

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jun 05, 2014, 4:21 pm
BY RONALD R. CARPENTER
CLERK

No. 89723-9

RECEIVED BY E-MAIL

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.

**ANSWER BY RESPONDENT PORT OF SEATTLE TO BRIEF OF
AMICUS CURIAE ATTORNEY GENERAL OF WASHINGTON**

Timothy G. Leyh, WSBA #14853
Shane P. Cramer, WSBA #35009
CALFO HARRIGAN LEYH & EAKES LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
(206) 623-1700
Attorneys for Respondent Port of Seattle

 ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT1

 A. The Court Need Not Construe the Minimum Wage Act to Determine Whether SMC Chapter 7.45 Can Be Enforced at STIA1

 B. The Port Need Not Have Authority to Enact Employment Regulations in Order to Preclude the City from Enforcing the Ordinance8

 C. Whether the Port Has the Authority to Impose Employment Terms at STIA is not Ripe for Review..... 12

 D. The Port Has the Authority to Impose Employment Terms at STIA..... 13

III. CONCLUSION..... 19

TABLE OF AUTHORITIES

CASES

<i>Asarco, Inc. v. Dep't of Ecology</i> , 145 Wn.2d 750, 43 P.3d 471 (2002).....	13, 18
<i>Branson v. Port of Seattle</i> , 152 Wn.2d 862, 101 P.3d 67 (2004).....	14
<i>Christie v. Port of Olympia</i> , 27 Wn.2d 534, 179 P.2d 294 (1947).....	15
<i>City of Normandy Park v. King County Fire District No. 2</i> , 43 Wn. App. 435, 717 P.2d 769 (1986)	11
<i>City of Spokane v. J-R Distribs., Inc.</i> , 90 Wn.2d 722, 585 P.2d 784 (1978).....	5
<i>City of Tacoma v. Taxpayers of Tacoma</i> , 108 Wn.2d 679, 743 P.2d 793 (1987).....	14
<i>Coburn v. Seda</i> , 101 Wn.2d 270, 677 P.2d 173 (1984).....	1
<i>HJS Dev. v. Pierce Cnty.</i> , 148 Wn.2d 451, 61 P.3d 1141 (2003).....	5
<i>Holt Civic Club v. City of Tuscaloosa</i> , 439 U.S. 60 (1978).....	12
<i>King County v. Port of Seattle</i> , 37 Wn.2d 338, 223 P.2d 834 (1950).....	4, 5, 6, 7, 8, 9, 10, 11
<i>Kirkpatrick v. Ironwood Commc'ns, Inc.</i> , 2006 U.S. Dist. LEXIS 57713, (W.D. Wash. Aug. 16, 2006).....	3
<i>Port of Seattle v. Washington Utilities & Transportation Commission</i> , 92 Wn.2d 789, 597 P.2d 383 (1979).....	3
<i>Mendoza v. Neudorfer Eng'rs, Inc.</i> , 145 Wn. App. 146, 185 P.3d 1204 (2008).....	8

<i>Municipality of Metropolitan Seattle v. Seattle,</i> 57 Wn.2d 446, 357 P.2d 863 (1960).....	18
<i>Roehl v. Pub. Util. Dist.,</i> 43 Wn.2d 214, 261 P.2d 92 (1953).....	1
<i>Spokane County Health District v. Brockett,</i> 120 Wn.2d 140, 839 P.2d 324 (1992).....	18
<i>State v. Catlett,</i> 133 Wn.2d 355, 945 P.2d 700 (1997).....	1
<i>State v. Clark,</i> 124 Wn.2d 90, 875 P.2d 613 (1994).....	1
<i>Tootle v. Secretary of the Navy,</i> 446 F.3d 167 (D.C. Cir. 2006).....	8
<i>Walker v. Munro,</i> 124 Wn.2d 402, 879 P.2d 920 (1994).....	13
<i>Washington State Coalition for the Homeless v. Department of Social & Health Services.</i> 133 Wn.2d 894, 949 P.2d 1291 (1997).....	8
<i>Weden v. San Juan Cnty.,</i> 135 Wn.2d 678, 958 P.2d 273 (1998).....	5

STATUTES

RCW 13.04.030.....	9
RCW 14.08.120.....	14, 15, 16, 17, 18
RCW 14.08.330.....	2, 3, 4, 5, 6, 7, 9, 10, 11, 12
RCW Chapter 34.....	8
RCW 35A.11.020.....	4
RCW Chapter 49.46.....	1
RCW 49.46.120.....	2
RCW 53.08.080.....	15
RCW 53.08.220.....	17

