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NO. 64838-1-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

(King County Superior Court Cause No. 09-1-05321-5 SEA)

CITY OF AUBURN
Petitioner,

V.

DUSTIN GAUNTT,
Respondent,

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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REPLY BRIEF OF PETITIONER

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A. IDENTITY OF PETITIONER

The Petitioner, City of Auburn, hereinafter referred to as the City, the prosecuting jurisdiction of the case on review before this Court, respectfully submits the following as its Reply to the Brief of Respondent, Dustin Gauntt, hereinafter referred to as the Defendant.

B. REPLY TO BRIEF OF RESPONDENT

In the Defendant's response to the City's Brief of Petitioner, the Defendant agreed with the facts as stated by the City with one caveat; that the City did not mention that the City of Auburn had not adopted the state law that was charged in this case. (Brief of Respondent, page 1.)

In his Response, the Defendant essentially describes the issue before this Court as whether a city may enforce state law without having adopted the state law by reference or having otherwise incorporated the state law into its municipal codes. From the City's perspective, the issue is whether the City of Auburn is entitled, pursuant to Section 39.34.180 of the Revised Code of Washington (RCW), to charge the Defendant with non-felony crimes occurring within the corporate limits of the City and referred for prosecution by the City's Police Department, under state law, regardless of whether the City adopted the state statute by ordinance into its municipal code.

In his argument, the Defendant relies on the language of Article XI § 11 of the Washington State Constitution, arguing that the City cannot prosecute violations of laws that the City has not adopted or enacted. Article XI § 11 of the State Constitution states as follows:

Article XI § 11. Police and Sanitary Regulations

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

The Defendant hitches his argument to the language of that singular section of the state constitution, and more specifically, to the language that says a “city... may *make and enforce* ... such local police, sanitary and other regulations (Art. XI § 11, Wash. Const., emphasis added.)

The Defendant argues in that regard that the “make and enforce” language can only be construed as requiring the city to adopt ordinances it wishes to enforce. However, if the Court were to adopt the Defendant’s argument, it would in essence, deem the language of Art. XI § 11, Wash. Const. as the only source of municipal authority, and, further, construing it to mean “a city may only enforce ... such local police, sanitary and other regulations it makes (adopts).” In order to reach the conclusion the Defendant seeks, the Court would have to ignore other provisions of the

State Constitution, as well as ignore statutory provisions. That would include ignoring the specific language set forth in section 39.34.180 RCW.

The Defendant argues, in support of his argument, that in order to render the language of Art. XI § 11, Wash. Const. meaningful (giving every word importance) the language of this constitutional provision must mean that “a city may only enforce ... such local police, sanitary and other regulations as it makes (adopts),” and anything other than that renders the “make and enforce” meaningless. The plain language of this constitutional provision is not ambiguous - it doesn’t need to be interpreted at all, and if it does, the court should adhere to its general reluctance to add or subtract words unless necessary. “[I]f a constitutional provision is plain and unambiguous on its face, then no construction or interpretation is necessary or permissible.” *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 650, 211 P.3d 406 (2009). Moreover, the suggestion by the Defendant that Art. XI § 11 Wash. Const. should be interpreted this way creates a conflict among other constitutional provisions as well as a clear incongruity with statutory language. While the Defendant seemingly argues rules of statutory construction, he really only wishes to apply them to Art. XI § 11, and then only with his interpretation: “the only way a city can enforce a regulation is if the city adopted the regulation by ordinance.” The fact of the matter is that while

Art. XI § 11 Wash. Const. does authorize cities to make and enforce regulations, it does not say that the legislature cannot empower cities to take action through a different route.

The rules of statutory construction apply to statutes, and so long as the statute is consistent with state law it should be upheld. Statutes are presumed valid and the burden rests on the challenger to show otherwise. *State v. Branch*, 129 Wn.2d 635, 648, 919 P.2d 1228 (1996), citing *Louthan v. King County*, 94 Wn.2d 422, 428, 617 P.2d 977 (1980). The burden to show such invalidity is a heavy one. As noted by the Court in *Sofie v. Fibreboard Corp.* 112 Wn.2d 636, 643, 771 P.2d 711 (1989) [citing *State v. Ide*, 35 Wash. 576, 77 P. 961 (1904)];

[I]t is settled by the highest authority that a legislative enactment is presumed to be constitutional and valid until the contrary clearly appears. In other words, the courts will presume that an act regularly passed by the legislative body of the government is a valid law, and will entertain no presumptions [against] its validity. And, when the constitutionality of an act of the legislature is drawn in question, the court will not declare it void unless its invalidity is so apparent as to leave no reasonable doubt upon the subject.... (Citations omitted.)

