

NO. 83771-6

SUPREME COURT OF THE STATE OF WASHINGTON

UNION ELEVATOR & WAREHOUSE COMPANY, INC.,
a Washington Corporation,

Respondent,

v.

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

Petitioner.

**SUPPLEMENTAL BRIEF OF
PETITIONER STATE OF WASHINGTON**

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I. INTRODUCTION

This court accepted review of a single issue: whether the legislature waived sovereign immunity with regard to interest payments when it passed the Relocation Act of 1971. Governmental immunity is a matter of state policy and can be changed only by the legislature. *Architectural Woods, Inc. v. State*, 92 Wn.2d 521, 526, 598 P.2d 1372 (1979). The legislature can waive sovereign immunity in one of three ways: (1) express statutory waiver, (2) express contractual waiver, or (3) implicit waiver by consenting to be sued for damages. *Id.* at 527. None of these waivers are present here.

This case arises from an appeal of a superior court decision that interest is unavailable under RCW 8.26 (“Relocation Act”) on relocation payments made to displaced persons. The superior court correctly concluded that the Relocation Act includes no express provision for interest on these awards and denied Union Elevator & Warehouse, Inc.’s (“Union Elevator”) request for interest.

Expanding upon *Architectural Woods*, the court of appeals inferred from two condemnation statutes, RCW 8.04.092 and RCW 8.28.040, a legislative intent to waive immunity to interest claims on relocation payments made under the Relocation Act, RCW 8.26. *Union Elevator & Warehouse, Inc. v. State*, 152 Wn. App. 199, 203-08, 215 P.3d 257 (2009).

This court's decisions do not provide for such implicit statutory waiver. But even if the court recognized such an approach, an examination of the language of the relocation and condemnation statutes reveals no legislative intent to waive immunity to interest claims on relocation assistance payments. Moreover, because the legislature passed the condemnation statutes decades before the Relocation Act, it is impossible to conclude that it intended to provide for interest on a right not yet recognized.

II. STATEMENT OF THE CASE

To appreciate the court of appeal's error, it is necessary to examine the legislative history and workings of the statutes it examined—the condemnation statutes, RCW 8.04 and RCW 8.28, and the Relocation Act, RCW 8.26. As explained below, this case arises from the application of RCW 8.26, and not RCW 8.04 or RCW 8.28.

A. Codification of Washington's Condemnation Process

In 1891, two years after statehood, the legislature passed the skeleton of RCW 8.04, the process for the exercise of eminent domain by the State, as limited by the Washington Constitution.¹ The legislature amended the process several times, including a 1943 provision for

¹ In part, the Washington Constitution provides that “[n]o private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner,” Const. art. I, § 16.

post-judgment interest on just compensation awards (RCW 8.28.040) and a 1951 provision for prejudgment interest (RCW 8.04.092).²

In 1965, the legislature passed Washington's first statute for the limited reimbursement of relocation costs incurred by persons displaced by a public project. Washington's relocation statute was followed in 1970 by the federal Relocation Assistance Act, which guaranteed relocation assistance for displaced persons on all federally funded projects.³ In 1971, twenty years after passage of the condemnation interest statutes, the legislature enacted RCW 8.26, the Relocation Act, which replaced the existing act and mirrored the language of its federal counterpart.⁴

The 1971 Relocation Act provides limited relocation assistance to persons displaced by a federally funded project, including payments for expenses incurred in moving, reestablishing a business, and replacing housing for homeowners and tenants. RCW 8.26.035-.055. Several reimbursement categories are capped. *E.g.*, RCW 8.26.035(1)(d), .045(1). Unlike the condemnation statutes, the Relocation Act contains no provision for payment of interest. *See generally* RCW 8.26.010-.115.

² *See* Laws of 1943, ch. 28, § 1 (adding RCW 8.28.040); Laws of 1951, ch. 177, § 2 (adding RCW 8.04.092).

³ 42 U.S.C. §§ 4601-4655.

⁴ Laws of 1971, 1st Ex. Sess., ch. 240.

B. Application of the State Condemnation Statute and the Relocation Act

Current statutes related to the State's exercise of its eminent domain power provide for a multi-step condemnation process. *See* RCW 8.04.010-.160. After filing the petition, a hearing on public use and necessity is held where a judge decides whether the project is public in nature and whether the property is necessary. RCW 8.04.070. If the property is required for the project prior to the subsequent just compensation trial date, the State may request that the owner stipulate to immediate possession and use. RCW 8.04.090. If the property owner grants the request, the State must deposit the tender amount (i.e., the amount it believes to be just compensation) into the registry. RCW 8.04.090.

