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No. 93788-5

IN THE SUPREME COURT
STATE OF WASHINGTON

CITY OF SPOKANE, a municipal corporation,

Petitioner,

v.

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

and

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

Respondents.

CONSOLIDATED REPLY IN SUPPORT OF PETITION FOR REVIEW

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Court Rules

RAP 13.4(d) 1, 3

Petitioner City of Spokane (“City”), through counsel, submits the following consolidated reply in support of its Petition for Review pursuant to RAP 13.4(d).

I. INTRODUCTION

Respondent Department of Revenue (“DOR”) has raised two new issues in responding to the City’s Petition: (1) whether the phrase “within constitutional limitations” in RCW 35A.11.020 was intended to prohibit first-class charter cities from granting local property tax exemptions; and (2) whether review of the constitutional issues presented should be denied in light of “disruptions” and “complications” that would supposedly result from a decision in the City’s favor.

The City agrees that review is warranted to decide the meaning of the phrase “within constitutional limitations.” When contrasted with other statutes that confer much narrower taxation authority—namely the power to assess and collect taxes—there can be no doubt that RCW 35A.11.020 confers the broadest possible authority the Constitution allows, including the power to exempt.

The City does not agree that DOR’s hypothetical “disruptions” and “complications” warrant denial of review. The questions presented are of constitutional magnitude. If the Constitution allows the City to grant local

property tax exemptions, then any hypothetical impact upon DOR's administration of the property tax system is irrelevant.

Respondents Horton and Chase (the "County"), have raised a new issue not decided by the Court of Appeals: whether the writ of mandamus compelling them to implement the City's Ordinance should be reinstated in the event the Ordinance is deemed constitutional.

Respondents, as the "ex officio" collectors of municipal taxes, have a statutory duty to implement property taxes certified to them by the City. They have neither the authority nor the discretion to refuse, *even if they question the legality of the tax*. The County's refusal to follow that simple rule prompted the Superior Court to issue a writ of mandamus. If this Court accepts review and decides that the Ordinance is constitutional, the propriety of that decision will be a foregone conclusion.

II. COUNTERSTATEMENT OF NEW ISSUES RAISED BY RESPONDENTS

1. Whether the Legislature, in granting the City all powers of taxation "within constitutional limitations," intended to convey only the power to assess and collect taxes, to the exclusion of the power to exempt.

2. Whether the Court should consider "disruptions" and "complications" cited by DOR in deciding whether to accept review of the constitutional questions presented.

3. If the Court accepts review to decide the constitutionality of the City's Ordinance, whether it should revisit longstanding precedent holding that mandamus is a proper remedy to compel county assessors and county treasurers to perform their ministerial duty of collecting city taxes.

III. ARGUMENT

RAP 13.4(d) allows a party seeking discretionary review to file a reply brief when the answering party "seeks review of issues not raised in the petition for review." RAP 13.4(d). New issues need not have been designated as such by the answering party; to the extent the answering brief touches upon a new issue, RAP 13.4(d) allows the petitioner to respond. *Blaney v. Int'l Ass'n of Machinists and Aerospace Workers*, Dist. No. 160, 151 Wn.2d 203, 210 n.3 (2004); *Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 139 n.6 (2005).

DOR has raised two new issues that were not addressed by the City: (1) whether the phrase "within constitutional limitations" in RCW 35A.11.020 limits the statute's broad grant of "all powers of taxation" to only the power to assess and collect taxes, to the exclusion of the power to exempt (DOR Answer at 1-2, 10, 15); and (2) whether "disruptions" and "complications" that would purportedly result from allowing first-class charter cities to grant local property tax exemptions warrant denial of

review (DOR Answer at 3, 19-20). The County, for its part, has raised a new issue not decided by the Court of Appeals: whether the writ of mandamus compelling the County to implement the Ordinance should be reinstated if this Court concludes that the Ordinance is constitutional.

(County Answer at 17-19). The City replies as follows.

