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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

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

Respondent,

v.

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

Appellants,

and,

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

Appellant.

DEPARTMENT OF REVENUE'S REPLY BRIEF

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TABLE OF CONTENTS

I. ARGUMENT 1

A. Under The Washington Constitution, All Municipal Property Taxes Must Be Uniform. 1

1. Article VII, Section 9 defines the scope of the taxation powers the Legislature may grant to municipalities. 2

2. Article VII, Section 9 expressly requires uniform property taxes. 6

3. There is no exception from the uniformity requirement. 9

a. Article VII, Section 10 does not excuse the City from Article VII, Section 9's uniform property tax requirement. 10

b. The drafters of the 1930 and 1966 amendments did not intend to allow uniformity exceptions for municipalities. 12

B. The Plain Meaning Of RCW 35A.11.020 Incorporates Both The Authority Granted In Article VII, Section 9 And The Limitations On That Authority. 16

1. The Department's interpretation is reasonable. 17

2. Even if the statute is ambiguous, the City's interpretation results in unlikely and strained consequences. 20

C. The Department's Opinion Letter Was Correct And Well Within Its Authority. 23

D. Mandamus Does Not Lie To Compel An Unauthorized, Unlawful, Vain, Or Useless Action. 24

II. CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Advanced Silicon Materials, L.L.C. v. Grant County,
156 Wn.2d 84, 124 P.3d 294 (2005) 21

Am. Legion Post No. 149 v. Dep't of Health,
164 Wn.2d 570, 192 P.3d 306 (2008) 21

Anderson v. Chapman,
86 Wn.2d 189, 543 P.2d 229 (1975) 11

Belas v. Kiga,
135 Wn.2d 913, 959 P.2d 1037 (1998) 14

Black v. State,
67 Wn.2d 97, 406 P.2d 761 (1965) 8

Caffall Bros. Forest Prods., Inc. v. State,
79 Wn.2d 223, 484 P.2d 912 (1971) 25

Carkonen v. Williams,
76 Wn.2d 617, 458 P.2d 280 (1969) 4, 5

City of Bothell v. Barnhart,
172 Wn.2d 223, 257 P.3d 648 (2011) 11

City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,
136 Wn.2d 38, 959 P.2d 1091 (1998) 24

City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1,
181 Wn. App. 326, 325 P.3d 419 (2014) ..... passim

Cmty. Telecable of Seattle, Inc. v. City of Seattle,
164 Wn.2d 35, 186 P.3d 1032 (2008) 18

Commonwealth Title Ins. Co. v. City of Tacoma,
81 Wn.2d 391, 502 P.2d 1024 (1972) 8

Covell v. City of Seattle,
127 Wn.2d 874, 905 P.2d 324 (1995) 8, 15

Denman v. City of Tacoma,
170 Wash. 406, 16 P.2d 596 (1932) 7

Dep't of Ecology v. Campbell & Gwinn, LLC,
146 Wn.2d 1, 43 P.3d 4 (2002) 17

Eugster v. City of Spokane,
118 Wn. App. 383, 76 P.3d 741 (2003) 24

Five Corners Family Farmers v. State,
173 Wn.2d 296, 268 P.3d 892 (2011) 20

Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area,
134 Wn.2d 825, 953 P.2d 1150 (1998) 5, 6, 7, 8

Grp. Health Co-op. of Puget Sound, Inc. v. Dep't of Revenue,
106 Wn.2d 391, 722 P.2d 787 (1986) 21

Inter Island Tel. Co. v. San Juan County,
125 Wn.2d 332, 883 P.2d 1380 (1994) 20

King County v. City of Algona,
101 Wn.2d 789, 681 P.2d 1281 (1984) 8

Larson v. Seattle Popular Monorail Auth.,
156 Wn.2d 752, 131 P.3d 892 (2006) 3, 4

Okeson v. City of Seattle,
150 Wn.2d 540, 78 P.3d 1279 (2003) 8

Pac. First Fed. Sav. & Loan Ass'n v. Pierce County,
27 Wn.2d 347, 178 P.2d 351 (1947) 21

Pierce County. v. State,
159 Wn.2d 16, 148 P.3d 1002 (2006) 9

State ex rel. O'Connell v. Port of Seattle,
65 Wn.2d 801, 399 P.2d 623 (1965) 11

State ex. rel. Atwood v. Wooster,
163 Wash. 659, 2 P.2d 653 (1931) 14

State ex. rel. Chamberlin v. Daniel,
17 Wash. 111, 49 P. 243 (1897) 13

State ex. rel. Nettleton v. Case,
39 Wash. 177, 81 P. 554 (1905) 7

State v. Cameron,
90 Wash. 407, 156 P. 537 (1916) 22

State v. J.P.,
149 Wn.2d 444, 69 P.3d 318 (2003) 17

State v. Pannell,
173 Wn.2d 222, 267 P.3d 349 (2011) 9

State v. Reyes,
104 Wn.2d 35, 700 P.2d 1155 (1985) 19

Union High Sch. Dist. No. 1, Skagit County v. Taxpayers of Union High Sch. Dist. No. 1 of Skagit County,
26 Wn.2d 1, 172 P.2d 591 (1946) 7