Even if the owner grants immediate possession and use, he or she maintains the right to additional just compensation. RCW 8.04.090. And the Washington Constitution guarantees a right to a jury determination of the amount. Const. art. I, § 16. If the jury or judge decides that the owner is entitled to just compensation greater than the amount already paid, the State must deposit the balance into the registry. RCW 8.04.130. The owner is due interest on the balance from the date the State obtained possession and use. RCW 8.04.130. Once the court enters a judgment

and decree of appropriation and the State pays the balance, the property title transfers. RCW 8.04.120-.130. Similar but distinct statutory schemes exist for counties (RCW 8.08), cities (RCW 8.12), school districts (RCW 8.16), and corporations (RCW 8.20).

The condemnation process under RCW 8.04.010-.180 is necessary only if the State and the property owner cannot negotiate just compensation. For those properties the State acquires through negotiated purchase, its condemnation statutes are not triggered.

Independent of whether property acquisition occurs through purchase or condemnation, if the project is federally funded and displaces a "person," the relocation assistance provisions, RCW 8.26.010-.115, are triggered. The displacing agency must provide notice to persons who may be displaced by the project that they may be eligible for assistance. WAC 468-100-203. The displaced person must then submit a timely claim for relocation payments. WAC 468-100-207. If the agency denies the claim, or grants an amount the claimant believes is erroneous, the claimant may demand an administrative appeal. WAC 468-100-010(1). The claimant may also seek judicial review. RCW 8.26.010(3). However, the Relocation Act does not provide for a cause of action in superior court. *Id.*

C. Procedural History

1. The inverse condemnation action.

In 1996, Union Elevator filed an inverse condemnation action against Washington State Department of Transportation (“WSDOT”). *Union Elevator & Warehouse Co., Inc. v. State*, 96 Wn. App. 288, 292, 298, 980 P.2d 779 (1999). It claimed that WSDOT’s change of its access as part of an improvement rendered its property useless and constituted an unconstitutional taking. Division Three of the Court of Appeals found that an issue of fact existed as to whether a taking occurred, and remanded for a trial. *Id.* at 298. The jury found a taking of Union Elevator’s access and awarded \$166,000 in just compensation. *Union Elevator & Warehouse Co., Inc. v. State*, 144 Wn. App. 593, 598, 183 P.3d 1097 (2008). That award is not at issue in this appeal.

2. The relocation assistance appeals.

After it was determined that WSDOT took Union Elevator’s access, Union Elevator’s business located at that property became a “displaced person” eligible for relocation assistance under the 1971 Relocation Act. Union Elevator moved its business and submitted a claim for relocation assistance associated with purchasing substitute equipment. WSDOT concluded the equipment were ineligible fixtures under

WAC 468-100-301(5). Clerk's Papers (CP) 18, 98-100, 103, 303-318.

Union Elevator sought administrative review. CP 1-13.

An administrative law judge found the equipment to be personal property, CP 21-24, but the reviewing officer reversed and found the equipment to be fixtures. CP 38-43. The superior court affirmed, but the court of appeals held the equipment to be personal property and reversed. *Union Elevator*, 144 Wn. App. at 606. Pursuant to the Relocation Act of 1971, WSDOT reimbursed Union Elevator \$235,000 for the substitute equipment. CP 399.

The court of appeals also awarded Union Elevator attorney fees under the Equal Access to Justice Act ("EAJA"), but on remand Union Elevator demanded fees well in excess of the statutory maximum and over \$200,000 in prejudgment interest on the relocation claim. CP 301. The superior court denied both requests. *Union Elevator & Warehouse Co., Inc. v. State*, 152 Wn. App. 199, 203, 215 P.3d 257 (2009).

Union Elevator appealed and Division Three affirmed that the EAJA fee cap applied but held that WSDOT owed interest on the relocation assistance. The court acknowledged that the Relocation Act does not expressly provide for interest on relocation assistance: "[w]hile there is no question that the State has waived immunity from interest for damages in condemnation proceedings, it is not clear whether the

legislature intended this waiver to extend to awards under the Relocation Act.” *Id.* at 205. But after reviewing the prejudgment interest provision of the state condemnation statute (RCW 8.04.092), the post-judgment interest provision relating to just compensation awards (RCW 8.28.040), and cases broadly addressing just compensation, the court concluded that the “legislature considered such benefits part of the compensation and damages owed to a condemnee.” *Id.* at 204-208.

