Firehouse Lawyer

Volume 6, Number 6E *June 23, 2006*

Joseph F. Quinn, Editor

Joseph F. Quinn is legal counsel to more than 30 fire districts in Pierce, King and other counties throughout the State of Washington.

His office is located at:
5000 Steilacoom Blvd. SW
Lakewood, WA 98499
(in Lakewood's Station 2-1)

Telephone: 253.589.3226

Fax: 253.589.3772

Email Joe at:
quinnjoseph@qwest.net

Access this newsletter at:
www.Firehouselawyer.com

Inside This Issue

Extra! Extra! Superior Court Strikes Down I-747

Well, we have never done this before, but the courts do not often issue unexpected, monumental rulings on issues so critical to local governments in the State of Washington. So we decided to issue a short, informational extra issue on one topic only.

Last week, King County Superior Court Judge Mary Roberts issued a controversial and surprising decision. She ruled that Initiative 747, the 1% limitation on annual property tax increases for state and local government agencies, is *unconstitutional*. If this decision were to be upheld on appeal to the Washington Supreme Court, it would mean that the old 6% annual limit on revenue growth would be back in effect (or the inflation rate, if that is less). What a huge difference that would make in the fiscal outlook for local governments in our state!

It goes without saying that many cost items for fire districts (for example) are increasing faster than 1% per year, including, but not limited to, fuel costs, health care costs, wages and salaries, etc. Granted, inflation overall has not been equal to 6% annually in recent years, but it has exceeded 1%. While assessed values have been markedly rising in the last few years, the overall tax revenue limitation of 1% dampens the effect of those AV increases. Therefore, fire districts and cities find that, under I-747's influence, their tax levy rates actually erode over time. Hence, many local governments often find themselves needing to ask the voters often, even annually, to "lift the lid", as allowed by the law. Since responsible voters place a high priority on public safety, including fire and EMS, such lid lifts are usually successful. Cities and counties, as general governments, do not have such a successful record, or do not try as often.

Judge Roberts struck down I-747 and issued an injunction against enforcing it. So, what does that mean for jurisdictions that have already been planning to ask their voters to approve a lid lift in September or November?

Our advice is to "stay the course", by proceeding with your plans as if this decision had not been made. Why do we so advise? The Attorney General has already said there will be a direct appeal of Judge Roberts'

decision to the State Supreme Court. That might take a year or more. But what if the Court ultimately reverses the trial court, reinstating the statutory limitation, and you have foregone the chance for a lid lift for 2006 property taxes, collectible in 2007?

First, a good possibility exists that this decision will be reversed. It is not our plan here to analyze the merits of I-747, and all of the constitutional issues presented. Suffice it to say that the law has been in effect for a few years already, and we find it somewhat odd that a challenge at this date has been found meritorious. If there were such a major defect in this legislation (like some other Tim Eyman initiative we need not mention here) such as violation of the "single subject" rule, it would have been declared unconstitutional a long time ago, in my opinion. Nonetheless, we cannot really opine on the likely outcome until we analyze the briefing on the issues. Therefore, the prudent course is to weigh the risks and benefits of both options.

We also note that the current makeup of the Washington Supreme Court has resulted in some decisions last year reflecting an evident populist, somewhat anti-government, flavor. But we need not make that argument. The fact is that no one will know the ultimate outcome until the Supreme Court rules. Therefore, it would be foolhardy to cancel election plans now, hoping that the trial court is right. If you forego a 2006 election, it is too late to change your mind next year.

A news article on the web site of Foster Pepper Shefelman, a pre-eminent municipal law firm located in Seattle, recommends that municipalities facing the choice of going ahead with such elections consider adding to their resolutions language to pull their ballot measures if the Court were to uphold the decision before the election. Alternatively, they could include language to consider them nonbinding advisory votes if that contingency were to occur. We concur in that advice, although some of our clients have experienced mixed voter reactions to advisory ballots (such as: "our vote is *merely* advisory, so you are telling us you *may* follow our "advice").

In other words, stay the course and hold the election but add a section to the resolution and perhaps some language in the explanatory statement, telling the voters what happens if the Court affirms.

We think it highly unlikely that the Court will issue a ruling that expeditiously, as modern briefing schedules, summer vacation realities, and the time line for election processing makes that well nigh impossible.

The Firehouse Lawyer has requested that other attorneys submit their views for this Extra Edition. Bob Meinig, an attorney with the Municipal Research Services Center, did say to Firehouse Lawyer that "staying the course" seems to be the consensus advice of the MRSC consultants. Stephen Dijulio, of Foster Pepper Shefelman, referred us to their news article, which does not advise pulling measures off the ballot. Jennifer Willner, of Halvorson Saunders & Willner, a law firm in Seattle and Bellingham, agrees with Firehouse Lawyer: "We are advising our fire district clients to basically pretend that this opinion does not exist. We have a number of clients with measures on the ballots this year. Our approach is to not mention the issue in the ballot title, but to make reference to the fact the issue is up for Supreme Court review in the informational statement. Public entities should definitely wait for a definitive ruling from the Washington Supreme Court."

Thus far, therefore, it seems that no municipal attorneys are saying that canceling the elections is the best option.

Clients needing assistance in last minute "tweaking" of their resolutions or ballot title and explanatory statement may give us a call at 253-589-3226.

DISCLAIMER

The Firehouse Lawyer newsletter is published for educational purposes only. Nothing herein shall create an attorney-client relationship between Joseph F. Quinn and the reader. Those needing legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.