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Honorable Michael S. Spearman (ret.), pro tem

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ARTHUR T. LANE, KENNETH GOROHOF
and WALTER L. WILLIAMS, individually and
on behalf of the class of all persons similarly
situated,

Plaintiffs,

v.

THE CITY OF SEATTLE,

Defendant/Third-Party Plaintiff,


v.

THE CITY OF SHORELINE, THE CITY OF
BURIEN, THE CITY OF LAKE FOREST
PARK, KING COUNTY, KING COUNTY
FIRE DISTRICT NO. 2, KING COUNTY FIRE
DISTRICT NO. 4 (a.k.a. Shoreline Fire
Department), NORTH HIGHLINE FIRE
DISTRICT NO. 11, KING COUNTY FIRE
DISTRICT NO. 16 (a.k.a. Northshore Fire
Department), and KING COUNTY FIRE
DISTRICT NO. 20,

Third-Party Defendants.

CLASS ACTION

NO. 05-2-07351-9SEA


~~Proposed~~ AMENDED ORDER AND FINAL
JUDGMENT ON ART AND FIRE
HYDRANT CLAIMS

This Court entered an Order and Final Judgment on Art and Fire Hydrant Claims (the "Prior Judgment") on May 30, 2007. Certain aspects of that judgment were appealed to the Washington

ORIGINAL

AMENDED ORDER AND FINAL JUDGMENT ON ART AND FIRE HYDRANT CLAIMS - 1

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1 Supreme Court, which issued its opinion on October 16, 2008 affirming the Prior Judgment on most
2 issues, except as to the rate of interest to be paid on the refunds by SPU to its ratepayers. Mandate
3 issued on November 14, 2008, and thereafter this Court entered its Order Granting Plaintiffs' Motion
4 for Amended Award of Attorney Fees and Expenses, in recognition of the increased recovery for the
5 ratepayers resulting from the appeal.

6
7 Accordingly, the Prior Judgment is deemed amended as set forth herein, and it is hereby
8 ORDERED, ADJUDGED AND DECREED as follows:

9 1. With respect to plaintiffs' claims relating to public art, Seattle shall implement and
10 fully comply with all terms of the stipulation and orders attached to the Prior Judgment as Exhibits A
11 and G.

12 2. With respect to plaintiffs' claims relating to fire hydrant expenses incurred prior to
13 January 1, 2005, Seattle shall implement and fully comply with all terms of the orders attached to the
14 Prior Judgment as Exhibits B, C, E and G, except as otherwise set forth herein. In particular,

15 a. Not later than April 30, 2009, Seattle's general fund shall pay to SPU the sum
16 of \$13,553,286, plus interest thereon at the rate of 3.18% per annum from the date of this Amended
17 Judgment until paid;

18 b. Within 14 days after entry of this Amended Judgment, out of the common fund
19 created for SPU and its ratepayers pursuant to this Amended Judgment, SPU shall (i) pay to
20 plaintiffs' counsel as attorney fees the sum of \$4,093,277, (ii) pay to plaintiffs' counsel \$37,760
21 representing reimbursement for expenses, and (iii) pay to plaintiff Kenneth Gorohoff \$5,000 as an
22 incentive award for services rendered as class representative;

23 c. SPU shall make refunds to water ratepayers for public fire hydrant expenses
24
25

