SUPREME COURT OF WASHINGTON

Arborwood Idaho, L.L.C. v. City of Kennewick

151 Wash. 2d 359 (2004) · Decided May 6, 2004

SUMMARY

The Washington Supreme Court considered whether the City of Kennewick could impose a monthly ambulance service charge on households, businesses, and industries under RCW 35.21.768. The court held that the charge was not an authorized excise tax because it was imposed without the required connection to the receipt of ambulance services, and it also failed the applicable criteria for a regulatory fee, benefit charge, or direct-service fee. The court reversed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Madsen, J.; Alexander, C.J.; Johnson, J.; Sanders, J.; Ireland, J.; Bridge, J.; Chambers, J.; Owens, J.; Fairhurst, J.
JURISDICTION	Washington
DECIDED	May 6, 2004
DISPOSITION	reversed
PROCEDURAL POSTURE	Arborwood sought review of a municipal ambulance charge through the city appeals process and Benton County Superior Court. After the superior court granted summary judgment to Kennewick and the Court of Appeals affirmed, the Washington Supreme Court granted review.
STANDARD OF REVIEW	De novo review of summary judgment and statutory interpretation.
PRECEDENTIAL VALUE	binding
PARTIES	Arborwood Idaho, L.L.C. v. City of Kennewick

TOPICS

municipal law · public utilities · municipal finance · ordinances · statutory interpretation

PRACTICE AREAS

municipal law · state and local tax · public utilities · statutory interpretation · constitutional law

QUESTIONS PRESENTED

1. Whether Kennewick's monthly ambulance charge was an excise tax authorized by RCW 35.21.768.
2. Whether the ambulance charge was a valid regulatory or utility fee under the city's police power and the factors governing municipal fees.
3. Whether RCW 35.21.766 impliedly authorized Kennewick to impose utility charges on every household, business, and industry within the service area.

HOLDINGS

1. The ambulance charge was not a valid excise tax because it was not based on a voluntary act, privilege, occupation, or transaction authorized by RCW 35.21.768; instead, it was imposed on water and sewer customers regardless of actual ambulance service use.
2. The ambulance charge was not a valid regulatory fee, benefit charge, or direct-service fee because it primarily raised revenue for a public benefit and lacked a direct relationship between the flat charge and the service or burden attributable to the payers.
3. RCW 35.21.766 did not impliedly authorize Kennewick to impose a utility rate on every household, business, and industry because the statute authorized establishment of an ambulance service but did not authorize setting rates or imposing a general charge, and RCW 35.21.768 expressly addressed the available taxing authority.

KEY QUOTATIONS

> *"We hold that the ambulance charge is not a valid excise tax under RCW 35.21.768. We also hold that the ambulance charge is not a valid fee under the Coveil analysis. Accordingly, we reverse the judgment of the Court of Appeals."* (375-376)

FACTUAL BACKGROUND

Kennewick imposed a monthly ambulance charge of $2.60 per occupied household, business, and industrial unit, billing the person named on the water or sewer utility account and terminating utility service for nonpayment. The city used the charge to fund the operation, maintenance, and capital needs of its emergency medical and ambulance service, although the charge was imposed without regard to actual ambulance use and was calculated as a flat amount. Arborwood, which owned an apartment complex with 188 units, was billed for occupied units and challenged its liability for the charges.

PROCEDURAL HISTORY

Arborwood challenged monthly ambulance charges assessed against its apartment complex. The Kennewick appeals commission upheld the charge, and the Benton County Superior Court granted Kennewick summary judgment, concluding that the charge was a valid regulatory fee. The Court of Appeals affirmed, characterizing the charge as a regulatory fee and also rejecting constitutional-property-tax and statutory-excise-tax challenges. The Supreme Court reversed the Court of Appeals.

DISPOSITION

reversed

CASES CITED

- Arborwood Idaho, L.L.C. v. City of Kennewick, 113 Wn. App. 875, 885, 887, 889, 55 P.3d 1170 (2002)
- King County v. City of Algona, 101 Wn.2d 789, 791-92, 681 P.2d 1281 (1984)
- Carkonen v. Williams, 76 Wn.2d 617, 627, 458 P.2d 280 (1969)
- Citizens for Financially Responsible Gov't v. City of Spokane, 99 Wn.2d 339, 342, 662 P.2d 845 (1983)
- Covell v. City of Seattle, 127 Wn.2d 874, 879, 889, 905 P.2d 324 (1995)
- Margola Assocs. v. City of Seattle, 121 Wn.2d 625, 634, 854 P.2d 23 (1993)
- Hillis Homes, Inc. v. Snohomish County, 97 Wn.2d 804, 809, 650 P.2d 193 (1982)
- Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)
- State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001)
- Group Health Coop. of Puget Sound, Inc. v. Dep't of Revenue, 106 Wn.2d 391, 401, 722 P.2d 787 (1986)
- High Tide Seafoods v. State, 106 Wn.2d 695, 699, 725 P.2d 411 (1986)
- Black v. State, 67 Wn.2d 97, 99, 406 P.2d 761 (1965)
- Whatcom County v. Taxpayers of Whatcom County Solid Waste Disposal District, 66 Wn. App. 284, 286-88, 294, 296, 831 P.2d 1140 (1992)
- Washington Public Ports Ass'n v. Department of Revenue, 148 Wn.2d 637, 641-44, 652, 62 P.3d 462 (2003)
- Phinney v. City of Seattle, 34 Wn.2d 330, 332, 208 P.2d 879 (1949)
- Okeson v. City of Seattle, 150 Wn.2d 540, 550, 552, 78 P.3d 1279 (2003)
- Lakoduk v. Cruger, 47 Wn.2d 286, 288-89, 287 P.2d 338 (1955)
- Hagerman v. City of Seattle, 189 Wash. 694, 701, 66 P.2d 1152 (1937)
- Town of Steilacoom v. Thompson, 69 Wn.2d 705, 709, 419 P.2d 989 (1966)
- State ex rel. Church v. Superior Court, 40 Wn.2d 90, 91, 240 P.2d 1208 (1952)
- King County Fire Protection District No. 16 v. Housing Authority of King County, 123 Wn.2d 819, 824-25, 831, 834, 872 P.2d 516 (1994)
- Sundquist Homes, Inc. v. Snohomish County Public Utility District No. 1, 140 Wn.2d 403, 405, 410-13, 997 P.2d 915 (2000)
- Hillis Homes, Inc. v. Public Utility District No. 1, 105 Wn.2d 288, 289, 297-98, 714 P.2d 1163 (1986)
- Twitchell v. City of Spokane, 55 Wash. 86, 88, 104 P. 150 (1909)
- Faxe v. City of Grandview, 48 Wn.2d 342, 351-52, 294 P.2d 402 (1956)
- Carstens v. Public Utility District No. 1 of Lincoln County, 8 Wn.2d 136, 151, 111 P.2d 583 (1941)
- City of Tacoma v. Taxpayers of City of Tacoma, 108 Wn.2d 679, 692-96, 743 P.2d 793 (1987)