

ORIGINAL

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 JAN 28 AM 8:07
BY RONALD R. CARPENTER

No.80204-1

CLERK

BY RONALD R. CARPENTER

2008 FEB -5 P 12:48

FILED
SUPREME COURT
STATE OF WASHINGTON

~~SUPREME~~ COURT OF THE STATE OF WASHINGTON

ARTHUR T. LANE, et al., individually and on behalf of the class of all persons similarly situated, *Respondents*

vs.

THE CITY OF SEATTLE, *Respondents*,

vs.

THE CITY OF SHORELINE, KING COUNTY FIRE DISTRICT NO. 2, KING COUNTY FIRE DISTRICT NO. 4 (a.k.a. Shoreline Fire Department), NORTH HIGHLINE FIRE DISTRICT NO. 11, KING COUNTY FIRE DISTRICT NO. 16 (a.k.a Northshore Fire Department); KING COUNTY FIRE DISTRICT NO. 20 and KING COUNTY, *Respondents*

THE CITY OF BURIEN and THE CITY OF LAKE FOREST PARK, *Appellants*;

AMICUS BRIEF OF WASHINGTON STATE FIRE COMMISSIONERS ASSOCIATION

Snure Law Office, PSC
Brian K. Snure, WSBA 23275
Attorney For Washington Fire Commissioners Association
612 S. 227th St.
Des Moines, WA 98198
(206) 824-5630

TABLE OF CONTENTS

A. IDENTITY AND INTEREST OF AMICUS	1
B. STATEMENT OF THE CASE	1
C. ARGUMENT	2
1. Water Purveyors Are Authorized By Statute To Charge Ratepayers For All Costs Of A Water System Including Fire Hydrant And Fire Flow Costs.	3
2. Statutes Are Presumed Constitutional And This Court Has Previously Rejected Attempts To Classify Water Charges That Include Fire Hydrant Costs As Taxes.	4
3. The Court Should Expand Its Analysis Of Taxes And Fees Originally Developed In <u>Covell</u> To Include Recognition Of The Concept Of Commodity Charges.	12
4. Fire Protection Districts Are Not Responsible For The Costs Of Hydrants Or Fire Flows.	17
CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<u>Berrocal v. Fernandez</u> , 155 Wn.2d 585, 121 P.3d 82 (2005).....	19
<u>Brown v. City of Yakima</u> , 116 Wn.2d 556, 807 P.2d 353 (1991).....	6
<u>Covell v. City of Seattle</u> , 127 Wn.2d 874, 905 P.2d 324 (1995).....	12-17
<u>Garcia v. San Antonio Metropolitan Transit Authority</u> , 469 U.S. 528, 105 S.Ct 1005, 83 L.Ed.2d 1016 (1985).....	13
<u>Hillis Homes, Inc. v. Public Utility District No. 1 of Snohomish County</u> , 105 Wn.2d 288, 714 P. 2d 1163 (1986).....	8,13,16
<u>Irvin Water District No. 6 v. Jackson Partnership</u> , 109 Wn. App. 113, 34 P.3d 840 (2001).....	9,10
<u>Island County v. State</u> , 135 Wn.2d 141, 955 P.2d 377 (1998).....	5,6
<u>Landmark Development v. City of Roy</u> , 138 Wn.2d 561, 980 P.2d 1234 (1999).....	8,9,13
<u>Okeson v. City of Seattle</u> , 150 Wn.2d 540, 78 P.3d 1279 (2003).....	5-7,11,13-16
<u>Riehl v. Foodmaker, Inc.</u> , 152 Wn.2d 138, 94 P.3d 930 (2004).....	7,10
<u>Teter v. Clark County</u> , 704 P.2d 1171, 104 Wn.2d 227 (1985).....	11, 13
<u>Twitchell v. City of Spokane</u> , 55 Wash. 86, 104 P. 150, 151 (1909).....	4,14

Statutes

RCW 35.92.010.....3
RCW 52.12.021.....18
RCW 52.12.031(4)1
RCW 52.14.010.....18
RCW 54.16.030.....4
RCW 57.08.005(3)3, 9

Other Authorities

Hugh D. Spitzer, Taxes vs. Fees: a Curious Confusion,
38 Gonzaga Law Review 335, 351 (2002-2003) 12-14

Constitutional Provisions

Article VII, Section 103

A. IDENTITY AND INTEREST OF AMICUS

The Washington Fire Commissioners Association “WFCA” is an association of fire protection districts authorized by RCW 52.12.031(4). Fire protection districts throughout the state rely on the availability of fire hydrants that are currently owned, controlled, operated and maintained by various water purveyors. Although this case focuses on water purveyors established and operating under chapter 35.92 RCW, WFCA is concerned that a ruling from this Court that alters the legislative scheme in which water purveyor ratepayers are responsible for the costs of fire hydrant availability will also affect fire protection districts that use water provided by purveyors operating under Title 57 RCW and Title 54 RCW.