I. INTRODUCTION

The Attorney General of Washington argues that (1) the statutory grant of exclusive jurisdiction to the Port of Seattle over Seattle-Tacoma International Airport (“STIA”) conflicts with a provision of the Washington Minimum Wage Act (RCW Chapter 49.46),¹ and (2) unless the Port can prove it has the authority to impose employment regulations at STIA, the City necessarily may impose them. These arguments erroneously limit and misconstrue the Legislature’s statutory grant of exclusive jurisdiction over STIA to the Port and are without merit.

II. ARGUMENT

A. **The Court Need Not Construe the Minimum Wage Act to Determine Whether SMC Chapter 7.45 Can Be Enforced at STIA.**

1. **The Minimum Wage Act Does Not Permit the City of SeaTac to Impose SMC Chapter 7.45 at STIA.**

¹ The Court need not address this argument. No party to this appeal has argued on appeal that the trial court failed to interpret or wrongly interpreted the Minimum Wage Act, or that there is a conflict between the Minimum Wage Act and the Revised Airports Act. *See State v. Clark*, 124 Wn.2d 90, 101, 875 P.2d 613 (1994) (“As [this Court has] previously stated, the case must be made by the parties litigant, and its course and the issues involved cannot be changed or added to by ‘friends of the court.’” ((internal quotations and citations omitted), *overruled on other grounds, State v. Catlett*, 133 Wn.2d 355, 361, 945 P.2d 700 (1997). *See also Coburn v. Seda*, 101 Wn.2d 270, 279, 677 P.2d 173 (1984) (“This argument” considering a statutory issue “is raised only by amici curiae, therefore we need not consider it.”); *Roehl v. Pub. Util. Dist. No. 1*, 43 Wn.2d 214, 231, 261 P.2d 92 (1953) (declining to “enter into a discussion” of issue of joinder raised by amicus that parties neither “raised . . . in the trial court or on this appeal”).

In its amicus brief, the Attorney General has substantively misquoted the Minimum Wage Act in a way that changes its meaning on precisely the point at issue here. The Attorney General argues the Minimum Wage Act conflicts with the grant of exclusive jurisdiction over STIA to the Port and “quotes” the Act as follows:

RCW 49.46.120 provides that “[a]ny standards relating to wages, hours, or other working conditions established by any . . . local law or ordinance, . . . which are more favorable to employees than the minimum standards applicable under [state law], . . . shall be in full force and effect.”^[2]

The actual language of the Minimum Wage Act provides that

[a]ny standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance . . . which are more favorable to employees than the minimum standards applicable under [state law] . . . shall be in full force and effect.

RCW 49.46.120 (emphasis added). By removing the word “applicable” and substituting an ellipsis, the Attorney General creates the conflict that is the basis of his argument, which conflict is not presented by the actual language of the statute. Stated simply, there is no conflict between the Minimum Wage Act and RCW 14.08.330 because the City’s wage ordinance is not “applicable” at STIA.

RCW 14.08.330 provides in part that:

² Br. Amicus Curiae Att’y Gen. at 2; statute quoted identically at 1.

Every airport and other air navigation facility controlled and operated by any municipality, 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 Attorney General claims that because the grant of exclusive jurisdiction to the Port over STIA is “subject to . . . state laws, rules, and regulations,” there is a conflict between the Minimum Wage Act and the State’s grant of exclusive jurisdiction to the Port.³ Not so. The Minimum Wage Act merely provides that there is no state preemption of more protective applicable federal, state, or local ordinances. *See, e.g., Kirkpatrick v. Ironwood Commc’ns, Inc.*, 2006 U.S. Dist. LEXIS 57713, at *43 (W.D. Wash. Aug. 16, 2006) (“the Washington Minimum Wage Act . . . provides that it does not undermine the provisions of any other statute that might provide relief”). It does not empower municipalities to enact legislation that they otherwise have no jurisdiction to enact under state law.⁴

The Attorney General’s interpretation of RCW 14.08.330 strains the language of that statute and ultimately renders it meaningless. All

³ *See* Br. Amicus Curiae Att’y Gen. at 3-7.

