

April 11, 2013

HAND DELIVERED

Representative Brian Clem, Chair
Committee Members
House Committee on Land Use
900 Court St. NE
Salem, Oregon 97301

Re: House Bill 2618

Dear Chair Clem and Committee Members:

House Bill 2618 arises from a recent case in Marion County Circuit Court – *Marion County Fire District #1 v. City of Keizer/Keizer Fire District* – in which the City of Keizer attempted to rely on ORS 222.520 to withdraw territory from Marion County Fire District #1, despite the fact that the city does not provide fire services. The court held that the statute does not authorize a city to withdraw territory from a special district unless the city will be responsible for providing the service currently provided by the district.

To a large extent, the court's decision simply affirmed a long-standing and widely-recognized understanding about the scope of city authority under ORS 222.520. House Bill 2618 is not intended to change city authority regarding the withdrawal of territory from a special district; instead, it simply clarifies cities' existing authority so that future litigation may be avoided.

House Bill 2618:

- Is consistent with existing city authority under ORS 222.520.
- Is consistent with the legislative history of ORS 222.520.
- Ensures the continuation of vital public services.
- Is consistent with the property tax system and the funding of public services.
- Is consistent with the Circuit Court decision.
- Does not require a city to provide the service directly but allows a city to provide the service either directly or through agreement with another entity.
- Respects the needs and boundaries of affected special districts.

House Committee on Land Use re HB 2618

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Attached to this letter is a copy of the court's decision ("Findings of Fact and Conclusions of Law"), and excerpts of Marion County Fire's brief ("Plaintiff's Motion for Partial Summary Judgment") that describes the legislative history of ORS 222.520. I hope that you find these materials helpful and encourage a "do pass" recommendation for House Bill 2618.

Sincerely,



Christopher Crean

Enclosure

STATE OF OREGON
Marion County Circuit Courts
JUN 04 2012
ENTERED

STATE OF OREGON
Marion County Circuit Courts
JUN 04 2012
FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

MARION COUNTY FIRE DISTRICT #1, an
Oregon rural fire protection district,

Plaintiff,

v.

CITY OF KEIZER, an Oregon municipal
corporation, and KEIZER FIRE DISTRICT, an
Oregon rural fire protection district,

Defendants.

Case No. 11C19259
(The Honorable Vance D. Day)

ORDER ON PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT,
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND DEFENDANTS'
MOTIONS TO STAY AND DISMISS

THIS MATTER came before the Honorable Vance D. Day on May 18, 2012, on Plaintiff's Motion for Partial Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants' Motions to Stay and Dismiss. Plaintiffs appeared by and through Christopher D. Crean and Chad A. Jacobs; Defendants appeared by and through Leta E. Gorman and E. Shannon Johnson. The Court, having reviewed the pleadings and files herein, having heard arguments of counsel and being otherwise advised of all the relevant facts, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Court finds that there is no genuine issue as to any material fact.
2. Plaintiff Marion County Fire District #1 ("MCFD#1") provides fire services to that portion of the City of Keizer known as the Clear Lake neighborhood.
3. Defendant Keizer Rural Fire Protection District ("KFD") provides fire services to the remainder of the City of Keizer.

Exhibit A
Page 1 of 5

- 1 4. Defendant City of Keizer ("City") does not provide fire and emergency services.
- 2 5. On September 19, 2011, pursuant to ORS 222.520 and 222.524, Defendant City adopted
- 3 Ordinance 2011-644 entitled "Withdrawing Territory from Marion County Fire District
- 4 No. 1" ("Ordinance"), which proposed withdrawing Clear Lake from MCFD#1.
- 5 6. On September 19, 2011, the City adopted Resolution 2011-2168 entitled "Proposing
- 6 Annexation to Keizer Fire," which proposed annexing Clear Lake to KFD.
- 7 7. On October 18, 2011, MCFD#1 filed for declaratory judgment seeking a declaration that
- 8 City lacked authority to withdraw Clear Lake pursuant to ORS 222.520 and 222.524.

