

No. 93788-5

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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

Petitioner,

v.

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

and,

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

Respondents.

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**RESPONDENT DEPARTMENT'S REPLY IN SUPPORT OF  
MOTION TO STRIKE**

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## I. INTRODUCTION

The Department of Revenue asks the Court to grant its motion to strike two sections of the City of Spokane's Consolidated Reply to the City's Petition for Review. Under RAP 13.4(d), the City may make a reply to an answer "only if the answering party seeks review of issues not raised in the petition for review." In its answer to the City's petition, the Department did not seek review of issues not already raised in the petition.

### A. *Blaney and Chevron U.S.A. Support The Department.*

The City responds that the Department has "misstated the law" about when an issue was raised and accuses the Department of violating ethical obligations by not addressing two cases. *See* City's Response to Mot. to Strike at 1-3 & n.1 (citing, *Blaney v. Int'l Ass'n of Machinists and Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 210 n.3, 87 P.3d 757 (2004); *Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 139-140 & n.6 (2005)). The Department's Motion quoted portions of RAP 13.4(d) and stated that its "answer did not seek review of additional issues. Rather, the Department's argument appropriately responded to the issues raised in the City's petition." Mot. to Strike, at 2.

The procedural issue in *Blaney* concerned the portion of RAP 13.4(d) requiring that the issues be raised before review is granted. *Blaney*, 151 Wn.2d at 210 n.3. The petitioner, a machinist union, argued that the

cross appellant was precluded from arguing on the issue of proper jury instructions in her supplemental brief, because it was a “new issue” she had not raised. *Id.* Unlike this case, *Blaney* did not concern whether the petitioner’s reply was proper in the first place under RAP 13.4(d).

*Blaney* is helpful, however, in identifying who “raised” the issue of statutory interpretation first. The Court in *Blaney* held that the petitioner machinist union had already raised the jury instruction issue by making “repeated references” to that specific issue in its petition for review, and “a lengthy footnote” on the topic in its reply to Ms. Blaney’s cross appeal on damage offsets. *Blaney*, 151 Wn.2d at 207-08, 210 & n.3. So, under *Blaney*, it is the party who first touches upon the issue in their filing (petition or answer) that raises the issue for purposes of RAP 13.4. *Id.*, 151 Wn.2d at 210 n.3.

The City neglects to apply the principles of *Blaney* to its own petition for review. Just as in *Blaney*, the City first raised the issue in question. The City of Spokane's petition touches on the issue of statutory interpretation, quoting certain language from RCW 35A.11.020 in support of its issue statement. *See* Petition at 1. The City then explains its interpretation and states that the language of RCW 35A.11.020 is broad, “far broader than the limited authority to assess and collect taxes granted to other legislative bodies.” Pet. for Rev. at 10 & n.6. The City then

disagrees with the Court of Appeals' decision regarding the "caveat" within RCW 35A.11.020, arguing that this language and the Court of Appeals interpretation of it is "of no moment." Pet. at 14. Under *Blaney*, the City's arguments constituted raising the issue of statutory interpretation in its petition, and the Department properly responded in its answer. No reply was permitted under RAP 13.4(d).

The City also mentions *Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 124 P.3d 640 (2005). Response to Mot. to Strike at 3. *Chevron* also supports the Department's motion to strike. In *Chevron*, this Court struck all of Petitioner Chevron's reply, except the portion responding to the Town of Woodway's answer, which requested attorney's fees under RAP 18.1(j). *Chevron U.S.A.*, 156 Wn.2d at 139-40 & n.6 ("To the extent that Chevron's reply brief addresses the issue of attorney fees, the reply brief is accepted. The remaining portions of the reply are stricken.") Here, as in *Chevron*, the Department seeks to strike all of the improper portions of the City's reply, except for the new issue raised by the County. The Court should rule as it did in *Chevron* to strike the City's reply, except for the parts related to County's new issue.

**B. The Proper Interpretation Of RCW 35A.11.020 Is Central To The City's Appeal And Petition for Review, And Nothing In The Department's Answer Raises Any New Statutory Issues For This Court's Review.**

In addressing the statutory issue here, the City argues that it intended to narrowly frame the issue so as to avoid a statutory interpretation issue and focus solely on the constitutional concerns, which it implicitly concedes governs the scope of its taxing authority. City's Response to Mot. to Strike at 3-4. But the City provides no legal authority supporting the notion that a petitioner's subjective intent to avoid raising an issue in the petition determines whether the issue was raised. In addition, the City's "concession" that the Washington Constitution controls over any statute is just a statement of a known legal principle. *Love v. King County.*, 181 Wash. 462, 467, 44 P.2d 175, 177 (1935).

Confusingly, the City asserts that the Department's answer to the petition raises an "independent" consideration about RCW 35A.11.020 in addition to what the Constitution allows, which is what authority the Legislature intended to convey. *Id.* at 5. Considerations of legislative intent are central to, and the primary purpose of, statutory interpretation, not "independent" issues. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The City also claims that the Department "argued that [the] Legislature intended to convey *something less* than what the Constitution

affords.” City’s Response to Mot. to Strike at 5 (emphasis in original).

This begs the question of what the Constitution *does* allow the Legislature to grant municipalities, a matter the Court of Appeals decided adversely to the City, and on which the City now seeks review. Pet. for Rev. at 10 & n.6, 14. Neither of these arguments transform the Department’s references to RCW 35A.11.020 into “new issues” for this Court’s consideration under RAP 13.4(d).

The reality is that the City necessarily sought review of the statutory question in this case because of how the lower courts decided the case. The parties argued, and the courts applied, constitutional and statutory interpretation to resolve the issues. *See City of Spokane v. Horton*, \_\_\_ Wn. App. \_\_\_, 380 P.3d 1278, 1282 (2016); CP 384-85. The Court of Appeals specifically disagreed with the City’s interpretation, and agreed with the Department’s “two-fold response,” including the legislative intent of the phrase “within constitutional limitations” found in RCW 35A.11.020. *Horton*, 380 P.3d at 1282. If the City is choosing not to seek review of this part of the decision then its appeal is futile. *See Resp.* at 14.

**C. The Department Did Not Raise A New Issue On Impediments To Its Administration For This Court's Review.**

The City's petition also asked the Court to consider review based on issues of substantial public interest. The Department argued that other public interests should be considered and are relevant to whether this Court should deny review. The City simply argues "do not be fooled." *See* City's Response to Mot. to Strike at 6. But the City's argument provides more heat than actual light. The Department did not present the impacts to the property tax system as a new issue for the Court to consider in this appeal. Instead, this was a countervailing reason to not accept review under the public interest standard.

**II. CONCLUSION**

For these reasons, the Department requests that the Court grant its motion to strike.

RESPECTFULLY SUBMITTED this 19th day of January, 2017.

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I certify under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

DATED this 19th day of January, 2017, at Tumwater, WA.

  
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**ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION**

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**Comments:**

Respondent Department's Reply in Support of Motion to Strike

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