⁴ The Attorney General’s citation to *Port of Seattle v. Washington Utilities & Transportation Commission*, 92 Wn.2d 789, 597 P.2d 383 (1979), does not advance his argument. *Port of Seattle* stands only for the undisputed proposition that the Port’s power is subordinate to state law, *id.* at 804, consistent with the language of RCW 14.08.330 itself.

ordinances of a municipality in which an airport controlled and operated by another municipality is located would be enforceable at the airport, because every valid ordinance is enacted pursuant to some state law that permits it. *See, e.g.*, RCW 35A.11.020 (providing that the legislative body of each noncharter code city like the City “may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city”). This would, of course, eviscerate the grant of exclusive jurisdiction over the airport to the municipality controlling and operating it.

This Court implicitly rejected this argument in *King County v. Port of Seattle*, 37 Wn.2d 338, 223 P.2d 834 (1950). There, King County sought to impose licensing obligations on Yellow Cab under a King County licensing ordinance. The ordinance was adopted under the State’s grant of police powers to King County, just as the City has the police power to set wage limits within its jurisdictional limits. According to the Attorney General’s argument, King County’s licensing ordinance should have trumped the Port’s exclusive jurisdiction. To the contrary, the Court found that imposition of license obligations on a taxi company servicing STIA conflicted with RCW 14.08.330 and thus was not enforceable. *See King County*, 37 Wn.2d at 347-48.

Similarly, in this case the question is whether SMC Chapter 7.45 conflicts with the Legislature’s grant of “exclusive jurisdiction and control” to the Port. Because it necessarily does, it has no effect at STIA. “Under the police power delegated by Const. art. 11, § 11, a city has no authority to enact regulations which conflict with general laws.” *City of Spokane v. J-R Distribs., Inc.*, 90 Wn.2d 722, 730, 585 P.2d 784 (1978). *See also HJS Dev. v. Pierce Cnty.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (“Within this [constitutional] authority counties have plenary police power to enact ordinances, which ceases when in conflict with general state law or when the Washington legislature intended state law to be exclusive, unless there is room for concurrent jurisdiction.”). This Court already has held that RCW 14.08.330 is a general law. *King County*, 37 Wn.2d at 349. The ordinance conflicts with the Legislature’s grant of exclusive jurisdiction and control, for the reasons articulated in the Port’s answering brief.

It is well-settled that ordinances only are enforceable when they are local in scope. *Weden v. San Juan Cnty.*, 135 Wn.2d 678, 706, 958 P.2d 273 (1998). A municipality “cannot exercise its police power outside its boundaries.” *Id.* Here, while STIA is physically located within the City’s borders, this Court has confirmed that local jurisdictions such as King County and the City lack authority to regulate matters at STIA

because such matters are within the Port's "exclusive jurisdiction and control." *See King County*, 37 Wn.2d at 347-48. Thus, while the Minimum Wage Act may render the City's wage ordinance enforceable "locally" elsewhere in the City, the ordinance cannot be enforced at STIA because to do so would give the ordinance "extra-jurisdictional" effect in violation of Washington law.

2. The Attorney General Seeks to Impose on the Port Evidentiary Burdens that Are Not Supported by RCW 14.08.330.

The Attorney General, like the City and Committee, seeks to graft onto RCW 14.08.330 requirements that do not exist. In *King County*, this Court stated that the "effect of [RCW 14.08.330] . . . is merely to preclude King County from interfering with respect to operation of the Seattle-Tacoma airport." *King County*, 37 Wn.2d at 348. Despite quoting this statement accurately, the Attorney General just ten lines later re-characterizes it as requiring that the Port prove that the ordinance would "meaningfully interfere with the operation of the airport."⁵ The Attorney General then concedes that an "exorbitant" minimum wage would run afoul of RCW 14.08.330. *Id.*

Thus the Attorney General would require a trial for any ordinance the City sought to enforce at STIA, at which trial the Port would be

⁵ Br. Amicus Curiae Att'y Gen. at 5 (emphasis added).

required to prove “meaningful” interference with its exclusive jurisdiction.⁶ This requirement is found nowhere in RCW 14.08.330 or in this Court’s precedent. In fact, in *King County*, the “interference” with STIA “operations” was the County’s licensing of taxicabs. A regulation that controls the employment terms of baggage handlers, aircraft de-icers, and airport terminal employees plainly impacts airport operations at least as much as taxi licenses.

