

NO. 93788-5

SUPREME COURT OF THE STATE OF WASHINGTON

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

Appellant,

v.

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

and

THE STATE OF WASHINGTON, by and through the DEPARTMENT
OF REVENUE,

Respondents.

**DEPARTMENT OF REVENUE'S RESPONSE TO BRIEF OF
AMICUS CURIAE WSAMA**

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I. INTRODUCTION

The Washington Constitution prohibits local jurisdictions from enacting a property tax that is not uniform. Const. art. VII, §§ 1, 9. Nevertheless, Amicus Washington State Association of Municipal Attorneys (WSAMA) contends that the City of Spokane, as well as all code cities within the state, may violate this constitutional prohibition for the general welfare of the citizenry or under its local police powers. WSAMA's arguments are fatally flawed. First, WSAMA repeats the City's mistaken reliance on a Washington Supreme Court opinion addressing a non-uniform *poll tax* that the Legislature had explicitly authorized, which does not control the *property tax* exemption created by a local government here. A long and unbroken line of this Court's authority, ignored by WSAMA, shows that property taxes must be uniform. Second, WSAMA incorrectly claims that the property tax and exemption is not a property tax at all – a claim so at odds with the record in this case that not even the City advances it. Finally, WSAMA's remaining arguments are inconsistent with the plain language of the Constitution and state laws governing property taxes, as well as precedent. Contrary to WSAMA's flawed arguments, no authority permits a local jurisdiction to violate the Constitution, regardless of the jurisdiction's intent or purpose. This Court should affirm.

II. ARGUMENT

A. *Tekoa* Is Limited To The Legislature's Exempting Persons From Poll Taxes.

The principles of *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 P. 769 (1907), to the extent they remain good law for poll taxes, have no application to the local property tax exemption at issue here.

First, *Tekoa* does not hold that the Legislature may authorize local governments to enact their own property tax exemptions or tax classifications contrary to article VII, section 9's uniformity requirements, as WSAMA erroneously asserts. Amicus Br. at 2. Rather, the "principle question" in *Tekoa* was the validity of the state legislative act classifying persons eligible for the tax, not the town's imposition of the tax. *Tekoa*, 47 Wash. at 203. The court found that the Legislature's classification of the subjects of the tax was reasonable and did not violate any constitutional provision. *Id.* at 206, 209. It thus concluded that the Legislature could exempt persons from a poll tax for altruistic purposes without violating uniformity. *Id.* at 209; *see also Thurston County v. Tenino Stone Quarries*, 44 Wash. 351, 354, 87 P. 634 (1906) ("In the absence of any constitutional inhibition, it must be conceded that the Legislature may provide for the levy and enforcement of a poll tax upon any or all of the citizens of the state, regardless of the question of uniformity.").

Second, unlike this case, *Tekoa* addressed a poll tax, not a property tax. While WSAMA argues that this makes no difference, Amicus Br. at 5, these two types of taxes have long been treated as different for purposes of the constitutional uniformity provisions. See Alfred Harsch, *The Washington Tax System—How It Grew*, 39 Wash. L. Rev. 944, 952-53 (1964); Hugh D. Spitzer, *A Washington State Income Tax—Again?* 16 U.P.S. L. Rev. 515, 559-60 (1993). A “poll” tax is generally defined as “a tax on a person without regard to his or her property, employment, or occupation.” 85 C.J.S. *Taxation* § 1801. It is thus a species of “capitation” tax and is considered to be an “excise tax and not a property tax in the constitutional sense.” Spitzer, 16 U.P.S. L. Rev at 559-60 & n.294 (1993). Indeed, the *Tekoa* court itself expressly distinguished another decision discussing uniformity because it involved a property tax, and “the question of classification under a poll tax law was not considered or decided.” *Tekoa*, 47 Wash. at 207.