9 CONCLUSIONS OF LAW

- 10 1. ORS 198.705 to 198.955 governs the formation and change of special district boundaries.
- 11 The withdrawal of territory from a special district under ORS 222.520 and 222.524 is
- 12 exempt from the provisions of ORS 198.705 to 198.955.
- 13 2. Based on the rules of statutory construction as outlined in *PGE v. Bureau of Labor and*
- 14 *Industries*, 317 Or 606, 859 P2d 1143 (1993), and *State v. Gaines*, 346 Or 160, 206 P3d
- 15 1042 (2009), the Court concludes that ORS 222.520 and 222.524 authorize a city to
- 16 withdraw territory from an affected special district only when the city will be responsible
- 17 for providing fire services.
- 18 3. Because the City is not responsible for fire services, it cannot utilize ORS 222.520 and
- 19 222.524 to attempt to withdraw Clear Lake from MCFD#1. Instead, the City must
- 20 comply with ORS 198.705 to 198.955.
- 21 4. Because the City did not comply with ORS 198.705 to 198.955 when it passed the
- 22 Ordinance, the City lacked authority to attempt to withdraw Clear Lake from MCFD#1
- 23 and, therefore, the actions it took to adopt the Ordinance were *ultra virus* and the
- 24 Ordinance is void *ab initio*.
- 25
- 26

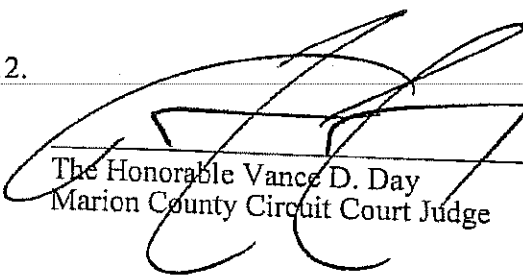
Exhibit A
Page 2 of 5

1 Now, therefore, IT IS HEREBY ORDERED THAT:

- 2 1. Defendants' Motion for Summary Judgment is DENIED.
- 3 2. Plaintiff's Motion for Partial Summary Judgment is GRANTED.
- 4 3. Defendants' Motion to Stay is GRANTED from this point forward until June 11,
- 5 2012.
- 6 4. The Court will take further action as necessary on Defendants' Motion to Dismiss
- 7 on June 11, 2012.
- 8 5. Defendants' answer to Plaintiff's First Amended Complaint is due June 29, 2012,
- 9 if an answer is necessary.

10
11 DATED this ^{4TH} day of ~~May~~, 2012.

June


The Honorable Vance D. Day
Marion County Circuit Court Judge

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15 Submitted by:

16 Christopher D. Crean, OSB No. 942804
17 Beery, Elsner & Hammond, LLP
18 Of Attorneys for Plaintiff
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Exhibit A
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

MARION COUNTY FIRE DISTRICT #1, an
Oregon rural fire protection district,

Plaintiff,

v.

CITY OF KEIZER, an Oregon municipal
corporation, and KEIZER FIRE DISTRICT, an
Oregon rural fire protection district,

Defendants.

Case No. 11C19259

**PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date: May 10, 2012
Time: 8:15 a.m.
Judge: Vance D. Day

1 ***a. The text and context of ORS 222.520 and 222.524 demonstrate the***
2 ***Legislature's intent to provide only limited authority to cities to withdraw***
3 ***territory from districts.***

3 In looking at "text and context," a court looks not just to the statute's text but must at the
4 same time look at its contextual framework. *See State ex rel. Penn v. Norblad*, 323 Or 464, 467,
5 918 P2d 426 (1996); *Jones v. General Motors*, 325 Or 404, 411, 939 P2d 608 (1999) ("As a part
6 of context, this court considers, among other things, other provisions of the same statute, other
7 related statutes, prior versions of the statute, and [the Supreme Court's] decisions interpreting the
8 statute").

9 Examining the issue before the Court in this way, it becomes apparent cities do not have
10 the statutory authority to effectively alter both the boundaries and tax base of other separate and
11 independent local governments.

12 ***i. Any guidance that can be gleaned from the text of the statutes indicates***
13 ***a legislative intent to provide limited authority to cities.***

14 The text of the both ORS 222.520 and ORS 222.524 provide little guidance on what the
15 Legislature intended when these provisions were adopted; that said, what little guidance there is
16 evinces an intent to allow withdrawal from a special district *only* if the city itself directly takes
17 responsibility for the services formerly provided by the affected district.

18 ORS 222.520 states:

19 **222. 520. Annexation of less than entire district; assumption of liabilities by**
20 **city optional**

21 (1) Whenever a part less than the entire area of a district named in ORS 222.510
22 becomes incorporated as or annexed to a city in accordance with law, *the city may*
23 *cause that part to be withdrawn from the district* in the manner set forth in ORS
24 222.120 or *at any time after such incorporation or annexation in the manner set*
25 *forth in ORS 222.524.* Until so withdrawn, the part of such a district incorporated
26 or annexed into a city shall continue to be a part of the district.

