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SUPREME COURT OF THE STATE OF WASHINGTON

BF FOODS, LLC; FILO FOODS, LLC; ALASKA AIRLINES, INC.; and
WASHINGTON RESTAURANT ASSOCIATION,

Respondents/Cross-Appellants,

v.

THE CITY OF SEATAC; KRISTINA GREGG, CITY OF SEATAC
CITY CLERK, in her official capacity,

Appellant/Cross-Respondent,

THE PORT OF SEATTLE,

Respondent,

and SEATAC COMMITTEE FOR GOOD JOBS,

Appellant/Cross-Respondent.

BRIEF OF RESPONDENT PORT OF SEATTLE

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I. INTRODUCTION

Respondent Port of Seattle (“the Port”) is a special-purpose municipal corporation with territorial boundaries co-extensive with King County. The Port was formed in 1911 and is the oldest and largest Port District in Washington State. Among its governmental and proprietary functions, the Port owns and operates Seattle-Tacoma International Airport (“STIA”). STIA consists of an integrated system of runways and taxiways, freight and passenger terminals, parking structures, driveways, and related infrastructure. Thousands of people are employed at STIA; most are employed by third-party businesses under lease agreements with the Port. These businesses offer necessary services and products that are core to STIA’s operations, including baggage and cargo handling, aircraft fueling, maintenance and janitorial services, wheelchair assistance, and concessions.

STIA is located within Defendant City of SeaTac’s (“the City”) city limits. In November 2013, the City enacted SeaTac Municipal Code (“SMC”) Chapter 7.45 (the “Ordinance”), which requires that certain employers within the City – many of which do business at STIA – pay a minimum wage of \$15 per hour and adhere to the Ordinance’s provisions concerning leave, full-time work, tip pooling, worker retention, reporting, and retaliation.

The Ordinance conflicts with, and is preempted by, the State's grant of exclusive jurisdiction over STIA to the Port, under RCW 14.08.330. RCW 14.08.330 is explicit in granting the Port, as the owner and operator of STIA, "exclusive jurisdiction and control" at STIA. The statute makes it equally clear that no other municipality, such as the City, may exercise its own police powers to reach beyond the City's jurisdictional boundaries and regulate matters occurring at STIA. *Id.* As the trial court recognized:

Pursuant to RCW 14.08.330, airport facilities and operations are "under the exclusive jurisdiction and control" of the Port of Seattle, subject to "federal and state laws, rules, and regulations" but **not** subject to the laws, rules and regulations of SeaTac or other municipalities. It is only the Port of Seattle that has legislative authorization "[t]o adopt . . . all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control . . ." RCW 14.08.120(2). The grant of exclusive jurisdiction to the Port of Seattle covers all operations and activities occurring at the airport, its buildings, roads and facilities. See Chapters 53.08 and 14.08 RCW.¹

The City and intervenor SeaTac Committee for Good Jobs ("the Committee") argue that the Legislature's grant of "exclusive jurisdiction and control" over STIA to the Port is limited to "airport operations." But this limitation is found nowhere in the statute or in the case law construing it. *See infra* pp. 7-9; 14-16.

¹ CP 1943-1944 (emphasis in original).

Even if the City and Committee were correct that this limitation exists, the Ordinance still is not enforceable at STIA because the employers it seeks to regulate offer services that are integral to the Port's operation of STIA. They include core functions such as airplane fueling, maintenance, baggage and cargo handling, curbside check-in, and concessions. *See infra* pp. 26-31.

Finally, the Committee and the City argue that a legal "vacuum" will exist if the City is prohibited from enforcing the Ordinance at STIA. But RCW 14.08.330 specifically provides that the Port's "exclusive jurisdiction and control" over STIA is "subject to federal and state law." Employers at STIA must comply with federal and state minimum wage and other worker-protection laws, leaving no "vacuum."

Washington law is clear and unequivocal: the Port of Seattle has exclusive jurisdiction and control over STIA, subject only to federal and state law. The City of SeaTac cannot enforce the Ordinance at STIA.

II. ISSUE PRESENTED

Was the trial court correct in ruling that the State's grant of exclusive jurisdiction and control over STIA to the Port, pursuant to RCW 14.08.330, precludes the City from enforcing the Ordinance at STIA?

III. STATEMENT OF THE CASE

The Ordinance purports to regulate businesses operating within the

City of SeaTac's city limits, including at STIA. The Ordinance requires that "[e]ach Hospitality Employer and Transportation Employer shall pay Covered Workers a living wage of not less than . . . fifteen dollars (\$15.00) per hour worked," with annual adjustments for inflation. SMC 7.45.050. It also requires mandatory paid leave (SMC 7.45.020), the promotion of full-time work (SMC 7.45.030), the regulation of tip-pooling (SMC 7.45.040), and compliance with worker retention requirements (SMC 7.45.060), reporting requirements (SMC 7.45.070), and anti-retaliation measures (SMC 7.45.090).

The statute defines "Hospitality Employer" as "any institutional foodservice or retail operation employing ten (10) or more nonmanagerial, nonsupervisory employees." SMC 7.45.010(D). "Institutional foodservice or retail" includes "foodservice or retail provided in public facilities." SMC 7.45.010(G).

"Transportation Employer" is defined as:

- 1) A person, excluding a certificated air carrier performing services for itself, who:
 - a) operates or provides within the City any of the following: any curbside passenger check-in services; baggage check services; wheelchair escort services; baggage handling; cargo handling; rental luggage cart services; aircraft interior cleaning; aircraft carpet cleaning; aircraft washing and cleaning; aviation ground support equipment washing and cleaning; aircraft water or lavatory

services; aircraft fueling; ground transportation management; or any janitorial and custodial services, facility maintenance services, security services, or customer service performed in any facility where any of the services listed in this paragraph are also performed;

[and]

- 2) . . . any person who:
 - a) operates or provides rental car services utilizing or operating a fleet of more than one hundred (100) cars; shuttle transportation utilizing or operating a fleet of more than ten (10) vans or buses; or parking lot management controlling more than one hundred (100) parking spaces

SMC 7.45.010(M).

There are Hospitality Employers and Transportation Employers operating at STIA. In fact, many of the jobs affected by the Ordinance exist only at STIA, because by their very nature they relate to core airport operations like curbside passenger check-in, baggage check services, baggage handling, aviation ground support equipment washing and cleaning, aircraft water or lavatory services, and aircraft fueling. *Id.* No party disputes that the ordinance is intended to apply at STIA.