WFCA believes that financial responsibility for fire flows and fire hydrants should remain where the state legislature placed responsibility, the water purveyor ratepayers. To the extent the Court’s decision attempts to shift this burden to fire district taxpayers, the decision will be an impermissible legislative action on the part of the courts, and will create an unfair system that will negatively impact the members of WFCA.

B. STATEMENT OF THE CASE

The facts of this case are adequately discussed in the briefs submitted by the parties.

C. ARGUMENT

The issue presented to the Court is who is responsible for the costs of fire hydrants. The parties have presented arguments identifying three potential revenue sources for fire hydrants: 1) Ratepayers of the water purveyors that install, maintain and control the fire hydrants; 2) Taxpayers within the jurisdiction of the City or County serving the area in which the hydrants are located; or, 3) Taxpayers of fire districts that use water from the hydrants to assist with the objective of fire suppression.

Of the three potential revenue sources only one, the water purveyor ratepayers, receive a direct benefit from the water system because they are connected to the system that makes fire hydrants and fire flows available when needed. A fire district taxpayer may be located miles from the boundaries of the water purveyor that owns and operates the hydrants and will be paying for an unavailable hydrant that provides no benefit to the taxpayer. Because water purveyor ratepayers directly benefit from the availability of fire hydrants and fire flows, WFCFA believes the currently accepted practice of water purveyor ratepayers paying for fire hydrants through general water rates, the method authorized by the state legislature, is a constitutional and fair method for covering the costs of fire hydrants.

1. Water Purveyors Are Authorized By Statute To Charge Ratepayers For All Costs Of A Water System Including Fire Hydrant And Fire Flow Costs.

The state legislature has exercised the authority granted in Article VII, Section 10 of the Washington State Constitution to create a variety of types of municipal entities to respond to the need for providing the citizens of this state with water for consumption and fire protection. In all situations, the authority granted is a broad authority to provide and charge for water for “all purposes.”

RCW 35.92.010 authorizes cities or towns to “furnish the city and its inhabitants, and any other persons, with an ample supply of water for all purposes, public and private... with full power to regulate and control the use, distribution, and price thereof:...”

Title 57 RCW creates water districts with the express authority to provide an “ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price...” RCW 57.08.005(3).

In Title 54 RCW, the legislature authorized public utility districts to provide “an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and

exclusive authority to sell and regulate and control the use, distribution, and price thereof.” RCW 54.16.030.

Simply put, the state legislature has authorized each type of municipal water purveyor to provide the public with “an ample supply” of water for “all purposes public and private” and to establish the price of water for “all purposes public and private.” The state legislature, in adopting the statutes referenced above, recognized what this Court recognized at the beginning of the 20th century, water is a commodity and the rates charged to the users of the commodity are commodity fees, not taxes. Twitchell v. City of Spokane, 55 Wash. 86 89, 104 P. 150, 151 (1909). The “ample supply” component reflects that the commodity provided not only includes the water flowing from the tap but includes the supply of water made available through fire hydrants and fire flows to be used by a ratepayer when needed. This availability component of the water commodity has not been fully analyzed by the parties and was not considered by the Superior Court.

2. Statutes Are Presumed Constitutional And This Court Has Previously Rejected Attempts To Classify Water Charges That Include Fire Hydrant Costs As Taxes.

The Superior Court concluded, in favor of the Ratepayers, that Seattle Public Utility’s “SPU” implementation of the legislative authority

to charge for water prior to 2005, violated the state constitution because SPU included fire hydrant costs in its general water rates. The Ratepayers, and the Superior Court, relying almost exclusively on Okeson v. City of Seattle, 150 Wn.2d 540, 78 P.3d 1279 (2003), conclude that by including these costs SPU unconstitutionally taxed its ratepayers.