1 (2) The part thus withdrawn shall not thereby be relieved from liabilities and
2 indebtedness previously contracted by the district. For the purposes of paying
3 such liabilities and indebtedness of the district, property in the part withdrawn
4 shall continue to be subject to assessment and taxation uniformly with property in
5 the area remaining in the district. The city of which it became a part shall,
however, assume such obligations if the obligations assumed do not bring the
total of the city's obligations above any applicable limitations prescribed by
statute. When the city assumes such obligations it shall be liable to the district for
one of the following, at the option of the city:

6 (a) The amount of taxes which otherwise would be extended each year
7 therefor against the property in the part withdrawn; or

8 (b) Payment annually, as the bonds of the district that were outstanding on the
9 effective date of the withdrawal mature, of the same proportion of such
10 outstanding bonds, and the interest thereon, as the assessed valuation of the
11 part withdrawn bears to the assessed valuation of the entire district on the
12 effective date of the withdrawal. After the city agrees to make such payments
under this subsection, neither the city nor the part withdrawn shall be charged
by the district with any future liabilities, obligations or functions of the
district.

11 ORS 222.520 (emphasis added).

12 MCFD does not dispute the fact that subsection (1) grants cities the authority to withdraw
13 territory from districts; however, that subsection does not define the scope of that authority.
14 Subsection (2) however makes clear that “the city” from which the withdrawn territory became a
15 part “shall” assume the district’s liabilities, provides options for “the city” to pay the district and
16 provides protection to “the city” as to future liabilities of the district.

17 Placing these obligations on the city only makes sense if it is “the city” taking
18 responsibility for provision of the affected services. If the Legislature intended to afford cities
19 the ability to affect the jurisdictional and financial wherewithal of two or more special districts
20 inside its borders, it would seem only logical (indeed necessary) for the Legislature to address
21 how that second (and/or third) district(s) would assume the debts/liabilities of the district from
22 which the territory was being withdrawn. The Legislature, however, did not address that topic in
23 ORS Chapter 222. The absence of such provisions leads inexorably in only one direction: that
24 the use of ORS 222.520 in the manner Keizer and KFD propose this is not proper and not at all
25 what the Legislature intended.
26

1 ORS 222.524 states:

2 **222.524. Withdrawal of part of district**

3 (1) If as authorized by ORS 222.520 the governing body of the city elects to cause
4 the withdrawal from a district named in ORS 222.510 of that part of such district
5 theretofore incorporated in or annexed to the city, it shall hold a public hearing on
6 the question of such withdrawal. At the hearing, the governing body of the city
7 shall hear objections to the withdrawal and shall determine whether such
8 withdrawal is for the best interest of the city.

9 (2) The governing body shall fix a date, time and place for the hearing and
10 cause notice of the date, time, place and purpose of the hearing to be published
11 once each week for two successive weeks prior to the date of the hearing in a
12 newspaper of general circulation in the city, and shall cause notices of the hearing
13 to be posted in four public places in the city for a like period.

14 (3) After the hearing, the governing body of the city may by ordinance declare
15 that the part of the district which was theretofore incorporated as or annexed to
16 the city is withdrawn from the district.

17 (4) The ordinance referred to in subsection (3) of this section is subject to
18 referendum.

19 (5) The city may withdraw from all of such districts at the same time in one
20 proceeding under this section or may withdraw from each district in separate
21 proceedings at different times.

22 (6) The public hearing and ordinance referred to in this section may be the
23 same as the public hearing and ordinance in ORS 222.120.

24 ORS 222.524 (emphasis added).

25 As with ORS 222.520, ORS 222.524 speaks only of “the city” not other governmental
26 entities such as another district. For example, the standard the city must meet is whether the
 withdrawal is “for the best interest of the city.” Likewise, notices for the hearings are to be
 posted in “the city” and not elsewhere. This on-going limited reference to “the city” supports the
 view that the Legislature intended for the scheme manifested by ORS 222.520 and 222.524 to
 allow “the city”—and no other body—to take responsibility for bearing the cost and providing
 the service.

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3 ***b. The legislative history of ORS 222.520 and 222.524 further demonstrate the***
4 ***Legislature's intent to provide only limited authority to cities to withdraw***
territory from districts.

5 After examining the text and context of the statute, a court must review the legislative
6 history underlying the statute to the extent the legislative history is useful to the court's analysis.
7 *See Gaines*, 346 Or at 172; *Young v. State of Oregon*, 246 Or App 115, 119, 265 P3d 32 (2011).