In her dissent, Judge Kulik recognized that, unlike condemnation awards, the State had not expressly waived immunity in relocation assistance benefit cases. *Id.* at 212.

WSDOT petitioned for review of the interest award and Union Elevator petitioned for review of the attorney fees decision. This court granted review of the interest issue but denied review of the attorney fees issue. *Union Elevator & Warehouse Co., Inc. v. State*, __ Wn.2d __, 228 P.3d 19, *granting review in part, denying in part*, No. 83771-6 (April 1, 2010).

III. ISSUES PRESENTED

1. Is relocation assistance, a statutory benefit that reimburses relocation costs of persons displaced by federally-funded projects, also a part of just compensation under article I, section 16 of the Washington Constitution?

2. Did the legislature intend to waive sovereign immunity for interest on relocation assistance when it omitted an interest provision in the authorizing statute, RCW 8.26?

IV. ARGUMENT

Relocation assistance is a statutory benefit and not part of the constitutional right to just compensation. As such, interest on this benefit is not recoverable without legislative consent. Because the legislature did not consent to payment of interest in the 1971 Relocation Act, RCW 8.26.010-.115, the court should hold that interest on relocation assistance payments is not available.

Sovereign immunity is an issue of law reviewed de novo. *See Wright v. Colville Tribal Enterprise Corp.*, 159 Wn.2d 108, 112, 147 P.3d 1275 (2006) (tribal sovereign immunity).

A. Just Compensation, as Defined Under Article I, Section 16, is Measured by the Market Value of the Taken Interests and Does Not Include Relocation Expenses

For over 60 years, this court has defined just compensation as the fair market value of the interests taken. In *Town of Issaquah v. Gordon*, 31 Wn.2d 556, 197 P.2d 1018 (1948), the court determined just compensation by analyzing the market value of the real property damaged or taken for public use, which it defined as “the price it will bring when offered for sale by one who desires, but is not required, to sell, and is

sought by one who desires, but is not required, to buy, after due consideration of all the elements reasonably affecting value.” *Id.* at 563-64 (quoting 29 C.J.S. *Eminent Domain* § 137, at 974). Those elements include the original price paid, the improvements on the property, the desirability of the property, the demand for such property, the use to which it could be put, and all other factors which would enter into a sale. *Id.* at 564. This court has consistently reaffirmed the definition of just compensation as the market value of the interests taken. *E.g.*, *City of Medina v. Cook*, 69 Wn.2d 574, 418 P.2d 1020 (1966) (“[t]he law is well settled that the measure of just compensation is the market value at the time of the taking.”); *State v. McDonald*, 98 Wn.2d 521, 525-26, 656 P.2d 1043 (1983) (where the state has taken an entire tract, the measure of damages is the market value of the tract taken).

It has also long recognized that consequential damages related to businesses affected by takings are not part of just compensation. *See, e.g.*, *Seattle & Montana Ry. Co. v. Roeder*, 30 Wn. 244, 263, 70 P. 498 (1902) (inquiry into profits when valuing land with minerals on it is not permitted); *McDonald*, 98 Wn.2d at 531 (property owner not entitled to recover lost profits or other consequential damages).

The vast majority of courts agree that consequential damages, including relocation costs, are not part of constitutional compensation.

See F.D. Pucket, *Cost to property owner of moving personal property as element of damages or compensation in eminent domain proceedings*, 69 A.L.R.2d 1453, § 2 (Supp. 2009). The U.S. Supreme Court stated in 1946, “[s]ince ‘market value’ does not fluctuate with the needs of condemnor or condemnee but with general demand for the property, evidence of loss of profits, damage to good will, the *expense of relocation* and other such consequential losses are refused in federal condemnation proceedings.” *United States v. Petty Motor Co.*, 327 U.S. 372, 378, 66 S. Ct. 596, 90 L. Ed. 729 (1946) (emphasis added); *see also National Railroad Passenger Corp. v. Faber Enterprises, Inc.*, 931 F.2d 438, 443 n.3 (7th Cir. 1991) (citing *Petty* for same rule).

