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and by EMAIL to <JamesP@atg.wa.gov>

Tuesday, March 23, 2004

Honorable Christine O. Gregoire
Attorney General of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

James Pharris, Assistant AG
Attorney General of Washington
1125 Washington St. SE
PO Box 40100
Olympia, WA 98504-0100

Re: *Pierce Co. et al. v. State, et al*., King County No. 02-2-35125-5 (the "I-776 case")

Dear Ms. Gregoire and Mr. Pharris,

As you know, we represent Salish Village Condominium Association and Mr. G. Dennis Vaughan (referred to hereafter as "Salish/Vaughan"), two intervening defendants in the above-referenced action.

On March 19, 2004, Sound Transit's counsel, Paul Lawrence, sent Salish/Vaughan an e-mail letter with a proposed stipulation regarding procedures in the case following remand from the Supreme Court. That letter [copy attached herewith at Exhibit ("A")], addressed to Mr. Pharris as well, suggests a "need to proceed with remaining issues at the trial court level" and that it "would be appropriate for interveners (Salish/Vaughan) to raise their issues regarding the Sound Transit MVET." Although Sound Transit's e-mail sometimes refers to a Salish/Vaughan Complaint, and sometimes to an Answer, it appears that Mr. Lawrence is saying the following: (1) that Sound Transit is now prepared to retreat from its earlier opposition to Salish/Vaughan's right to file or argue claims in the case and (2) that Sound Transit now recognizes that it must respond to Salish/Vaughan's claims on the merits.

Our review of the Trial Court record shows that while your office previously filed an Answer for the State of Washington to the Complaint filed by Plaintiffs King and Pierce Counties, et al., you have yet to file an Answer to the Complaint filed by Sound Transit. While most of the Sound Transit claims have already been resolved by the State Supreme Court against Sound Transit, the most significant Sound Transit claim has not been resolved — can I-776 (though facially constitutional) be constitutionally construed to prevent collection of the Motor Vehicle Excise Tax ("MVET") pledged to bond holders, and if so, in what amounts and for how long?

Following oral argument in the Supreme Court, we spoke informally with Mr. Pharris to ascertain whether the State intended to defend I-776 against Sound Transit's "contract impairment" claim, but Mr. Pharris was unable to commit. It appears that the State should now file its Answer to Sound Transit so that the issues of all parties will be known and legally joined prior to entry of any stipulation. This will eliminate uncertainty about the State's position. We believe that the State AG has the responsibility to defend the law (I-776) against Sound Transit's assault. We hereby inform you of our intent to defend I-776 and to preserve the MVET being collected for eventual refund. We also intend to seek attorney fees for doing so if the AG does not fully defend I-776 against Sound Transit's claims.

At the risk of oversimplifying the defenses we attempted to raise previously in the Trial Court, our response to Sound Transit's "contract impairment" challenge is twofold:

1. Salish points out that as originally enacted in 1992, ESHB 2610 (laws 1992, Ch. 101, codified at RCW 81.112) required the RTA (Sound Transit) to place on the ballot a proposition to the voters for an "up or down" vote to ratify the agency's formation, a step that agency never took. This omission was ostensibly justified by the Legislature's inclusion in the 1993 state transportation budget bill a provision repealing the required local public vote to ratify agency formation (SSB 5972, §62). Because this was a classic violation of the "single subject" restriction of the State Constitution rendering the purported amendment invalid, the citizens' right to vote, and the RTA's obligation to achieve a favorable vote prior to implementation of the transportation plan, was not legally altered. Sound Transit's authority to implement its plan, including the issuing of bonds, was statutorily conditioned upon first procuring a favorable public vote ratifying its formation.

   We understand that generally the State Attorney General will defend a state statute against a claim that it is unconstitutional and the AG has a policy against challenging the constitutionality of a state statute. However, where the primary defense of one statute (I-776) requires a secondary adjudication of the constitutionality of another legislative act (the 1993 state budget bill), it appears that you have no choice but to offer a complete defense even if it requires you to condemn the rather obvious "log rolling" that occurred in 1993.

2. Even if the 1993 amendments were constitutionally valid, Salish and Vaughan claim

that Sound Transit's formation violates several constitutional limitations on the formation of local governments which all dovetail to preserve basic republican governance principles (direct or indirect voter control) embraced by the Federal and State Constitutions. These claims minimally involve Washington Constitution Article One §§ 1, 19, 29, 30 and 32, Article Eleven §§ 4, 10 and 16, and the debt limit restrictions of Article Eight § 6. Our claims also challenge due process restrictions on the power of the State Legislature to delegate the putative formation power to local officials. It is quite clear that, as currently constituted, Sound Transit's organization operates without a charter, without accountability to local voters (or to higher elected legislative bodies), and that its governance structure violates equal protection (one-person-one-vote) requirements of both the US and Washington State Constitutions. To the extent RCW 81.112 purports to provide legislative authority, that state statute is unconstitutional.

It does appear that a valid defense of I-776 requires the defense of a host of other rights all designed to preserve direct and indirect voter control of government. While reasonable minds may disagree over the application of these fundamental principles, all reasonable minds must agree that the government's revolution must occur within constitutional limitations. Salish and Vaughan are prepared to defend, and hope the State Attorney General shares our determination.