The Port was statutorily granted exclusive – *i.e.*, sole – jurisdiction and control over STIA, with no carve-outs, no exceptions, and no limitations, except state and federal law. The first sentence of the statute makes this clear: STIA “shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of” the Port. RCW 14.08.330. It would make no sense to read the statute as allowing the City to circumvent this clear and unequivocal grant to the Port of exclusive authority over STIA on the ground that the City has general police powers under state law.

The terms “operations” and “interference” were used by this Court in *King County* in the context of describing what the Port does at STIA, which is run an airport. An artificial limitation of “operations” to

⁶ Even if this Court requires proof of some effect on or interference with operations, the only evidence in the record establishes interference. *See, e.g.*, CP 931, CP 933-935, CP 937-940, CP 985. If this Court finds the record insufficient, remand for trial on the point is appropriate.

something more narrow than the entirety of operating the airport, including its terminals and runways and the employment terms of the people who work there, is inconsistent with *King County* and finds no support in the statute.

As discussed more fully below, the Port's statutory authority at STIA is broad. This authority permits wide latitude to the Port to, for instance, lease space and grant concessionaire privileges for airport purposes. These airport purposes are what this Court in *King County* deemed "operations." "Interference" with these airport purposes was what the grant of exclusive jurisdiction was meant to preclude. Outside imposition of employment regulations for some employees working at STIA is just the type of interference which the Court and Legislature intended to avoid.

B. The Port Need Not Have Authority to Enact Employment Regulations in Order to Preclude the City from Enforcing the Ordinance.

The Attorney General next argues that the Port must prove it has jurisdiction to enact employment regulations in order to prevent the City's reaching into STIA to impose the City's minimum wage.⁷ This argument

⁷ See Br. Amicus Curiae Att'y Gen. at 7-10. The Attorney General's citations to *Washington State Coalition for the Homeless v. Department of Social & Health Services*, 133 Wn.2d 894, 949 P.2d 1291 (1997), and *Tootle v. Secretary of the Navy*, 446 F.3d 167 (D.C. Cir. 2006), are inapposite. Both cases dealt with judicial jurisdiction, not political jurisdiction, which is at issue here. See *Mendoza v. Neudorfer Eng'rs, Inc.*, 145 Wn.App.

is merely a variant of the “vacuum” argument made by the Committee,⁸ and fails for the same reasons.

“Exclusive” means “excluding or having power to exclude” and “single, sole.”⁹ The Port’s jurisdiction over STIA is exclusive, “subject to federal and state law.” The statute is clear: while federal and state laws apply, the only local¹⁰ municipal entity with the power to regulate at the airport is the municipality that controls and operates the airport – here, the Port.

Even if the Port could not regulate the employment terms of workers at STIA (which, as described below, it can), that would not mean that the City could. To the extent regulating employment terms exceeded

146, 152, 185 P.3d 1204 (2008). In *Washington State Coalition for the Homeless*, the Court was asked to decide whether the State violated its statutory duties concerning foster children. Those duties arose under the dependency statute, RCW Chapter 13.34. Pursuant to RCW 13.04.030(b), proceedings involving children found to be dependent were under the exclusive jurisdiction of the juvenile division of the superior court. This Court held that while such dependency *proceedings* were under the juvenile division’s exclusive jurisdiction, the superior court could nonetheless *interpret* the dependency statute in a declaratory judgment action. Because the case involved *interpretation* rather than *application* of the dependency statute, the superior court had jurisdiction. 133 Wn.2d at 916-17. And *Tootle* stands simply for the proposition that where a case is not among the limited type over which the Court of Federal Claims has jurisdiction, the case is not within the exclusive jurisdiction of the Court of Federal Claims. 446 F.3d at 176-77.

⁸ Brief of Committee at 40-43.

⁹ Webster’s Third New International Dictionary (2002).

¹⁰ The City’s claim that if the City does not have the authority to enact wage regulations at STIA then neither does the State, *see* Answer of City of SeaTac and Gregg to Amicus Brief of Washington Public Ports Ass’n at 4, is without analysis and wrong. The Port’s operation of STIA is “subject to federal and state laws, rules, and regulations.” RCW 14.08.330.

the Port's statutory grant of power as a special-purpose municipality, the result would be that an interested party (*e.g.*, an airport concessionaire) could file a complaint alleging the Port was exceeding its power. It would not mean that the City could step in and impose its own regulations.

The Court's analysis in *King County* supports this. The Court found that King County's effort to impose license fees on Yellow Cab violated RCW 14.08.330 because it conflicted with exclusive rights granted to, and reserved for, the Port. The Court was not concerned with – and did not even address – whether the Port itself had the power to impose license fees on Yellow Cab. The decision turned entirely on whether the County's regulations conflicted with the language of the statute.