WFCA questions why the state constitution has any bearing on the legislative determination that water purveyors may include fire hydrant costs when determining the water rates charged to owners/ratepayers of a municipal water system. Unlike fire district taxpayers, who may not receive any benefit from hydrants, water purveyor ratepayers directly benefit from the availability of hydrants within the water system. As argued above, the legislature has granted municipal water purveyors full authority and discretion to deliver and charge for water as a commodity and this legislation is presumed to be constitutional. It is the position of WFCA that the constitutional presumption is where the judicial inquiry should begin and end.

“... [A] statute is presumed to be constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt.” Island County v. State, 135 Wn.2d 141, 146, 955 P.2d 377 (1998). Importantly, “Municipal ordinances are afforded the

same presumption of constitutionality.” Brown v. City of Yakima, 116 Wn.2d 556, 559, 807 P.2d 353 (1991). The Court’s explanation of this rule in Island County provides direct guidance in addressing the issues before the Court in the present case.

... [T]he “beyond a reasonable doubt” standard used when a statute is challenged as unconstitutional refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution. The reason for this high standard is based on our respect for the legislative branch of government as a co-equal branch of government, which, like the court, is sworn to uphold the constitution. We assume the Legislature considered the constitutionality of its enactments and afford some deference to that judgment. Additionally, the Legislature speaks for the people and we are hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution. Id. at 147

The Ratepayers must be able to prove beyond a reasonable doubt that a municipal water purveyor’s discretionary decision to include the cost of fire hydrants and fire flows as part of its general rates (as SPU did prior to 2005) violates the constitution. In order to support their position the Ratepayers rely almost exclusively on Okeson v. City of Seattle, 150 Wn.2d 540, 78 P.3d 1279 (2003).

Okeson, however, involved the issue of whether the City of Seattle could pass on the cost of streetlights to its electric utility ratepayers. Unlike fire hydrants, streetlights are not provided to make electricity

available to the ratepayers on a continuous basis for the ratepayer to use when needed, streetlights are provided to light specific areas that may or may not benefit the ratepayer. In contrast, fire hydrants and fire flows are available throughout the water system and ratepayers directly benefit from this availability through lower insurance rates and by having fire flows available when needed. Aside from the Okeson Court's statement that the issue of fire hydrants "is not before us" the Okeson Court did not analyze water systems or consider water rates or fire hydrant costs. Id. at 551.

Despite the high burden that the Ratepayers must meet to prevail in this matter, the Ratepayers have ignored prior case law that specifically addresses the validity of water rates that include fire hydrant costs. Both this Court and Division 3 of the Court of Appeals previously deferred to the legislature and concluded that connection charges for water service (one form of water rates), which include fire protection availability costs, do not constitute taxes and are valid and constitutional fees.

WFCA suggests that the following cases are more analogous to the fire hydrant issue presently before the Court than Okeson and, in deference to its prior decisions, the Court should adhere to the doctrine of stare decisis and reverse the Superior Court's ruling. Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004).

In Hillis Homes, Inc. v. Public Utility District No. 1 of Snohomish County, 105 Wn.2d 288, 714 P. 2d 1163 (1986), the State Supreme Court upheld the authority of a Public Utility District under Title 54 RCW to charge connection fees based on the cost of providing water and “for other services and facilities furnished by the district” Id. at 298. The Court recognized that the connection charges calculated by the district were for “an integrated system” that needed to be expanded “to provide minimum fire flow capacity” to new customers and that the added fire flow capacity would decrease the “fire insurance rating for the water system” resulting in a “decrease in the individual fire insurance rates for all customers of the water system.” Id. at 296, 291-293. The Hillis Homes decision recognized that the costs of making fire hydrants and adequate fire flows available are integral costs of providing a water system and the responsibility for the cost of the system properly resided with the ratepayers. The Court concluded that the charges were “not a tax” and as long as the charges, rates and classifications established by the water purveyor are reasonable the Court would not interfere with the legislative enactments. Id. at 299-301.

In Landmark Development v. City of Roy, 138 Wn.2d 561, 980 P.2d 1234 (1999), this Court used the same reasoning in a decision

upholding the authority of cities under chapter 35.92 RCW to impose connection charges to new users “in order that such property owners shall bear their equitable share of the cost of such **system**.” Id. at 569 (emphasis added). In discussing the “system” the Court acknowledged that “required fire flows” were part of the cost of the water system being recovered by the connection fees. Id. at 566.