1 included in water bills for the period from March 1, 2002 through December 31, 2004, including
2 utility taxes, and together with prejudgment and postjudgment interest thereon calculated at the rate
3 of 12% per annum until paid, less the amounts set forth in subparagraph (b) above representing
4 attorney fees, expenses and incentive award. The total amount to be refunded to water ratepayers
5 collectively for this time period is \$20,346,660, plus interest thereon at the rate of 12% per annum
6 from the date of this Amended Judgment until paid, less the amounts provided in subparagraph (b)
7 above for attorney fees, expenses and incentive award payable to plaintiffs or their counsel. The
8 timing and manner of making such refunds, and the method for determining the amount of refund to
9 be made to each eligible ratepayer, shall be generally as described in the Joint Status Report of
10 Plaintiffs and Seattle on Proposed Refund Plan, dated November 16, 2006 (copy attached to Prior
11 Judgment as Exhibit I), except that (i) the administrative costs of making the refunds shall be borne
12 by Seattle's general fund and shall not be deducted from the amounts to be refunded to ratepayers,
13 and (ii) the threshold refund amount for issuing refund checks to former ratepayers shall be \$5.
14 Refunds less than \$5 that are otherwise payable to former ratepayers, as well as amounts otherwise
15 payable but unpaid to former ratepayers whose whereabouts cannot be ascertained or who otherwise
16 do not satisfy the conditions for receiving a refund, shall be used by SPU for utility purposes
17 benefiting water ratepayers. As set forth in the Joint Status Report, refunds to active ratepayers shall
18 be made approximately six months after entry of this Amended Judgment and shall be in the form of
19 credits applied to the ratepayers' current water bills. Refunds to former ratepayers shall be completed
20 within twelve months after entry of this Amended Judgment;
21
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23
24 d. Plaintiffs and Seattle shall attempt to agree on the contents of any written
25 notice to be provided to ratepayers concerning the refunds, in the form of bill inserts or letters to

1 active or former ratepayers, or in the form of newspaper advertisements or otherwise. Any
2 disagreement about the contents of such notices shall be resolved by the Court; and

3 e. Plaintiffs' counsel shall be entitled to monitor the implementation of the refund
4 process described above, and SPU shall provide monthly status reports to plaintiffs' counsel
5 concerning the implementation and status of the refund process.
6

7 3. Plaintiffs' claims relating to the water utility tax rate increase adopted pursuant to
8 Seattle Ordinance 121671 were dismissed by the order attached as Exhibit D to the Prior Judgment,
9 and that dismissal was affirmed by the Washington Supreme Court's opinion dated October 16, 2008.

10 4. Seattle's third-party claims against the third-party defendants, and any counterclaims
11 or crossclaims asserted by the third-party defendants, were resolved by the orders attached as
12 Exhibits F and H to the Prior Judgment, and to the extent those orders were appealed they were
13 affirmed by the Washington Supreme Court's opinion dated October 16, 2008. In particular,
14

15 a. Seattle's third-party claims against Shoreline, King County, and the Fire
16 Districts are dismissed;


17 b. Not later than April 30, 2009, Burien shall pay to SPU the sum of \$131,533,
18 representing fire hydrant charges through April 30, 2007, plus interest thereon at the rate of 3.18%
19 per annum from April 30, 2007 until paid;

20 c. Not later than April 30, 2009, Lake Forest Park shall pay to SPU the sum of
21 \$74,171, representing fire hydrant charges through April 30, 2007, plus interest thereon at the rate of
22 3.18% per annum from April 30, 2007 until paid; and
23

24 d. Burien and Lake Forest Park are each obligated to pay SPU for fire hydrant
25 services provided by SPU within their respective jurisdictions after April 30, 2007.

1 5. The Court shall retain continuing jurisdiction over this matter for purposes of
2 resolving any disputes that may arise concerning implementation of the remedies provided by this
3 Amended Judgment.

4 Dated this 5 day of December, 2008.

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Honorable Michael S. Spearman (ret.)
Superior Court Judge, pro tem

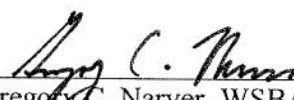
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HELSELL FETTERMAN LLP

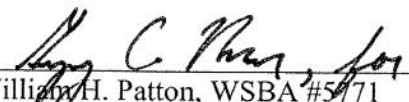
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(King Co. Nos. 2, 4, 16, 20 & North Highline 11)

LANE v. CITY OF SEATTLE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

80204-1

ARTHUR T. LANE, KENNETH
GOROHOFF and WALTER L.
WILLIAMS, individually and on behalf of
the class of all persons similarly situated,

Respondents/Cross-Appellants,

v.