In *State v. Grant Motor Co.*, 345 So.2d 843 (Fla. App. 1977), the court held that “full compensation” consists of two elements, the value of the property taken and severance damages to the remainder, but not relocation assistance. *Id.* at 845-46. In rejecting the claim for relocation assistance as part of constitutional compensation, the court explained that the purpose of payments made under the Federal Relocation Assistance Act was to supplement traditional eminent domain compensation, not to create an additional element of compensation. *Id.* at 846. *See also Spackman v. Spackman*, 3 Kan. App. 2d 400, 595 P.2d 748, 750 (1979) (same holding under federal act); *Rollins Outdoor Advertising, Inc. v.*

State Road Commission, 60 Md. App. 195, 481 A.2d 1149, 1156 (1984)

(same holding applied to Maryland Relocation Act).

B. Without an Express Statutory Waiver, Sovereign Immunity Bars Interest on a Statutory Benefit

As a legislatively-crafted benefit that is not part of constitutionally-mandated just compensation, interest is due on relocation benefits only if the legislature has waived sovereign immunity. In *Architectural Woods*, this court reaffirmed that sovereign immunity prohibits the State from being held to interest on its debts without its consent. 92 Wn.2d at 526. The case involved a breach of contract dispute between Evergreen State College and its contractor; the contractor wanted prejudgment and post-judgment interest on unpaid fees. This court recognized that the State cannot waive immunity unless it has expressly done so by statute or contract, but held that the legislature could also implicitly waive immunity through authorized contract. *Id.* at 526-529.

Until Division Three's decision below, Washington courts had consistently applied *Architectural Woods* to hold that, where payments are controlled solely by state statute, no immunity waiver exists absent an explicit provision for interest. For example, in *Our Lady of Lourdes Hosp. v. Franklin County*, 120 Wn.2d 439, 842 P.2d 956 (1993), this court examined the application of the City and County Jails Act,

RCW 70.48.130, to determine whether the Department of Social and Health Services (“DSHS”) must fully reimburse Franklin County for medical costs incurred for two inmates. The court found that DSHS had a statutory obligation to pay the medical costs but not interest as there was no contract or statute expressly waiving sovereign immunity. *Id.* at 456.

In *Shum v. Department of Labor and Industries*, 63 Wn. App. 405, 819 P.2d 399 (1991), the court of appeals, citing *Architectural Woods*, barred an award of prejudgment interest on a widow’s pension under RCW 51.52.135: “[i]t is inappropriate to imply a waiver of sovereign immunity when what is being administered is entirely statutory.” *Id.* at 411. *Accord Norris v. State*, 46 Wn. App. 822, 825, 733 P.2d 231 (1987) (“There is no room for implication here; a statute speaks to the point.”).

Similarly in *Kringel v. State*, 45 Wn. App. 462, 726 P.2d 58 (1986), the court of appeals held that the State had not waived sovereign immunity for interest on back pay under RCW 41.06.220. In so holding, the court noted that consent to interest payments “could be manifested expressly by statute or could be found by implication in situations where State agencies were authorized to enter into contracts.” *Id.* at 463-64. But it further noted that state personnel matters are governed entirely by statute and the statute does not give rise to the “contractual expectancies” found in *Architectural Woods*. *Id.* at 464.

As with pensions, back pay, and health cost reimbursements, relocation assistance is a legislatively-created benefit, the scope of which is entirely controlled by statute. And as with the statutes governing those benefits (RCW 70.48.130, RCW 51.51.135, RCW 41.06.220), the Relocation Act (RCW 8.26) includes no express provision for interest.

The legislature knows how to explicitly waive sovereign immunity as it did for torts (RCW 4.92.090) and interest on industrial insurance compensation (RCW 51.52.112). No similar language exists in the 1971 Relocation Act. *See* RCW 8.26.010-.115. Because the Relocation Act entirely controls the scope of the benefit and the legislature omitted an interest provision, the State has not waived sovereign immunity. *See Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 54, 905 P.2d 338 (1995) (improper to find implicit waiver when RCW 82.32.180 lacks an express provision providing for class actions suits).