Finally, in Irvin Water District No. 6 v. Jackson Partnership, 109 Wn. App. 113, 34 P.3d 840 (2001), Division Three of the Court of Appeals reached a similar result when analyzing the statutory authority for water districts under Title 57 RCW. The Court recognized that former RCW 57.08.010(3), currently RCW 57.08.005(3), established the authority for water districts to impose a connection fee on new users so that the “new users would bear their equitable share of the **system’s** cost through the new connection fee.” Id. at 125 (emphasis added). The Court noted that the system included the provision of water “for fire protection and construction purposes.” Id. at 117-118.

The Court concluded that “[c]harges imposed by a water district are presumptively reasonable and will be upheld, unless it appears from all the circumstances that they are excessive and disproportionate to the services rendered.” Id. at 127. The Court specifically rejected the

argument that water charges constitute a tax as the funds raised by the charges are used to “regulate the distribution of water” and the water charge “is imposed only on people connecting to the District’s water system for water service.” Id. at 849. In other words a legislative enactment in which the users of the water system (which includes fire flow and fire hydrant components) are required to pay for the water system is reasonable and constitutional.

The common thread in each of the above cases is the Court’s recognition that the fire flow capacity and fire hydrant components of a water system provide ratepayers with the direct benefit of having water available for fire protection regardless of whether the water is used. In each case, the Court recognized that because the commodity being paid for included the cost of having fire hydrants and fire flows available, the legislative approach to requiring the users of a water system to pay for all costs of the integrated water system reflected a constitutional fee. “The doctrine of stare decisis requires a clear showing that an established rule is incorrect and harmful before it is abandoned...” Riehl, at 147. The doctrine of stare decisis when combined with the presumption of constitutionality that applies to the legislative and municipal decisions to

include fire hydrant costs in water rates precludes this Court from extending the analysis developed in Okeson to the fire hydrant issue.

The rationale for recognizing the constitutional validity of spreading the costs of a water system among the users of the system through rates is also consistent with this Court's decision in Teter v. Clark County, 704 P.2d 1171, 104 Wn.2d 227 (1985). Although Teter involved county storm water charges imposed under RCW 36.89.080 and chapter 35.67 RCW, the similarities between the purposes and functions of storm water systems and water systems is significant.

The storm water control facilities within such county provide protection from storm water damage for life and property throughout the county, generally require planning and development over the entire drainage basins, and affect the proprietary, interests and welfare of all the residents of such county. Id. at 232.

Similarly, the fire suppression benefits of having adequate fire flows and available hydrants affects the prosperity, interests and welfare of all ratepayers within a specific water purveyors system. Although the storm water system provided general public benefits, the Teter court concluded that the storm water charges were not taxes but were constitutional fees relating to the "regulation and control of storm and surface waters." Similarly, the fact that having adequate fire flows and fire hydrants provide benefits to the general public does not render the

current statutory scheme for allowing water purveyors to charge for the costs of the entire system unconstitutional because water purveyors use the fees to control the entire system and to make fire hydrants and fire flows available to the ratepayers.

This Court's precedents establish a valid and reasonable basis to recognize the presumption of constitutionality of the legislature's determination that water purveyors may include all costs of a water system when determining water rates.

3. The Court Should Expand Its Analysis Of Taxes And Fees Originally Developed In Covell To Include Recognition Of The Concept Of Commodity Charges.

This Court in Covell v. City of Seattle, 127 Wn.2d 874, 905 P.2d 324 (1995) developed a three-part test to review whether a governmental charge is a tax, subject to constitutional scrutiny, or a fee that is not subject to constitutional scrutiny. While the parties have addressed and applied the Covell test, WFCOA encourages the Court to clarify the test by recognizing that a government imposed commodity charge is a type of user fee that is not subject to constitutional scrutiny.

Much of law is taxonomic in nature. That is, it involves classifying activities by people and institutions so that rules of human conduct can be developed and readily applied to future conduct. **To be effective, classifications have to make sense.**

Hugh D. Spitzer, Taxes vs. Fees: a Curious Confusion, 38
Gonzaga Law Review 335, 351 (2002-2003) (emphasis added)

In the above article, professor Spitzer presents a compelling case that the tax/regulatory fee classification established in Covell provides the basic framework for recognizing that governments may constitutionally impose not only regulatory fees but may also impose commodity charges when selling a commodity, such as water, to the public. Professor Spitzer's commodity charge concept applies directly to the fire hydrant issue and, if adopted by the Court, would represent a logical and necessary development and clarification of the Covell standard that will allow the review of fire hydrant cost allocation to "make sense."¹