The Attorney General's argument on this point also is logically inconsistent with his earlier hypothetical. The Attorney General hypothesized that a City ordinance seeking “to prevent new construction at the airport by requiring workers on such construction to receive an exorbitant minimum wage, or to regulate the hours of operation there by imposing an exorbitant minimum wage between 8 p.m. and 6 a.m.”¹¹ would be unenforceable as conflicting with the Port's exclusive jurisdiction under RCW 14.08.330. But now the Attorney General argues that the Port must prove it has jurisdiction over wages to preclude

¹¹ Br. Amicus Curiae Att'y Gen. at 5.

enforcement of the City's wage ordinance. According to this argument, if the Port cannot prove it has jurisdiction over wages, it does not matter whether such "exorbitant minimum wages" interfere with airport operations. Without jurisdiction to impose a minimum wage, the Attorney General argues, the exclusive jurisdiction provision does not apply at all. This logical inconsistency in the Attorney General's brief cannot be cured.

Finally, relying on dicta from the Court of Appeals' decision in *City of Normandy Park v. King County Fire District No. 2*, 43 Wn. App. 435, 442, 717 P.2d 769 (1986), the Attorney General argues that the term "police jurisdiction" as used in RCW 14.08.330¹² means that "the airport is 'responsible' for police operations at the airport, and no other municipality may interfere with those operations."¹³ On this issue, the Port and the City agree that the Attorney General is wrong.¹⁴

The term "police jurisdiction" refers to the spill-over jurisdiction a municipality has to regulate matters outside its corporate limits. As a treatise published in 1941, a few years before the enactment of RCW Chapter 14.08 in 1945, explained, "the legislature has power to confer on

¹² RCW 14.08.330 states, "[n]o other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same...."

¹³ Br. Amicus Curiae Att'y Gen. at 10.

¹⁴ See Brief of City at 10 ("police jurisdiction' refers to a municipality's authority to exercise extraterritorial jurisdiction"); Brief of Port of Seattle at 10-13; City Reply at 7 ("As everyone agrees, the term 'police jurisdiction' refers to jurisdiction of a municipality outside its corporate boundaries.") (emphasis in original).

a municipal corporation police jurisdiction over adjoining territory immediately next to and within a specified short distance of the corporate limits.” 37 Am. Jur. *Municipal Corporations* § 284 (1941) (emphasis added) (citing cases discussing cities’ exercise of police power within their police jurisdiction). *See also Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 61-62 & nn.1 & 3 (1978).

Contrary to the Attorney General’s contention, this interpretation is not superfluous in light of the grant of exclusive jurisdiction to the Port found in the first sentence of RCW 14.08.330. The two sentences refer to different, although related and mutually reinforcing, concepts. By way of example, neither Olympia nor Lacey has the authority to regulate within the other’s city limits; each has “exclusive jurisdiction” over its own territory vis-à-vis the other. Nonetheless, each city might have the ability to exercise its police powers within its *police jurisdiction* – i.e. the area near the border but within the other’s city limits. The “police jurisdiction” sentence in RCW 14.08.330 reinforces the exclusive grant of jurisdiction over STIA by making it clear that the City cannot reach over the City’s jurisdictional boundaries and regulate STIA via its police jurisdiction.

C. Whether the Port Has the Authority to Impose Employment Terms at STIA is not Ripe for Review.

The separate question of whether the Port may impose

employment terms at STIA is not ripe for review. Ripeness requires a justiciable controversy meaning, in this case, a Port-promulgated rule or ordinance, challenged by persons or entities subject to that rule or ordinance. *See, e.g., Asarco, Inc. v. Dep't of Ecology*, 145 Wn.2d 750, 759, 43 P.3d 471 (2002). The requirement of ripeness ensures that the courts “do not entangl[e] themselves in abstract disagreements,” *id.*, protects litigants “from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties,” *id.*, and assures that the court does not “step[] into the prohibited area of advisory opinions,” *Walker v. Munro*, 124 Wn.2d 402, 411-12, 879 P.2d 920 (1994). The validity of a Port regulation necessarily would turn on issues such as the particular provisions of the regulation and the elected Port Commission’s deliberation and reasons therefor. This issue cannot be resolved on a hypothetical basis. If and when the Port Commission does regulate employment standards, such regulation would pose an obvious conflict with SMC Chapter 7.45, which conflict the exclusive jurisdiction provision of the Revised Airports Act was specifically designed to prevent.

