

NO. 296083
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

COURT OF APPEALS
STATE OF WASHINGTON
BY _____

BERT HOOK, a single man,

Appellant,

v.

LINCOLN COUNTY NOXIOUS WEED CONTROL BOARD, a
Washington subagency; LINCOLN COUNTY, a Washington municipal
corporation,

Respondents.

APPELLANT'S OPENING BRIEF

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I. Introduction

Appellant Bert Hook challenges the lawful constitution and subsequent activities of the Lincoln County Noxious Weed Control Board and the trial court's dismissal of his Complaint against it and Lincoln County by summary judgment.

II. Assignments of Error

No. 1. The trial court erred in entering its order dated October 1, 2010 denying Appellant's motion for declaratory judgment and granting Respondents' cross motion for summary judgment.

No. 2. The trial court erred in entering its order denying Appellant's motion for reconsideration (and for amendment of Complaint) entered on December 6, 2010.

Issues Pertaining to Assignments of Error

No. 1. Is the statutory scheme governing control of noxious weeds (RCW 17.10 *et seq.*) a police and sanitary regulation?

No. 2. If so, does the 10-day minimum published notice requirement of RCW 36.32.120(7) apply to a county's adoption of the statutory scheme?

No. 3. If so, is the statute's language plain enough to render adoption ineffective for noncompliance therewith or may a court read such language out of the statute?

No. 4. Is "activation" of a county Noxious Weed Control Board adoption of the regulatory provisions of RCW 17.10 *et seq.* and did Lincoln County Resolution 117286 adopt (or attempt to adopt) those provisions?

No. 5. Do adequate standards, guidelines and procedural safeguards exist to control arbitrary administrative action and/or administrative abuse of discretionary power by Lincoln County's Noxious Weed Control Board, a non-representative entity?

III. Statement of the Case

In 1969, Washington's legislature enacted Chapter 113 Ex. Session Laws, now codified at RCW 17.10 *et seq.* The statute "created" county noxious weed control boards in each county but all were "inactive until activated." *RCW 17.10.020*. One way under the statutory scheme to "activate" a county's noxious weed control board was for a county legislative authority "on its own motion" to hold a hearing to determine whether there was a need due to a damaging infestation of noxious weeds to activate a weed control board. *RCW 17.10.040(1)*. Following such hearing,

if such need was found, the county legislative authority was required by the statute to: (1) divide the county into five geographical areas that best represented the county's interests; (2) create a map of each geographical area; (3) appoint a voting member to the activated weed board from each geographical area; (4) assure that four-fifths of these voting members be engaged in the primary production of agricultural products; (5) stagger the terms of each voting member at the time the board is "first activated". *Id.*; *RCW 17.10.050(1)*.

After proper initial activation by a county legislative authority, the statute provided that future members of a county weed board be appointed following a careful, statutory protocol. If the term of any initially-appointed (or any subsequent) weed board member was expiring, the statute required a new appointment "at least 30 days prior to the expiration of any board member's term of office." *RCW 17.10.050(2)*. Before that appointment, however, a Notice of Expiration of any term was required to be published at least twice in a weekly or daily newspaper of general circulation in the geographical area. *Id.* Anybody interested in an appointment and residing in the geographical area could (a) make a written application which, (b) had to be supported by the signatures of at least ten registered voters residing in the geographical area, and (c) submit a nomination to the weed control

board. *Id.* Once received, the Weed Control Board was required to (d) hold a hearing, then, (e) send all applications to the county legislative authority with recommendations of the “most qualified candidates”, (f) post the names of nominees in the county courthouse, and (g) publish the names of nominees in a paper of general circulation. *RCW 17.10.050(2)*. The county legislative authority was exclusively charged with filling (appointing) any vacancies occurring on the board. *RCW 17.10.050(4)*.

