

## Washington Supreme Court Recognizes Broad Municipal Taxing Authority and Upholds City of Federal Way's Excise Tax on Water and Sewer Districts

June 24, 2020

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The Washington Supreme Court recently issued an important decision for Pacifica Law Group client the City of Federal Way affirming that cities have broad excise tax authority rooted in home rule principles. On June 18, 2020, eight justices of the Court held that the City has authority to impose a local excise tax on public water and sewer districts providing services to ratepayers within the City's borders, including Lakehaven Water and Sewer District, Highline Water District, and Midway Sewer District. The Court based its decision in large part on the plain language of RCW 35A.82.020, which delegates broad authority to code cities to levy excise taxes on "all places and kinds of business" activities within their boundaries. The Court determined that this language includes public and private businesses alike and rejected the Districts' argument that the City was required to show an additional and "express" authorization to tax the Districts' water and sewer businesses. The Court thus clarified that general grants of municipal taxing authority are sufficient to tax the business of another municipal corporation so long as the legislature's intent is plain, as it was here.

The Court's opinion also is an important decision on "home rule" authority, which grants municipalities the broadest powers of self-government. Specifically, the Court agreed that the optional municipal code, codified under Title 35A RCW, grants code cities broad home rule authority and abrogated Dillon's Rule, which limits municipal powers to only those expressly granted by the constitution or state legislature. Thus, the Court explained that all grants of municipal power under the optional municipal code must be liberally construed in favor of the municipality.

Consistent with longstanding precedent, the Court further held that the governmental immunity doctrine did not shield the Districts from the City's excise tax because the Districts operate in a proprietary capacity, like any other business, when providing water or sewer services to ratepayers. The Court reaffirmed that the governmental/proprietary distinction is integral to the governmental immunity doctrine—which requires an explicit grant of authority to tax another municipal corporation's governmental, as opposed to proprietary, activities—and declined the Districts' invitation to abandon the distinction.

Six justices of the Court also agreed that municipal corporations generally do not have standing to bring claims under the Equal Protection or Due Process Clauses of the state and federal constitutions, which clauses protect individuals against governments, not governments against governments. In a concurrence/dissent, two justices indicated that they would have held that the Districts had standing to

bring their constitutional claims, but that those claims failed on the merits. Finally, a single justice dissent argued that the City's tax was not authorized.

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