Sofie v. Fibreboard Corp. 112 Wn.2d at 643 also quotes *Spokane v. Coon*, 3 Wn.2d 243, 246, 100 P.2d 36 (1940), stating “every presumption is in favor of the constitutionality of a law or ordinance.” Put another way, the Court in *Sofie v. Fibreboard* said “if any state of facts

can reasonably be conceived to uphold the legislation ... the legislation will be upheld.” *Id.*

Additionally, the Defendant’s argument is misdirected by its singular focus on Article XI § 11 of the Washington Constitution. Not only does that constitutional provision not say what the Defendant thinks it does (that the only way a city can enforce a law is by having adopted it), although adoption is certainly one avenue through which enforcement could be authorized), Article XI § 11 does not exclude avenues created by other constitutional provisions or by enactments of the legislature. The Defendant’s argument ignores the well established concept that cities are creatures of the legislature and thus the legislature can enact statutes that give authority in excess of the limited language of Article XI § 11.

The City’s powers are derived from the state legislature. *Othello v. Harder*, 46 Wn.2d 747, 284 P.2d 1099 (1955). So long as the authority granted by the state legislature is consistent with the general law, the Constitution does not limit the legislature from taking action which expands the authority of cities beyond what was contemplated or included in the language of the Constitution. That cities are creatures of the sovereign state may be seen from Article XI § 10, of the state constitution which says that the legislature shall provide for the incorporation and organization of cities and that all city charters shall be subject to and

controlled by general laws. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676, 409 P.2d 458 (1965). Article XI § 10 of the state constitution states, in pertinent part, as follows:

Article XI § 10. Incorporation of Municipalities

Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. (Emphasis added.)

Clearly this Article includes and contemplates that statutes affecting cities can change. Essentially, what the Defendant's argument indicates is that the legislature cannot add to or subtract from what the defendant argues is the authority set forth in Article XI section 11 of the state constitution.

The courts do not interpret statutes – legislative enactments – to render portions of their language meaningless. *See, e.g., State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (in turn citing *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996))).

The Defendant argues that RCW 39.34.180 does not grant a city authority to prosecute under state law, but instead, requires a city to enter into contracts with the county for prosecution of crimes not adopted by the city. This argument ignores the language of the statute that says:

Each ... city ... is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, *whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts **or** interlocal agreements under this chapter to provide these services.* (Emphasis added.)

Particularly where the contract language is separated (separated by an “or”), the contract is an option distinct and different from the prosecution. Additionally, particularly since the county has no authority that would allow the county to usurp and use city courts and facilities (no such authority has been presented by the Defendant and none exists in this state for the county to do so), the Defendant’s argument makes no sense if that language is to be given any effect at all. No matter how the above cited language of RCW 39.34.180 is twisted or contorted, in order to reach the conclusion of the Defendant’s argument, language must be ignored or changed. Below is an example of how the language of RCW 39.34.180 would have to be construed in order to reach the Defendant’s conclusion:

Each ... city ... is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, ~~whether~~ filed under ~~state law or city ordinance, and must~~ carrying out these responsibilities through the use of their own courts, staff, and facilities, or filed under state law by entering into contracts or interlocal agreements under this chapter to provide these services.

Even if the same or similar words are used, the meaning is changed with the re-arrangement of the statute's words. Unfortunately for the Defendant, the changed language does not say what the statute says. Changing the order of words in a statute, replacing some and deleting others are not consistent with statutory construction. Additionally, in reviewing statutory language, the court looks to the statute's plain meaning in order to fulfill its obligation to give effect to legislative intent. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). To do so, the court neither adds language to nor construes an unambiguous statute. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006).