C. Implicit Statutory Waiver Occurs Only When the State Consents to be Sued for Damages

Although this court has recognized implicit immunity waiver on interest claims, it has done so only where the State consented to be sued for damages. *Architectural Woods*, 92 Wn.2d 521.⁵ In *Architectural*

⁵ Division Three's implicit waiver holding in *Hyde v. Wellpinit School Dist. No. 49*, 32 Wn. App. 465, 648 P.2d 892 (1982) is distinguishable because the court inferred waiver from a specific change in the statute. No such affirmative legislative act exists here. *See Shum*, 63 Wn. App. at 411-12.

Woods, this court found that the State so consented when Evergreen State College contracted with private parties. The State consented to be sued for breach of contract and thereby waived immunity for associated claims, including interest. *Id.* at 526-29.

Similarly, in *Smoke v. City of Seattle*, 132 Wn.2d 214, 937 P.2d 186 (1997), this court found an implied waiver of sovereign immunity to post-judgment interest claims under RCW 64.40, which created a cause of action against agencies and local governments for damages arising from arbitrary, capricious, or unlawful land use decisions. The court noted that when the State makes such a blanket waiver, it also waives immunity to the “liabilities attendant to such claims.” *Smoke*, 132 Wn.2d at 228.

In contrast, although the legislature in the Relocation Act authorized APA review of the final agency decision, it explicitly refused to create a cause of action: “no provision of this chapter may be construed to give any person a cause of action in any court.” RCW 8.26.010(3). Without a cause of action, no attendant liabilities exist.

When it passed the Relocation Act in 1971, the legislature selectively meted out limited rights to displaced persons, whereas when it consents to suit for damages it pulls back the entire sovereign immunity blanket. Unlike a damages action, where the judge or jury decides liability and damages, the legislature charged the State with deciding whether the

claimant qualifies for reimbursement (WAC 468-100-203(2)(b)) and, if so, the amount of relocation assistance that can be awarded. RCW 8.26.010(3); *see also* WAC 468-100-010(2) (“A person is entitled to only such benefits as are specifically delineated in this chapter.”). The issue before the agency is not one of liability, but of applying legislative criteria to the facts of each assistance claim. RCW 8.26.035-.055; WAC 468-100-010(1). WSDOT’s application of the governing statute and rules must be upheld on judicial review unless the challenger demonstrates one of the errors set out in RCW 34.05.570(3). No blanket waiver exists within RCW 8.26; therefore, interest claims remain well-covered by sovereign immunity.

D. No Reasonable Basis Exists for Inferring Waiver Where There is no Consent to Be Sued for Damages

Even if this court is willing to recognize a new form of implicit statutory waiver, this case does not present a statute or combination of statutes that can be fairly read to waive sovereign immunity. Interpretations of legislative intent with regard to sovereign immunity waiver begin with the statute’s plain language. *Lacey Nursing*, 128 Wn.2d at 53. If the language is clear, courts must give effect to its plain meaning and assume the legislature means exactly what it says. *State v. Chapman*, 140 Wn.2d 436, 450, 998 P.2d 282 (2000).

Foregoing any plain language analysis of RCW 8.26, the court of appeals held that the term “compensation” under RCW 8.04.092 and RCW 8.28.040 “includes all compensable damages flowing from the condemnation action” *Union Elevator*, 152 Wn. App. at 207. As explained in Part A above, this is a departure from Washington law which excludes consequential damages from recoverable compensation in condemnation actions. *McDonald*, 98 Wn.2d at 531.

Nor does a reasonable reading of these statutes support it. In both statutes “compensation” is the constitutionally-mandated just compensation related to condemnation actions but not to relocation assistance claims. Under RCW 8.04.092,⁶ the referenced compensation is the difference between the final judgment amount and the amount the State paid for immediate possession and use under RCW 8.04.090, another statute irrelevant to relocation claims. In the same statute, the legislature references jury verdicts, again applicable to just compensation awards but

⁶ RCW 8.04.092 provides as follows:

The amount paid into court shall constitute just compensation paid for the taking of such property: PROVIDED, That respondents may, in the same action, request a trial for the purpose of assessing the amount of compensation to be made and the amount of damages arising from the taking. At the trial, the date of valuation of the property shall be the date of entry of the order granting to the state immediate possession and use of the property. If, pursuant to such hearing, the verdict of the jury, unless a jury is waived by all parties, or decision of the court, awards respondents an amount in excess of the tender, the court shall order the excess paid to respondents with interest thereon from the time of the entry of the order of immediate possession, and shall charge the costs of the action to the state.

not relocation claims. The court's expansion of the word "compensation" to include relocation payments cannot be reconciled with the fact that no portion of the statute applies to relocation claims.⁷

The same logical flaw exists in the court's analysis of RCW 8.28.040.⁸ The provision's references to "verdict[s] . . . returned by a jury" and property "taken or damaged"—both phrases which implicate article I, section 16—suggest that the intervening term, "compensation," is constitutional compensation. Relocation costs are not part of the constitutional compensation; therefore, the legislature cannot have intended to bring this benefit within this statute's reach.