8 ORS 222.520 was enacted in 1949 and ORS 222.524 was enacted in 1957. Both statutes
9 have been amended since first enacted. *See* Chapter 153, Oregon Laws 1949; Chapter 471,
10 Oregon Laws 1955; Chapter 401, Oregon Laws 1957; Chapter 347, Oregon Laws 1963; Chapter
11 509, Oregon Laws 1965; Chapter 624, Oregon Laws 1967; and Chapter 702, Oregon Laws 1985.
12 Although much legislative history is not relevant to these proceedings, the relevant history that
13 does exist confirms Plaintiff's interpretation that the Legislature intended to provide only limited
14 authority to cities when it enacted ORS 222.520 and 222.524. As detailed below, portions of
15 several legislative committee reports and minutes support Plaintiff's interpretation of ORS
16 222.520 and 222.524. *See State v. Laemoa*, 20 Or App 516, 523, 533 P2d 370 (1975)
17 (explaining the use of committee reports and minutes is helpful and proper in determining the
18 legislative history of a statute).

19 As noted, ORS 222.520 was originally enacted in 1949 and initially required automatic
20 withdrawal of territory from a district when that territory was annexed to or incorporated in a
21 city. *See* Chapter 153, Oregon Laws 1949. When originally enacted, the law applied only to
22 rural fire protection districts, water districts and sanitary districts. *See id.* The law was amended
23 six years later to add park and recreation districts to the list of special districts to which the
24 automatic withdrawal requirement applied. *See* Chapter 471, Oregon Laws 1955. In explaining
25 the intent of the bill, Representative Johnson stated that "it would allow a city to take over the
26 assets and become charged with the liabilities, obligations and functions of parks and recreation

1 districts . . . when incorporated in or annexed to a city.” See Minutes of House Committee on
2 Local Governments, Feb. 4, 1955 at p. 1 (emphasis added). Based on this language, it is clear
3 the Legislature intended for the law to apply when a city takes over responsibility for performing
4 the “functions” of the district—in other words, consistent with Plaintiff’s interpretation of the
5 law, the city would be responsible for providing the services previously performed by the
6 district.

7 The Legislature amended ORS 222.520 again two years later when it changed the
8 withdrawal requirement from an automatic one to the optional withdrawal provision that exists
9 today. See Chapter 401, Oregon Laws 1957. At that time, the Legislature enacted the original
10 version of ORS 222.524. See *id.* In an explanation of the procedures that would eventually
11 become ORS 222.524, the minutes of the Senate Local Government Committee state, “[t]he
12 district must continue to furnish services until the incorporated area can provide their own.” See
13 Minutes of Senate Local Government Committee, February 25, 1957 at p. 1 (emphasis added).
14 Furthermore, when explaining the effects of the bill to the House Local Government Committee,
15 Representative Mosser explained “[c]ertain services for some districts may be performed by the
16 city under contract.” See Minutes of House Local Government Committee, April 22, 1957 at p. 2
17 (emphasis added). These statements, which were made to explain the intent of these statutes,
18 also provide clear support for the conclusion that the power granted to cities to withdraw
19 territory from a district under ORS 222.520 and 222.524 is limited to situations when a city will
20 be responsible for providing services previously performed by the district.

21 The law was once again amended in 1965 to add domestic water supply, water control
22 and road districts to the list of districts to which the laws apply. See Chapter 509, Oregon Laws
23 1965. In explaining the need for the legislation, Senator Husband, the sponsor and proponent of
24 the bill, explained that the City of Eugene had recently annexed territory where there was a
25 special road district in place, which resulted in double taxation to the people living in the
26 annexed territory. See Minutes of Senate Committee on Local Government, March 5, 1965 at

1 page 2; Minutes of House Committee on Local Government, April 22, 1965 at page 1.
2 Presumably, this "double taxation" is the result of the citizens paying taxes to both the city and
3 the district for roads as both would be providing that service. Again, this history demonstrates
4 the Legislature's understanding that ORS 222.520 and 222.524 apply only in those situations
5 when the city will be responsible for providing the service previously performed by the district.

6 While recognizing this legislative history is not extensive, it is the only relevant
7 legislative history available and confirms Plaintiff's position about legislative intent, i.e., the
8 relevant legislative history shows that the Legislature intended to give cities authority to
9 withdraw territory from a special district only when the city would provide the service. It did not
10 intend to give cities carte blanche authority to withdraw territory from a special district for the
11 purpose of handing it over to another district. For these reasons, this Court may rely on this
12 legislative history to confirm Plaintiff's interpretation of ORS 222.520 and 222.524 and,
13 accordingly, grant Plaintiff's motion for partial summary judgment.

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