Third, WSAMA’s argument that *Tekoa* applies to property taxes to allow non-uniformity for altruistic purposes would obliterate this Court’s century-old principle that uniformity for property taxes is not only required by the Constitution, but is the “highest and most important of all requirements applicable to taxation under our system.” *Inter Island Tel. Co., Inc. v. San Juan County*, 125 Wn.2d 332, 334, 883 P.2d 1380 (1994)

(quoting *Savage v. Pierce County*, 68 Wash. 623, 625, 123 P. 1088 (1912)). WSAMA does not even acknowledge this Court's steady line of cases upholding this principle, let alone provide reasons for overturning the precedent. See *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016) (requiring party to show that precedent is both incorrect and harmful before overturning).

Here, the City of Spokane's Ordinance expressly intended to create a property tax exemption that was not uniform in tax rate or assessment valuation for like property. While the City certainly wished to relieve certain low-income persons from its regular property tax increase, no authority, including *Tekoa*, permits such classification for local property taxes. Because the Ordinance violates the uniformity requirement of article VII, section 9, it must fail regardless of whether the City's purposes for the enactment were laudable or not.

B. WSAMA's Alternate Theories For Validating The City's Ordinance Are Without Merit.

WSAMA also argues that the City's Ordinance should be presumed valid if any "state of facts" can be conceived that would uphold it. Amicus Br. at 3-4 (quoting *State v. Melcher*, 33 Wn. App. 357, 655 P.2d 1169 (1982)). WSAMA then argues the City could have implemented this Ordinance using its police power authority. Amicus Br. at 4. WSAMA

confuses the test for the constitutionality of a law. While courts uphold a law against a facial constitutional challenge if it would be valid as applied to any conceivable set of facts, they do not uphold an unconstitutional law merely because a different law that might accomplish the same goals would be valid. *E.g.*, *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004) (“successful facial challenge is one where no set of circumstances exists in which the statute, *as currently written*, can be constitutionally applied”) (emphasis added).

Municipalities have no inherent authority in the field of taxation. *Love v. King County*, 181 Wash. 462, 468, 44 P.2d 175 (1935); *see also Carkonen v. Williams*, 76 Wn.2d 617, 627-28, 458 P.2d 280 (1969). Accordingly, the extent and boundaries of a municipality’s police power do not apply to the field of delegated tax authority. *See Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 366, 89 P.3d 217 (2004) (local police powers do not include the power to tax). It is thus common for this Court to invalidate municipal ordinances enacted under the guise of police power when they are in effect unlawful taxes under article VII. *See, e.g., Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 811–13, 23 P.3d 477, 485-86 (2001); *Okeson v. City of Seattle*, 150 Wn.2d 540, 554, 78 P.3d 1279 (2003); *Great N. Ry. v. Stevens County*, 108 Wash. 238, 244, 183 P. 65 (1919). Because this Court has invalidated a non-uniform

property tax that was enacted under the guise of police power, it follows even more strongly that an ordinance enacted as a non-uniform property tax is invalid, even if it could be reimagined as a tax claiming to be based on police power.

In any event, the provisions at issue in this case do not permit doing something indirectly that cannot be done directly. *State ex rel. Schillberg v. Safeway Stores, Inc.*, 75 Wn.2d 339, 349, 450 P.2d 949 (1969). The Constitution provides the only exceptions to the uniformity requirements, none of which apply to municipalities. *State ex rel. Atwood v. Wooster*, 163 Wash. 659, 664-65, 2 P.2d 653, 655 (1931); *State ex rel. Chamberlin v. Daniel*, 17 Wash. 111, 49 P. 243 (1897). This Court should reject WSAMA's invitation to alternatively validate the City's Ordinance under an exercise of police powers.

Similarly, the Court should decline WSAMA's invitation to construe the Ordinance as "a mechanism" for providing assistance to the "poor and infirm" which it argues is authorized by article VIII, section 7. Amicus Br. at 11. While WSAMA asserts that the Ordinance "at issue is not a real property tax," *id.*, the facts prove otherwise as the City expressly intended to enact a property tax exemption. *See* CP 110-11.