Plaintiffs BF Foods, LLC; Filo Foods, LLC; Alaska Airlines, Inc.; and Washington Restaurant Association filed suit against the City to have the Ordinance declared void and unenforceable.² The Committee

² CP 1-32.

intervened to defend the Ordinance.³ On November 8, 2013, Plaintiffs amended their complaint to name the Port as a defendant.⁴

Plaintiffs moved for entry of declaratory judgment that SMC Chapter 7.45 was invalid under state and federal law.⁵ The Port joined in part Plaintiffs' state-law motion, arguing that RCW 14.08.330 precludes enforcement of the Ordinance at STIA.⁶

The trial court heard oral argument on Plaintiffs' motions on December 13, 2013.⁷ On December 27, 2013, the trial court granted in part and denied in part Plaintiffs' motions for declaratory judgment.⁸ The court found the Ordinance was preempted by RCW 14.08.330 and thus "void insofar as it purports to apply to workers at SeaTac airport, because RCW 14.08.330 prohibits the City of SeaTac from asserting jurisdiction or police power over the airport."⁹ In other words, the court found the Ordinance "ineffective and unenforceable with respect to employers and employees conducting business within the boundaries of SeaTac

³ See CP 672-673 (Order Granting Motion to Intervene).

⁴ CP 842-892.

⁵ CP 897-927 (state law claims); CP 1145-1171 (federal law claims).

⁶ CP 1356-1360.

⁷ The City claims that the December 13, 2013 oral argument "was essentially a trial." Brief of City at 5. It was not, as the transcript confirms. RP at 7, 9.

⁸ See Memorandum Decision and Order on Plaintiffs' Motions for Declaratory Judgment at CP 1934-1966.

⁹ CP 1942. The Port's brief addresses only this part of the trial court's ruling. The Port takes no position regarding the court's rulings on other issues raised by the parties.

International Airport.”¹⁰

The trial court’s ruling was correct. The Port respectfully requests that this Court uphold the trial court’s decision declaring SMC Chapter 7.45 unenforceable at STIA.

IV. ARGUMENT

A. **The Port Has Exclusive Jurisdiction and Control Over All Facilities, Operations, and Activities at STIA.**

1. **RCW 14.08.330 Is Clear and Unambiguous: the Port Has “Exclusive Jurisdiction and Control” at STIA.**

In RCW 14.08.330, the State Legislature granted the Port of Seattle, as the municipality controlling and operating STIA, exclusive jurisdiction and control at STIA. RCW 14.08.330 provides:

Every airport and other air navigation facility controlled and operated by any municipality,¹¹ or jointly controlled and operated pursuant to the provisions of this chapter, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it. The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations. However, by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation

¹⁰ CP 1946.

¹¹ The term “municipality” includes “any county, city, town, airport district, or port district of this state.” RCW 14.08.010(2) (emphasis added).

facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries.

Id. (emphasis added).

The Legislature made clear in the first sentence that airports are “under the exclusive jurisdiction and control of” the municipality controlling and operating them, to the exclusion of all other municipalities, and subject only to federal and state laws.¹² The plain language of this jurisdictional grant contains no limitations, and does not indicate that the Legislature intended to limit the scope of the authority that was being granted to the Port, as the owner and operator of STIA.

The Committee argues that the use of the term “operating” narrows the exclusive jurisdiction of the Port to some concept it calls “operations” of STIA. This contention is not supported by the statute’s plain language. The clause “[o]f the municipality or municipalities controlling or operating it” does not define the scope of the jurisdictional grant; it simply identifies the municipality that has jurisdiction. Had the Legislature wished to limit the Port’s “jurisdiction and control” over STIA to control over “operations” or some other narrower field, it could have done so.

¹² This distinguishes the Washington statute from the statutes figuring so prominently in the Committee’s brief. *See infra* § IV.D.

Instead, it chose the term “exclusive” – meaning “excluding or having power to exclude; limiting or limited to possession, control, or use; excluding or inclined to exclude others from participation; single, sole; undivided, whole”¹³ – to modify “jurisdiction” with no carve-outs, no exceptions, and no limitations.

The Legislature’s intent is clear: the Port has exclusive – that is, sole and undivided – jurisdiction at STIA, subject only to federal and state law. The City does not have the statutory authority to regulate any matters occurring at STIA.¹⁴

The second sentence of the statute confirms the Legislature’s intent that the Port’s jurisdiction be “exclusive” and not shared with any other municipality. After granting exclusive jurisdiction over the airport to the

¹³ Webster’s Third New International Dictionary (2002).

¹⁴ In a footnote, the Committee cites to a 2005 Interlocal Agreement (“ILA”) between the Port and the City. The Committee argues the municipalities agreed in the ILA that “each have statutory authority to address common subjects at SeaTac Airport,” implying the Port does not have exclusive jurisdiction there. *See* Brief of Appellant SeaTac Committee for Good Jobs (“Brief of Committee”) at 23 n.10 (emphasis added). This argument is flawed for at least three reasons. First, the recital actually states, “as municipal corporations, the City and Port each have statutory authority to address common subjects such as planning, land use and zoning, transportation, surface water management, critical areas, police and other matters.” It does not refer to “common subjects at Sea-Tac Airport” as the Committee contends. Second, the ILA relates to issues and property throughout the City (not just at STIA). RCW 14.08.330 does purport not give the Port “exclusive jurisdiction and control” over non-airport property. Finally, that the Port and City executed a private agreement in order to “avoid disputes” over their “respective jurisdictional authority” (CP1756) does not mean the City would have had jurisdiction to regulate matters at STIA in the absence of the ILA. In fact, the converse is more likely true. If the City thought it could regulate matters covered by the ILA, it need not have executed it; the City would simply have exercised that jurisdiction. The ILA is not relevant to the issues before the Court.

municipality operating it, the statute declares that the municipality controlling the airport “shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2).” The “adjacent territory” described in RCW 14.08.120(2) includes, “that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter.” *Id.*

This grant of concurrent jurisdiction over property adjacent to an airport reinforces the exclusivity of the Legislature’s grant of jurisdiction at the airport to the municipality responsible for owning and operating it. As the concurrent jurisdiction language makes clear, had the Legislature intended to give another municipality concurrent jurisdiction at the airport (as opposed to simply over adjacent property), it knew how to do so.

RCW 14.08.330 then makes it clear in the third sentence that no other municipality may exercise its own police power in an attempt to circumvent the exclusive jurisdiction granted to the municipality operating an airport:

No other municipality in which the airport . . . is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations.

RCW 14.08.330.