THE CITY OF SEATTLE,

Respondent/Cross-Respondent,

KING COUNTY FIRE DISTRICT NO. 2;
KING COUNTY FIRE DISTRICT NO. 4
(a.k.a. Shoreline Fire Department);
NORTH HIGHLINE FIRE DISTRICT
NO. 11; KING COUNTY FIRE
DISTRICT NO. 16 (a.k.a. Northshore Fire
Department); KING COUNTY FIRE
DISTRICT NO. 20; THE CITY OF
SHORELINE, a Washington municipal
corporation; and KING COUNTY, a
Washington municipal corporation,

Respondents,

THE CITY OF BURIEN, a Washington
municipal corporation; THE CITY OF
LAKE FOREST PARK, a Washington
municipal corporation,

Appellants.

No. 80204-1

En Banc

Filed October 16, 2008

case we must decide who will pay for fire hydrants in the city of Seattle and its suburbs. Seattle Public Utility (SPU) used to pay for them, passing the cost along to its ratepayers. The ratepayers object and want Seattle to foot the bill. If Seattle has to pay for its hydrants, it wants Lake Forest Park to pay for the hydrants in Lake Forest Park. Lake Forest Park, in turn, wants fire districts in Lake Forest Park to pay. The fire districts want someone, anyone, else to pay. On top of all that, the ratepayers want interest on improper past hydrant payments they recover and want Seattle's new tax on SPU declared illegal. Finally, the fire districts claim they are no longer even parties to the litigation.

We affirm the trial court on most issues. The court correctly held that providing fire hydrants is a government responsibility for which a government must pay, that Seattle's new tax on SPU is constitutional, and that municipality Lake Forest Park must pay for hydrants within its boundary. The trial court erred only when it failed to give the claiming ratepayers the statutory interest rate on the invalid hydrant fees.

I

For years, SPU paid for hydrants by charging its water ratepayers a flat

hydrant fee added to their water charges. In 2003, this court held that Seattle City Light could not charge its ratepayers for streetlights. Providing streetlights is a government function, and the court held that a municipal government must pay out of the city's general fund. *Okeson v. City of Seattle*, 150 Wn.2d 540, 78 P.3d 1279 (2003). Recognizing the legal equivalence between hydrants and streetlights expressed in that decision (and argued by the city), Seattle had SPU stop charging ratepayers for hydrants. Instead, Seattle began to pay for the hydrants out of its general fund. To make up the cost, Seattle raised taxes on SPU, which led SPU to raise rates on water ratepayers to make up the difference.

SPU also provides local hydrants to areas outside the city of Seattle and concluded that those municipal governments should pay their share. SPU sent a bill for hydrants to Lake Forest Park, Burien, and to local fire districts, all of which refused to pay. SPU then sued Lake Forest Park and Burien for payment and later joined the fire districts.

Meanwhile, a class made up of ratepayers ("Lane et al.," as representatives, hereinafter "Lane") sued SPU for hydrant payments made by ratepayers for the preceding three years. The statute of limitations limits that

claim to three years. RCW 4.16.080(6). Lane also sued Seattle to enjoin the newly raised city taxes on SPU, which had resulted in SPU's raising its rates on ratepayers.

After a lengthy pretrial process, each party moved for summary judgment. The trial judge held (1) SPU could not charge ratepayers to pay for hydrants; (2) Seattle's tax on SPU was valid; (3) SPU had to pay back the Lane ratepayers, but only at one percent interest; (4) Lake Forest Park and Burien had to pay Seattle for their share of the hydrant costs; and (5) the fire districts had no obligation to pay. Each of these rulings has been challenged. We granted direct review.

After review, but before oral argument, Burien decided it had spent too much money litigating and withdrew. Thus, Burien was the only party originally stating a claim against the fire districts. Without an opposing party appealing their judgment, the fire districts are no longer parties, and we do not reach the issue between Burien and the fire districts. The remaining issues are resolved below.

II

A. SPU Cannot Charge Ratepayers for Hydrants, which Are a General Government Responsibility

“No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied,” Wash. Const. art. VII, § 5. If providing hydrants is a government function, and if charging ratepayers for those hydrants is a tax, not a fee, the charge violates this part of the constitution. Seattle imposed a “charge” rather than a tax, which it was not authorized by law to impose.