D. The Port Has the Authority to Impose Employment Terms at STIA.

While it is not necessary to decide the issue in this appeal, the Port

has the authority to establish employment terms for its concessionaires and tenants at STIA. “As ‘creatures of statute,’ municipal corporations possess only those powers conferred on them by the constitution, statutes, and their charters.” *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 685-86, 743 P.2d 793 (1987). While courts generally construe municipal powers differently depending on whether the power exercised is governmental or proprietary – with broader powers implied when proprietary functions are involved – municipal powers under the Revised Airports Act (whether considered proprietary or governmental) are liberally construed. *See Branson v. Port of Seattle*, 152 Wn.2d 862, 871, 101 P.3d 67 (2004) (“Even if the operation of airports were a governmental function in Washington limiting our ability to liberally construe the authority available to a municipality under RCW 14.08.120, the statute itself contemplates that some powers are implied.”). As noted in *Branson*, RCW 14.08.120(10) (then-numbered subsection 7) authorizes airport operators like the Port “to exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section.” *Id.* at 871.

Several statutory sections in the Revised Airport Act support the Port’s regulation of employment terms at STIA.

- 1. The Port May Regulate its Tenants’ Employment**

Terms Under its Power to Determine the Terms and Conditions on Which the Port Leases its Property.

RCW 14.08.120(4) authorizes the Port, as the municipality operating STIA:

To lease airports or any air navigation facilities, or real property acquired or set apart for airport purposes, to private parties . . . for operation; to lease or assign to private parties . . . 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 . . . ; and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities

Id. RCW 14.08.120(6), in turn, authorizes the Port 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.” *Id.* (emphasis added).¹⁵

Both the Attorney General and the City concede that the Port has the ability to set employment standards for its tenants in its lease agreements with those tenants.¹⁶ But nothing requires the Port to set the

¹⁵ Likewise, RCW 53.08.080 provides that a port district “may lease all lands . . . and real and personal property owned and controlled by it, for such purposes and upon such terms as the port commission deems proper.” *Id.* (emphasis added).

¹⁶ See City Reply Br. at 18 n.44 (“The Port likely has authority to include minimum wage and other requirements in the leases and permits it issues to Airport tenants.”); Br. Amicus Curiae Att’y Gen. at 11 n.1 (“In its proprietary capacity, the Port likely can set by contract the wages its contractors must pay in at least some circumstances.”). In *Port of Seattle v. Washington Utilities & Transportation Commission*, this Court approved of a contract between the Port and an airporter service which “regulate[d] the rates, quality of services, and practices of [the airporter] in transporting passengers between Seattle and

“terms and conditions” for use of its property solely through its leases. It also can do so through the adoption of regulations setting the terms its tenants must provide their employees. In *Branson*, this Court held:

[I]f the method for exercising a municipal power is not specifically prescribed, *the mode or means* by which a municipality may exercise powers granted by the legislature will not be strictly construed. There is a range of reasonableness within which a municipality’s manner and means of exercising [its] powers will not be interfered with or upset by the judiciary. Here, the legislature has not prescribed the specific means by which municipalities must set airport concession fees. Therefore, the Port has discretion to set airport fees in the manner it chooses, so long as the resulting fees comply with the basic limitations set forth in in RCW 14.08.120(6).^[17]

152 Wn.2d at 871 (citations omitted) (internal quotation marks omitted).

As in *Branson*, the issue in this case is not whether the Port has the power to require that its tenants provide particular employment terms, but rather the “mode or means” by which the Port may choose to do so. The Attorney General concedes that the Port has the power to establish wage standards through its ability to determine the terms and conditions on

[STIA].” 92 Wn.2d at 792. Just as the Port regulated the rates, quality of services, and practices of the taxi company in *Port of Seattle*, the Port may regulate through its contracts the wages and worker protection standards of its lessees and concessionaires. *See also Christie v. Port of Olympia*, 27 Wn.2d 534, 546, 179 P.2d 294 (1947) (permitting port to enter into employment contracts with longshoremen “relating to wages, hours, vacations, and so forth, as are customarily offered to longshoremen by its competitors in the same business”).