Three of five voting members of a county weed control board constitute a quorum for the transaction of business. *RCW 17.10.050(3)*. A quorum is “necessary for any action” taken by a weed control board. *Id.*

The county legislative authority is, by statute, also authorized to tax county citizens for the “cost of the county’s weed program” or, in lieu of tax, to levy assessments against lands for that purpose. *RCW 17.10.240(1) et seq.* If levies of assessments were made, each county noxious weed control board was required to hold a public hearing in order to gather information to serve as a basis for land classification and then to classify lands in suitable classifications for assessment. *Id.* Once classified, a weed control board was required to develop and forward to the county legislative authority a proposed level of assessment for each class, an amount “as seems just.” *RCW 17.10.240(1)(a)*. Upon receipt of a weed control board’s

proposed level of assessment, the county legislative authority was also required to hold a hearing and, thereafter, accept or modify by resolution (or refer back to the weed board for reconsideration) all or any portion of the proposed levels of assessment. *Id.* The amount of the assessment constitutes a lien against property. *Id.*

The powers delegated to each county weed board under RCW 17.10 *et seq.* were extensive. Once properly activated, a county noxious weed control board had the power to “enter upon any property” for the purpose of administering the chapter, obtain warrants for recalcitrant owners and to prosecute them (misdemeanor) for interference. *RCW 17.10.160 et seq.* The statute gave each county weed control board authority to “order prompt control acts, issue notices of civil infraction”, cause noxious weeds to be controlled “at the expense of the owner”, and to lien an owner’s property for such expenses. *RCW 17.10.170.* Liens against properties could be enforced “by proceedings on the lien”. *Id. @ subsection (3).* Under some circumstances a weed board was empowered to quarantine an owner’s property and to restrict and deny access to it, and, for failure to pay any monetary penalties imposed under the statute, a recalcitrant landowner was, again, made subject to punishment as a misdemeanor. *RCW 17.10.350(2).*

A 1953 Session Law, Chapter 216, reads:

“Section 1: No board, commission, agency or authority of the State of Washington, nor the governing board, commission, agency or authority of any political subdivision exercising legislative, regulatory or directive powers, shall adopt any ordinance, resolution, rule, regulation, order or directive, except in a meeting open to the public, and then only at a meeting, the date of which is fixed by law or rule...” (underlining added).

Another statute, RCW 36.32.120(7) requires the legislative authorities of each county to give at least ten days published notice of the adoption of all police and sanitary regulations. Under this statute, failure to provide the minimum ten days published notice, renders any such regulation ineffective. *Id.* (“no such regulation, code, compilation or statute shall be effective unless before its adoption a public hearing has been held thereon by the county legislative authority of which at least ten days notice has been given”).

On March 3, 1970, Lincoln County’s legislative authority (county commissioners) enacted Lincoln County Resolution No. 117286, “activating” the Lincoln County Noxious Weed Control Board pursuant to RCW 17.10 *et seq.* CP-150; CP-15.

It never provided Lincoln County citizens with the notice “fixed by law”, i.e. the minimum 10-days published notice mandated by RCW 36.32.120(7). CP-22 (*admitting only five days elapsed*). Although Lincoln County Commissioners at the time appointed initial voting members to its

Noxious Weed Control Board and divided the county into five geographic areas, as required, there's no subsequent record of any activity by Lincoln County's Noxious Weed Control Board for the next 14 years. *CP-47*. The newly "activated" Weed Control Board was inactive; it was dormant or defunct. *CP-145*. As far as the record of the case discloses, in 1984 there were only two "existing" members of the county weed board.¹ *CP-161*.

In 1984, new county commissioners "reorganized" Lincoln County's Weed Control Board. *Id.* They unilaterally appointed three new members to the weed board. *Id.* As far as the record discloses, the careful statutory protocol for appointment of these Weed Board members was ignored. Once "reorganized" this way, the new county commissioners offered a "supervisory" employment position to Mr. Richard Whaley. *CP-188*. Mr. Whaley began supervision of Lincoln County's Weed Control Board on January 9, 1985. *Id.*²

But between the county commissioners' "reorganization" of the county weed board in 1984 and the spring of 1985, three weed board

¹ Thus, the weed board, if active, had no quorum and could take no action during this time - and did not. There is no record of any appointments or re-appointments of the two "existing" members during the period.