We treat governments differently if they are acting as governments or as businesses. *Okeson*, 150 Wn.2d at 549. We review most government decisions to determine whether they had a rational basis and occasionally use this standard to strike down a government decision. *E.g.*, *Associated Grocers, Inc. v. State*, 114 Wn.2d 182, 187-88, 787 P.2d 22 (1990); *O’Meara v. Wash. State Bd. Against Discrimination*, 58 Wn.2d 793, 799, 365 P.2d 1 (1961); *In re Hendrickson*, 12 Wn.2d 600, 612, 123 P.2d 322 (1942). In contrast, we review business decisions under the business judgment rule and infrequently reverse a business decision. *See Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 709, 64 P.3d 1 (2003). We must first decide if providing hydrants is a government responsibility or a proprietary responsibility.

It is conceded that *Okeson* decides that question. We held that streetlights are a government function and strongly suggested that providing hydrants is the same. We confirm that holding today.

The next step is deciding whether charging ratepayers to pay for hydrants was a tax or a fee, since a city must be authorized by statute to impose a tax but has broader power to impose a fee. *Okeson*, 150 Wn.2d at 550. We have created a three-factor test to decide whether a charge is a tax or a fee; no single factor determines the matter. *Covell v. City of Seattle*, 127 Wn.2d 874, 879, 905 P.2d 324 (1995). The three factors are the purpose of the cost, where the money raised is spent, and whether people pay the cost because they use the service. *Id.*

Our decision here directly follows our decision in *Okeson*. There, the purpose of the cost was to increase revenue for the city and not to regulate the installed streetlights, indicating a tax. *Okeson*, 150 Wn.2d at 553. The money did go into a streetlight fund, which made it more like a fee. *Id.* But ratepayers bore the same streetlight cost no matter how much electricity they used, leaning toward tax. *Id.* at 554. Since all citizens may use and benefit from lighted areas, we held the charge to be an invalid tax. *Id.*

Here, the purpose of charging ratepayers a hydrant charge is also to increase revenue for the city and not to regulate hydrants or water usage, indicating a tax. The money goes to a hydrant fund, making it more like a fee. But, ratepayers pay the same fixed hydrant cost whether they use hydrants or not, indicating a tax. All benefit by having water available to put out fires. Moreover, we had expressly discussed fire hydrants as an example of government services in *Okeson*. Seattle had argued that the *Okeson* streetlights were just like hydrants, and SPU had always charged ratepayers for hydrants. The hydrant issue was not before us, but the argument of Seattle and implication of our decision were clear: for purposes of deciding a tax or fee, hydrants are very much like streetlights. *Id.* at 552. As in *Okeson*, the charge here is a tax.

Lake Forest Park tries to distinguish *Okeson*. It points out that water companies within cities must, by statute, provide hydrants (RCW 80.28.010), but no similar law requires electric companies to provide streetlights. This is not determinative. After all, state law requires police to report accidents (RCW 46.52.070) and school districts to educate special education children (RCW 28A.155.040), but these laws do not justify taxing such transactions.

Lake Forest Park also claims a relationship between hydrant charges and user benefit by pointing out that houses near hydrants may have lower insurance rates. This might be more persuasive if SPU charged a different cost based on proximity to hydrants. The direct benefit of a hydrant system is enhanced fire suppression, which is a shared benefit, and the record shows no differential.

Amici also point to three cases where Washington courts upheld charges on customers when first connecting to waterworks. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 980 P.2d 1234 (1999); *Hillis Homes, Inc. v. Pub. Util. Dist. No. 1*, 105 Wn.2d 288, 714 P.2d 1163 (1986); *Irvin Water Dist. No. 6 v. Jackson P'ship*, 109 Wn. App. 113, 34 P.3d 840 (2001). These cases are inapposite. One-time connection fees are different from monthly hydrant charges. Connection fees capture start-up costs for new customers, which are costs of the waterlines for water service. Hydrant fees capture the costs of hydrants, which are government costs.

