

WASHINGTON SUPREME COURT

Sheehan v. Central Puget Sound Regional Transit Authority

155 Wash. 2d 790 (2005) · Decided November 10, 2005

OPINION

Sheehan v. Central Puget Sound Regional Transit Authority

155 Wash. 2d 790

OWENS, J.

¶1 Owens, J. Patrick Sheehan and James Reynolds (Appellants) seek reversal of the trial court’s decision to dismiss, upon motion for summary judgment, all of their claims challenging the motor vehicle excise taxes (MVET) levied and collected by respondents Central Puget Sound Regional Transit Authority (Sound Transit) and Seattle Popular Monorail Authority (the Monorail) (collectively, the Authorities). Appellants also assign error to the trial court’s decision to defer a ruling on their CR 23 motion for class certification until final disposition of the parties’ cross motions for summary judgment. We hold that, contrary to the myriad arguments offered by Appellants, the taxes imposed by the Authorities are not illegal and that the trial court did not err in denying their motion for class certification on the basis that the motion was moot. We, therefore, affirm the trial court in all respects.

FACTS

¶2 There is no dispute as to the underlying facts of this case. A background description of the MVET collected by Sound Transit and the Monorail is provided below.

1. The Sound Transit Tax

¶3 Sound Transit was formed in 1993 pursuant to enabling legislation that authorized counties in the Puget Sound region to create transit authorities for the financing and operation of regional transit systems. See generally ch. 81.104 RCW; ch. 81.112 RCW. Pursuant to this legislation, King, Pierce, and Snohomish Counties voted to establish Sound Transit to provide mass transportation services within a defined geographical district (Sound Transit District). To fund such services, RCW 81.104.140 authorizes a regional transit authority, such as Sound Transit, to collect *794revenue from several funding sources, including an excise tax on motor vehicles. Specifically, former RCW 81-.104.160(1) (1998)¹ permitted regional transit authorities to submit an authorizing proposition to the voters, and if approved, [to] levy and collect an excise tax, at a rate approved by the voters, but not exceeding eighty one-hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing high capacity transportation service. The legislature authorized Sound Transit to contract with appropriate agencies “for administration ... of any tax authorized by RCW . . . 81.104.160.” RCW 81.104.190. ¶4 In November 1996, voters in the Sound Transit District

approved a regional mass transportation plan, as well as a local MVET of 0.3 percent of the value of motor vehicles licensed within the Sound Transit District. Sound Transit's MVET was passed "to provide the local share of funding towards the \$3.9 billion estimated cost of the system." Clerk's Papers (CP) at 251. Using its authority under RCW 81-.104.190 to contract with state agencies for tax administration, Sound Transit reached an agreement with the Washington Department of Licensing (DOL) for the collection of its MVET.

2. The Monorail Tax

¶5 The Monorail was formed in 2002 pursuant to enabling legislation authorizing the creation of transportation authorities that are charged with building, owning, operating, and maintaining a monorail system. See generally ch. 35.95A RCW. The Monorail may, with voter approval, "levy and collect a special excise tax not exceeding two and one-half percent on the value of every motor vehicle owned by a resident of the authority area for the privilege of using *795a motor vehicle." RCW 35.95A.080(1), (5). This special excise tax "will be collected at the same time and in the same manner as relicensing tab fees under RCW 46-.16.0621 and 35.95A.090." RCW 35.95A.130. "Valuation of motor vehicles for purposes of the special excise tax. . . must be consistent with chapter 82.44 RCW" Id. (referencing the State's former MVET, repealed by 1-776; see *supra* note 1). ¶6 In 2002, Seattle voters approved a measure providing for "an annual special excise tax not to exceed 1.4% on the value of every motor vehicle owned by a Seattle resident." CP at 42, 148. The Monorail thereafter pledged proceeds from the Monorail MVET to the long-term debt it issued to finance construction of the "Green Line" project from Ballard to West Seattle. Unlike Sound Transit's enabling legislation, the Monorail legislation specifically provides that DOL shall quarterly "remit special excise taxes collected on behalf of an authority, back to the authority, at no cost to the authority." RCW 35.95A.130.