Covell "recognized that there are different types of user fees— some for the cost of direct regulatory activities, some for the cost of

¹ WFCFA encourages the Court to recognize the inherent limitations of trying to fit all governmental functions into a proprietary or governmental box for purposes of determining the constitutional validity of a government charge and to abandon the distinction in this context. The ability of this Court to resolve the issues presented in Teter, Hillis Homes, and Landmark, without any mention of governmental vs. proprietary services, demonstrates that the issue of who should pay for fire hydrants can be properly analyzed without the concepts. As the United States Supreme Court determined when considering tax immunity cases, "the distinction between 'governmental' and 'proprietary' functions was 'untenable' and must be abandoned." Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 542, 105 S.Ct 1005, 1013, 83 L.Ed.2d 1016 (1985) citing New York v. United States, 66 S.Ct 310, 314 (1946).

If the Court breaks down utility services into various components to determine whether each component is governmental or proprietary, the Court will have to address, water treatment, sewage treatment and system sizing components each of which could arguably be considered to be governmental components. The key distinction that allows the Court to avoid this unhelpful analysis is to consider water, sewer etc. as a commodity.

commodities purchased and others for costs (burdens) imposed on the general public by specific human activities.” Spitzer, at 353. All of these “user fees” have been confusingly referred to as “regulatory fees.” In order to properly analyze the constitutionality of charging fire hydrant costs to the water purveyor ratepayers, however, it is necessary to recognize that a regulatory fee is only a “narrow variety” of a broader category of permissible user fees. Id. at 352. Water charges, under Covell, should not be analyzed as regulatory fees, rather they should be analyzed as the cost of a commodity, water. Twitchell v. City of Spokane, 55 Wash. 86, 89, 104 P. 150, 151 (1909). As discussed previously, the commodity includes not only the water used but the immediate availability of the water supply to the ratepayer for fire protection. If the concepts of user fees and commodity charges are recognized when applying the Covell test, the constitutional validity of including fire hydrant costs as part of general water rates “makes sense.”

As stated in Okeson,² the first part of the Covell test is to consider whether the purpose of the portion of water rates covering the costs of fire hydrants is to raise “revenue for the general public welfare” or to raise

² Because of the Ratepayers reliance on Okeson, WFCR applies the Covell test using the Okeson Court’s statement of the test.

money to “pay for or regulate the service that those who pay will enjoy.” Okeson, at 553. (emphasis added).

While it makes little sense to argue that water rates are used to regulate fire hydrants and fire flows (the regulation of fire hydrants and fire flows is controlled by the building and permitting process), water rates are used to “pay for” the service of providing clean water and available fire flows to the ratepayers. When viewed as a commodity charge, the charge meets Covell’s definition of a fee: the purpose of charging for fire hydrant costs is to raise revenue to provide the commodity, the availability of fire flows, that the ratepayers will enjoy.

The second part of the Covell test requires that fire hydrant charges “must be allocated for the authorized regulatory purpose to qualify as a regulatory fee and not a tax.” Okeson, at 553. If the term commodity charge is inserted the test becomes whether fire hydrant charges are “allocated for the authorized commodity.” Since the fire hydrant portion of water rates are, by definition, allocated to pay for the costs of providing fire hydrants, the costs qualify as commodity charges and cannot be construed as taxes under the second part of the Covell test.

The third Covell factor requires a “direct relationship between the fee charged and either a service received by the fee payers or a burden to

which they contribute.” Okeson, at 553-554. This simply recognizes that the ratepayer must receive the commodity being paid for. The question then becomes whether the fee charged for fire hydrants bears a direct relationship to the commodity received? The fire hydrant costs pay for hydrants, the hydrants make adequate fire flows available to the ratepayer regardless of whether the ratepayer uses the fire flows. This availability component of the commodity received establishes the necessary direct relationship. For example, it is the availability, not the water, that provides the ratepayer with lower insurance ratings, see Hillis Homes v. Snohomish County, 105 Wn.2d 288, 292, 714 P. 2d 1163 (1986). The fire hydrant component of water rates directly relates to the commodity received: having an available fire hydrant to put out a fire if the ratepayer's home catches fire. Under this test, water rates are a fee not a tax.