Finally, Lake Forest Park says, “the heights of irony will be scaled if SPU can purchase art for its facilities and recover the cost in rates . . . but cannot recover the cost of complying with lawful regulations.” Br. of

Appellant Lake Forest Park at 9-10. This makes a mountain out of an irony molehill. The question is not whether there will be art and hydrants, but who must pay for them. Art for public facilities is a business expense (sometimes imposed by statute or ordinance). Hydrants, like streetlights, are a government expense for which a government must pay.

Thus, charges for hydrants are taxes, not fees. Since “[n]o tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.” Wash. Const. art. VII, § 5. Since Seattle did not declare the charge to be a tax until 2005 or state a lawful object of a tax or statutory authority, the imposition was unconstitutional. *See Okeson*, 150 Wn.2d at 556.

B. Lane Has Standing To Challenge Seattle’s Tax and SPU’s Rate Increases, but Those Increases Are Not Invalid

Seattle recognized the legal similarity between streetlights and hydrants, and so, in 2003, began paying for hydrants out of the general fund. To pay, Seattle either had to raise tax revenue or take funds from other services. The city council decided to raise revenue. It did so by raising the tax rate on SPU from 10 to 14 percent. Since it wholly controls SPU, it had SPU make up the difference by raising rates on customers. This situation has

a similar result for nearly every party involved as if SPU just charged ratepayers for hydrants, with two exceptions: for residents of other areas, their local government will repay the charges; for Seattle ratepayers, the tax charge is now subject to referendum or political efforts to change, including election of council members opposing the tax. Lane still objects. This issue raises two subissues: whether Lane has standing and whether the tax is legal.

1. Lane Has Standing To Challenge Seattle's Tax on SPU

Seattle challenged Lane's standing to challenge the tax at trial but has dropped the argument here. However, standing is a matter of our jurisdiction. Without jurisdiction, we cannot hear a case, even if every party concedes standing. *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986).¹

To have standing, a party must be in a law's zone of interest and must suffer some harm. *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186,

¹ This rule is in flux. Compare *Branson v. Port of Seattle*, 152 Wn.2d 862, 879-80 & n.10, 101 P.3d 67 (2004) (Chambers, J., concurring) (a case may be heard even if a party lacks standing, as long as the issue is one of great public interest and well briefed), with *High Tides*, 106 Wn.2d at 702 (unanimously holding, "[i]f a plaintiff lacks standing to bring a suit, courts lack jurisdiction to consider it."). This case does not lend itself to deciding whether standing is jurisdictional in Washington, since neither party briefed the matter. And in any event, even if we are not required to raise the issue, we certainly have the discretion to. *In re Recall of West*, 156 Wn.2d 244, 248, 126 P.3d 798 (2006).

157 P.3d 847 (2007). Lane obviously has suffered harm; if his argument is right, he must pay more in taxes than is legally allowed. His zone of interest argument, though, is on shakier ground because he does not directly pay the tax. After all, he is complaining about Seattle's tax on the water utility SPU. If Lane has standing at all, it is only as a taxpayer interested in making his government follow the law.

Lane points us to RCW 80.04.440, which allows any person harmed by a public utility's unlawful acts to bring suit. Even though Lane's challenge is to Seattle's tax on SPU and not to SPU's illegal acts, he rests on RCW 7.24.020, allowing for declaratory judgments of laws directly affecting a party.

The standing issue here was analyzed in our decision in *Nelson*. There, we held that a car buyer has standing to challenge a tax applied directly to his dealer and seller because the buyer ultimately paid the tax. *Nelson*, 160 Wn.2d at 186. In the same way, the tax on SPU is passed on to Lane directly, and so he is within the interest zone of RCW 80.04.440. He has standing to challenge the tax and rate increase.

2. Seattle's Tax and SPU's Rate Increases Are Constitutional

Lane complains that Seattle is frustrating the holding in *Okeson*. He argues that raising taxes on SPU and passing the increases along to ratepayers is just the same as SPU charging ratepayers for hydrants. The problem with the argument is that *Okeson* did not go so far as Lane would take it.