3. Procedural History

¶7 Appellants are motor vehicle owners who reside within one or both of the Authorities' boundaries and have paid one or both of the vehicle taxes. In March 2004, Appellants filed a complaint in King County Superior Court alleging that both vehicle taxes were unconstitutional and statutorily unauthorized. Soon thereafter, Appellants moved for certification of a class of similarly situated taxpayers pursuant to CR 23. The Authorities opposed certification, arguing that consideration of the motion should be stayed pending the resolution of the Authorities' motion for summary judgment, which they filed simultaneously with their opposition to the class certification. Appellants subsequently filed a cross motion for summary judgment. ¶8 After oral argument regarding class certification, the trial court reserved its ruling on that issue pending a *796resolution of the parties' cross motions for summary judgment. The trial court then heard argument on the summary judgment motions, granted the Authorities' summary judgment motion, denied Appellants' summary judgment motion, dismissed all claims against the Authorities, and denied the pending class certification motion as moot. Appellants sought, and we granted, direct review in this court.²

ISSUES

¶9 1. Are the taxes imposed by the Authorities illegal under article VII, section 5 of the Washington State Constitution because (a) there is no provision for the taxing events in the enabling legislation, (b) they are invalid excise taxes, (c) they are collected annually, or (d) they are invalid licensing taxes? ¶10 2. Are the taxes imposed by the Authorities illegal because they are preempted under RCW 46.08.010? ¶11 3. Are the taxes imposed by the Authorities actually property taxes, prohibited by RCW 82.44.130 and RCW 84-.36.595(2)? ¶12 4. Did the trial court abuse its discretion by delaying a ruling on the plaintiffs' CR 23 motion for class certification until after the cross motions for summary judgment had been decided? ¶13 5. Are Appellants entitled to attorney fees?

STANDARD OF REVIEW

¶14 At issue is the trial court's grant of summary judgment in favor of the Authorities as to Appellants' constitutional and statutory violation claims. "The standard of review of an order of summary judgment is de novo, and the *797appellate court performs the same inquiry as the trial court." *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. See CR 56(c). ¶15 Issues pertaining to constitutional limitations on local taxation and statutory interpretation are issues of law to be determined de novo. *Okeson v. City of Seattle*, 150 Wn.2d 540, 548-49, 78 P.3d 1279 (2003). The aim of statutory interpretation is "to discern and implement the intent of the legislature." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Where the meaning of a provision is "plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). A provision's plain meaning may be ascertained by an "examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found." *Id.* at 10 (citing, *inter alia*, *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 708-09, 985 P.2d 262 (1999) (stating that "[r]elated statutory provisions are interpreted in relation to each other and all provisions harmonized")). Only when the plain, unambiguous meaning cannot be derived through such an inquiry will it be "appropriate [for a reviewing court] to resort to aids to construction." *Campbell & Gwinn*, 146 Wn.2d at 12.

ANALYSIS

1. Appellants' Constitutional Challenges to the Sound Transit and Monorail Taxes

¶16 Appellants suggest that four aspects of the Sound Transit and Monorail vehicle taxes are unconstitutional under article VII, section 5 of the Washington State Constitution. Article VII, section 5 states, "No tax shall be *798levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." Appellants argue that the vehicle taxes contravene these constitutional requirements because (1) the enabling

statutes do not expressly allow Sound Transit and the Monorail to tax the registration of a vehicle; (2) the vehicle taxes do not operate as valid excise taxes as provided for in the enabling legislation; (3) the enabling legislation precludes the imposition of the vehicle taxes on an annual basis, rather than as a per-vehicle cap; and (4) the vehicle taxes fail, under the second clause of article VII, section 5, to “state distinctly the object of the [tax].” We address each of these constitutional arguments in turn.

