

Pierce County

Office of Prosecuting Attorney

REPLY TO:
CIVIL DIVISION
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
FAX: (253) 798-6713

MARK LINDQUIST
Prosecuting Attorney

Main Office: (253) 798-6732
(WA Only) 1-800-992-2456

MEMORANDUM

TO: Mark Lindquist, Prosecuting Attorney

FROM: Douglas W. Vanscoy, Chief Civil Deputy

DATE: November 4, 2009

RE: Status of Department 9: Ordinance 2009-105

You have requested a review of the legal effect of Ordinance 2009-105 which, according to its title, declares an emergency and modifies the county's 2009 budget by eliminating Department 9 of the Pierce County Superior Court. Specifically, the legislation adds a proviso to the Superior Court's 2009 total budget of \$13,888,280 as follows:

PROVIDED, Department 9 is hereby eliminated. Provided further that the 2009 appropriation to Superior Court for salary and benefits for the Department 9 Superior Court judge on and after November 16, 2009, should be expended for pro-tem judge costs.

For the reasons stated below, in my opinion the portion of this ordinance that abolishes Department 9 is beyond the authority of the Council. Until such time as the position is filled by gubernatorial appointment, there is no problem with using the salary savings from the impending vacancy to pay pro-tem judges.

The state constitution as adopted in 1889 provided for one superior court judge in Pierce County "until otherwise directed by the legislature". WA Const. Art. 4, § 5. The Legislature added judgeships over the years and created Department 9 forty years ago, Laws 1969, ex. s. ch. 213, § 1:

There shall be . . . in the county of Pierce (~~eight~~) nine judges of the superior court.

In subsequent years there were a number of enactments adding more departments to the court. In 1985, with the authorization of Departments 14 and 15, the Legislature began the practice of giving the County Council the choice whether to accept the new departments, Laws 1985, ch. 357, §4:

The additional judicial positions created by sections 1 and 2 of this act in Pierce and Clark counties shall be effective only if, prior to January 1, 1987, each county through its duly constituted legislative authority documents its

approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities.

Nearly identical language appeared in connection with Departments 16 through 19 (Laws 1989, ch. 328, § 5) and similar language was used in authorizing Departments 20 through 24 (Laws 1997, ch. 347, § 4). (The Council has yet to authorize Departments 23 and 24.)

Since 1985, then, the Legislature has given county legislative authorities the power of consent concerning new superior court judgeships. That does not necessarily mean those bodies have the power to rescind the consent once given,* but that is not a question that needs answering here. Department 9, which the ordinance purports to eliminate, was created by the Legislature without provision for local consent. Under Art. 4, § 5, that Department is a creature of the Legislature, and in my opinion only that body can abolish it. *Cf. Union High School Dist. No. 1 v. Taxpayers*, 26 Wn.2d 1, 10, 172 P.2d 591 (1946): “It is our view that, regardless of its language, a constitutional provision does not confer upon local units of government the power to act independently of legislative control unless it clearly appears from such language that it was intended to confer upon such local unit some measure of home rule.”

According to WA Const. Art. 4, § 13, “One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected.” The county’s original 2009 budget was structured to fulfill that salary obligation. By removing that required funding, Ordinance 2009-105 would violate the county’s constitutional obligation. Under RCW Ch. 2.32, the county is also required to fund judges’ courtroom staff, including that of Department 9.

The ordinance is also invalid because it purports to effect substantive policy change beyond the 2009 budget year: “Department 9 is hereby eliminated.” Charter 6.10 requires the Council to adopt appropriation ordinances yearly. To paraphrase the Supreme Court:

An appropriation bill is not a law, in its ordinary sense. It is not a rule of action. It has no moral or divine sanction. It defines no rights and punishes no wrongs. It is purely *lex scripta*. It is a means only to the enforcement of law, the maintenance of good order, and the life of [county] government. . . . Such bills pertain only to the administrative functions of government. . . .

Appropriation bills are made temporary in nature by the provisions of [Charter 6.10]

It follows that, if legislation of a general and continuing nature is to be passed, it cannot come under the subject of appropriations

* See, e.g., Ordinance No. 98-26, § 1: “The Pierce County Council hereby approves the twentieth superior court judgeship in Pierce County, and hereby agrees that the expenses related to said judicial position will be paid by County funds.” To like effect, see Resolution No. 2000-162, § 1, concerning Department 21.

State ex rel. Washington Toll Bridge Authority v. Yelle, 54 Wn.2d 545, 342 P.2d 588 (1959)(citations omitted). “We have repeatedly indicated the Legislature may not abolish or adopt substantive law in an appropriations bill.” *Washington Legislature v. Lowry*, 131 Wn.2d 309, 328 n.11, 931 P.2d 884 (1997)(citations omitted). A clause reaching beyond the budget year is subject to challenge as improper substantive legislation within an appropriations bill. *Washington State Legislature v. State*, 139 Wn.2d 129, 147, 985 P.2d 353 (1999). Legislative bodies of charter counties are generally governed by the same rules as the Legislature. *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980).

In my opinion, then, that portion of Ordinance 2009-105 which would abolish Department 9 is beyond the authority of the Council, because that Department was created by the Legislature pursuant to constitutional grant of authority, and because the clause is beyond the permissible scope of an appropriation ordinance.