The term “police jurisdiction” refers to the jurisdiction of a municipality to regulate matters outside its borders. It was a commonly accepted concept in the 1940s when RCW Chapter 14.08 was adopted. *See* 37 Am. Jur. *Municipal Corporations* § 284 (1941) (“The legislature has power to confer on a municipal corporation police jurisdiction over adjoining territory immediately next to and within a specified short distance of the corporate limits.”) (emphasis added) (citing cases discussing cities’ exercise of police power within their police jurisdiction).¹⁵ *See also Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 61-62 & nn.1 & 3, 99 S. Ct. 383, 58 L. Ed. 2d 292 (1978) (describing Alabama’s “police jurisdiction” statutes, which permit cities to enforce police powers within a set distance – 1.5 or 3 miles depending on the city’s population – outside the city limits).¹⁶

¹⁵ *But see City of Normandy Park v. King County Fire District No. 2*, 43 Wn. App. 435, 717 P.2d 769 (1986). In dicta, the Court of Appeals opined that the term “police jurisdiction” meant “police operations” at STIA. *Id.* at 442. The City and Port agree that the Court of Appeals’ interpretation of this term is incorrect. *See* Brief of City at 10 (““police jurisdiction” refers to a municipality’s authority to exercise extraterritorial jurisdiction”).

¹⁶ Alabama still uses the term extensively to refer to extraterritorial control. *See, e.g.*, Ala. Code § 11-51-91 (“[a]ny municipality may fix and collect licenses for any business, trade, or profession done within the police jurisdiction of such municipality but outside the corporate limits thereof”). Kansas and Nebraska also use police jurisdiction in this manner. *See* Kan. Stat. Ann. § 12-851 (“Police jurisdiction is hereby granted and extended to cities . . . and all ordinances of such cities now in force or hereafter enacted shall extend to, cover and include all such public utilities and property and property rights to the same extent and with like force and effect without as within the limits of such cities.”); Neb. Rev. Stat. § 21-2308 (“no project or part of a project shall be located within the police jurisdiction of another city or of any village in this state unless the

As used in RCW 14.08.330, the term “police jurisdiction” prohibits municipalities in which the airport is physically located (such as the City or King County) from exercising their own police powers at an airport owned and operated by another municipality (such as STIA). This interpretation comports with the term’s use elsewhere in RCW Chapter 14.08.

RCW 14.08.120(2) provides that the Port “may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation.” *Id.* (emphasis added). In other words, this section gives the Port the authority to enact regulations to protect the public from aeronautical related hazards beyond the Port’s property, i.e., in the Port’s own “police jurisdiction.”

As this Court has long held:

Whenever a legislature had used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using it in the same sense, unless there be something in the context or the nature of things to indicate that it intended a different meaning thereby.

Champion v. Shoreline Sch. Dist. No. 412, 81 Wn.2d 672, 676, 504 P.2d

governing body of the city or village has adopted a resolution consenting to the location of the project or part of the project in the police jurisdiction of the city or village”).

304 (1972). The term “police jurisdiction” appears twice in RCW Chapter 14.08 and its meaning is clear from the context of RCW 14.08.120(2). That meaning should be applied to RCW 14.08.330. *See also Schrom v. Board*, 153 Wn.2d 19, 29, 100 P.3d 814 (2004) (“since the legislature employed the same term . . . , we presume the legislature intended” the same meaning).

The express elimination of the City’s police jurisdiction over STIA reinforces the Legislature’s grant of exclusive jurisdiction to the Port by making it clear that the City cannot exercise its own police jurisdiction to reach into STIA to regulate matters therein.¹⁷

After addressing concurrent and police jurisdiction, RCW 14.08.330 concludes with a proviso, enacted in 1985, that

by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its

¹⁷ The City argues that because STIA “lies wholly within the City of SeaTac,” police jurisdiction has no relevance. Brief of City at 10. This argument ignores the plain language of the exclusion of police jurisdiction, which applies to “municipalit[ies] in which the airport . . . is located.” RCW 14.08.330 (emphasis added). The City’s preferred interpretation would render the statute’s “police jurisdiction” sentence nonsensical, violating a fundamental canon of statutory interpretation. *See State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) (“We may not delete language from an unambiguous statute: Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”) (citations and internal quotation marks omitted). The provision affirms that the City cannot extend its jurisdictional reach into STIA.

jurisdictional boundaries.

Id. (emphasis added). This provision allows the airport operator with exclusive jurisdiction – here the Port – to agree to allow enforcement of another municipality’s fire code on airport property. If the City and the Committee were correct that the City may exercise its police powers at STIA as long as they do not impact airport operations, there would be no need for this provision, because enforcement of fire codes does not fall within the ambit of “airport operations” as they narrowly construe that term, and thus would remain with the City.

Every sentence in RCW 14.08.330 confirms and reinforces the exclusive nature of the Port’s jurisdiction at STIA, subject only to federal and state law (which regulate a wide range of worker-protection issues, including minimum wage; *see infra* § IV.C). Because the statute bars the City from enacting legislation that applies at STIA, the Ordinance cannot be enforced at STIA.

2. Washington Courts That Have Interpreted RCW 14.08.330 Have Confirmed That the Statute Grants Exclusive Jurisdiction at STIA to the Port.

The seminal case construing RCW 14.08.330 is *King County v. Port of Seattle*, 37 Wn.2d 338, 223 P.2d 834 (1950). In *King County*, the County sought to impose a licensing requirement on Yellow Cab, a third party taxi service with which the Port had contracted to provide taxi

service to and from STIA. Despite STIA's location within the physical boundaries of King County, this Court held that King County could not require that Yellow Cab be licensed by King County in order to pick up and deliver passengers at STIA. The Court held that RCW 14.08.330:

preclude[s] [King County] from interfering with respect to the operation of the Seattle-Tacoma airport and forbids [King County's] exacting any license fees since the legislature has declared its policy to be that the responsibility of providing adequate and satisfactory transportation and other public services shall belong to the Port.

Id. at 348.

The Committee attempts to limit this Court's holding in *King County* to mean that the Port's jurisdiction is exclusive only as to its operation of STIA and the imposition of license fees at the airport.¹⁸ But the Court's holding is broader. The Court recognized that "the legislature has declared its policy to be that the responsibility of providing adequate and satisfactory transportation and other public services shall belong to the Port." *Id.* at 348 (emphasis added).