² Nowhere in the provisions of RCW 17.10 *et seq.* is there authority for the county's legislative authority to employ a "supervisor" for a county Weed Board. This action by the Lincoln County Commissioners, as far as Appellant can tell, precipitated the "dispute" which was about to unfold. *CP-163 (state auditor called upon to "settle a dispute between the Board of County Commissioners and the Lincoln County Weed Board.")*.

members' terms expired or were expiring.³ As far as the record discloses, the three new weed board members unilaterally appointed by the county commissioners six months earlier were gone.

So, on February 7, 1985, the Lincoln County Noxious Weed Control Board met to consider these vacancies. It was decided that "elections" would be held on March 7th at weed board offices. *CP-145*.

At the March 7, 1985 meeting, the first order of business were the elections. *CP-151*. Somebody present nominated a weed board member for geographic area No. 4. Dick Whaley, the supervisor, recommended him. There's no record of any application, advertisement, registered voters signatures or County Commissioner involvement. *Id.* Since there were no other nominations for District No. 4, a motion was put to the floor and passed. *Id.* The Weed Board minutes reflect: "Kevin Houger will be representing District No. 4 for a two-year term." *Id.*

Then, another weed board member was recommended for District No. 2. Once again, the motion was put to the floor and passed. The record

³ Although appellant here has sifted through copious documentation produced in written discovery by defendants, there is a lack of completeness and continuity in any of the weed board's records during its existence. *CP-46-47*. In any event, for many years-long periods, there are little or no records to support any activity of the Lincoln County Noxious Weed Control Board, namely from 1970 to 1984, 1987 to 1992, 1993 to 2000, 2001 to 2005, and 2007 to 2011.

discloses: “Ralph Doershlag will be representing District No. 2 for a two-year term.” *Id.*

Then, another nomination was submitted for District No. 3 and, again, the motion was put to the floor and passed. The record reflects: “Eugene [Krupke] will be representing District No. 3 for a two-year term.” *Id. And see, CP-145-147.*

As far as the record discloses, or Appellant can tell, it cannot be shown that any of the weed board members present at the March 7th 1985 meeting (and electing new members) were lawfully appointed to the weed board themselves.

Then, six months later, on June 10, 1985, Supervisor Whaley was abruptly terminated by Lincoln County’s Weed Control Board. *CP-189.*

Mr. Whaley sued Lincoln County for wrongful termination in April 1986, alleging that his attempts to enforce the provisions of RCW 17.10 (as supervisor of Lincoln County’s Weed Control Board), “conflicted directly with the inherent financial interests of one or more members of the Board and the Commissioners.” *CP-189.*

By November 1985, the “dispute” between Lincoln County’s legislative authority and its noxious weed control board was apparent and deepening. Unable to determine whose responsibility it was for the “proper

handling of budgeting, voucher approval, wage setting, and liability insurance for the Lincoln County Weed Board,” county commissioners wrote to Washington’s State Auditor asking for his interpretation; they had questions as to whether or not the weed control board was “more or less self-governing.” *CP-162*.

On January 6, 1986, Lincoln County Commissioners got their response. *CP-163*. Recognizing the “dispute between the Board of County Commissioners and Lincoln County Weed Board,” the State Auditor replied that a “strong argument” existed that the weed board had the specific and implied powers to undertake all these functions unilaterally. *CP-163*. However, if Lincoln County’s Weed Control Board chose, it could “allow the County Commissioners to exercise these powers on their behalf.” *Id*. The Weed Board did not so choose. Instead, as far as the record discloses, Lincoln County’s Weed Control Board continued to arrogate all statutory powers, processes and functions to itself.

One month after the state auditor responded, the record (as far as it goes) reflects Weed Board members voting by “secret ballot,” *CP-178*, conducting self-styled “elections”, *CP-177*, and ultimately (as recorded at one of the rare transcribed minutes of meeting) declaring that no member of the Weed Board wanted county commissioners to appoint Weed Board

Members. *CP-153* (“none of the Board want the commissioners to appoint the Weed Board members”).