The Defendant also argues that the jurisdiction and authority of the court is limited by the provisions of Chapter 3.50 RCW. Specifically, on pages 5 and 6 of the Defendant's Brief, he argues that a city is [only] authorized to collect monies associated with violations of municipal or

county ordinances. While cities and their municipal court certainly have authority to enforce city ordinances, that is not an exclusive authorization under the statutes. For instance, RCW 46.08.190 expressly authorizes municipal court judges to act with jurisdiction over “all [non-felony] violations of the provisions of ‘this title.’” Obviously, this title refers to Title 46 RCW, state law not city ordinance. The very fact that a statute gives a municipal court judge authority over state law – non-felony violations of Title 46 RCW – shows the defect in the Defendant’s argument. The language of RCW 46.08.190 states as follows:

46.08.190. Jurisdiction of judges of district, municipal, and superior court

Every district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, except the trial of felony charges on the merits, and may impose any punishment provided therefor.

Since a municipal court judge’s authority is limited to the municipal court, it cannot be said that this enactment does anything other than authorize enforcement by a municipal court of state law – non-felony violations of Title 46 RCW. Not only does RCW 46.08.190 give concurrent jurisdiction over state law (Title 46 RCW), it does so without any requirement that the municipality for whom the municipal court judge works adopt any ordinance. This statute, consistent with the City of Auburn’s argument, shows the folly of the Defendant’s argument and the

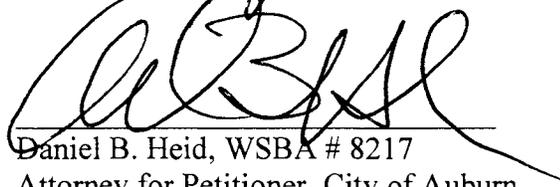
Defendant's interpretation of RCW 3.50.100(1). Also inconsistent with the Defendant's argument is the fact that other statutes similarly impose an enforcement responsibility upon cities regardless of whether or not the city adopted any ordinance. For instance, RCW 19.27.050 directs that the "state building code" required by this chapter [Chapter 19.27 RCW – state law] shall be enforced by the counties and cities.

Even aside from RCW 39.34.180, because both Title 46 RCW and Chapter 19.27 RCW include criminal enforcement elements that would need to be enforced, the Defendant is patently incorrect when he argues that there is no statutory language that grants cities and towns authority to enforce any non-felony criminal laws regardless of whether the laws are found in the city code. (Brief of Respondent, page 4.) The fact is that the cited examples – RCW 19.27.050, 39.34.180 and 46.08.190 – are three examples where the legislature has done exactly that, something the legislature is entitled to do with cities. Again, cities are creatures of the state, and their powers are derived from the state legislature. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676, 409 P.2d 458 (1965).

C. CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiff's Brief of Petitioner, it is respectfully requested that this Court reverse the Superior Court's ruling.

Respectfully submitted this 20th day of September, 2010.

A large, stylized handwritten signature in black ink, appearing to read 'DBH', is written over a horizontal line.

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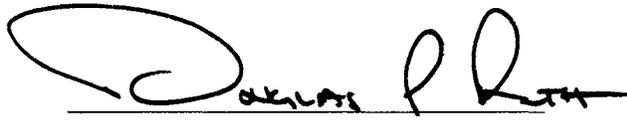
CITY OF AUBURN,) NO. 64838-1-I
)
Petitioner,) CERTIFICATE OF SERVICE OF
) BRIEF OF PETITIONER
v.)
)
DUSTIN GAUNTT,)
)
Respondent.) King County Superior Court
) Cause No. 09-1-05321-5 SEA

I, Douglas Ruth, hereby certify and declare under penalty of perjury under the laws of the State of Washington, that on the date below set forth, I delivered a true and correct copy of the Reply Brief of Petitioner, concerning the above entitled matter to:

David Kirshenbaum
Attorney for Defendant/Respondent
1314 Central Ave S; Ste 101
Kent, WA 98032

by mailing in the United States Mail, postage prepaid, to the above address, on the 20 day of SEPTEMBER, 2010.

SIGNED at Auburn, Washington, this 20 day of SEPTEMBER 2010.


Signature

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