Wash. Water Jet Workers Ass'n v. Yarbrough,
151 Wn.2d 470, 90 P.3d 42 (2004) 2, 12, 16

Weyerhaeuser Timber Co. v. Roessler,
2 Wn.2d 304, 97 P.2d 1070 (1940) 7

Constitutional Provisions

Const. art. I, § 22 11

Const. art. VII, § 1 ..... passim

Const. art. VII, § 2 ..... 10, 13

Const. art. VII, § 3 13

Const. art. VII, § 4 13

Const. art. VII, § 5 14

Const. art. VII, § 6 14

Const. art. VII, § 7 14

Const. art. VII, § 8 14

Const. art. VII, § 9 ..... passim

Const. art. VII, §10 ..... passim

Const. art. XI, § 12 ..... passim

Statutes

Laws of 1971, Ex. Sess., ch. 288, § 4 15

RCW 7.16.170 24

RCW 35.23.440 19

RCW 35.27.370(8) 19

RCW Title 35A 21

RCW 35A.11.020 ..... passim

RCW 35A.84.010 ..... 21, 22

RCW 53.08.010 19

RCW Title 84 23

RCW 84.08.010 24

RCW 84.08.010-.020 23

RCW 84.08.080 ..... 23, 24

RCW 84.36 22

RCW 84.36.005 23

RCW 84.36.379 15

RCW 84.36.379-.383 15

Other Authorities

A. E. Harsch & G. A. Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 Wash. L. Rev. 225 (Autumn 1958) 2, 4, 14

A. Harsch, *Symposium: The Washington Tax System—How it Grew*, 39 Wash. L. Rev. 944 (1964) ..... passim

I. ARGUMENT

The Washington Constitution expressly mandates that all property taxes enacted by a City be uniform. There is no exception. The City admits its Ordinance creates a non-uniform city property tax. Therefore, the Ordinance is unconstitutional and contrary to RCW 35A.11.020.

The City argues that uniformity is "of no concern," because it reads Article VII, Section 9 as doing nothing more than excluding the Legislature from local taxation. Article VII, Section 9 does allow the Legislature to grant taxation powers to municipalities, but any taxes on persons and property "shall be uniform." When the Legislature granted authority in RCW 35A.11.020, it incorporated the requirement that city taxes "shall be uniform" by requiring city powers of taxation to be "*within constitutional limitations.*" In other words, the Legislature plainly included the uniformity limitation in its grant of powers to cities.

The Department's opinion letter is correct: The County had no duty to violate uniformity by implementing the City's unlawful Ordinance. This Court should reverse the trial court's order and writ of mandamus.

A. Under The Washington Constitution, All Municipal Property Taxes Must Be Uniform.

Article VII, Section 9 expressly requires that municipally-enacted property taxes be uniform. The City does not dispute that its Ordinance

results in non-uniform property taxation. Resp't City of Spokane's Resp. to Appellant State of Washington, Dep't of Revenue Opening Brief ("Resp.") at 23. Rather, the City argues that non-uniform taxation is "of no concern." *Id.* The City's lack of concern is at odds with the plain language of the Constitution and cases addressing city tax authority and uniform property taxes. Uniform property taxation is a bedrock principle in Washington.

1. Article VII, Section 9 defines the scope of the taxation powers the Legislature may grant to municipalities.

When interpreting constitutional provisions, a court looks to the plain language of the text and will accord it a reasonable interpretation. *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). Article VII, Section 9 states in relevant part:

> For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

The plain meaning of this text is to define the scope of legislative taxing authority the Legislature may grant to a municipality. *See* A. E. Harsch & G. A. Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 Wash. L. Rev. 225, 262-63 (Autumn 1958).

The City strongly disagrees that Article VII, Section 9 has such a purpose. The City conflates the purpose of Section 9 with a different

constitutional provision, Article XI, Section 12. *See* Resp. at 9-10, 21-22; *see also* Resp't City of Spokane's Response to Appellants' Horton and Chase Opening Brief ("Resp. to Horton & Chase") at 30-31. Specifically, the City argues that Section 9's sole purpose is to "exclusively vest authority in the City—to the exclusion of the legislature" arguing that the "Supreme Court has repeatedly explained this." Resp. at 9-10, 21-22 (citing *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 131 P.3d 892, 894 (2006)). But the City misrepresents Section 9's purpose and the cited authority.

