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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

81636-1

No. 259676-III

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COURT OF APPEALS, DIVISION III  
IN AND FOR THE STATE OF WASHINGTON

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PAUL LAWSON,

Respondent,

v.

CITY OF PASCO, a Municipal Corporation of the  
State of Washington,

Appellant.

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REPLY BRIEF

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## SUMMARY OF LEGAL ARGUMENT

Respondent's entire argument – and correspondingly the trial court's decision in this matter – is based upon a false assertion: namely, that the Mobile Home Landlord –Tenant Act [MHLTA], RCW Chapter 59.20, demands or requires that recreational vehicles used as permanent residences be permitted or allowed in mobile home parks.

RCW Chapter 59.20 does not require, allow or otherwise provide any regulations regarding who a mobile home park owner or landlord must rent to or permit in his or her park. It does not prohibit exclusion of mobile homes, manufactured homes, or recreational vehicles used either as permanent or temporary residences. It does not prohibit cities, counties or any other state subdivision from enacting ordinances or other regulations governing who is permitted in mobile home parks or prohibiting recreational vehicles or any other dwelling from mobile home parks. Bottom line, nothing in the MHLTA demands or even authorizes Respondent to lease mobile home lots to recreational vehicles used as permanent residences and thus the statute does not conflict with Pasco Municipal Code 25.40.060, despite Respondent's unfounded assertions to the contrary.

Thus, Respondent's entire position, and correspondingly the trial court's decision, is without legal support or basis. Instead, the MHLTA

actually requires mobile home landlords and tenants to comply with applicable municipal codes such as PMC 25.40.060, provides for eviction of tenants that are in mobile home parks in violation of the municipal codes, and nullifies the rental agreements that Respondent claims he cannot terminate. Thus, based on both PMC 25.40.060 **and** RCW Chapter 59.20, Respondent Lawson has no legal argument or basis for either 1) permitting the recreational vehicles in his park in the first place or 2) continuing to allow them to remain there. The trial court's decision permitting Respondent Lawson to do both of these things is contrary to the established law and thus must be overturned.

**A. RCW 59.20 APPLIES TO RECREATIONAL VEHICLES USED AS PERMANENT RESIDENCES, BUT DOES NOT REQUIRE OR DEMAND THAT RESPONDENT HAVE THEM IN HIS MOBILE HOME PARK.**

Respondent claims that Appellant City of Pasco [Pasco] is contending that recreational vehicles used as permanent residences are not subject to the MHLTA and then spends a good deal of time in his brief arguing that these residences are *like* mobile homes and therefore should be treated as mobile homes under the act. Respondent's Brief, pp. 3-7.

Pasco is not contending that the MHLTA does not apply to recreational vehicles used as permanent residences. Whether these residences are classed under the definition for mobile homes, as urged by

Respondent, or under the definition for Park Models, as offered by Pasco, the Act clearly applies to and regulates landlord-tenant relationships for these residences. RCW 59.20.040. Rather than argue the MHLTA does not apply, Pasco is in fact arguing that it does apply and 1) invalidates any existing leases that violate of PMC 25.40.060 while also 2) providing the necessary statutory authority and means for Respondent Lawson to evict these same tenants for violating Pasco's code. See Brief of Appellant, pp. 12-16.

Respondent's response to this argument is to contend that the MHLTA does not permit eviction or require compliance with PMC 25.40.060 because it directly conflicts with the Pasco code by "demanding" that Respondent Lawson permit recreational vehicles used as permanent residences in his park. Respondent makes this assertion several times in his brief, but fails to cite or point out any express language in RCW 59.20 that requires or "demands" that he permit recreational vehicles used as permanent residences in his mobile home park. In fact, no such language exists.

We are actually dealing with a two part process here. First, the mobile home park landlord must decide *who* he is going to rent to. Once the decision is made to rent to someone, *then* the landlord-tenant relationship arises. PMC 25.40.060 controls the first part – it states *who* a

mobile home park landlord in Pasco cannot rent to. RCW Chapter 59.20 is silent to this question. In fact, it only applies to the second part – it governs and controls the landlord-tenant relationship only. RCW 59.20.040.

Thus, RCW Chapter 59.20 does not conflict with PMC 25.40.060 because it does not apply to or govern *who* a landlord must rent to. The MHTLA is actually silent as to that issue and, contrary to Respondent's assertions and arguments, the MHTLA does not allow, permit, demand or require that recreational vehicles be placed in mobile home parks. It only comes into play and controls the landlord-tenant relationship *after* the landlord has decided who to rent to.