Since then, as far as the record shows, Lincoln County’s Noxious Weed Control Board has usurped the functions of county commissioners pursuant to the statute, violated express limitations on the exercise of their powers, ignored compliance with statutory prescriptions and undertaken the enforcement powers of RCW 17.10 without authority and without compliance with state law, in violation of the rights of Lincoln County citizens and taxpayers, like plaintiff Bert Hook. Appellant Hook has annually been trying to resist the penalties imposed on him by Lincoln County’s Weed Control Board for about 20 years. *CP-111*.⁴

Lincoln County’s Noxious Weed Control Board is today a self-governing, non-representative entity. Both Lincoln County’s prosecuting attorney (and the separate attorney for its Weed Board) concede, it is an “independent agency”. *VRP2-10*.⁵ “Its actions should not be governed by the County Commissioners.” *Id.* “[It’s] not part of this county.” *VRP1-9*.

⁴ Mr. Hook as been in Lincoln County District Court three times, has had his property sprayed, had it liened, then compelled to pay the taxes (levies) as determined by the Weed Board, among other things.

⁵ There are two verbatim reports of proceedings incident to this appeal. The first hearing was held February 22, 2010 and will be identified herein as VRP1-page number. The second was held October 19, 2010 and will be identified herein as VRP2-page number.

Mr. Hook asserts that Resolution No. 117286 is a void legislative act and that Lincoln County's Weed Control Board's actions are, and have been, *ultra vires*.

IV. Summary of the Argument

Lincoln County's Weed Control Board was not lawfully constituted and all its actions since its purported "activation" were taken without lawful authority. Resolution No. 117286 is a void legislative act and Lincoln County's Weed Control Board has usurped the authority and functions conferred by statute upon Lincoln County Commissioners. Its actions are wrongful and without authority.

V. Argument

a) The statutory scheme for control of noxious weeds in Lincoln County, pursuant to RCW 17.10 et seq., is a police and sanitary regulation.

The trial court ruled that Lincoln County Resolution No. 117286 was "not an exercise of local police, sanitary or other regulation..." and it did not adopt the provisions of Title 17.10, "by reference or otherwise." *CP-132-3*. Accordingly, the trial court ruled that the 10-day notice

requirement of RCW 36.32.120(7) was “not applicable when no county ordinance or regulation or state statute is adopted by reference.” *Id.*

Appellant Hook asserts that the statutory scheme for control of noxious weeds, which places restraints on the personal freedom and property rights of persons, is a police and sanitary regulation. He also asserts Resolution No. 117286 adopted the provisions of RCW 17.10 *et seq.*

Police power is defined as the power of the state to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals, or the promotion of the public convenience and general prosperity. *Black's Law Dictionary, 5th Ed.; 1979. @ 241.* It includes all those regulations designed to promote the public convenience, the general welfare, the general prosperity, etc. *Continental Baking v. Mount Vernon, 182 Wash. 68, 72, 44 P2d 821 (1935).* In the exercise of enforcement powers, a properly constituted county weed control board may take control action against a recalcitrant landowner and cause weed control at the expense of the owner. *RCW 17.10.170(3).* This includes spraying herbicides and pesticides under a related and companion statute, *RCW 17.21 et seq.*, the Washington Pesticide Application Act.⁶

⁶ Appellate Hook involuntarily suffered his lands to be sprayed by Lincoln County's Noxious Weed Control Board and subsequently liened for the cost thereof. *CP-04.* When he objected, he was denied hearing despite statutory entitlement thereto. *RCW 17.10.180 (any owner is entitled to a hearing before the Board).*

This related statute expressly declares that if provisions “are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health and welfare of the people of the state.” *RCW 17.21.010*.

Legislative enactments are an exercise of police power. *Snohomish Cy. Bld'rs v. Health Dist.*, 8 *Wn.App.* 589, 598, 508 *P2d* 617 (1973).