The Court of Appeals applied *King County* in *City of Normandy Park v. King County Fire District No. 2*, 43 Wn. App. 435, 717 P.2d 769 (1986). At issue in *Normandy Park* was whether the land occupied by STIA should be included in calculating the total area of King County's fire

¹⁸ Brief of Committee at 12-14.

district. The *Normandy Park* court stated:

[O]ur Supreme Court held that the phrase “exclusive jurisdiction and control” only precludes other entities “from interfering with respect to the operation of the Seattle-Tacoma airport.” In so holding, the court rejected the County’s argument that the words “exclusive jurisdiction” effectively removed the airport from the territory of King County. It follows then that the court’s interpretation of the language “exclusive jurisdiction and control” defeats respondent’s argument in the instance case, *i.e.*, that the “exclusive jurisdiction” language in RCW 14.08 effectively removes the airport property from the Fire District.

Normandy Park, 43 Wn. App. at 441 (citations omitted).

The Committee similarly argues that *Normandy Park* limits the scope of the Port’s exclusive jurisdiction and control to the “operation of the Seattle-Tacoma airport.”¹⁹ But the *Normandy Park* Court did not interpret the phrase “operation of Seattle-Tacoma airport” in order to define the limits of the Port’s “exclusive jurisdiction and control” over STIA. The Port’s operation of STIA was not even an issue in *Normandy Park*. The Court of Appeals employed this Court’s language from *King County* in order to distinguish what was at issue in that case: a concept the court called “territorial jurisdiction,” or whether RCW 14.08.330 “effectively removed the airport from the territory of King County.” *Normandy Park*, 43 Wn. App. at 441. The court was not asked to, and did not, rule on the scope of the Port’s jurisdictional authority at STIA.

¹⁹ Brief of Committee at 13-14 (quoting *Normandy Park*, 43 Wn. App. at 441).

Even if the Committee's argument that the Port's exclusive jurisdiction at STIA is somehow limited to the "operation of the Seattle-Tacoma airport" is correct, that authority would unquestionably include jurisdiction over the fields targeted by the Ordinance, such as baggage check-in and handling, airplane fueling, and concessions. These fields are as core to airport operations – if not more so – than is taxi service, over which this Court has already determined the Port has exclusive jurisdiction. *King County*, 37 Wn.2d at 348.²⁰

3. RCW 14.08.330's Legislative History Supports the Port's Interpretation.

The legislative history of RCW 14.08.330 confirms the correctness of the trial court's decision.

Washington enacted the Revised Airports Act (codified as RCW Chapter 14.08) in 1945. It was adopted from the Revised Uniform Airports Act promulgated by the National Association of State Aviation Officials (NASAO) in 1944.²¹ The uniform act included the identical jurisdictional language as enacted in Washington:

[The airport] shall, subject to federal and state laws, rules,

²⁰ See also *infra* § IV.B.3

²¹ See CP 1635, CP 1648-1654. The Washington statute is not identical to the uniform law, but nearly so. The substantive changes are (1) the additions of the "special airport fund" section (RCW 14.08.120(3)) and the establishment of county airport districts (RCW 14.08.290); and (2) the subtraction of sections related to surveys for condemnation proceedings, tort liability, exemption from taxation, issuance of bonds, and levying of taxes. Compare CP 1617-1633 with CP 1648-1654.

and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it.

Revised Unif. Airports Act § 14 (1944) (emphasis added).²² In 1946 (after RCW Chapter 14.08's adoption in Washington), the NASAO substantially amended the uniform act and retitled it the Municipal Airports Act.²³ The Municipal Airports Act again granted jurisdiction to the municipality controlling or operating it, but eliminated the exclusivity of that grant. The new uniform act provided that the airport "shall, subject to federal and state laws, rules and regulations, be under the jurisdiction and control of the municipality controlling or operating it" – i.e., it eliminated the word "exclusive." Uniform Municipal Airports Act § 8(a) (1946) (emphasis added).²⁴

While the Washington Legislature has amended RCW Chapter 14.08 in the intervening years, including to add the fire code language to

²² CP 1654. The City's argument that merely placing this grant of jurisdiction within the Revised Airports Act but not within RCW Chapter 53.08 (which sets forth the general powers of port districts) somehow limits the terms of the grant to "operations" (Brief of City at 12) is unsupported, logically unsound, and contrary to law. RCW 53.08.047 specifically provides otherwise: "Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which a district might otherwise have under any laws of this state, but shall be construed as cumulative."

²³ CP 1543, CP 1548-1567.

²⁴ CP 1556. Further discussion of the Uniform Municipal Airports Act is at *infra* note 49 and accompanying text. Similar to Washington, Nebraska, North Carolina, Delaware, and Minnesota adopted the Uniform Airports Act and grant municipalities "exclusive jurisdiction" over airport properties. See Neb. Rev. Stat. § 3-236, N.C. Gen. Stat. § 63-58, Del. Code Ann. tit. 2 § 912, Minn. Stat. § 360.045. These provisions have not been construed by courts.

RCW 14.08.330,²⁵ the Legislature did not change the jurisdictional language. This is compelling evidence of the Legislature's intent that the statute means what it says: airports "shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality . . . controlling and operating it." *See Lundberg v. Coleman*, 115 Wn. App. 172, 177-78, 60 P.3d 595 (2002) ("when the model act . . . contains a certain provision, but the legislature fails to adopt such a provision, our courts conclude that the legislature intended to reject the provision").²⁶

4. The Trial Court's Decision is Consistent With This Court's Interpretation of "Exclusive Jurisdiction" in Analogous Circumstances.

In *Department of Labor & Industries v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 837 P.2d 1018 (1992), this Court held the State's grant of exclusive jurisdiction (through a cession agreement) over Mount Rainier National Park to the federal government was enforceable and without limitation: "Once exclusive jurisdiction is established, the state government loses the power to legislate over the federal enclave." *Id.* at

²⁵ *See supra* § IV.A.1.

²⁶ Further, it is clear that STIA was not formed solely to benefit the citizens of the City of SeaTac. The airport existed for almost 50 years before the City was incorporated in 1990. STIA serves far more people than just the City's – or even the county's – residents; travelers from all over the world pass through STIA every day. The Legislature cannot have intended that regulations at STIA would be subject to the decisions of a few thousand people in the City.

52.

The Committee would have this Court believe that the *Dirt & Aggregate* ruling hinged on the application of federal law. It did not: “The scope of federal jurisdiction over an area is governed by the terms of the cession agreement. Here, there is no doubt that Washington intended to convey and the federal government intended to receive exclusive jurisdiction over the park.” *Id.* at 53.²⁷

This principle, that a grant of exclusive jurisdiction ousts a competing governmental entity from an area, abolishing its power to legislate, predates the enactment of RCW Chapter 14.08. In *State v. Rainier National Park Co.*, 192 Wash. 592, 74 P.2d 464 (1937), this Court held:

Mount Rainier National Park was established by an act of Congress Thereafter, the legislature of the state of Washington . . . ceded exclusive jurisdiction to the United States over all the territory embraced in the Rainier National Park. . . . In 1916, an act of Congress was passed assuming sole and exclusive jurisdiction by the United States over the territory embraced within the park It is . . . an accepted rule of law that, where a cession of jurisdiction is made by a state to the Federal government, it is necessarily one of political power and leaves no authority in the state government thereafter to legislate over the ceded territory.