The legislative history of RCW 8.04.092 and RCW 8.28.040 supports this conclusion. Relocation costs were neither a constitutionally nor statutorily mandated benefit in 1943 or 1951, the years the legislature

⁷ Ironically, to deny attorney fees the court of appeals concluded that the fee statute for condemnation awards *did not* apply to relocation claims. *Union Elevator*, 152 Wn. App. at 209. Although the attorney fee decision is not under review here, the court's flexible application of statutory construction rules is noteworthy.

⁸ RCW 8.28.040 provides as follows:

Whenever in any eminent domain proceeding, heretofore or hereafter instituted for the taking or damaging of private property, *a verdict shall have been returned by the jury*, or by the court if the case be tried without a jury, fixing the amount to be paid as *compensation for the property so to be taken or damaged*, such verdict shall bear interest at the maximum rate of interest permitted at that time under RCW 19.52.020 from the date of its entry to the date of payment thereof: PROVIDED, That the running of such interest shall be suspended, and such interest shall not accrue, for any period of time during which the entry of final judgment in such proceeding shall have been delayed solely by the pendency of an appeal taken in such proceeding.

(Emphasis added.)

passed these statutes. The legislature could not have intended for “compensation” in those statutes to include a benefit that did not exist.

The court of appeals similarly confused the legislatively-granted relocation assistance benefit with constitutionally-mandated just compensation in its interpretation of *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 656, 935 P.2d 555 (1997). *Union Elevator*, 152 Wn. App. at 205. In *Sintra*, the City of Seattle enforced an unconstitutional ordinance, causing a property owner to lose a development opportunity. The owner filed an inverse condemnation action to recover its damages. This court found that compensation for a temporary taking is the same as that required for permanent takings in a direct condemnation action. *Id.* at 656-57. In both settings, sovereign immunity does not apply because interest is part of constitutional compensation. *Id.* at 657.

Because relocation costs are not part of constitutionally-mandated compensation, the *Sintra* waiver analysis does not apply here.⁹

⁹ The court of appeals also erroneously relied on questionable out-of-state case law to support its implicit waiver conclusion. Both *Luber v. Milwaukee County*, 177 N.W.2d 380 (Wis. 1970) (rental losses are part of just compensation), and *Jacksonville Expressway Authority v. Henry G. Du Free Co.*, 108 So.2d 289 (Fla. 1959) (cost of moving personal property part of constitutionally required “full compensation”) controversially expanded the definition of compensation in their respective constitutions, and both were subsequently limited. See *City of Janesville v. CC Midwest, Inc.*, 734 N.W.2d 428, 617 (Wis. 2007) (relocation assistance benefits are purely statutory and not required to satisfy just compensation under federal or Wisconsin constitutions); *State Road Dep’t v. N.B. Bramlett*, 189 So.2d 481, 483 (Fla. 1966) (*Du Free* holding does not apply to state agencies).

E. It is the Legislature's Role to Make Policy Decisions

Although Union Elevator's desire for interest on its relocation benefits is understandable, the waiver of sovereign immunity is a policy decision for the legislature. *Architectural Woods*, 92 Wn.2d at 526. "[T]he issue here is not what the legislature should do, but what it has done." *Kringel*, 45 Wn. App. at 465; *see also Union Elevator*, 152 Wn. App. at 212 ("extending immunity on relocation assistance benefits is a matter for the legislature, not for this court.") (Kulik, J., dissenting). Here, the legislature has refrained from authorizing interest.

V. CONCLUSION

For the foregoing reasons, the State of Washington respectfully requests that the Court hold that the State has not waived sovereign immunity as to interest on relocation assistance payments under RCW 8.26, and reverse the court of appeals ruling on that issue.

RESPECTFULLY SUBMITTED this 10th day of May, 2010.

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