municipal regulation must yield to a state statute on the same subject if the two cannot be harmonized. *City of Spokane v. J-R Distributors, Inc.*, 90

Wn.2d 722, 730, 585 P.2d 784 (2005); *City of Brown v. Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991). Here, the trial court disregarded a conflict between the Ordinance and provisions of RCW 84.40 that cannot be harmonized.

RCW Title 84 requires a specific process for computing the assessed value, tax rate and levy amount. As discussed above in the tax system overview (Part III.B.), the process for the regular levies generally involves the valuation and exemption of property before it is listed for assessment. *See* RCW 84.40.040. The statute requires that assessors complete the duties of listing and placing valuations on all property by May 31st of each year and list all exempt property “at the time of making the assessment of real property.” RCW 84.40.040; RCW 84.40.175.

The City’s Ordinance in sections § 8.18.010 and § 8.18.020(E) would require the Assessor to list and exempt property later in the process, after the regular levy is determined. CP 11, 13. This precludes the Assessor from determining and listing those who qualify for the Ordinance’s exemption, contrary to the required statutory procedure.⁷ RCW 84.40.040, .175. Additionally, this introduces a circular process whereby the Assessor changes the assessment value used to calculate the

⁷ This conflict highlights why the Legislature would have provided guidance on how to implement local exemptions, if it had intended to allow cities to create such exemptions.

City's tax rate and then changes the tax rate that is used to calculate the assessment value.

Implementing this Ordinance also causes an unwieldy dual system of appeals. For example, this Ordinance's appeal provision (§ 8.18.070) providing appeals to a hearing examiner is different than the appeals process through the Board of Tax Appeals. *See* RCW 82.03.130; RCW 84.36.850. The two appellate processes could arrive at two different conclusions about qualification for the exemption without any guidelines or standards on how to reconcile these results.

The City's exemption program also no longer matches the State's program for 2016. The Legislature amended the senior property tax exemption to increase the disposable income thresholds by five thousand dollars for 2016. *See* Laws of 2015, 3d Spec. Sess., ch. 30, §§ 2-3. If the City does not amend its exemption program in 2016, applicants who have a combined disposable income between \$35,000 and \$40,000 would qualify under RCW 84.36.381, but not for the City's Ordinance.

In sum, the trial court erred in concluding that "the plain language of RCW 35A.11.020 includes the power to grant exemptions from taxation." CP 384. The plain language does not address exemptions. If the Legislature had intended to grant exemption authority to cities, it would have expressed its intent clearly by using the word "exemption,"

and it would have provided a method for integrating those exemptions into the property tax system. Courts should avoid absurd results, and if there is any doubt, the statute should be construed against the taxing authority.

City of Wenatchee, 181 Wn. App. at 337 (applying this principle to RCW Title 35A taxation statute). If this Court finds RCW 35A.11.020 ambiguous, it should construe the statute conservatively as reserving to the Legislature the power to exempt property from property taxes.

E. The Department's Opinion Letter Was Properly Concerned With RCW Title 84 And Ensuring Uniformity.

The Court ruled the Department's letter was ultra vires and must be annulled because "DOR's analysis relies upon its interpretation of the Washington Constitution and the statutory authority of a city to adopt legislation" and "for the additional and independent reason that the City was in fact authorized to implement a local property tax exemption." CP 385. To the contrary, the Department's letter was consistent with its statutory authority and duties under RCW 84.08. The Legislature charged the Department with exercising general supervision and control over the administration of property tax laws, and with advising and directing county assessors and treasurers as to their duties relating to taxation. RCW 84.08.010 -.020. The Department also is responsible for "deciding all questions that may arise in reference to the true construction or

interpretation of this title, or any part thereof, with reference to the powers and duties of taxing district officers.” RCW 84.08.080. The Department’s letter dealt with two topics, both of which were within the Department’s authority to advise and interpret.

First, the letter discussed tax exemptions from the City’s regular levy. The trial court failed to recognize that the Department’s analysis concerned RCW Title 84 and the Assessor’s statutory duties in implementing the property tax system. The City’s Ordinance expressly states: “RCW 84.36.005 provides that all property shall be subject to assessment by the City, except as exempted from taxation by law.” CP 10. Interpreting what exemptions are recognized by the Assessor under RCW 84.36.005, and more importantly what exemptions from a City’s property tax are not, is both an interpretation of RCW Title 84 and a matter relating to the administration of the assessment and taxation laws of the state.

The letter also concerned uniformity. The trial court largely ignored the fact that the Department is an “agency clothed with sufficient supervisory authority to ensure ‘equality of taxation and uniformity of administration’ in a tax structure badly fractionalized by 39 different county units.” *Boeing Co.*, 75 Wn.2d at 165 (quoting, *State ex rel. Barlow*, 70 Wn.2d at 486). In *State ex rel. Barlow*, the Court concluded that the predecessor to the Department of Revenue properly ordered compliance

with the constitutional standard of uniformity required by Article VII, Section 1. *Barlow*, 70 Wn.2d at 488; *see also State v. Cameron*, 90 Wash. at 415 (“the power to supervise the work of another means something more than merely to act in an advisory capacity only”) (citing *Great Northern Ry. Co. v. Snohomish County*, 48 Wash. 478, 93 P. 924 (1908)). Because the Ordinance causes non-uniform taxation, the Department was well within its purview of ensuring uniformity and supervision in directing the County Assessor and Treasurer to uphold the requirement. RCW 84.08.010 -.020.

The trial court considered the letter ultra vires because it discussed the Constitution and RCW Title 35A. Nothing in RCW 84.08.010 or .080 requires the Department to perform its functions without considering all relevant information and referring to statutes and the constitution. The Department’s letter was properly concerned with whether the City had authority to exempt individuals under RCW 84.36.005, and giving that advice was part of its general supervision of the property tax system. This Court should reverse the trial court’s order nullifying the letter.

F. The Trial Court Improperly Issued The Writ Of Mandamus Compelling The County To Implement An Unlawful Ordinance.

Mandamus is an “extraordinary” writ action. *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994). An applicant for a writ of

mandamus must satisfy three elements: (1) the party subject to the writ is under a clear duty to act; (2) the applicant has no “plain, speedy and adequate remedy in the ordinary course of law;” and (3) the applicant is “beneficially interested.” *Eugster v. City of Spokane*, 118 Wn. App. 383, 402-03, 76 P.3d 741 (2003) (citing RCW 7.16.170). The applicant bears the “demanding” burden of proving all three elements justifying mandamus. *Id.* (citing *Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 309, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989)). Here there is no clear legal duty because the trial court could not command County officials to perform an act the County had no legal duty to perform. If the City had no authority to enact this ordinance, then the County Assessor has no legal duty to implement it.

Mandamus will also not be ordered if the action or actions are illegal. *See Caffall Bros. Forest Products, Inc. v. State*, 79 Wn.2d 223, 229, 484 P.2d 912 (1971) (mandamus will not lie to compel an illegal action). Setting two different millage rates for regular property taxes causes the City’s regular property tax to be non-uniform. Because a non-uniform local levy manifestly violates the Constitution, the trial court could not validly order mandamus to require its implementation.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's Order finding the Ordinance valid and constitutional and vacate the Writ of Mandamus.

RESPECTFULLY SUBMITTED this 4th day of January, 2016.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read 'Andrew Krawczyk', is written over the printed name and title of the Assistant Attorney General.

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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 4th day of January, 2016, at Tumwater, WA.


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