The text of Section 9 says nothing about excluding the Legislature from local taxation. Const. art. VII, § 9. The framers addressed when the Legislature may invest taxation authority in municipalities and placed limits on that authority. *Id.* Excluding the Legislature from assessing and collecting local taxes is the distinctive and plain purpose of Article XI, Section 12 (aka "Home Rule" provision) *not* Article VII, Section 9. Article XI, Section 12 provides:

> The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, *by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.*

(Emphasis added). These two constitutional provisions, as commentators note, are distinct, not duplicative:

> These sections, which are complementary, embody two distinct precepts. *One* [Const. art. VII, § 9] *is definitive of the taxing power which may be enjoyed by local subdivisions of government*; the other [Const. art. XI, § 12] is a restriction upon the power of the state legislature.

Harsch & Shipman, 33 Wash. L. Rev. at 263 (emphasis added).

In arguing that the Supreme Court in *Larson* offered a different characterization of Section 9, the City substitutes the Court's use of the word "similar" with the word "same." Resp. at 9. It is true the two sections are "similar," because they contain overlapping language and often appear together in discussions of municipal taxation.[1] *See* Harsch & Shipman, 33 Wash. L. Rev. at 262; *see, e.g.*, *Carkonen v. Williams*, 76 Wn.2d 617, 627, 458 P.2d 280 (1969); *Larson*, 156 Wn.2d at 758. But this shows only that Section 9 and Section 12 concern the subject matter of local taxation, not that the framers intended these sections to serve identical purposes. Given that both provisions support the principle that

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[1] Noted commentator Alfred Harsch describes how these sections overlap:

> A portion of section 9 and the final clause of section 12 are, at least in part, overlapping. The provisions of both sections are permissive in character and clearly show that municipal corporations are without inherent power of taxation, being dependent upon legislative grant. The legislature may give such authority or it may withhold it.

A. Harsch, *Symposium: The Washington Tax System—How it Grew*, 39 Wash. L. Rev. 944, 950 (1964); *see City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1*, 181 Wn. App. 326, 325 P.3d 419 (2014) (citing Harsch article).

local tax powers are "dependent upon legislative grant," it is unremarkable that some cases focus on the similarities between these sections, not their differences. *See, e.g., Carkonen,* 76 Wn.2d at 627.

When the differences in Article VII, Section 9 and Article XI, Section 12 matter, our Supreme Court applies them independently. *See, e.g., Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area*, 134 Wn.2d 825, 833-40, 953 P.2d 1150 (1998). In *Granite Falls Library*, the Court addressed these sections in considering the application of local tax authority to property located in a library capital facility area. *Id.* The Court first considered whether the County, not a library capital facility area district, was the governmental body levying the tax. *Id.* The tax applied only to property within a certain area around Granite Falls, not to other parts of Snohomish County. Accordingly, if the County levied the tax, the library levy would violate the uniformity requirements of Article VII, Sections §1 and 9 because all of the taxable property in the County would not be paying the same levy rate. *Id.* The Court held that that the library capital facility area, not the County, was the governmental body that levied the property tax levy at issue, and thus the tax satisfied uniformity because the levy was uniform within the jurisdiction of the body levying the tax. *Id.* at 833.

Next, the Supreme Court separately considered Article XI, Section 12 to determine whether having appointed county council members on the governing body was an unconstitutional delegation of authority to the County to impose taxes for municipal purposes in violation of Article XI, Section 12. *Granite Falls Library*, 134 Wn.2d at 836-37. The Court held that the Act creating library facility areas did not violate Section 12 where the only control the County exerted was to appoint the independent governing board. *Id.* at 838-39. Accordingly, as the analysis in *Granite Falls Library* demonstrates, while these sections concern similar subjects they serve different purposes.

In summary, this Court should conclude that Article VII, Section 9 is definitive of the taxing power that may be enjoyed by local subdivisions of government and reject the City's argument that the purposes of Article VII, Section 9 and Article XI, Section 12 are the same.

2. Article VII, Section 9 expressly requires uniform property taxes.

The City argues that "Article VII, Section 9 is not—and must not be construed as—a constitutional limitation" on the Legislature's authority to delegate taxation powers to municipalities. Resp. at 21. But the Constitution is a limitation on State power. *Union High Sch. Dist. No. 1, Skagit County v. Taxpayers of Union High Sch. Dist. No. 1 of Skagit*

County, 26 Wn.2d 1, 7, 172 P.2d 591 (1946). Numerous cases hold that Section 9 is a constitutional limitation on legislative grants of taxation authority to local governments.