We voided the charge in *Okeson* because Seattle did not adopt the charge as a lawfully authorized tax, violating article VII, section 5 of the state constitution, and because a tax would have exceeded the six percent statutory limit. Either reason was sufficient to support our holding in its entirety. *Okeson*, 150 Wn.2d at 556-57. We simply held that if Seattle wanted to charge Seattle City Light ratepayers for streetlights, it would have to comply with statutes in enacting the tax (with the attendant possibility of a referendum, Wash. Const. art. II, § 1(b)). Such tax, if adopted, would be subject to the applicable statutes and a six percent total cap.

Seattle has complied here. It explicitly said it was taxing SPU, the tax was properly adopted, and the tax expressly stated it was subject to referendum. Also, the six percent limit referenced in *Okeson* does not apply to taxes on businesses providing water. RCW 35.21.710; RCW 82.16.010(4). Seattle has statutory authority to impose this tax on SPU

(RCW 35.22.280(32)).

Lane's whole argument rests on our constitution's requirement that "[n]o tax shall be levied except in pursuance of law;" Wash. Const. art. VII, § 5. He argues that imposing a tax with the same effect as SPU's charging ratepayers for hydrants is contrary to the law announced in *Okeson*.

This argument fails for the same reason as above. The law is not that Seattle must charge for hydrants to a broad range of taxpayers. Instead, it is simply that cities must have statutory authority to impose taxes and must enact them properly as "taxes." This tax meets both requirements. The tax and the resulting rate raise are lawful.

C. SPU Must Pay the Statutory Interest Rate on Back Payments

SPU illegally charged ratepayers for hydrant costs before 2005, so it had to refund the charges for three years as allowed by the applicable statute of limitations. Lane wants his payments to be with interest; Seattle opposes. The trial court gave Lane interest at one percent. Lane appealed, saying he is entitled to more. Seattle says he is entitled to none (or, at most, one percent).

Governments cannot be sued for money without their consent.

Architectural Woods, Inc. v. State, 92 Wn.2d 521, 526, 598 P.2d 1372

(1979). More to the point, local governments cannot be sued for interest without the State's consent. *Our Lady of Lourdes Hosp. v. Franklin County*, 120 Wn.2d 439, 455-56, 842 P.2d 956 (1993). But absent sovereign immunity, parties must pay 12 percent interest on judicial awards from the time of judgment to the time of payment. RCW 4.56.110(4); RCW 19.52.020. They must also pay 12 percent on the time from the injury to the judgment if the damages are liquidated, that is, if it is "possible to compute the amount with exactness, without reliance on opinion or discretion." *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968); RCW 19.52.020. The damages here are clearly liquidated because they are based only on the amounts customers wrongly paid. So if SPU is not immune from judgment, it must pay 12 percent interest on both the pre- and postjudgment award.

Lane offers three reasons why he should be awarded statutory interest on his refund payments from SPU, and if he is correct on any of them, he receives interest at the judgment rate. His best argument is that a statute waives immunity for claims against government-run utilities, allowing interest on part of those claims.

RCW 80.04.440 allows people to sue water companies for “all loss, damage or injury” resulting from an illegal act. On its face, “all loss” includes interest. Depriving a party of money for a time deprives him of its productive use during that time. “Justice delayed is justice denied” is literally true for money. If a losing party has wrongfully kept another’s money at 12 percent interest for six years before giving it back, it is the same as taking the lost value. “All loss, damage or injury” includes interest on money improperly taken or withheld.

Seattle argues that the statute does not include the word “interest.” Neither does it expressly include “medical bills” or “lost work time” or “profits,” but the phrase “all loss, damage or injury” has been held to include those. *See, e.g., Nat’l Union Ins. Co. of Pittsburgh, Pa. v. Puget Sound Power & Light*, 94 Wn. App. 163, 168, 175, 972 P.2d 481 (1999). Seattle says we would have to infer state consent to interest payments from the statute. However, “all loss, damage or injury” is clear, broad, and inclusive. We have no authority to judicially amend the broad statute to read “all loss (except interest).”

The trial court seems to have split the difference and held the statute

waived immunity for interest, but not for interest at the judgment rate.