Thus, the statutory scheme for the control of noxious weeds is a police and sanitary regulation and an exercise of police power adopted by Lincoln County through Resolution No. 117286. In proposing and passing Resolution No. 117286 and making specific reference to *RCW 17.10 et seq.* in its contents, Lincoln County was acting to make the provisions of that statute applicable and enforceable locally in Lincoln County, as all its actions since have demonstrated. Activation pursuant to statute is adoption of it.

The trial court erred in concluding otherwise.

b) All the notice provisions for adoption of such regulations apply.

By law, no legislative authority of any county is permitted to adopt any regulation except in a meeting open to the public and then only at a

meeting the date of which is fixed by law or rule. *Chapter 216, Session Laws, 1953.*

RCW 36.32.120(7) fixes by law a minimum notice period to the public for the adoption of all police and sanitary regulations and the methods for providing it. No regulation, code, compilation and/or statute shall be effective unless before its adoption a public hearing has been held thereon by the county legislative authority of which at least 10-days notice has been given. *Id.* Notice must be given by publication. *Id.*

The trial court also ruled that Lincoln County's legislative authority did not adopt the provisions of RCW 17.10 "by reference or otherwise" on March 3, 1970 and, therefore, RCW 36.32.120(7) was not applicable. *CP-133.*

Appellant Hook has had his property liened by Lincoln County's Noxious Weed Control Board, has been subjected to its presumed authority, has expended money, been denied a hearing, paid assessments on his lands, and been thrust into court proceedings by the non-representative entity known as the Lincoln County Noxious Weed Control Board. To say that Lincoln County's Noxious Weed Control Board does not derive (adopt) its powers from RCW 17.10 cannot follow. If it was lawfully constituted and exercises enforcement powers over the citizens of Lincoln County then

Resolution No. 117286 purported to adopt the provisions of RCW 17.10, and Lincoln County's Weed Board enforces it.

Lincoln County's Noxious Weed Control Board's power to regulate and restrict the free use of private property in Lincoln County for the purposes of controlling or eradicating noxious weeds is a delegated power from the state legislature. Such power can only be exercised to the extent to which the delegation was made and to the extent that conditions attached to the grant of power are fulfilled. *State v. Thomasson*, 61 Wn.2d 425, 378 P2d 441 (1963) (fundamental principle in connection with an enactment of a resolution is that enabling legislation must be followed); see, generally, *McQuillen, Municipal Corporations*, §16:1 (enactment of ordinances); §16:10 (method and manner of enacting ordinances may be described and controlled by statute and the failure to comply with the enabling legislation renders ordinance nullity).

In *Savage v. Tacoma*, 61 Wash. 1, 112 Pac. 78 (1910), our Supreme Court said:

“We believe it to be the law that where [enabling legislation] prescribes a definite method for the enactment of ordinances, such requirements are mandatory and no authority is vested in the law-making body of the municipality to pass ordinances except in the manner required by the [enabling legislation].” *Savage @ 6; Accord, Tennent v. Seattle*, 83 Wash. 108, 113, 145 Pac. 83 (1914). (underlining added).

When the town of Tumwater, Washington enacted a zoning ordinance in 1948 by resolution in an attempt to adopt the Washington Zoning Act, RCW 35.63, it failed in various ways (omitting a zoning map; failing to establish a local planning commission; and failing to prepare a comprehensive plan for adoption after a public hearing), our Supreme Court invalidated the ordinance saying that “strict compliance with the requirements of the act” were mandatory. *State ex rel. Weiks v. Tumwater*, 66 Wn.2d 33, 35, 400 P2d 789 (1965). Said the *Weiks* court:

“The basis for the rule, as in the case of the requirement of definiteness and certainty in statutes, is the necessity for notice to those affected by the operation and effect of the ordinance, and the necessity for such notice is especially strong, of course, where the ordinance is penal in character...citations omitted...So also is the necessity for notice especially strong where the effect of the ordinance is to regulate the otherwise free use of property.” *Weiks*, *supra* @ 35-36. (underlining added).