Specifically, the Supreme Court has recognized that Section 9 contains two *express* constitutional limitations on legislative grants of taxation powers to municipalities. First, the taxes levied by the municipality must be for "corporate purposes." *Weyerhaeuser Timber Co. v. Roessler*, 2 Wn.2d 304, 307-08, 97 P.2d 1070 (1940); *Denman v. City of Tacoma*, 170 Wash. 406, 407-08, 16 P.2d 596 (1932). Second, municipal levied taxes must be "uniform in respect to persons and property within the jurisdiction of the body levying the same." *Granite Falls Library*, 134 Wn.2d at 833-36; *State ex. rel. Nettleton v. Case*, 39 Wash. 177, 180, 81 Pac. 554 (1905).

The City cites *City of Wenatchee* for the proposition that Section 9 contains no constitutional limitations on the Legislature's authority to delegate taxation powers to municipalities. Resp. at 21 (citing *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1*, 181 Wn. App. 326, 333-36, 325 P.3d 419 (2014)). The City again mischaracterizes a case holding. In *City of Wenatchee*, this Court addressed a public utility district's (PUD's) argument that it was protected from taxation under a "governmental immunity" doctrine pursuant to either Article VII, Section

9 or Article XI, Section 12. 181 Wn. App. at 335. This Court held that Section 9 did not contain constitutional protection against city taxes on the water services revenue of the PUD. *Id.* at 334-36 (noting that city property would be exempt). Specifically, this Court noted that the PUD could "not point to any language" in the plain language of these constitutional provisions that imposed that limitation. *Id.* at 335-36. Contrary to the City's assertion, this decision does not provide support for ignoring the limitations that are *expressly* stated, like uniform property taxation. To do so would be contrary to those cases mentioned above that apply these provisions as limitations. *See, e.g.*, *Granite Falls Library*, 134 Wn.2d at 833-36.

The City also argues that the Legislature may bestow *other* powers like the "conceptually distinct" power to exempt. *See* Resp. at 8-10.[2] However, the City's constitutional analysis fails to recognize that even if

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[2] Some cities enjoy the power to create exemptions from local excise taxes. But this fact does not affect the uniformity limitations in Article VII, Section 9. The uniformity limitations apply only to *direct* taxes, like property and poll taxes, not to *indirect* taxes such as excise, license, or business and occupation (B&O) taxes. *Black v. State*, 67 Wn.2d 97, 99-100, 406 P.2d 761 (1965). With respect to excise taxes, the Legislature may authorize municipalities to impose different tax rates and grant tax exemptions without a uniformity violation. *See Commonwealth Title Ins. Co. v. City of Tacoma*, 81 Wn.2d 391, 394-96, 502 P.2d 1024 (1972); *see also, e.g., King County v. City of Algona*, 101 Wn.2d 789, 791-92, 681 P.2d 1281 (1984) (B&O tax).

The same cannot be said of property taxes. Cities are still restrained by constitutional uniformity limitations. *See, e.g.*, *Covell v. City of Seattle*, 127 Wn.2d 874, 891, 905 P.2d 324 (1995) (street utility charge is an unconstitutional non-uniform property tax); *see also, e.g., Okeson v. City of Seattle*, 150 Wn.2d 540, 556-58, 78 P.3d 1279 (2003) (method of imposing electricity fees constituted an unlawful and non-uniform property tax). In arguing about authority to create tax exemptions, the City errs in failing to distinguish between excise taxes and property taxes. Resp. at 8-10, 26.

the Legislature had granted to cities the statutory power to exempt properties from tax, Section 9 would still limit the Legislature, regardless of whether the Legislature has labeled the power as a taxation or exemption power. This is because Constitution should not be construed to do indirectly what it cannot do directly. *Pierce County. v. State*, 159 Wn.2d 16, 48, 148 P.3d 1002 (2006). And constitutional provisions should be construed so that no portion is rendered superfluous. *State v. Pannell*, 173 Wn.2d 222, 230, 267 P.3d 349 (2011). The City construes Article VII, Section 9 limitations as unessential and easily circumvented.

In summary, unless plain, simple, direct words like "such taxes shall be uniform in respect to…property" have lost their meaning, the Legislature lacks the authority to invest a city with the legislative power to cause a non-uniform property tax within its jurisdiction.