¹⁷ RCW 14.08.120(6) states: “That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality.”

which its tenants can operate. The Attorney General does not argue that there is anything that would require the Port to do so in the leases themselves, as opposed to through the establishment of an employment regulation that would apply to STIA tenants and concessionaires generally. The Port already does this very thing with respect to many of the terms and conditions it imposes on its tenants.¹⁸ Enacting an employment regulation setting forth a wage standard with which its tenants and concessionaires must comply falls well within the range of reasonableness permitted to the Port in exercising the powers granted to it by the Legislature.

2. The Port Can Establish Employment Regulations Through its Power to Adopt “Needed” Regulations Under RCW 14.08.120(2).

RCW 14.08.120(2) authorizes the Port “to adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control.”¹⁹

Here, it is premature to assess whether the Port might determine that establishment of employment regulations for its tenants is a “needed”

¹⁸ See, e.g., CP 1366-1446 (Sea-Tac International Airport Schedule of Rules & Regulations No. 4 (Sept. 1, 2012); CP 1448-1461 (“Operating a Concession Business at Seattle-Tacoma International Airport”).

¹⁹ Likewise, RCW 53.08.220(1) provides that “[a] port district may 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.”

regulation at STIA.²⁰ Any such assessment would be made by the elected Port Commissioners after undertaking studies and taking public comment on the issue.

To the extent the Attorney General (and Appellants) argue that the Port does not have the authority to enact employment regulations because it is not one of the governmental subdivisions specifically identified in Article 11, Section 11 of the Washington State Constitution, that argument is without merit. In *Municipality of Metropolitan Seattle v. Seattle*, 57 Wn.2d 446, 357 P.2d 863 (1960), this Court held that subdivisions of the state other than “those specifically enumerated in Art. XI, § 11” “may exercise police power” if statutorily authorized. *Id.* at 454. *See also Spokane County Health District v. Brockett*, 120 Wn.2d 140, 149, 155, 839 P.2d 324 (1992) (a board of health – a special purpose municipality like the Port – could exercise police powers the breadth of which were determined by its statutory authority). The Port has the statutory authority to adopt regulations necessary for the use and management of STIA. RCW 14.08.120(2). Whether phrased in terms of “police power” or not, if the Port deems employment regulation necessary, it may adopt such

²⁰ See *supra* Section II.C as to the need for a justiciable controversy, i.e., a Port-promulgated rule challenged by persons or entities subject to that rule or ordinance. *See Asarco, Inc. v. Dep't of Ecology*, 145 Wn.2d 750, 759, 43 P.3d 471 (2002).

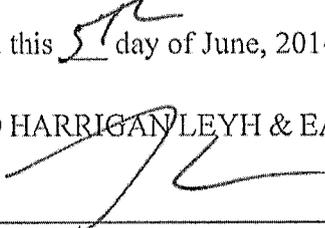
regulations. As discussed above,²¹ to the extent a regulated entity believed such regulation exceeded the Port's power, such entity could file a complaint alleging the Port was exceeding its power.

III. CONCLUSION

For the above stated reasons, this Court should reject the analysis and conclusions proffered by the Attorney General in his Amicus Brief.

Respectfully submitted this 5th day of June, 2014.

CALFO HARRIGAN LEYH & EAKES LLP

By 

Timothy G. Leyh, WSBA #14853

Shane P. Cramer, WSBA #35099

Attorneys for Respondent Port of Seattle

²¹ See *supra* § II.B.

CERTIFICATE OF SERVICE

I, Jill Martin, 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.

On June 5, 2014, I caused a true and correct copy of the foregoing document to be served on counsel listed below in the manner indicated:

Harry J. F. Korrell
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
HarryKorrell@dwt.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Wayne D. Tanaka
Ogden Murphy Wallace P.L.L.C.
901 Fifth Avenue, Suite 3500
Seattle, WA 98164
wtanaka@omwlaw.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Mary Mirante Bartolo
Mark Johnsen
City of SeaTac Attorney's Office
4800 South 188th Street
SeaTac, WA 98188-8605
mmbartolo@ci.seatac.wa.us
mjohnsen@ci.seatac.wa.us

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Laura Ewan
Dmitri Iglitzin
Schwerin Campbell Barnard Iglitzin &
Lavitt
18 W. Mercer Street, Suite 400
Seattle, WA 98119
iglitzin@workerlaw.com
ewan@workerlaw.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

robbins@workerlaw.com

Craig Watson
General Counsel for the Port of Seattle
2711 Alaskan Way (Pier 69)
Seattle, WA 98121
Watson.C@portseattle.org