Respondent spends a good deal of time on the definitions within the MHTLA. Again, none of these definitions require a mobile home park landlord to rent to anyone, let alone recreational vehicles used as permanent residences. See RCW 59.20.030. Instead, the statute expressly states:

"Mobile home park" or "manufactured housing community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, **OR** park models for the primary purpose of production of income....

RCW 59.20.030(6)(emphasis added). By using the term "or" rather than "and", the legislature defined these parks to include any one of the three

types of residences listed therein, but did not require or "demand" that said parks include all three. Again, the MHLTA does not apply or come into play regarding *who* the landlord rents to; it only governs the landlord-tenant relationship *after* the landlord has decided who to rent to. All the MHLTA requires is that, in order to be a mobile home park, a landlord must rent to two or more mobile homes **OR** manufactured homes **OR** park models, but he is not required to rent to all three or any one type of residence specifically.

Put another way, in deciding *who* he wants to rent to, Respondent Lawson can exclude any type of residence he wants from his park and rent to just mobile homes, or just manufactured homes, or just park models and his park would still be a "mobile home park" under the MHLTA. RCW 59.20.030(6). Thus, the MHLTA only comes into play *after* he decides who to rent to and does not control or even address *who* he is to rent to. It therefore does not conflict with PMC 25.40.060. Respondent Lawson has failed to point to any other state law or regulation that conflicts with Pasco's municipal code and thus there is no constitutional challenge or problem with PMC 25.40.060.

**B. RCW CHAPTER 59.20 AND PMC 25.40.060 ARE NOT IN CONFLICT AND THUS THERE IS NO SUPREMACY CLAUSE OR OTHER CONSTITUTIONAL ISSUE WITH PASCO'S MUNICIPAL CODE.**

Respondent's entire constitutional challenge to PMC 25.40.060 is based upon his false conclusion that the state law and the municipal code are in conflict. However, as discussed above and in Appellant's previous brief, the MHLTA does not require or "demand" Respondent rent or lease space to anyone and thus does not conflict with Pasco's prohibition on renting mobile home spaces to recreational vehicles – whether used as permanent residences or not.

Since the MHLTA does not conflict with PMC 25.40.060, then there is no Supremacy Clause issue as contended by Respondent. Respondent correctly points out that under the Washington State Constitution, a local or city ordinance cannot conflict with state law. Washington Const. Art. 11, Sect. 11. However, there is no such conflict here because the state has never legislated to require or "demand" that mobile home park landlords rent to recreational vehicles used as permanent residences. The MHLTA does not make any such requirement and Respondent has failed to cite or identify any other state law that does. Thus, there is no state law that conflicts with PMC 25.40.060.

Instead, the legislature has left in tact the right and ability of cities and municipalities to perform zoning and other land use regulation through their police powers. That is exactly what PMC 25.40.060 does and, rather than conflict with state law, it is upheld and enforced by the MHLTA. There is no conflict under the Supremacy Clause of the Washington State Constitution and state law does not void or "trump" PMC 25.40.060.

Respondent does not go so far as to claim actual discrimination by Pasco, but does bandy the "discrimination" term about. However, there is no evidence – and Respondent does not argue – that PMC 25.40.060 involves a protected class or otherwise violates the Washington Law Against Discrimination, RCW 49.60.010, or any other constitutional provision.

Respondent also argues that Pasco cannot evict or exclude recreational vehicles used as permanent residences just for being what they are. However, under the police powers that is exactly what Pasco can do – as long as the city has a legitimate public interest to protect. The court has recognized that reserving mobile home parks for use by only mobile homes and/or manufactured homes is a legitimate state interest to promote and preserve affordable housing for low income and elderly residents. See Guimont v. Seattle, 77 Wn. App. 74, 84, 896 P.2d 70

(1995) ("We agree that making as many [mobile home] pads as possible available for the elderly and low-income population is a legitimate state interest.") (citing Guimont v. Clarke, 121 Wn.2d 586, 610, 854 P.2d 1 (1993)). This is exactly the interest that Pasco is seeking to promote and protect with PMC 25.40.060. CP 13.

Thus, under the police powers Pasco can do exactly what Respondent argues it cannot – it can exclude all recreational vehicles from mobile home parks just for being recreational vehicles, because this serves the recognized and legitimate state purpose of preserving such parks for mobile homes for low income and elderly occupants.

Respondent also offers a hypothetical involving Catholic green and Protestant orange to demonstrate the alleged danger of upholding a city ordinance over state law. This hypothetical has two problems. First, it is premised on a religious conflict that clearly involves questions of religious freedom and discrimination under both the state and federal constitutions. Religion is a recognized protected class and thus there are constitutional reasons Pasco could never exclude mobile homes based on religious affiliation or "color." Recreational vehicles, on the other hand, are not a protected class and can be excluded under the police powers for a legitimate public interest. Guimont, 77 Wn. App. at 83-84. Comparing the two situations is like comparing apples with carrots – one involves a

constitutionally protected class and the other does not. They are totally unrelated.