3. There is no exception from the uniformity requirement.

The City seeks to create an exception to the uniformity requirements. As explained above, the City initially ignores the purpose and express limitations in Article VII, Section 9. Beyond that, the City contends that it has general authority, like the Legislature, to ignore uniformity requirements when creating tax exemptions for senior citizens. Resp. at 12. The City relies on Article VII, Sections § 1 and 10, but its constitutional interpretation is flawed for two reasons. First, it engrafts an

exception to uniformity onto the Constitution that does not exist; and second, it ignores the history and plain language of Article VII.

a. Article VII, Section 10 does not excuse the City from Article VII, Section 9's uniform property tax requirement.

Article VII, Section 10 gives the Legislature authority to grant property tax relief to retired property owners:

> *Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:*
>
> *The legislature* shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners.

(Emphasis added.) Section 10 expressly applies only to the limitations in the provisions of Article VII, Sections 1 and 2. The "notwithstanding" clause relieves the Legislature from complying with the uniformity limitation in Article VII, Section 1 to the extent it grants property tax relief to retired property owners. In contrast, Article VII, Section 10 says nothing about waiving Article VII, Section 9's requirement that city taxes "shall be uniform in respect to persons and property." The City's reliance on Article VII, Section 10 is contrary to its plain language.

To make its "broad grant" of authority interpretation work within the constitutional framework, the City essentially takes the

"notwithstanding" clause in Article VII, Section 10, which partly concerns the uniformity limitations in Section 1, and applies it to "wherever else in the Washington Constitution it [uniformity] might be found." Resp. at 23. In essence, the City invites this Court to add an exception from Section 9's uniformity requirements to Section 10.

This Court should decline that invitation. *Anderson v. Chapman*, 86 Wn.2d 189, 191, 543 P.2d 229 (1975). Courts may not create exceptions from constitutional requirements, no matter how desirable or expedient such an exception might seem. *City of Bothell v. Barnhart*, 172 Wn.2d 223, 229, 232, 257 P.3d 648 (2011) (court cannot create exception to Article I, Section 22's requirement of trial by impartial jury of the county in which offense is charged for district court serving an area straddling two counties); *State ex rel. O'Connell v. Port of Seattle*, 65 Wn.2d 801, 806, 399 P.2d 623 (1965) (court cannot create an exception to constitutional prohibition on gifts for port's promotional hosting even though it would result in loss of business); *see also City of Wenatchee*, 181 Wn. App. at 335 (the courts shall not engraft "governmental immunity" language onto the constitution).

The fact that a City misunderstanding resulted in an increase in low-income senior property taxes does not justify engrafting language

onto the constitution.[3] Accordingly, this Court should not interpret Article VII, Section 10 as excusing the City from the limitations in Section 9.

b. The drafters of the 1930 and 1966 amendments did not intend to allow uniformity exceptions for municipalities.

Nothing in the Constitution indicates the drafters intended to relieve municipalities of the uniformity requirements applying to property taxes. Quite the opposite. The words of the constitutional text will be given their common and ordinary meaning, as determined at the time they were drafted. *Washington Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). Courts may also examine the historical context of a constitutional provision for guidance. *Id.*

Article VII, Section 1 states, in relevant part:

> The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only . . . . Such property *as the legislature may by general laws* provide shall be exempt from taxation.

(Emphasis added.) The City claims it possesses the same exemption power as the Legislature that it may exercise in a manner immune from the uniform property tax requirements. Resp. at 23-26. But the City's

[3] The City can remedy the situation in the future by paying for road improvements with bond levies or by cutting its budget and requesting a smaller levy from all taxpayers in future years.

interpretation is inconsistent with the plain meaning and historical context of these constitutional provisions.

With respect to the history of these Taxation provisions, between 1889 and 1930, the uniformity limitation, and the limited exceptions to the requirement, appeared in Article VII, Section 2 (instead of Section 1). During this period, "all property" was to be both assessed and taxed at the state level at "uniform and equal rate." Const. art. VII, § 2; *see generally*, A. Harsch, *Symposium: The Washington Tax System—How it Grew*, 39 Wash. L. Rev. 944, 948 (1964). The Legislature's general authority to create property tax exemptions was limited to statutes exempting governmental or quasi-governmental property or those specifically identified in the Constitution, such as deduction of debts from credits and a $300 personal property deduction. *See State ex. rel. Chamberlin v. Daniel*, 17 Wash. 111, 112-13, 122-23, 49 P. 243 (1897) (statutes exempting $500 in personal property and $500 in improvements violated requirement that all property be taxed uniformly without express exemption in the Constitution). In other words, the Legislature had limited authority to create property tax exemptions.