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Cecilia Cordova
Pacific Alliance Law, PLLC
601 Union St. Suite 4200
Seattle, WA 98101
cecilia@cordovalawfirm.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Herman L. Wacker
Alaska Airlines
PO Box 68900
Seattle, WA 98168-0900
Herman.Wacker@alaskaair.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Frank J. Chmelik
Seth Woolson
Chmelik Sitkin & Davis, P.S.
1500 Railroad Avenue
Bellingham, WA 98225
fchmelik@chmelik.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

M. Roy Goldberg
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
1300 I Street, N.W., Suite 1100 East,
Washington, D.C. 20005
rgoldberg@sheppardmullin.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Douglas W. Hall
FORD HARRISON
1300 19th Street, N.W., Suite 300
Washington, D.C. 20036
DHall@fordharrison.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Robert J. Guite, WSBA No. 25753
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111
rguite@sheppardmullin.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Patrick D. McVey
James E. Breitenbucher
RIDDELL WILLIAMS P.S.
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154
pmcvey@Riddellwilliams.com
jbreitenbucher@Riddellwilliams.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Diego Rondon Ichikawa
Rebecca Smith
National Employment Law Project
317 17th Avenue South
Seattle, Washington 98144
drondon@nelp.org
rsmith@nelp.org

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Timothy J. O'Connell,
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197
tjoconnell@stoel.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Kristopher I. Tefft
1401 Fourth Avenue East, Suite 200
Olympia, WA 98506-4484
Kris.Tefft@wsiasn.org

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Noah Guzzo Purcell
Solicitor General
PO Box 40100
Olympia, WA 98504-0100
(360) 753-2536
noahp@atg.wa.gov

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email

Dated this 5th day of June, 2014.

/s/ Jill Martin

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, June 05, 2014 4:22 PM
To: 'Jill Martin'
Cc: Korrell, Harry; Wayne D. Tanaka; mmbartolo@ci.seatac.wa.us; mjohnsen@ci.seatac.wa.us; Dmitri Iglitzin; Laura Ewan; Jennifer Robbins; Watson, Craig; DeKoster, Ann; Cecilia Cordova; herman.wacker@alaskaair.com; fchmelik@chmelik.com; drondon@nelp.org; rsmith@nelp.org; tjoconnell@stoel.com; Kris.tefft@wsiassn.org; noahp@atg.wa.gov; Timothy G. Leyh; Shane Cramer; Florine Fujita; rgoldberg@sheppardmullin.com; rguite@sheppardmullin.com; DHall@fordharrison.com; pmcvey@Riddellwilliams.com; jbreitenbucher@Riddellwilliams.com; Kristin Ballinger
Subject: RE: Filo Foods v Port of Seattle, et al. Cause No. 89723-9

Rec'd 6-5-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Jill Martin [mailto:jillm@calfoharrigan.com]
Sent: Thursday, June 05, 2014 4:20 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Korrell, Harry; Wayne D. Tanaka; mmbartolo@ci.seatac.wa.us; mjohnsen@ci.seatac.wa.us; Dmitri Iglitzin; Laura Ewan; Jennifer Robbins; Watson, Craig; DeKoster, Ann; Cecilia Cordova; herman.wacker@alaskaair.com; fchmelik@chmelik.com; drondon@nelp.org; rsmith@nelp.org; tjoconnell@stoel.com; Kris.tefft@wsiassn.org; noahp@atg.wa.gov; Timothy G. Leyh; Shane Cramer; Florine Fujita; rgoldberg@sheppardmullin.com; rguite@sheppardmullin.com; DHall@fordharrison.com; pmcvey@Riddellwilliams.com; jbreitenbucher@Riddellwilliams.com; Kristin Ballinger
Subject: Filo Foods v Port of Seattle, et al. Cause No. 89723-9

Attached please find *Answer by Respondent Port of Seattle to Brief of Amicus Curiae Attorney General of Washington* for filing with the Court in this matter, thank you.

Jill Martin - Legal Assistant
CALFO HARRIGAN LEYH & EAKES, LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
Telephone: (206) 623-1700
Fax: (206) 623-8717
Email: jillm@calfoharrigan.com

This internet e-mail message contains confidential, privileged information that is intended only for the addressee. If you have received this e-mail message in error, please call us (collect, if necessary) immediately at (206) 623-1700 and ask to speak to the message sender. Thank you. We appreciate your assistance in correcting this matter.