²⁷ The Committee notes that the federal government’s grant of exclusive jurisdiction was subject to pre-existing state laws that did not conflict with federal law. This is the result of the relationship between states and the federal government. *Id.* at 52 n.1. In any event, this argument has no relevance here, as RCW 14.08.330 and the existence of STIA predate the Ordinance’s passage by sixty years.

Id. at 594 (emphasis added).²⁸

The State's grant of exclusive jurisdiction over STIA to the Port effectively shields it from regulation by the City in the same way the State's grant of "exclusive jurisdiction" over Mount Rainier National Park "shielded" the park from direct state regulation in *Department of Labor & Industries*. 120 Wn.2d at 52.²⁹

Instead of looking to other instances in which this Court has construed the term "exclusive jurisdiction," the Committee cites to *Edmonds School District No. 15 v. City of Mountlake Terrace*, 77 Wn.2d 609, 465 P.2d 177 (1970), in which this Court held that because no state law specifically granted exclusive jurisdiction over the construction of school buildings to the local school board, the city could impose its building codes. The Committee ignores the critical language in this Court's holding that makes it clear *Edmonds* supports the Port's position. In *Edmonds*, the Court held that:

Unless the state has, so to speak, preempted the field of building standards or specifically ousted the municipality

²⁸ See also *Watts v. United States*, 1 Wash. Terr. 288, 296 (1870) (defining "sole and exclusive jurisdiction" to mean "exclusive of any other domestic jurisdiction").

²⁹ The City notes that the cession of land to the federal government means that the land "ceases to be a part of the state, either territorially or jurisdictionally," presumably to contrast this Court's holding in *King County* that RCW 14.08.330 does not physically remove STIA from King County. Brief of City at 13. The City's argument conflates the act of the state's cession of land to the federal government with the "exclusive jurisdiction" that the state grants to the federal government as part of the cession. It is this Court's interpretation of the latter concept that is relevant here, not the former.

of jurisdiction over school construction, we think the school district is obliged to comply with . . . the city's building code.

Id. at 614 (emphasis added).

Here, as the trial court held (and as discussed *infra* § IV.B.2), the State has preempted the field. The Legislature has “specifically ousted the municipality of jurisdiction.” It has granted “exclusive jurisdiction and control” over STIA to the Port.

B. The Ordinance Cannot Be Enforced at STIA Because It Is Not Local and Because It Irreconcilably Conflicts With RCW 14.08.330, Which Preempts the Field of Regulation Over STIA.

An ordinance is unenforceable where:

- (1) It is not local in scope;
- (2) A general statute preempts city regulation of the subject; or
- (3) It directly conflicts with a statute.

Weden v. San Juan County, 135 Wn.2d 678, 706, 958 P.2d 273 (1998);

Heinsma v. City of Vancouver, 144 Wn.2d 556, 561, 29 P.3d 709 (2001).

The Legislature's statutory grant of exclusive jurisdiction and control to the Port (analyzed *supra* § IV.A) renders the Ordinance unenforceable at STIA under all three of these tests.

1. The Ordinance May Not Be Imposed at STIA Because It Is Not Local in Scope: Its Effect at STIA Would Be Significant.

A municipality “cannot exercise its police power outside its

boundaries.” *Weden*, 135 Wn.2d at 706. If an ordinance’s effect outside the municipality is more than “incidental,” it is not enforceable. *Id.*

The Ordinance purports to impose regulations on employers at STIA. Although this Court held in *King County* that STIA has not been “removed” from King County, the Court also held the County lacks authority to regulate matters at STIA within the Port’s “exclusive jurisdiction and control.” *King County*, 37 Wn.2d at 348. The Legislature has specifically divested the City of jurisdiction at STIA, both directly, through the grant of “exclusive jurisdiction and control” to the Port, and indirectly, through divesting the City of its “police jurisdiction” over the airport. RCW 14.08.330. Thus, to the extent the Ordinance’s effect at STIA is more than “incidental,” the Ordinance cannot be enforced therein.

Neither the City nor the Committee argues that the Ordinance’s effect at STIA is merely “incidental.” In fact, many of the businesses regulated by the Ordinance, such as airplane fueling, baggage handling, and curbside check-in, only exist in the City at STIA because they are core airport operations. Because the Ordinance’s effect is to regulate outside the City’s jurisdictional authority, the Ordinance may not be enforced at STIA.

2. The Ordinance May Not Be Imposed at STIA Because RCW 14.08.330 Preempts the Field of Airport Regulations.

The trial court correctly held that RCW 14.08.330 preempts other municipalities such as the City from imposing regulations at STIA.³⁰ “A statute preempts the field and invalidates a local ordinance if there is express legislative intent to preempt the field or if such intent is necessarily implied.” *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010). In the absence of express or implied intent, the court may “infer field preemption from the purpose of the statute and the facts and circumstances under which it was intended to operate.” *Id.* (citation omitted).

That the Legislature intended RCW 14.08.330 to preempt city and county regulation at port-owned airports within the state is clear from the statutory language. RCW 14.08.330 grants the Port exclusive jurisdiction over the airport “subject to federal and state laws, rules, and regulations.” By contrast, the statute does not make the Port’s exclusive jurisdiction subject to any municipal laws or regulations. Only municipalities owning and operating airports are given the power to impose laws, rules, or regulations at those airports.

This point was confirmed by *King County v. Port of Seattle*: “the

³⁰ CP 1942-1947.

legislature has declared its policy to be that the responsibility of providing adequate and satisfactory transportation and other public services shall belong to the Port.” 37 Wn.2d at 348. Nothing in RCW 14.08.330 or the holding in *King County* shows an intent by the Legislature to grant concurrent jurisdiction at STIA to the City or any other local municipality. The Ordinance is not enforceable at STIA because RCW 14.08.330 preempts the local regulation of STIA by any municipality other than the Port.

3. The Ordinance May Not Be Imposed at STIA Because It Irreconcilably Conflicts With RCW 14.08.330’s Grant of Exclusive Jurisdiction to the Port.