In 1930, the drafters amended the constitution to "fundamentally" alter the tax structure. Amendment 14 of the Washington Constitution struck all of Article VII, Sections 1, 2, 3, and 4, replacing it with relevant

parts of Article VII, Section 1 cited above. The drafters of Amendment 14 left Sections 5, 6, 7, 8, and 9 alone. The Amendment consolidated several provisions and allowed "the legislature" to classify different types of property for purposes of property taxation, among other things. *See State ex. rel. Atwood v. Wooster*, 163 Wash. 659, 664, 2 P.2d 653 (1931); Harsch, 39 Wash. L. Rev. at 956-57 (on the purpose and effect of the 1930 Amendment). However, the drafters left two important qualifications: All taxes must be uniform within a created class, and all real estate constitutes one class. *Belas v. Kiga*, 135 Wn.2d 913, 922, 959 P.2d 1037 (1998). The drafters also permitted "the legislature" to exempt property from property taxation "by general laws" without violating Article VII, Section 1's uniformity and class requirements. Harsch, 39 Wash. L. Rev. at 956-57; Harsch & Shipman, 33 Wash. L. Rev. at 248-56.

The drafters were specific and used the words "the legislature" in reference to each of these provisions. Article VII, section 1 (Wash. Const. Amendment 14). The drafters did not fundamentally alter the property tax system to include other entities to which the Legislature could provide taxing powers. There is no doubt that drafters were aware of how to refer to municipalities because Article VII, Section 1 expressly exempts municipal property from taxation.

Had the drafters of Amendment 14 intended to relieve municipalities, in the exercise of their taxing authority, from the uniformity requirements in property taxation they would have done so. The City also provides no evidence that the purpose of Amendment 14 was to allow municipalities to enact locals laws exempting property in the same manner as the Legislature. In fact, since the 1930 amendment, City property taxes have been routinely restrained by constitutional uniformity. *See, e.g., Covell*, 127 Wn.2d at 891.

Many years later, in 1966, the people approved the 47th Amendment, appearing in Article VII, Section 10, which authorized "the legislature" to provide a property tax preference for seniors by allowing it to create non-uniform property taxation in this instance. Notably, nothing in Amendment 47 changed how *municipal* taxation worked or relieved municipalities of the uniformity requirement.

The Legislature achieved the specific purpose of the 1966 amendment when it first enacted property tax relief for retired persons in 1971. Laws of 1971, Ex. Sess., ch. 288, § 4 (now codified under RCW 84.36.379-.383). The Legislature expressly referenced its authority under Article VII, Section 10 in the statutory findings clause. RCW 84.36.379. Nothing in the 1971 legislation or later legislation indicates the Legislature contemplated that municipalities were granted the same authority under

Article VII, Section 10, or that municipalities had any authority to create non-uniform property taxes.

Instead, the people left untouched the two constitutional provisions that specifically apply to local taxation. Article VII, Section 9 (1889) and Article XI, Section 12 (1889) as part of the fundamental alteration of the tax system, nor have they been amended since then. *See* Harsch, 39 Wash. L. Rev. at 956. These sections have the same common and ordinary meaning as when they were framed in 1889. *See Washington Water Jet Workers Ass'n*, 151 Wn.2d at 477.

Consequently, uniformity is more than a "concern" for cities under Article VII, Sections 1 and 9—it is a constitutional requirement. Because there is no exception from the requirement, and the City admits that its ordinance results in non-uniform taxation, this Court should reverse the trial court's ruling that the Ordinance did not violate uniformity.

B. The Plain Meaning Of RCW 35A.11.020 Incorporates Both The Authority Granted In Article VII, Section 9 And The Limitations On That Authority.

The core basis of the City's claim of authority to pass the Ordinance is found in the last sentence of RCW 35A.11.020, which states:

> *Within constitutional limitations*, legislative bodies of code cities shall have within their territorial limits *all powers of taxation for local purposes* except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

(Emphasis added.) When interpreting a statute the goal is to discern and implement the intent of the Legislature. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The surest indication of legislative intent is the plain meaning of the statute, which is gleaned "from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

When the Legislature gave code cities all powers of taxation for local purposes "[w]ithin constitutional limitations," the Legislature made its intent in RCW 35A.11.020 quite plain: Code cities remain subject to all constitutional limitations, including the requirements that property taxes be uniform. To read RCW 35A.11.020 any other way would be contrary to both legislative intent and the Constitution.

1. The Department's interpretation is reasonable.

The reasonable interpretation of "[w]ithin constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation" is that the Legislature gave effect to Article VII, Section 9. As explained above, Section 9 defines the scope of grantable taxation powers. It also places express limitations on those

powers, including uniformity. The Legislature may grant broad tax powers, but only to the extent Section 9 permits.