WSAMA also misconstrues the holding in *City of Snoqualmie v. King County*, 187 Wn.2d 289, 386 P.3d 279 (2016), arguing that the case

creates the effect that uniformity requirements “apply only to the taxation of real property.”¹ Amicus Br. at 10-11. Although unclear, WSAMA appears to argue that *Snoqualmie* supports a conclusion that property taxes must be uniform, but not exemptions from property tax. Amicus Br. at 11. This Court in *Snoqualmie* held no such thing. Instead, this Court concluded that the payment at issue in that case was not a tax, and thus not subject to the requirements of article VII. *City of Snoqualmie*, 187 Wn.2d at 303. In contrast, the City’s Ordinance explicitly created a property tax exemption that causes its property tax as applied to real property to be imposed at one of two different tax rates within the jurisdiction. Article VII, including the requirement of uniformity, most certainly does apply. The *City of Snoqualmie* case has no application here.

Taken to its logical conclusion, WSAMA’s argument (as well as the City’s) would mean that every property tax exemption or unequal property tax could be relabeled as a mechanism for public welfare or as police power legislation to escape the Constitution’s uniformity requirements. This cannot be the law. Not only would it be contrary to

¹ WSAMA also incorrectly suggests that the Department’s position on standing in *Snoqualmie* is inconsistent with its arguments in this case. Amicus Br. at 7 & n.4. But the Department did not argue below that the City had no standing or that it should have filed an action under the Uniform Declaratory Judgment Act, and standing is a fact-specific inquiry. CP 212-14. In any event, WSAMA’s point is irrelevant because the Court in *Snoqualmie* rejected the Department’s arguments on standing. *City of Snoqualmie*, 187 Wn.2d at 283-84.

how this Court has treated uniformity in our modern tax jurisprudence, i.e. as the highest and most important requirement, but it would be contrary to the plain language of the Constitution. WSAMA's arguments should be rejected.

C. The Ordinance Disregards The State Property Tax System.

WSAMA argues that the Legislature's property tax exemption for retired persons found at RCW 84.36.383 is indistinguishable from the Ordinance at issue. Amicus Br. at 9-10. It thus argues that the Department of Revenue and Spokane County merely seek to absolve themselves of their property tax implementation duties for the City's exemption. *Id.*

It is true that many parts of RCW 84.36.383 and the Ordinance are the same in that both (1) freeze property values, (2) deduct value from the property, and (3) exempt excess levies. But WSAMA is incorrect in asserting that they are identical because the Ordinance applies different qualifying income thresholds and redefines "excess levies" to include voter approved levy-lid lifts. CP 114-15, 121. This requires the County Assessor to calculate and assess the City's property tax rates different than those under the State's exemption for retired persons. *See* RCW 84.36.379-.389 (exemption for retired persons); *see also generally* RCW 84.40 (listing property); RCW 84.52 (levying taxes); WAC 458-16A (exemptions for retired persons); WAC 458-19 (levies, rates, and limits).

As explained in the Department's Supplemental Brief at pp. 13-15, the Legislature intended for all cities to levy and assess property taxes in conformity with the State's statutory framework. The Legislature also intended that only its enacted property tax exemptions, as authorized by the Constitution, would apply. The Department's concern in this case is therefore not abdicating duty as WSAMA contends, but ensuring that the State's laws are upheld and that the property tax structure designed by the Legislature remains intact.

III. CONCLUSION

The Department of Revenue respectfully requests that the Court of Appeals decision be affirmed.

RESPECTFULLY SUBMITTED this 2nd day of May, 2017.

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May 02, 2017 - 11:47 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 93788-5
Appellate Court Case Title: City of Spokane v. Spokane County, et al.
Superior Court Case Number: 15-2-00547-7

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