The Ordinance also is invalid as applied at STIA because it “directly and irreconcilably conflicts with” RCW 14.08.330. *See HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 482, 61 P.3d 1141 (2003). *See also Seattle Bldg. & Constr. Trades Council v. Seattle*, 94 Wn. 2d 740, 747, 620 P.2d 82 (1980) (“While the inhabitants of a municipality may enact legislation governing local affairs, they cannot enact legislation which conflicts with state law.”). A local regulation irreconcilably conflicts with a statute when it “permits what is forbidden by state law or prohibits what state law permits.” *Parkland Light v. Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004), *citing HJS*, 148 Wn.2d at 482. “In other words, when two provisions are contradictory they cannot coexist.”

Parkland Light, 151 Wn.2d at 433. In *Parkland Light*, this Court invalidated a local law relating to water fluoridation because it irreconcilably conflicted with the state’s grant of authority over fluoridation to water districts. *Id.*

Here, an irreconcilable conflict exists between RCW 14.08.330, which grants “exclusive jurisdiction and control” over STIA to the Port, and the Ordinance, which seeks to regulate businesses operating at STIA. The Legislature’s grant of exclusive jurisdiction and control to the Port is complete, and contains no carve-outs for regulation of third parties doing business at the Port. *See King County*, 37 Wn.2d at 348 (invalidating ordinance which would have imposed license fee on Yellow Cab, a third-party providing taxi service to and from STIA).

The Committee attempts to avoid this conclusion by arguing that the Ordinance does not conflict with the statute because it does not affect “airport operations.”³¹ Even if the Port’s exclusive jurisdiction and control were limited to airport operations, the Ordinance undeniably impacts airport operations. The businesses the Ordinance seeks to regulate are core to operation of STIA. For example, SMC 7.45.010 regulates Transportation Employers, which are defined to include:

A person . . . who . . . operates or provides within the City

³¹ Brief of Committee at 11-12.

any of the following: any curbside passenger check-in services; baggage check services; wheelchair escort services; baggage handling; cargo handling; rental luggage cart services; aircraft interior cleaning; aircraft carpet cleaning; aircraft washing and cleaning; aviation ground support equipment washing and cleaning; aircraft water or lavatory services; aircraft fueling; ground transportation management; or any janitorial and custodial services, facility maintenance services, security services, or customer service performed in any facility where any of the services listed in this paragraph are also performed[.]

SMC 7.45.010(M)(1)(a). Many of the businesses providing these services operate only at STIA. They are unique to operation of an airport.

Airport concessionaires, some of which fall within the definition of “Hospitality Employer,” are equally integral to airport operations, and support the mission of STIA and a central purpose of the Revised Airport Act, which is “to construct, install and maintain airport facilities . . . for the comfort and accommodation of air travelers.” RCW 14.08.030(1).³²

None of these businesses would exist at STIA but for the operation of the airport. And these businesses are essential to a fully functioning airport. They are far more integral to the operation of STIA than was taxi service, which this Court found to be within the ambit of the Port’s exclusive jurisdiction under RCW 14.08.330 in *King County*.

The Port already regulates these fields, through its grant of

³² See CP 1451 (“The goal of the Sea-Tac Concessions Program is to provide passengers with an exceptional experience in quality, variety and affordability while at the airport. . . . Customer Service . . . stands as a top priority for the Sea-Tac Concessions Program.”).

authority under RCW 14.08.120 (“Specific Powers of Municipalities

Operating Airports”). This statute empowers the Port:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control

* * *

(4) To lease airports or other air navigation facilities . . . for operation; to lease or assign . . . for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises . . . ; to sell any part of such airports . . . , and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities

. . . .

* * *

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport

* * *

(10) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section.

RCW 14.08.120 (emphasis added).³³

Pursuant to this authority, the Port has adopted the Sea-Tac International Airport Schedule of Rules & Regulations No. 4 (Sept. 1, 2012) (“Rules and Regulations”).³⁴ Section 3.5.3 of the Rules and Regulations requires that all persons doing business at STIA “first enter into a written agreement with the Port, or show proof of an agreement with a tenant, which may require the payment of fees, insurance policy and security, all in accordance with the Port’s requirements.”³⁵

Businesses engaging in “aircraft fueling[,] loading/unloading aircraft baggage, mail and cargo, aircraft movement (includes towing) and/or aircraft maintenance, interior/exterior aircraft cleaning, and aircraft water, lavatory and de-icing services” (i.e., the same categories targeted by the Ordinance) must execute “a Ground Service Operator Licensing Application and Agreement” with the Port, provide proof of insurance, and pay certain required fees and charges.”³⁶ The Port requires businesses operating shuttles and vans (another category of employer specifically

³³ RCW Chapter 53.08 sets forth the general powers granted to Port Districts. Under RCW 53.08.220, the Port is authorized to “formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it.”

³⁴ CP 1366-1446.

³⁵ CP 1380.

³⁶ CP 1373, CP 1407.

targeted by the Ordinance), to execute a “Permit Agreement” and pay certain fees and charges.³⁷

The Port also has a comprehensive concessionaire program at STIA.³⁸ The Port’s agreements with its concessionaires under this program regulate things such as “customer service, hours of operation, pricing policies, product delivery, management of sharp objects, as well as trash and recycling,” in order to “to provide passengers with an exceptional experience in quality, variety and affordability while at the airport.”³⁹ Among the Port’s requirements is that its concessionaires at STIA offer “street pricing,” requiring that items sold at STIA be priced as they would at “shopping malls and other high traffic urban areas.”⁴⁰ The Port has made the determination that, consistent with its purpose of serving the flying public, street pricing is “an important element” that STIA’s passengers have “come to expect” “as part of the first class

³⁷ CP 1412. The Rules and Regulations also include (for example) regulations governing signage (prohibiting, for example, tobacco signage, § 3.9.c.1, and defamatory signage, § 3.9.c.6), safety (*passim*), non-discriminatory employment practices (§ 3.5), improper disposal of refuse (§ 3.13.a), toilet use (§ 3.13.b), smoking (§ 13.21), speech protected by the First Amendment (§ 3.18), use of prescription medications by employees (§ 3.20.1), and permitting of for hire vehicles (§ 4.F). CP 1366-1445.

³⁸ See CP 1448-1461.

³⁹ CP 1451.