The City argues the Department's interpretation does not take into account the plural "powers" or the breadth of "all." Resp. at 12-18. The City's criticism is misguided. Without doubt, "taxes" in Section 9 is broad enough to include any exaction whose primary purpose is raising revenue, including property and poll taxes, excise taxes, and taxes on trades, professions, and occupations. *See, e.g., Cmty. Telecable of Seattle, Inc. v. City of Seattle*, 164 Wn.2d 35, 37, 186 P.3d 1032 (2008) (first-class city's taxation of telephone businesses). And, as explained above, Article VII, Section 9 contemplates broad authority for cities to generate revenue, as well as to create tax preferences, so long as the tax is for corporate purposes and taxes on persons or property are uniform.[4]

The City is restrained by constitutional limitations, including the uniformity requirement in Article VII, Section 9. The Legislature underscored this requirement in RCW 35A.11.020 by including the phrase "[w]ithin constitutional limitations." This Court should give the Legislature's words meaning. In fact, the Legislature could have said nothing at all about constitutional limitations and the statute would still be

[4] *See* footnote 2, *supra*, explaining the distinction between excise or indirect taxes, which unlike direct taxes, such as property and poll taxes, are not subject to uniformity.

subject to those limitations. *See State v. Reyes*, 104 Wn.2d 35, 40, 700 P.2d 1155 (1985) (where possible, courts construe statutory language so as to uphold its constitutionality).

The City compares the language of RCW 35A.11.020 to other legislative grants of taxing authority to show that its language is broader. Resp. at 18-20. But that comparison is not useful. There are many explanations for the differences in legislative enactments that do not require a conclusion that the Legislature granted cities unconstrained, limitless, general authority, including authority to create non-uniform property taxes. For example, the Legislature may limit the types of tax an entity may impose. RCW 35.23.440 (second-class cities may impose certain license taxes, property taxes, and special assessments); RCW 35.27.370(8) (towns may levy property taxes). The Legislature may link certain taxes to revenue generation for specific purposes. *See, e.g.*, RCW 53.08.010 (port districts may levy property taxes for payment of damages and compensation).

The City also argues that RCW 35A.11.020 is an "all encompassing" grant of authority including the power to exempt property from property tax. Resp. at 19; *see also id.* at 32 (arguing such an interpretation is conceivable). But for the City's interpretation to be reasonable, it must, "*at a minimum*, account for all the words in a statute."

Five Corners Family Farmers v. State, 173 Wn.2d 296, 312, 268 P.3d 892 (2011) (emphasis added). The City's interpretation of RCW 35A.11.020 is unreasonable because it gives no meaning to the words "[w]ithin constitutional limitations." RCW 35A.11.020. This is not a proper way to interpretation a statute.

The City's interpretation is also unreasonable given the importance of uniformity with respect to property taxation. Uniformity is the "highest and most important" limitation on taxing authority. *Inter Island Tel. Co. v. San Juan County*, 125 Wn.2d 332, 336-37, 883 P.2d 1380 (1994). It is entirely unreasonable to interpret "[w]ithin constitutional limitations" as not including uniformity as required by the constitution.

The plain and reasonable meaning of RCW 35A.11.020 is that the Legislature intended to grant to cities all the powers *grantable* to cities under Article VII, Section 9, subject to the express uniformity limitations therein. City property taxes must be uniform.

2. Even if the statute is ambiguous, the City's interpretation results in unlikely and strained consequences.

When a statute has more than one reasonable meaning, the statute is ambiguous, and it is appropriate to resort to aids to construction. *Advanced Silicon Materials, L.L.C. v. Grant County*, 156 Wn.2d 84, 90,

124 P.3d 294 (2005). Even if the Court were to decide that RCW 35A.11.020 is ambiguous, the City's interpretation should be rejected.

The City argues that the statute must be broadly interpreted if it is ambiguous because RCW Title 35A must be "liberally construed to carry out the objectives of the cities." *See* Resp. at 13-15, 18-19. This is an overstatement. When a tax statute is ambiguous, it must be construed most strongly against the taxing authority. *City of Wenatchee,* 181 Wn. App. at 337 (citing *Grp. Health Co-op. of Puget Sound, Inc. v. Dep't of Revenue*, 106 Wn.2d 391, 401, 722 P.2d 787 (1986)). And when a constitutional requirement is what creates doubt about the existence of authority to enact local tax legislation, courts should proceed with caution rather than assume such authority. *See Pac. First Fed. Sav. & Loan Ass'n v. Pierce County*, 27 Wn.2d 347, 353, 178 P.2d 351 (1947).