a. Taxing the Registration of a Vehicle ¶17 Appellants first contend that the “[n]o tax shall be levied except in pursuance of law” clause of article VII, section 5 renders the Authorities’ vehicle taxes unconstitutional because former RCW 81.104.160(1) and RCW 35.95A.080(1) do not expressly authorize the Authorities to tax the registration of a vehicle. Appellants rely upon (1) the absence of any variant of the terms “register” or “license” in the tax authorization statutes for either Sound Transit (former RCW 81.104.160(1)) or the Monorail (RCW 35.95A.080(1)) and (2) the express use of such terms in related sections of the Authorities’ enabling statutes. See, e.g., RCW 35.95A.090. As a result, Appellants reason, the legislature understood how to use vehicle registration as the taxable event but declined to do so with respect to these vehicle taxes, as evidenced by the lack of express language to the contrary.

¶18 The constitution allows the legislature to grant municipal authorities the power to levy and collect excise taxes for local purposes. See Const, art. XI, § 12; *King County v. City of Algona*, 101 Wn.2d 789, 791, 681 P.2d 1281 (1984). In this instance, the legislature granted Sound *799Transit the power to “levy and collect an excise tax ... of every motor vehicle owned by a resident of the taxing district.” Former RCW 81.104.160(1). Similarly, the Monorail has the power to “levy and collect a special excise tax... on the value of every motor vehicle owned by a resident of the authority area for the privilege of using a motor vehicle.” RCW 35.95A.080(1).

¶19 Exercising the powers expressly delegated by the legislature, the Authorities have determined, with approval of the voting residents within their respective districts, that an excise tax on motor vehicles will be imposed. The Authorities have also determined that the time and place of this excise tax is the registration of a vehicle within the district. Using vehicle registration as the taxable event is not only consistent with the express grant of legislative authority in former RCW 81.104.160(1) and RCW 35.95A-.080(1), but it comports fully with the legislature’s decision to allow the Authorities to employ DOL, which is charged with licensing vehicles, to collect the tax. See RCW 81.104-.190; RCW 35.95A.130. Contrary to Appellants’ assertion, there is no basis to conclude that “register” or “license” somehow operate as indispensable words without which a local authority is precluded from using vehicle registration as the event triggering taxation on the privilege of driving. Such an exceedingly rigid view of the constitutional analysis would be antithetical to the legislature’s ability to delegate its authority to tax. In sum, we conclude that the plain language of the tax authorization and collection statutes satisfy the constitutional requirement that the Authorities’ use of vehicle registration as the taxable event is done “in pursuance of law.” See Const, art. VII, § 5.

b. Validity as an Excise Tax ¶20 Appellants next suggest that the vehicle taxes in this case are unconstitutional because they do not qualify as valid