⁴⁰ CP 1452 (requirement). See also CP 1450 (definition); CP 931, CP 938 (impact on concessionaires).

concession program.”⁴¹ Because the requirements of the Ordinance are not in force in the comparable areas by which pricing is established,⁴² enforcement of the Ordinance at STIA would impact the Port’s ability to require street pricing.⁴³

The Committee concedes that if the higher minimum wage and other requirements go into effect, the “cessionaires and other private employers at [STIA],” in adjusting to higher labor costs, would need to “absorb[] those costs, reduc[e] net profits, or pass[] some portion of the increased costs along to airport customers.”⁴⁴ The Committee argues, however, that these consequences may not “have any substantial impact” on operations. But this argument grafts a requirement onto RCW 14.08.330 that simply does not exist. Nothing in RCW 14.08.330 supports the Committee’s position that the Port must establish that the Ordinance has a “substantial impact on airport operations” in order to find it infringes on the Port’s exclusive jurisdiction and control over STIA.⁴⁵ Each of the “adjustments” suggested by the Committee are changes that would in some manner affect operations at STIA, whether through revised lease

⁴¹ CP 1452.

⁴² *See generally* Seattle Municipal Code Titles 1-25, Tacoma Municipal Code Titles 1-17.

⁴³ *See* Declaration of LeeAnne Subelbia (CP 1141-1142, ¶¶7-9, 11-12).

⁴⁴ Brief of Committee at 18.

⁴⁵ Brief of Committee at 18, 27.

agreements, increased costs to the Port and the public, shuttered storefronts, or in some other material way.⁴⁶

Because the Ordinance seeks to regulate key operational functions at STIA, it irreconcilably conflicts with RCW 14.08.330's grant of exclusive jurisdiction to the Port, and cannot be enforced at STIA.

C. There is No "Vacuum" for the City to Fill.

Both the City and Committee argue that the Port lacks the power to enact a minimum wage at STIA, creating a void that the City is entitled to fill. Not so.

First, the Port does not concede that it lacks jurisdiction to enact an increased minimum wage. As described above, the Port does impose significant regulation on employers doing business at STIA. The question of whether to impose a new minimum wage rule or other employment regulations at STIA is an issue for the Port to consider and deliberate, consistent with federal and state laws and regulations governing STIA. But this specific question is not before the Court, and the Court need not reach this question in order to determine whether the Ordinance can be enforced at STIA.

Even if the Port could not, or opts to not, increase the minimum

⁴⁶ To the extent that the Committee questions that the higher minimum wage and other provisions of SMC Chapter 7.45 will in fact create higher labor costs (Brief of Committee at 18), basic math – and the undisputed record below – dispense with that suggestion. *See* CP 931, CP 933-934, CP 937-939, CP 985, CP 994-995, CP 1132.

wage paid at STIA, there would be no “vacuum” as the City and Committee contend. RCW 14.08.330 specifically provides that the Port’s exclusive jurisdiction at STIA is “subject to federal and state laws, rules, and regulations,” including those setting a minimum wage and other employee protections. *See, e.g.*, RCW Ch. 49.46; 29 U.S.C. § 206. Those regulations continue to apply at STIA, as they do in every town, city, and unincorporated area of Washington State.⁴⁷

D. The Out of State Authorities Cited by the Committee and City Are Either Inapposite or Support the Port’s Position.

The Committee and City rely on cases and statutes from outside Washington to argue that the trial court’s decision was erroneous. But the out-of-state authorities cited by the Committee and the City either support the trial court’s decision or are easily distinguishable from this case because they involve statutes that differ significantly from RCW 14.08.330.

1. Florida Authority.

The City cites to *City of Opa-Locka v. Dade County*, 384 So. 2d 937 (Fla. Dist. Ct. App. 1980) (“*Opa-Locka II*”), but that case supports the

⁴⁷ For this same reason, the Committee’s claim that affirming the trial court’s decision would leave “the subject matter at issue . . . effectively unregulated,” Brief of Committee at 43, n.19, is spurious. Under no definition of the word “unregulated” could that word be used to describe the literally thousands of state and federal laws and regulations governing the wages, hours, working conditions, and benefits of workers.

Port's position. The court was asked to construe the following statute to determine whether the City of Opa-Locka could exercise jurisdiction or levy taxes at an airport owned and operated by Dade County, but located within the City of Opa-Locka's boundaries:

Any project [including airport facilities] owned or operated by such county and lying within the boundaries of a municipality shall be under the exclusive jurisdiction of the county and shall be without the jurisdiction of said municipality.

Id. at 938, *citing* Fla. Stat. § 125.015.

The statute had been construed nine years earlier by the court in *City of Opa-Locka v. Metro. Dade County*, 247 So. 2d 755, 760 (Fla. Dist. Ct. App. 1971) ("*Opa-Locka I*"). In *Opa-Locka I*, the court held:

The language of [the statute], quoted above, leaves no doubt as to the legislative intent. Exclusive jurisdiction over county owned airport facilities is vested in the county. That grant alone would have been sufficiently clear as to require no interpretation. In an abundance of caution, the Legislature added that such facilities 'shall be without the jurisdiction' of said municipality.

Opa-Locka I, at 760 (emphasis added). *Opa-Locka II*, which the City cites, simply adhered to the *Opa-Locka I* court's earlier holding. 384 So. 2d at 939.

The City argues the Florida statute's grant of "exclusive jurisdiction" to airport operators is more comprehensive than RCW 14.08.330's because the Florida statute includes the phrase "shall be

without the jurisdiction of said municipality,” which does not appear in the Washington statute.⁴⁸ But the court in *Opa-Locka I* concluded the phrase was added “in an abundance of caution” and adds nothing to the Legislature’s grant of “exclusive jurisdiction” in the previous sentence. 247 So. 2d at 761. Contrary to the City’s argument, RCW 14.08.330’s grant of exclusive jurisdiction and control actually is more comprehensive, as it also ensures that the surrounding municipalities cannot circumvent it through the exercise of their police jurisdiction. RCW 14.08.330. These cases support the trial court’s holding that RCW 14.08.330 precludes enforcement of the Ordinance at STIA.

2. Texas Authority.

The Committee cites *Woolen v. Surtran Taxicabs, Inc.*, 461 F. Supp. 1025 (N.D. Tex 1978), to support its argument that the City can regulate at STIA. The statute at issue in *Woolen*, however, differed in key ways from RCW 14.08.330. It granted the local government operating an airport “jurisdiction” – as opposed to “exclusive jurisdiction” – over the airport. Tex. Transp. Code § 22.014.⁴⁹ The statute also did not preclude

⁴⁸ The specific language quoted by the City (Brief of City at 19-20) actually is from the trial court’s decision in *Opa-Locka II*. 384 So.2d at 938-39. It is not the appellate court’s holding in the case.