Once water service is recognized as a commodity that includes the availability of fire flows, including the fire hydrant costs in the water rates not only makes sense, but it provides a fairer system than a system in which fire protection district taxpayers pay for hydrants. Any given fire protection district may cover large portions of relatively uninhabited property and large areas that are located outside the boundaries of a water system that are not served by fire hydrants. If the cost of fire hydrants is

charged to the taxpayers of fire protection districts, taxpayers that receive no benefit from the availability of the hydrants will nonetheless pay for the hydrants. In contrast, if ratepayers are charged for the hydrants, the ratepayers that directly benefit from the proximity and availability of a hydrant will be responsible for the cost of that benefit. Because fire hydrant based fire suppression services are normally associated with fire suppression in nearby structures that receive water, there is a direct connection between the service provided and the ratepayer.

Both the legislature and the courts have consistently recognized that ratepayers are responsible for the entire costs of a water system and because the entire system is essential for providing water and making water available for fire protection, that such costs are constitutional commodity charges. The Ratepayers attempt in this case to separate out one component of the system for differential treatment fails to meet the burden of proving the present system unconstitutional as the practice of charging fire hydrant costs to ratepayers is a rational and reasonable method by which the water purveyor can pay for the commodity provided.

4. Fire Protection Districts Are Not Responsible For The Costs Of Hydrants Or Fire Flows.

As presented to the Court, the Cities are asking the courts to take on a legislative role and order fire protection districts to pay for hydrants

and fire flows. The practical difficulties associated with implementing this approach is reflected in the simple fact that the level of service provided by a fire protection district is discretionary. Fire protection districts are municipal corporations created by the legislature and are limited to exercising only those powers delegated by the constitution and the legislature. Title 52 RCW establishes that fire protection districts are created “for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property...” The level of services, and the manner in which the services are provided are largely left to the discretion of the Board of Commissioners, RCW 52.12.021, RCW 52.14.010.

In a fire district covering a large area that is not served by hydrants, a District could exercise its discretion and decide that it is neither fair nor cost effective to pass the hydrant costs on to its taxpayers since a majority of the taxpayers would not benefit from the hydrant costs. If this situation occurred no governmental entity, under current law, could force the fire protection districts to use or pay for the unused hydrants.

Nonetheless, as outlined in the briefs of the Cities, current building codes will require certain levels of fire flows and hydrant spacing regardless of whether a fire protection district chooses to use and pay for

the hydrants. A ruling by this Court that fire protection district taxpayers are the responsible parties could result in a situation where the infrastructure is built by the water purveyor, because a city or county requires the infrastructure, but the purveyor cannot collect revenues to pay for the infrastructure because they are prohibited from charging the ratepayers and the fire districts decide they do not want to use the hydrants. While this is an unlikely scenario it is a scenario that would be created if the Court determines fire district taxpayers are responsible to pay for costs. A ruling that fire district taxpayers are responsible for hydrant costs would violate the basic rule of statutory construction that the Court “must be careful to avoid unlikely, absurd or strained results.” Berrocal v. Fernandez, 155 Wn.2d 585, 590 121 P.3d 82 (2005).

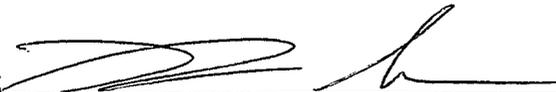
The unreasonable situation described above reflects the inherent problem with attempting to impose the costs of hydrants on taxpayers of an entity that has no control over the installation, maintenance or location of the system they are ordered to pay for. The cost allocation of fire hydrants should remain within the realm of the legislature and the water purveyors and the Court should refrain from attempting to legislate the responsibility absent a clear and compelling constitutional violation.

CONCLUSION

The legislature has created municipal water purveyors to provide an ample supply of water for all purposes public and private and has authorized the purveyors to impose charges for the costs of these services. As early as 1909, this Court recognized that the sale of water by a municipal water purveyor is the sale of commodity that is unrestrained by constitutional considerations. This Court has recognized that water systems are operated as integrated systems, that fire flows and fire protection are integral elements of the system and that it is reasonable that the direct recipients of the service (commodity) being sold pay for the commodity. WFCB respectfully requests that the Court reverse the Superior Court and rule that water purveyors may include the costs of fire hydrants and fire flows in the cost of the commodity that they sell to their customers.

Dated: 1-25-2008

Respectfully Submitted:
Snure Law Office, PSC

By: 
Brian K. Snure, WSBA 23275
Attorney for Washington Fire
Commissioners Association