The second provision of Sound Transit's proposed stipulation concerns the sticky question of continued collection by the State for Sound Transit of the MVET repealed by I-776. Our clients' Complaint asked for declaratory, injunctive, mandamus or prohibition relief to prevent collection and expenditure of the MVET and for a refund of any MVET collected after the effective date of I-776. We have not sought a temporary injunction for the obvious reason that the required bond would be prohibitive, well beyond the means of all but a handful of the state's citizens, and those are not parties in the case. It does occur to us, however, that the Court is powerless to require an injunction bond from the State of Washington (CR 65 and RCW 4.92.080) and you may wish to request a preliminary injunction to prevent the collection of the MVET or to prevent or limit its expenditure by Sound Transit during the litigation.

We understood that Sound Transit's MVET was continuing to be collected by informal agreement between Sound Transit and your office. Sound Transit's proposed stipulation apparently seeks to elevate your informal agreement to the status of a Stipulated Court Order for continued MVET collection, and it seeks our participation. Given the presumption that I-776 is constitutional, the "beyond a reasonable doubt" burden on Sound Transit to prove its unconstitutionality, and the nature of our claims, we believe that it is inappropriate and unnecessary for Salish and Vaughan to join such a stipulation.

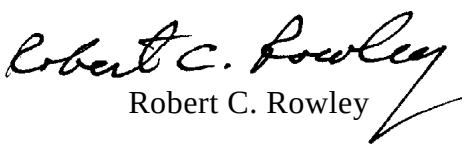
Even if we were otherwise inclined, the matter is far more complex than Sound Transit's simple stipulation comprehends. We now know that I-776 is constitutional. The maximum remedy Sound Transit could achieve if it ultimately prevails on its "contract impairment" claim would be the preservation of only so much of the MVET as is necessary to avoid the supposed unconstitutional impairment. Sound Transit has never bothered to quantify its claimed

"impairment," much less to quantify the amount and duration of MVET necessary to satisfy its commitment to bond holders, the application of the MVET, or complicated issues such as defeasance, early payment or availability of other resources. We understood from colloquy during oral argument in the Supreme Court that Sound Transit had represented to the Supreme Court that Sound Transit had sufficient resources at its disposal to implement all of its plan and to meet all of its obligations, including those owed to bond holders, even if it lost the entirety of the MVET revenue as a result of the I-776 repeal. Until Sound Transit is more forthcoming and candid we could never stipulate that it continue to receive the entirety of these illegal taxes, or that their expenditure be unrestricted, during what now promises to be extended litigation.

Please forgive the length of this letter, but we want a full discussion of positions and issues prior to making any commitments that may have unforeseen consequences. We know that you will want to make your own comprehensive assessment before reaching any agreements with Sound Transit. We hope our dialogue will be mutually beneficial, and that we may expect a prompt response.

Yours very truly,

ROWLEY & KLAUSER, LLP



Robert C. Rowley

James J. Klauser

Enclosures: Exhibits ("A") and ("B")
cc: clients

Subject: Proposed Stipulation
Date: Fri, 19 Mar 2004 14:59:58 -0800
Thread-Topic: Proposed Stipulation
From: "Lawrence, Paul \(SEA\)" <lawrence@prestongates.com>
To: <JamesP@atg.wa.gov>, <jklauser@speakeasy.org>
Cc: "zz-Brown, Desmond \(ST\)" <brownd@soundtransit.org>

Now that the Supreme Court has completed consideration of the 776 challenge, we need to proceed with remaining issues at the trial court level. At this time, it would be appropriate for interveners to raise their issues regarding the Sound Transit MVET. We would propose to stipulate to the interveners bringing these issues into the case now by filing of an amended complaint and then an agreed briefing schedule to bring these matters to the court.
Please let me know whether this proposal is acceptable.
Thanks you.

Paul J. Lawrence
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Exhibit ("A")

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PIERCE COUNTY, et.al Plaintiffs, v. STATE OF WASHINGTON, et. al, ; Defendant.	***Honorable Mary Yu*** **No.02-2-35125-5 SEA** **STIPULATED ORDER**

The undersigned parties stipulate as follows:

1. Salish Village Condominium Association and G. Dennis Vaughn (collectively "Intervenors") may file an amended answer to assert any unresolved claims related to Sound Transit's authority to collect the motor-vehicle tax as set forth in Exhibit A to their motion to intervene filed with the Court on December 20, 2002. The amended answer shall be filed by _____.

2. Pending resolution of the legal claims related to Sound Transit's right to collect Sound Transit's motor-vehicle tax, including the claim that art. I, section 23 of the Washington Constitution prohibits enforcement of Initiative 776's repeal of the motor-vehicle tax for so long as the bond contract requires that the tax be collected, the Department of Licensing shall continue to collect and remit the tax to Sound Transit as provided in their contract.

Exhibit ("B")

3. The parties shall confer and present the Court with a proposed briefing and hearing schedule for resolution of those issues that can be decided on summary judgment.

IT IS SO ORDERED:

Entered this_____day of March 2004.

_____
Honorable Mary Yu
King County Superior Court Judge

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Exhibit ("B")