Here, not only did Lincoln County fail to provide its citizens with proper notice of adoption of this police and sanitary regulation and the penal provisions of RCW 17.10 but the statute itself declares that “no such regulation, code, compellation, and/or statute shall be effective unless before its adoption, a public hearing has been held thereon by the county legislative authority of which at least 10 days notice have been given.” *RCW 36.32.120(7)*.

It is undisputed in this case that Lincoln County's legislative authority did not provide the minimum 10-day published notice of its adoption of the provisions of RCW 17.10 *et seq.* in Lincoln County. *CP-110, VRP1-8* ("failed to give adequate notice" if RCW 36.32.120(7) applies). If the Lincoln County's Weed Board purports to exercise authority under RCW 17.10 *et seq.*, it could only have been derived from Resolution No. 117286.

The trial court erred in concluding the notice provisions were not applicable.

c) Unambiguous statutory language must be given its plain meaning.

Courts do not construe unambiguous statutes. *Whatcom Co. v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P2d 1303 (1996). In judicial interpretation of statutes, the first rule is a court should assume that the legislature means exactly what it says. Plain words do not require construction. *State v. McCraw*, 127 Wn.2d 281, 288, 898 P2d 838 (1995).

When the Legislature provided that no police or sanitary regulation, however adopted, shall be effective "unless before its adoption a public hearing has been held thereon by the county legislative authority of which at least 10-days notice has been given," Hook submits, they meant exactly

what they said. If the language of a statute is unambiguous, a court's inquiry is at an end. *Dependency of M.S.*, 156 Wn.App. 907, 913, ___ P3d ___ (2010).

The trial court erred in reading these plain words out of the statute.⁷

d) Adequate standards, guidelines and safeguards do not exist to control the arbitrary and/or abusive actions of Lincoln County's Weed Control Board.

It is constitutionally permissible for non-representative bodies, e.g. entities that are governed by non-elected board members or officials, to be delegated legislative authority, as long as certain standards or guidelines are provided and procedural safeguards exist. *Larson v. Monorail Auth.*, 156 Wn.2d 752, 761-2, ___ P3d ___ (2006). First, the legislature must provide standards or guidelines which define in general terms what is to be done and identifies the entity which is to accomplish it. *Id.* Second, procedural safeguards must exist to control arbitrary administrative actions and any administrative abuse of discretionary power. *Id.*

⁷ Importantly, a void legislative act is of no effect and may be successfully attacked at any time. *Swartout v. Spokane*, 21 Wn.App. 665, 674, 586 P2d 135 (Div. III, 1978); *Spokane v. Harris*, 25 Wn.App. 345, 348, 606 P2d 291 (Div. III, 1980) (*same*).

In this case, it may be that the Legislature defined in general terms what it wanted done, but it is clear that it did not develop standards or guidelines identifying the entity which was to accomplish it, as here the county legislative authority has relinquished to the Weed Board (or the Weed Board has usurped) the functions delegated to the legislative authority by the statute, like election of Weed Board members, budget oversight, taxing authority and etc. If adequate standards or guidelines existed identifying which entity was going to accomplish the object of noxious weed control in Lincoln County, and/or how it was to be done, Lincoln County would not have hired a “supervisor” or written to the State Auditor seeking an “interpretation of the responsibility” of the Commissioners and asking whether or not the Weed Board was “more or less self-governing.” *CP-194*. And, if procedural safeguards existed to control the arbitrary administrative action of Lincoln County’s Weed Control Board (and/or any administrative abuse of its discretionary power), Weed Board members would not be “electing” themselves by “secret ballot” and expressly declaring that they did not want the County Commissioners to appoint their members. *CP-51*. Further, the Weed Board would be following the careful statutory protocol, the county legislative authority would be holding hearings on the levels of assessment imposed by

Lincoln County's Weed Control Board, based on the required lands' classification system, and conducting its statutory oversight upon said levels of assessment, as required. *RCW 17.10.240(1)(a)*. If these standards, guidelines and safeguards existed, and others, Lincoln County's Weed Control Board would not have become what both its attorney and the county prosecuting attorney say it is -- an "independent agency."