excise taxes. We have previously noted that excise *800taxes require two conditions: First, excise taxes are imposed upon a voluntary act of the taxpayer, which affords the taxpayer the benefits of the occupation, business, or activity that triggers the taxable event. Second, excise taxes are directly imposed based upon the extent to which the taxpayer enjoys the taxable privilege. See *Harbour Vill. Apartments v. City of Mukilteo*, 139 Wn.2d 604, 611, 989 P.2d 542 (1999) (Talmadge, J., dissenting) (summarizing *Black v. State*, 67 Wn.2d 97, 99, 406 P.2d 761 (1965)). Appellants would have us hold that the Authorities' vehicle taxes fail as excise taxes because they are involuntary and calculated using an improper taxation method. The vehicle taxes are involuntary because, Appellants reason, the only available means of avoiding payment is to relinquish the beneficial use of one's property (i.e., not registering for use on public roadways). Appellants also argue that the taxes, which are calculated with reference to the value of a resident's vehicle, are not adequately based on the extent to which a resident enjoys the privilege of relicensing a vehicle for use on the public roadways in the relevant municipality. ¶21 The Authorities' vehicle taxes satisfy the requirement that excise taxes must be voluntary. There is no inherent requirement that residents of the taxing districts own or continue to own a motor vehicle. Certainly, many residents within the Authorities' districts do not own such vehicles. Similarly, there is no requirement that a vehicle owner drive his or her vehicle or, if a resident chooses to drive, that the resident use public roadways. A vehicle owner may, for instance, use his or her vehicle on private land without registration. See RCW 82.44.010(2)(c) (exemption for vehicles used entirely on private property). Finally, since 1937, this court has held that a motor vehicle tax, measured annually upon the value of a vehicle at registration, is a valid excise tax. See *State ex rel. Hansen v. Salter*, 190 Wash. 703, 705-06, 70 P.2d 1056 (1937). Although the analysis provided in *Hansen* is sparse, the court clearly stated that the original MVET, which is nearly identical to those at issue in this case, was a valid excise tax "upon the *801use of personal property." *Id.* at 705 (addressing Laws of 1937, ch. 228). ¶22 The Authorities' method of taxation is also consistent with the requirements of a valid excise tax. While Appellants are correct that a taxation scheme with a closer nexus between the privilege and the taxation method is conceivable,³ they offer no persuasive argument or authority suggesting that the constitution requires such a precise fit. To the contrary, this court has, since *Hansen*, approved of an excise tax on the privilege of relicensing a motor vehicle that is assessed against the value of a motor vehicle. Moreover, the legislature uses the same methodology in imposing similar excise taxes. See, e.g., RCW 82.50.425(2) (excise tax on travel trailers and campers levied according to statutory depreciation schedule); RCW 82.49.010(1) (water vessels taxed as percentage of value of watercraft for privilege of using waterways). Simply put, the relationship between the legitimate decision to tax the privilege of relicensing a motor vehicle for use on public roadways and the method of using the value of a vehicle as the measure of that privilege is sufficient to avoid any constitutional infirmity. c. Annual Collection of the Vehicle Taxes ¶23 Appellants next contend that the vehicle taxes violate the "[n]o tax shall be levied except in pursuance of law" clause of article VII, section 5 because

the taxes may not be imposed annually. Although the argument is perfunctory,⁴ Appellants seem to suggest that the legislature's decision not to use some form of the term "annual" in the excise tax enabling statutes for either Sound Transit or the Monorail can mean only that the legislature authorized a one-time, per-vehicle cap. For example, former RCW 81.104.160(1) ^{*802}authorizes Sound Transit to "levy and collect an excise tax . . . not exceeding eighty one-hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district." Exercising this authority, Sound Transit voters approved an MVET of 0.3 percent. Consequently, Appellants appear to conclude that Sound Transit may collect an MVET up to 0.3 percent annually but only until such taxation on a given vehicle reaches a sum total of 0.8 percent, at which point any additional taxation would violate article VII, section 5 and require a refund. In support of this argument, Appellants reference only the general principle that, when there is doubt, "taxing statutes are construed most strongly against the government and in favor of the taxpayer." *Dep't of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973). Unfortunately for Appellants, on this point there is no doubt. f 24 We begin and end with the principle that a provision's plain meaning may be ascertained by an "examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found." *Campbell & Gwinn*, 146 Wn.2d at 10. An examination of the authorizing legislation, former RCW 81.104.160(1) and RCW 35.95A.080(1), in conjunction with related statutes provides several reasons to conclude that the legislature authorized an annual tax on motor vehicles. ¶25 First, the express language of the authorizing legislation provides for "an excise tax... of every motor vehicle," former RCW 81.104.160(1) (Sound Transit), and a "special excise tax ... on the value of every motor vehicle," RCW 35.95A.080(1) (Monorail). Since 1937, a "motor vehicle excise tax" has meant a tax on the privilege of relicensing a motor vehicle for use on public roadways collected by DOL at the point of annual registration. See former RCW 82.44.020(1) (1993). While the original MVET of 1937 explicitly used the term "annual," we cannot conclude by negative implication that the legislature, approxi^{*803}mately 60 years later, necessarily intended the Authorities' MVET to operate as a onetime cap. Instead, it seems clear that the legislature intended to adopt the long-held understanding of the meaning and operation of an MVET. See former RCW 82.44.020(1). ¶26 Second, the legislature provided for DOL's collection of the MVET. RCW 81.104.190; RCW 35.95A.130. DOL, in turn, has always collected the MVET annually upon the registration or relicensing of a resident's motor vehicle. Additionally, while not necessary to conclude that the legislature authorized annual taxation, we note that the Monorail tax is to be collected "at the same time and in the same manner as relicensing tab fees under RCW 46-.16.0621." RCW 35.95A.130. Notably, RCW 46.16.0621(2) provides for payment annually. All of this provides further indication that the legislature both considered and intended to authorize the annual imposition of the Authorities' MVET. ¶27 Finally, if Appellants' contention that the Authorities are restricted to a onetime per-vehicle cap were correct, the taxes would no longer operate as a valid excise tax. As discussed above, these motor