A. **The Court should clarify that RCW 35A.11.020 grants first-class charter cities every taxation power available to them under the Constitution, with no additional restrictions imposed by the Legislature.**

DOR contends that first-class charter cities are prohibited from granting local property tax exemptions not only by Article VII, Sections 9 and 10, but also by RCW 35A.11.020. According to DOR, construing the statute's broad grant of "all powers of taxation" to include the power to exempt would be "contrary to express legislative intent." DOR Answer at 15. The better interpretation, DOR argues, is that the Legislature intended to convey only the power to assess and collect taxes, to the exclusion of the power to exempt. *Id.*

This interpretation is at odds with the statute's plain language and well-settled principles of statutory construction. When a statute's meaning is plain on its face, courts must give effect to that meaning as a definitive expression of legislative intent. *Christensen v. Ellsworth*, 162 Wn.2d 365, 372-73 (2007). "Plain meaning is discerned from the ordinary meaning of

the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* at 373.

The meaning of RCW 35A.11.020 is plain on its face: first-class charter cities have all powers of taxation available to them under the Constitution. The phrase “within constitutional limitations” cannot be interpreted to limit “all powers of taxation” to something less than what the Constitution allows. The only rational interpretation of “all powers of taxation . . . within constitutional limitations” is all powers of taxation, *to the full extent* of what the Constitution allows.

DOR suggests that “within constitutional limitations” translates to “only the power to assess and collect.” In DOR’s view, the Legislature believed that the Constitution restricts cities to assessing and collecting taxes, and decided to use “within constitutional limitations” as shorthand for that restriction.

That argument fails for two main reasons. First, the Legislature has expressly directed courts to interpret Title 35A RCW to convey the “broadest possible” powers available under the Constitution:

The purpose and policy of this title is to confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state. Any specific enumeration of

municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality.

RCW 35A.01.010 (emphasis added). Applying that mandate to RCW 35A.11.020, the grant of “all powers of taxation . . . within constitutional limitations” means each and every power available under the Constitution, with no additional restrictions imposed by the Legislature.

Second, DOR’s construction conflicts with the language used in other statutes conferring local taxation authority. The Legislature knows how to convey only the power to assess and collect property taxes when that is what it intends. For example:

- Second-class cities are only authorized to provide for the “*assessment, levying and collecting*” of property taxes. RCW 35.23.440(46) (emphasis added);
- Towns are only authorized to “*levy and collect*” property taxes. RCW 35.27.370(8) (emphasis added);
- Fire protection districts are only authorized to “*levy and enforce*” property taxes. RCW 52.12.021 (emphasis added);
- Public utility districts are only authorized to “*levy*” a property tax. RCW 54.16.080 (emphasis added).

These limited grants of authority to impose and/or collect taxes stand in sharp contrast to “all powers of taxation” granted to first-class charter cities. The use of far broader language in RCW 35A.11.020 indicates that the Legislature meant to grant something more than just the power to assess and collect taxes. *See Millay v. Cam*, 135 Wn.2d 193, 202 (1998) (“It is well settled that where the Legislature uses certain language in one instance but different, dissimilar language in another, a difference in legislative intent is presumed.”).

As explained in the City’s opening brief, the key question is whether the *Constitution* allows the City to grant local property tax exemptions. If the Court accepts review to decide that question, it should confirm that RCW 35A.11.020 authorizes the City to exercise each and every power available to it under the Constitution, with no independent restrictions imposed by the Legislature.

B. Hypothetical “disruptions” to DOR’s administration of the property tax system are not relevant to the constitutional questions presented.

In an argument that failed to persuade either of the lower courts, DOR insists that a ruling in the City’s favor will “disrupt the system” and “unduly complicate” its administration of the property tax system. DOR Answer at 3, 19. With due respect, the fact that a decision in the City’s

favor might make DOR's job more difficult (and there is no evidence in the record that it would), the incremental burden on DOR has no bearing on the analysis. The question is what taxation powers are available to the City under the Constitution. Whether DOR would be inconvenienced is irrelevant.