Statutes must be read together, whenever possible, to achieve a harmonious total statutory scheme that maintains the integrity of the respective statutes. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 588, 192 P.3d 306 (2008). As County officials note, RCW 35A.84.010 mandates that the City adhere to the general laws of the state with regard to property tax exemptions:

> The taxation of property in code cities shall be governed by general provisions of the law including, but not limited to,

> the provisions of . . . (6) Chapter 84.36 RCW, relating to property subject to taxation and exemption therefrom.

RCW 35A.84.010. This "governed by" language further evidences the dominant legislative role in matters related to property tax exemptions, as codified in RCW 84.36. Cities have no room to exercise independent authority to exempt property from property taxes when the Legislature has already defined those exemptions.

The City argues that there are no absurd consequences or conflicts within the property tax system because its Ordinance operates just like all other property exemptions. Resp. at 24-32. The City is wrong. For example, the City disputes that timing is a concern, yet to exempt the levy-lid lift portion requires applying a portion of the Ordinance at a point in time after the assessor determines the assessable value of the taxable property. No property tax preference is implemented after valuation and assessment of property. *See generally*, RCW 84.36; Dep't's Opening Brief at 7, 37. In fact, a century ago, the Supreme Court expressly rejected the claim that a property tax preference could be applied after assessment. *State v. Cameron,* 90 Wash. 407, 408-14, 156 P. 537 (1916). Thus, the Ordinance operates contrary to the statutory scheme and case law addressing the scheme. Nothing in RCW 35A.11.020 indicates the Legislature intended this strained result.

C. The Department's Opinion Letter Was Correct And Well Within Its Authority.

The City argues that the Department's opinion letter does not fall within the scope of RCW 84.08.080 because the Department's opinion does not involve a "construction or interpretation" of a statute in RCW Title 84. Resp. at 34. The City is incorrect. The property subject to a city's regular levy also is taxable for state purposes and all other local levy purposes under RCW Title 84. Harsch, 39 Wash. L. Rev. at 951; RCW 84.36.005. The City's Ordinance expressly states: "RCW 84.36.005 provides that all property shall be subject to assessment by the City, except as exempted from taxation by law." CP 10; *see also*, Resp. to Horton & Chase at 2, 9. Interpreting what exemptions fall under RCW 84.36.005 is deciding a question arising "in reference to the true construction" of RCW Title 84 as provided in RCW 84.08.080.

Additionally, the Ordinance results in non-uniform taxation with respect to a regular levy authorized under RCW Title 84. The Department is tasked by the Legislature to supervise the property tax system and ensure uniformity. RCW 84.08.010-.020. The Department was well within its authority in advising the County Assessor and Treasurer to remain steadfast to the uniformity requirement. RCW 84.08.010-.020.

The City argues that the Department has no authority to interpret RCW 35A.11.020. But nothing in RCW 84.08.010 or .080 requires the Department to perform its supervision, or interpretation functions without considering relevant information or referring to statutes and constitutional requirements. Indeed, to do so would be arbitrary and capricious because the Department's opinion would be formed without regard to the relevant facts and circumstances. *See City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

The trial court erred when it annulled the Department's letter.

D. Mandamus Does Not Lie To Compel An Unauthorized, Unlawful, Vain, Or Useless Action.

The City mocks the Department for the brevity of its arguments regarding the reasons why the trial court improperly issued the writ of mandamus. Resp. at 35-37. The City fails to grasp that the first 40 pages of the Department's opening brief establish the reasons why the County officials had no duty to implement the Ordinance. In the absence of a *clear* duty, no writ of mandamus may be issued. *Eugster v. City of Spokane*, 118 Wn. App. 383, 402-03, 76 P.3d 741 (2003) (citing RCW 7.16.170). Here, no duty existed because the Ordinance created a non-

uniform City property tax in violation of Article VII, Section 9. The trial court issued the writ in error.[5]

The City admits the Ordinance violates uniformity if subject to the requirement. Mandamus is not the appropriate remedy when the action to be taken would be illegal, vain, or useless. *Caffall Bros. Forest Prods., Inc. v. State*, 79 Wn.2d 223, 229, 484 P.2d 912 (1971). The trial court's order and mandate implementing the Ordinance results in the very definition of a local non-uniform property tax in requiring two different regular levy rates to be applied to real property.

II. CONCLUSION

For the foregoing reasons, and those discussed in the Department's opening brief, this Court should reverse the trial court's Order finding the Ordinance valid and constitutional and vacate the Writ of Mandamus.

RESPECTFULLY SUBMITTED this 18th day of March, 2016.

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[5] The City begrudgingly acknowledges mandamus should be denied for a constitutional violation. Resp. at 38.

PROOF OF SERVICE

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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 18th day of March, 2016, at Tumwater, WA.

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