vehicle taxes operate as valid excise taxes because they are assessed upon the privilege of relicensing a motor vehicle for use on the public roadways — a privilege that is taxed annually at registration. If, as Appellants maintain, the legislature authorized taxes that are based purely on the value of a vehicle rather than the privilege of relicensing the vehicle annually, such taxes could operate only as what are known as ad valorem or property taxes. The legislature has expressly and unequivocally forbidden such taxes on motor vehicles. RCW 82-.44.130 (“No motor vehicle shall be listed and assessed for ad valorem taxation so long as this chapter remains in effect.”). Thus, adopting Appellants’ position would require the conclusion that the legislature intended to authorize Sound Transit and the Monorail to enact taxes that are clearly illegal under a related statute. Our long-held rules of statutory interpretation preclude such logic. See, e.g., *804Alderwood Water Dist. v. Pope & Talbot, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963) (statutory interpretation should “avoid unlikely, strained or absurd consequences which could result from a literal reading”).

d. Stating the Object of the Tax ¶28 Appellants’ final constitutional argument suggests that the Authorities’ implementing ordinances fail to “state distinctly the object of the [tax] to which only it shall be applied,” as required under article VII, section 5. Sound Transit’s ordinance implements a “motor vehicle excise tax of three-tenths of one percent” for a “regional rail and express bus system.” CP at 236. Similarly, the Monorail’s ordinance implements a “special excise tax not to exceed 1.4 percent on the value of every motor vehicle owned by a resident of the Authority Area for the privilege of using a motor vehicle. ... to pay all or a portion of the cost of Phase I.” CP at 247. Appellants argue that both the ordinances contravene the “state distinctly” requirement because they fail to reference vehicle registration or licensing. This reasoning fails in at least two ways. First, the use of the phrase “motor vehicle excise tax” adopts, by reference, the meaning that the phrase has always had — namely, an excise tax on the privilege of relicensing a vehicle for use on public roadways assessed annually at vehicle registration. Second, the “state distinctly” requirement in article VII, section 5 is directed not simply to the method of taxation but rather the relationship between the tax and the purpose of the tax. See *Sheldon v. Purdy*, 17 Wash. 135, 141, 49 P. 228 (1897). For example, the objects of the taxes in this case are the Ten-Year Regional Transit System Plan and Phase I of the Seattle monorail. Article VII, section 5 would render unconstitutional actions taken to divert taxes assessed for those purposes into some wholly unrelated project or fund. There is no suggestion that such a diversion has occurred or is proposed with regard to either Sound Transit or the Monorail. Thus, there is no constitutional violation.