⁴⁹ Unlike RCW 14.08.330, the Texas statute was modeled after the later-drafted Uniform Municipal Airports Act (though it differs from that as well), which removed the word “exclusive” from the jurisdictional grant. *Compare* Tex. Civ. Stats. Ann. arts. 46d-1 - 46d-22 (repealed; historical version available on Westlaw), with *Uniform Municipal*

other municipalities from exercising “police jurisdiction” at the airport.

The Committee argues that RCW 14.08.340 mandates that RCW Chapter 14.08 be “interpreted and construed” so as to be uniform with the laws of other states.⁵⁰ But that provision cannot require uniformity when the “laws of other states” do not contain the same language and were derived from a different source than was RCW Chapter 14.08.

3. New York Authority.

The Committee relies heavily on a line of New York cases interpreting a New York statute governing public transit.⁵¹ The Committee’s argument ignores the key statutory language that demonstrates why RCW 14.08.330 and the New York statute are not analogous. The New York statute at issue provides:

Except as hereinafter specially provided, no municipality . . . shall have jurisdiction over any facilities of the [Metropolitan Commuter Transportation Authority and New York City transit authority] . . . or any of their activities or operations. The local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision, heretofore or hereafter adopted, conflicting with this title or any rule or regulation of the [Transportation and Transit Authorities], shall not be applicable to the activities or operations of the [Transportation and Transit Authorities], except such facilities that are devoted to purposes other than

Airports Act (1946), at CP 1543, CP 1548-1567. See also *supra* note 24 and accompanying text.

⁵⁰ Brief of Committee at 24 n.13.

⁵¹ Brief of Committee at 36-38.

transportation or transit purposes.

N.Y. Pub. Auth. Law § 1266(8) (emphasis added). The Committee cites only the first sentence, which purports to take jurisdiction over certain transit facilities away from municipalities other than the transit authorities, and ignores the second sentence entirely.⁵² But when read together it is clear that the statute divests other political subdivisions of authority only when the transit authority has already adopted rules or regulations on an issue.

Courts interpreting this statute have made this precise point:

If the Legislature meant literally that no local law should apply to the [Transit Authority], it would be unnecessary to provide that only local laws that “conflicted” with the Public Authorities Law should be inapplicable, and then, only as to “facilities . . . devoted to . . . transportation and transit purposes.” It would then appear that the Legislature did not intend to prohibit the application of all local laws to the [Transit Authority], but only of such laws that interfered with the accomplishment of its transportation purposes.

Bodgan v. New York City Transit Authority, No. 02-09587, 2005 U.S.

Dist. LEXIS 9317, *15-16 (S.D.N.Y. 2005). *See also Muhammad v. New York City*, 450 F. Supp. 2d 198 (E.D.N.Y. 2006) (noting the statute’s first sentence “appeared to be qualified by a subsequent provision which provided that only local laws that ‘conflict[ed]’ with the Public Authorities

⁵² Brief of Committee at 37.

Law should be inapplicable”).⁵³

By contrast, RCW 14.08.330 explicitly and unequivocally states that STIA “shall . . . be under the exclusive jurisdiction and control” of the Port of Seattle, with no qualifications. That affirmative, express grant of exclusive jurisdiction differs significantly from the negative partial divestiture in the New York statute. The New York decisions construing that dissimilar statute have no relevance here.

4. Wisconsin Authority.

The Committee relies heavily on *Courtesy Cab Company v. Johnson*, 103 N.W.2d 17 (Wis. 1960), to argue that concurrent jurisdiction exists at STIA.⁵⁴ Again, however, the statute differed from RCW 14.08.330 in key ways. The Wisconsin statute provides that:

The governing body of a city, village, town, or county which has established an airport may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation thereof in an airport commission of three commissioners . . . Such commission shall have complete and exclusive control and management over the airport for which it has been appointed.

Id. at 22. The statute does not purport to grant “exclusive jurisdiction” to a specific municipality. And unlike RCW 14.08.330, which was derived

⁵³ New York state court cases construing the statute are consistent with these federal cases, but with less robust analysis. *See, e.g., Tang v. New York City Transit Auth.*, 55 A.D.3d 720, 867 N.Y.S.2d 453 (N.Y. App. Div. 2008); *Levy v. City Comm’n on Human Rights*, 651 N.E.2d 1264, 628 N.Y.S.2d 245 (N.Y. 1995).

⁵⁴ Brief of Committee at 22.

from the Uniform Airports Act (and is in fact called the “Revised Airports Act”), the Wisconsin statute was not. It “borrowed language” from the Uniform Airports Act, but otherwise was drafted independently of the uniform law. *County of Milwaukee v. Williams*, 732 N.W.2d 770, 789-90 (Wis. 2007).⁵⁵

Moreover, following the Wisconsin court’s holding in *Courtesy Cab* would require overruling this Court’s long-standing holding in *King County v. Port of Seattle*. Both cases involve the imposition of license fees on taxi cab operators servicing the airport by other municipalities. Unlike this Court’s holding in *King County* that the county could not regulate taxicabs, the Wisconsin court, interpreting the above statute, held that absent taxicab regulation by Milwaukee County, the city of Milwaukee could regulate them. 103 N.W.2d at 23.

Given the key differences in the two statutes, and the fact that Washington has already reached a different conclusion from that of the Wisconsin court on similar facts, the Committee’s reliance on *Courtesy Cab* and the Wisconsin statute is misplaced.

V. CONCLUSION

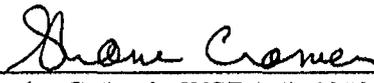
For the above stated reasons, this Court should affirm the trial

⁵⁵ The Committee’s claim that the Wisconsin statute is “its version of the same Uniform Airports Act that was adopted in our state,” Brief of Committee at 21, thus is incorrect.

court's order finding SMC Chapter 7.45 void and unenforceable at Seattle-Tacoma International Airport.

Respectfully submitted this 2nd day of April, 2014.

CALFO HARRIGAN LEYH & EAKES LLP

By 

Timothy G. Leyh, WSBA #14853
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CERTIFICATE OF SERVICE

I, Florine Fujita, declare under penalty of perjury under the laws of the State of Washington:

I am employed by the law firm of Calfo Harrigan Leyh & Eakes, LLP, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

I caused a true and correct copy of the foregoing document to be served on counsel listed below in the manner indicated:

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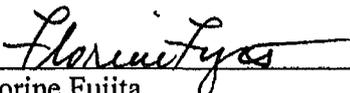
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DATED this 2nd day of April, 2014.



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Dear Clerk,

Attached for filing with the Court, please find the *Brief Of Respondent Port Of Seattle*.

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