

May 14, 2013

HAND DELIVERED

Senator Arnie Roblan, Chair
Committee Members
Senate Committee on Rural Communities and Economic Development
900 Court St. NE
Salem, Oregon 97301

Re: House Bill 2618

Dear Chair Roblan 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.

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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

Enclosures

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.

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- 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
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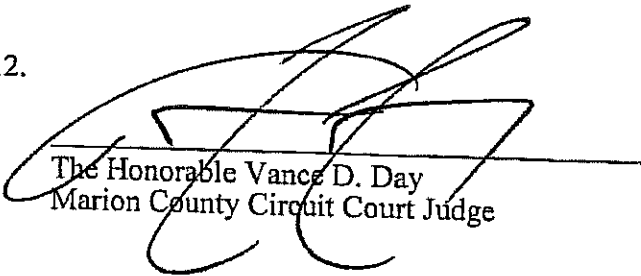
1 Now, therefore, IT IS HEREBY ORDERED THAT:

- 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.

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

12 June

13 
The Honorable Vance D. Day
14 Marion County Circuit Court Judge

15 Submitted by:

16 Christopher D. Crean, OSB No. 942804
17 Beery, Elsner & Hammond, LLP
Of Attorneys for Plaintiff

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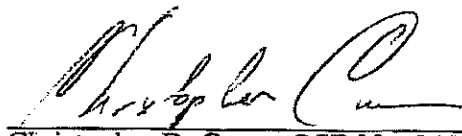
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Exhibit A
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1 UTCR 5.100 CERTIFICATION

2 Counsel for Plaintiff certifies that he served the foregoing Order on Plaintiff's Motion for
3 Partial Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants'
4 Motions to Stay and Dismiss on opposing counsel not less than three (3) days prior to submission
5 to the court by sending the same to opposing counsel by e-mail at leta.gorman@jordanramis.com
6 and johnsons@keizer.org and by first-class mail on May 21, 2012.

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9 _____
10 Christopher D. Crean, OSB No. 942804
11 Of Attorneys for Plaintiff

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Exhibit A
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1 The actions of the City to withdraw Clear Lake from the District are *ultra vires* and *void*
2 *ab initio*, and as such, the Court should grant Plaintiff's motion for partial summary judgment.

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***
5 ***territory from districts.***

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

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

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

14 ***c. Maxims of statutory construction also demonstrate the Legislature’s intent***
15 ***to provide only limited authority to cities to withdraw territory from districts.***

16 Finally, if any doubt remains about the Legislature’s intent following the Court’s review
17 of the text, context and legislative history of a statute, the Court may resort to maxims of
18 statutory construction. *See Gaines*, 346 Or at 172; *Young*, 246 Or App at 119. The Legislature’s
19 intent in enacting ORS 222.520 and 222.524 is clear from the text, context and legislative history
20 of these statutes, and as such, there is no need to resort to general maxims of statutory
21 construction. Nonetheless, to the extent this Court determines it necessary to rely upon maxims
22 of statutory construction, two commonly used general maxims further support Plaintiff’s
23 interpretation of the law.

1 First, a court should assume that the Legislature would not have intended that a statute
2 produce absurd results. *See State v. Walker*, 192 Or App 535, 546, 86 P.3d 690 (2004). Here,
3 the City does not provide fire services but nonetheless asserts the statute allows it to withdraw
4 Clear Lake from the fire district that is providing the service. Complaint ¶ 2; Answer ¶ 2 and 18.
5 This interpretation of ORS 222.520 allows a city to withdraw territory from a special district and
6 leave the area without service. It is absurd to conclude, as the City does, that the Legislature
7 intended to give cities the authority to leave entire areas of the state without, among other things,
8 fire protection, sanitary sewer services or potable water.

9 In addition, the City's interpretation of ORS 222.520 and 222.524 grants cities the ability
10 to impair the services of citizens outside of their geographical boundaries in significant ways.
11 For example, removing a significant portion of a special district's tax base simply to hand that
12 same tax base over to another special district affects not only the citizens of the city, but all of
13 the citizens of each special district. It is absurd to think the Legislature granted such power to
14 cities while only requiring the city to consider what is in the best interest of "the city." *See* ORS
15 222.524(1).

16 Second, a court should attempt to determine how the legislature would have intended the
17 statute to be applied had it considered the issue. *See Westwood Homeowners Ass'n v. Lane*
18 *County*, 318 Or 146, 159-160, 864 P.2d 350 (1993), *modified and adhered to on recons.*, 318 Or
19 327, 866 P.2d 463 (1994). To do so, courts often look to avoid conflict with other laws. *See*
20 *Carlson v. Myers*, 327 Or 213, 222-225, 959 P.2d 31 (1998). As explained above, under Keizer's
21 interpretation of ORS 222.520 and 222.524 a city is authorized to make decisions that could have
22 a significant effect on hundreds if not thousands of citizens that live outside of the city without
23 taking into consideration whether the decision is in the best interests of these citizens. This
24 interpretation directly conflicts with the provisions of ORS Chapter 195, which requires the
25 coordination of local government planning and the adoption of urban service agreements
26 between counties, cities and special districts. *See* ORS 195.020; 195.065 and 195.070.

1 It also conflicts with the comprehensive statutory structure the Legislature enacted in the
2 District Boundary Procedures Act in ORS Chapter 198. These statutes give county Boards of
3 Commissioners authority over the process of creating, amending and merging special district
4 boundaries. *See* ORS 198.365 (county as trustee for assets of terminated district), ORS 198.725
5 (designating principal county when two or more counties affected), ORS 198.795 (district
6 formation), ORS 198.850 (annexation into a district), ORS 198.870 (withdrawal from a district),
7 ORS 198.940 (district dissolution). County elected officials are elected by and accountable to all
8 county residents and, therefore, are assumed to act in the best interest of these residents when
9 making decisions regarding special district boundaries, not simply the residents of a single,
10 smaller jurisdiction. It is unreasonable to conclude that the Legislature created a comprehensive
11 Boundary Act to regulate special district boundaries, including delegating authority to county
12 boards, in direct conflict with ORS 222.520.

13 In short, if confronted with the issue, it is extremely doubtful that the Legislature would
14 have intended such a conflict to exist.

15 Consequently, after reviewing the text, context and legislative history of ORS 222.520
16 and 222.524, to the extent there is any remaining doubt about the Legislature's intent, general
17 maxims of statutory interpretation support the conclusion that the Legislature intended these
18 statutes to apply only to situations when the city effectuating the withdrawal will be responsible
19 for providing the services previously performed by the district.
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