Importantly, fundamental principles of fairness and free government forbid public officials from dictating policy or determining what money should be spent and how it would be spent when the residents have no voice in election of those officials. *See, Malim v. Benthien, 114 Wash. 533, 196, P. 7 (1921) (diking district prohibited from levying assessments outside district boundaries)*. The *Malim* court held:

"To uphold such a course would be a denial of the principle [prohibiting taxation without representation] upon which our government is founded, and which as a nation we have always maintained is the only true principle upon which a free government can be founded and maintained." *Malim, supra @ 539; Carstons v. PUD, 8 Wn.2d 136, 111 P2d 583 (citing Malim for proposition that voters had no voice relative to the imposition of taxes, resulting in taxation without representation), cert. denied, 314 U.S. 667, 62 S.Ct. 128, 86 L.ed. 533 (1941)*.

If, as Hook asserts, and as the county concedes, Lincoln County's Weed Control Board is a completely independent agency, functioning without standards, guidelines or procedural safeguards to control arbitrary

administrative action, setting levels of assessments of Lincoln County landowners and taxpayers, electing themselves, setting their own budgets and employee salaries, and collecting taxes through the county Treasurer's Office to fund it all, it is not democratically constituted. No electoral mechanism is at work. The legislature may not constitutionally grant the power of taxation to persons over whom the taxpayers can exercise no control. *State ex. rel Tax Commission v. Redd*, 166 Wash. 132, 6 P2d 619 (1932); *Barry & Barry Inc. v. State Dep't of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P2d 540 (1972).⁸

Here, Lincoln County's non-representative entity, its Weed Control Board, governs its budgeting, expense vouchers, elections of members and levels of assessment which county residents pay without having voice or vote. The county legislative authority has apparently acquiesced in this breakdown of the right of self-government. Hook contends even if the Weed Board could be said to be lawfully constituted in 1970 that his action scrutinizing this kind of non-representative entity's conduct should be permitted to continue, as requested by motion for reconsideration and amendment of complaint, and that the trial court erred in denying the same.

⁸ Imposition of an unlawful levy is a species of taxation without representation. *Granite Falls Library v. Taxpayers*, 134 Wn.2d 825, 846, (Justice Sanders, Matson, and Alexander in dissent).

VI. Conclusion

Mr. Hook asks this court to recognize that the statutory scheme for control of noxious weeds is a police and sanitary regulation, that Lincoln County purported to adopt it (by reference or otherwise) and then to enforce it, that it was required, as such, to give Lincoln County residents a minimum 10-days published notice of the hearing from which Resolution No. 117286 emerged, that no such notice was provided and, therefore, under the statute, the resolution is void.

Mr. Hook asks this court to hold, as such, that Resolution No. 117286 is ineffective, a void legislative act, and that the conduct of Lincoln County's Noxious Weed Control Board subsequent thereto is *ultra vires*.

Further, Mr. Hook asks this court to reverse the trial court's denial of his motion for reconsideration and seeking amendment of the Complaint to conduct further discovery, including depositions, with respect to his allegations, supported by the record of the case, that Lincoln County's Noxious Weed Control Board does not function in conformity with the provisions of state law, is a independent agency and self-governing and lacks democratic constitution.

Mr. Hook asks this court to remand for further proceedings to ascertain Lincoln County's Noxious Weed Control Boards' compliance with the standards and safeguards necessary to assure this non-elected, non-representative body is not abusing its vast discretion or engaged in activities which are equal to or tantamount to taxation without representation.

Mr. Hook also reserves his right to seek further relief pursuant to RCW 7.24.080.

RESPECTFULLY SUBMITTED this 6 day of June, 2011.

BOSWELL LAW FIRM, P.S.



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