Moreover, as Judge Fearing appropriately concluded, DOR's doomsday predictions are overblown: "The county assessor and state Department of Revenue must already equalize assessments with state tax exemptions bestowed to disabled veterans and elderly. Extending the exemptions to city levies should not be impossible. The Department of Revenue employs astute analysts and uses competent computer technology to perform equalizations." *City of Spokane v. Horton*, 380 P.3d 1278, 1287 (2016) (Fearing, J. dissenting). Accordingly, the Court should not consider any hypothetical impact on DOR's administration of the property tax system in deciding whether to accept review or in reaching the merits of the constitutional issues presented.

C. **It is well-settled that mandamus is the proper remedy to compel county assessors and treasurers to perform their ministerial, non-discretionary duties as the "ex officio" collectors of city taxes.**

The County seeks review of an issue not decided by the Court of Appeals: whether the writ of mandamus issued by the Superior Court

should be reinstated in the event this Court concludes that the City's Ordinance is constitutional. County Answer at 17-19. It is already well-established that mandamus is the proper remedy to compel Respondents, as the ministerial collectors of city taxes, to implement the Ordinance. The Court should decline to accept review of this question.

A writ of mandamus “compel[s] the performance of an act which the law especially enjoins as a duty resulting from [public] office.” RCW 7.16.160. The duty in question must be “ministerial,” meaning that it “leave[s] nothing to the exercise of discretion or judgment.” *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 599 (2010); *see also Brown v. Owen*, 165 Wn.2d 706, 725 n.10 (2009) (“A duty is ministerial where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.”) (quotation and citation omitted).

The City cannot implement the Ordinance on its own. Instead, it must rely on Respondents, who are charged by statute as the “ex officio” collectors of city taxes. RCW 36.29.100. Respondents must collect city taxes in the same manner they collect all other taxes. RCW 36.29.130. Respondents are “**subordinate ministerial officers**” in this role. *State ex rel. Godfrey v. Turner*, 113 Wash. 214, 218-19 (1920) (emphasis added).

Their sworn duty is to “collect[] taxes as they are certified” to them by the City. *Id.* at 219.

Collecting city taxes is the archetype of a ministerial function. It involves no exercise of discretion whatsoever. As explained in *Turner*, county officials are **expressly forbidden from inquiring into the validity or legality of a city tax**. As “subordinate ministerial officers,” they have neither the authority nor the discretion to perform that judicial function. *Id.* at 219, 223. Accordingly, they may not refuse to implement a tax, even if they believe the tax is illegal. *Id.* at 219. Their sworn duty is simply to “collect the amount of taxes shown by the certificate roll in [their] hands, placed there by the duly constituted [city] authorities.” *Id.* at 223; *see also State ex rel. Mason Cnty. Logging Co. v. Wiley*, 177 Wash. 65, 75 (1934) (directing issuance of writ of mandamus compelling county assessor and county treasurer to perform the “ministerial act” of applying reduction in property tax rates for reforestation lands).

Respondents abdicated their duty to implement the Ordinance. They had no authority to even consider its legality, much less to declare it illegal and refuse to implement it. *Turner*, 113 Wash. at 219, 223. Their sworn duty was simply to implement the tax as certified to them by the City. *Id.* at 223. By refusing to do so, the County effectively vetoed the

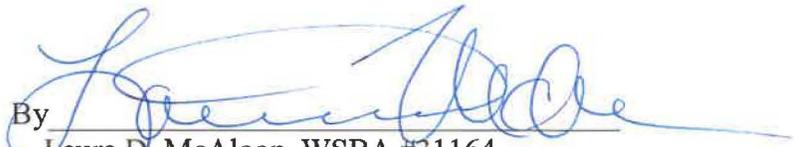
City's duly-enacted legislation. As longstanding precedent confirms that mandamus is the appropriate remedy, the Court should decline to accept review of this question.

IV. CONCLUSION

For the reasons addressed above, the City respectfully requests that the Court accept review.

RESPECTFULLY SUBMITTED this 8th day of December, 2016.

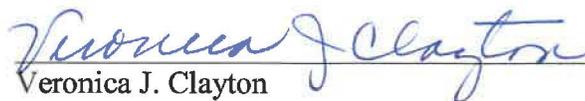
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CERTIFICATE OF SERVICE

I, Veronica J. Clayton , hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this 8th day of December, 2016.

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