Instead, the trial court gave one percent interest because the monthly amounts were so small that a reasonable investor could have placed the money only in a low interest account. We reject this approach for two reasons.

First, RCW 80.04.440 says nothing about a reasonably prudent investor. It consents to suit for all “loss, damage or injury” and does not exempt from those losses the usual judgment interest. Second, any reasonably prudent investor test invites complex factual questions about investment returns. The legislature has decided the number by setting the statutory rate of 12 percent, RCW 4.56.110(4); RCW 19.52.020 (set for all judgments), and we have no reason to deviate from it. “All loss” includes interest at the judgment rate. SPU must pay back the payments at the statutory rate.

D. Lake Forest Park Is Liable for Hydrant Payments

If Seattle must pay for hydrants located in Seattle, it asks Lake Forest Park to pay for those hydrants located in Lake Forest Park. Seattle argues, and the trial court held, that RCW 43.09.210 makes the cities liable. The statute reads: “All service rendered by . . . one department . . . to another,

shall be paid for at its true and full value by the department . . . receiving the same,” RCW 43.09.210. This law applies to services that one government body provides for another, including when one city provides another city with services.² *Cf. State v. Grays Harbor County*, 98 Wn.2d 606, 608, 656 P.2d 1084 (1983) (“The word ‘department’ plainly refers to an administrative division or branch of government,”). Since SPU provided a service to Lake Forest Park, Lake Forest Park is liable for SPU’s cost.

Moreover, SPU provided the hydrants because Lake Forest Park required it to do so by ordinance. Lake Forest Park Mun. Code 15.04.015(A)(3). Since providing hydrants is governmental, *see above*, Lake Forest Park also consented to pay for the hydrants when it passed this requirement. True, Lake Forest Park passed the ordinance before *Okeson*, but this does not avoid its liability.

Lake Forest Park would apply the three-part test from *Covell* to argue that Seattle would be imposing a tax on another city, which it cannot do. The *Covell* factors are the purpose of the cost: where the money raised is allocated and whether the cities pay the cost because they use the service.

² Otherwise, resident taxpayers of the providing city would be paying for services to others.

127 Wn.2d at 879.

The purpose of charging Lake Forest Park for hydrants is clearly to raise money, indicating a tax. There is no evidence that the funds are segregated, also leaning toward a tax. But, most importantly, here there is a direct relationship between the costs charged and the service provided. Lake Forest Park requires SPU to provide hydrants, and SPU is charging just for the costs of the hydrants required by Lake Forest Park. We hold that the hydrant charge to Lake Forest Park is not a tax, but rather a cost of providing a government service, which Lake Forest Park must pay.

Lake Forest Park argues that if we require it to pay for hydrants, cities may extend their utility services to other jurisdictions without consent and then charge the cost. This possibility is speculative (and improbable). SPU will not likely install fire hydrants where uninvited. Right-of-way problems alone would block this eventuality. SPU operates in Lake Forest Park only with that city's permission, and it is providing a service only Lake Forest Park required.

Lake Forest Park also argues that even if it has to pay for hydrants, it should have to pay only for costs before January 1, 2005. On that day,

Seattle's tax on SPU started. Under Lake Forest Park's theory, since Seattle already recovered the costs of hydrants starting in 2005, it would get a windfall if Lake Forest Park also had to pay. We reject this argument. RCW 43.09.210 draws no distinction that would exempt pre-2005 charges.

RCW 43.09.210 requires Lake Forest Park to pay for the hydrants within its boundary.

III

In summary, we hold that (1) providing hydrants is a government responsibility for which the general government of the area must pay; (2) charging every SPU ratepayer a flat hydrant fee amounted to an improper tax; (3) the ratepayers may recover past improper hydrant fees, together with interest at the judgment rate; (4) Seattle's new tax on SPU is legal; and (5) Lake Forest Park must pay for the hydrants within its boundary.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Susan Owens

Justice Charles W. Johnson

Justice Mary E. Fairhurst

Justice Barbara A. Madsen

Justice Richard B. Sanders

Justice Debra L. Stephens

Justice Tom Chambers