Second, Respondent's hypothetical provides an actual conflict between state law and city ordinance because the State has declared or enacted a law stating who a mobile home park landlord can or cannot rent to – i.e., the landlord cannot preclude admittance to Catholic green or Protestant orange mobile homes. No such corresponding state law exists under the actual facts of this case. As discussed above, RCW Chapter 59.20 does not address, let alone provide for, who a landlord can or cannot rent to. Thus, the conflict between state law and municipal ordinance Respondent created in his hypothetical does not exist under the actual facts of this case – although Respondent has tried to create it. The hypothetical and the dangers it is suppose to illustrate are inapplicable under the actual facts of this case.

The bottom line is that there is no conflict between PMC 25.40.060 and RCW Chapter 59.20 and thus the municipal code does not violate the Supremacy Clause or any other constitutional provision, despite Respondent's assertions and hypothetical to the contrary. Instead, PMC 25.40.060 is a legitimate exercise of Pasco's police powers and, in fact, is supported and enforced by the MHLTA.

**C. RCW CHAPTER 59.20 REQUIRES RESPONDENT LAWSON TO COMPLY WITH PMC 25.40.060 AND AUTHORIZES HIM TO EVICT THE RECREATIONAL VEHICLES THAT VIOLATE PASCO'S MUNICIPAL CODE.**

Absent any conflict between state law and PMC 25.40.060 or any constitutional challenge to the municipal code, the court is left with a statutory scheme that actually cooperates with and enforces Pasco's municipal code. As discussed in Appellant's original brief, Respondent Lawson admits that he is violating PMC 25.40.060. He also contends that he must continue violating the municipal code because his tenants cannot be evicted except for cause. Ironically, RCW Chapter 59.20 provides just such cause.

First, the statute does not prohibit or otherwise conflict with Pasco's right to exclude recreational vehicles used as permanent residences from mobile home parks. Second, the statute requires landlords to comply "with codes, statutes, ordinances, and administrative rules applicable to the mobile home park." RCW 59.20.130(1). Respondent Lawson admits he is not complying with PMC 25.40.060 and thus he is also violating RCW 59.20.130(1). Moreover, every reason he gives for not complying with either the municipal code or the state statute is without legal basis or support: 1) state law and the code do not conflict; 2) the code is not unconstitutional under the Supremacy Clause or any other constitutional

provision; and 3) Pasco can exclude these residential vehicles from mobile home parks as a permissible use of its police powers.

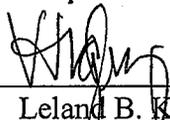
Thus, Respondent Lawson is without legal basis or justification for continuing to violate both PMC 25.40.060 and RCW 59.20.130(1). Due to this conflict with the statute, the rental agreements that Respondent Lawson claims he cannot terminate are therefore expressly unenforceable and void. RCW 59.20.040. This means that there are no rental agreements for the tenants Respondent is claiming he cannot evict and thus no basis for their remaining in his park or his failure to remove them. The "tenancies" Respondent Lawson seeks to protect and hide behind do not in fact exist.

Even if some sort of day-to-day rental agreement or arrangement does exist, Respondent Lawson can still terminate or decline to renew any such tenancy or occupancy for the tenants' failure to comply with PMC 25.60.040. RCW 59.20.080(d) & (i). Respondent Lawson argues that he cannot evict these tenants just for residing in recreational vehicles but, as discussed above, that is exactly what he is required to do both under Pasco's proper exercise of its police powers and RCW Chapter 59.20. Recreational vehicles used as permanent residences are not a protected class and there is no state law requiring that they be permitted in mobile home parks.

Instead, there is a municipal code excluding them from mobile home parks and several state statutes requiring compliance with that municipal code. PMC 25.40.060; RCW Chapter 59.20. Respondent's argument to the contrary – and correspondingly, the trial court's decision based thereon – is without legal support and is in fact inconsistent with the existing law. The trial court's decision invalidating PMC 25.60.040 and vacating Violation CEB2005-0502 and the Code Enforcement Board's affirmation of Violation CEB2005-0502 should therefore be overturned.

DATED this 10<sup>th</sup> day of August, 2007.

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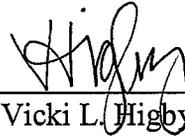
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10th day of August, 2007, I caused to be served a true and correct copy of the foregoing reply brief REPLY BRIEF as follows:

|               |                      |                       |
|---------------|----------------------|-----------------------|
| <u>      </u> | U.S. MAIL            | George Fearing        |
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