*8052. Preemption under RCW 46.08.010

¶29 Appellants contend that the Authorities’ taxes are preempted under RCW 46.08.010 because they operate as licensing conditions. RCW 46.08.010 states in relevant part as follows: State preempts licensing field. The provisions of this title relating to the certificate of ownership, certificate of license registration, vehicle license, vehicle license plates and vehicle operator’s license shall be exclusive and no political subdivision of the state of Washington shall require or

issue any licenses or certificates for the same or a similar purpose. Preemption requires a showing that (1) “the legislature either expressly or by necessary implication state [d] its intention to preempt the field,” or (2) “a state statute and local ordinance are in such direct conflict they cannot be reconciled.” *Kennedy v. City of Seattle*, 94 Wn.2d 376, 383-84, 617 P.2d 713 (1980). Appellants reason that the legislature intended a general preemption of vehicle license taxation because the preemption clause applies to all of Title 46 RCW and, in a separate section under that title, there is a reference to license fees and excise taxes. See RCW 46.16.210(2) (“The application must be accompanied by the payment of such license fees and excise tax as may be required by law.”). Therefore, Appellants would have us hold that the Authorities’ MVET could be valid only if the legislature had provided a preemption exception, which would require a specific reference to “registration” or “licensing” taxes in the enabling statutes. f 30 Contrary to Appellants’ interpretation of the vehicle licensing statutes, there is no preemption in this case. The Authorities have not undertaken the issuance of vehicle licenses, as prohibited by RCW 46.08.010. Instead, the Authorities have implemented a duly authorized MVET on the privilege of relicensing a vehicle for use on the public roadways. This is contemplated, not prohibited, by the reference to the “license fees and excise tax as may be required by law” in RCW 46.16.210(2). The Authorities’ *806vehicle taxes are “required by law.” Additionally, the legislature made specific provision for the Authorities to employ DOL in collecting the vehicle taxes. See RCW 81.104.190; RCW 35.95A.130. Appellants’ suggestion that the legislature simultaneously authorized DOL to collect the Authorities’ MVET and preempted those taxes under the vehicle licensing statute is once again adverse to our rules of statutory construction. See *Alderwood Water Dist.*, 62 Wn.2d at 321 (statutory interpretation should “avoid unlikely strained or absurd consequences”).

3. Property Taxes Prohibited by RCW 82.44.130 and RCW 84.36.595(2)

¶31 Appellants’ final substantive argument relies on the characterization of the Authorities’ vehicle taxes as ad valorem or property taxes. Appellants argue that the Authorities have implemented property taxes, not excise taxes, because the assessment is calculated as a percentage of vehicle value rather than the degree to which a resident uses the public roadways. Assuming the vehicle taxes are property taxes, Appellants maintain that those taxes are invalid because they violate the two prohibitions found in RCW 82.44.130 (“[n]o motor vehicle shall be listed and assessed for ad valorem taxation”) and RCW 84.36.595(2) (“[m]otor vehicles . . . are exempt from property taxation”). While Appellants are correct that property taxes on motor vehicles are invalid, they are incorrect in characterizing the Authorities’ vehicle taxes as property taxes. ¶32 In *Hansen*, this court directly addressed the issue of whether the State’s MVET was, in operation, a property tax. 190 Wash., at 705-07. The *Hansen* court stated “[t]hat a tax upon the use of personal property is an excise!] is no longer open to question in this state.” *Id.* at 705. Although both the original MVET of 1937 and the Authorities’ vehicle taxes are calculated as a percentage of vehicle value, in each case the tax was or is levied upon the privilege of relicensing a vehicle for use on public

roadways. Certainly, *807if the Authorities had imposed true property taxes, there would be no exception for residents who choose to own, but not use, their motor vehicles. Once again, the mere fact that a closer nexus between the taxable activity (driving on public roadways) and the taxing event (vehicle registration) is conceivable does not require the recharacterization of such taxes as property taxes. This is the conclusion inherent in Hansen, and we decline Appellants' invitation to disregard that precedent.

4. Class Certification under CR 23

¶33 Appellants assign error to the trial court's denial of their motion for class certification as moot after it disposed of their substantive claims on summary judgment. A trial court's class certification decision is discretionary and will not be overturned absent a manifest abuse of discretion. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 47, 905 P.2d 338 (1995). Because we affirm the trial court's order of summary judgment in favor of the Authorities, the class certification issue continues to be moot. Although the argument is rather opaque, Appellants appear to go further in suggesting that the trial court erred in delaying its ruling on CR 23 class certification until after deciding the cross motions for summary judgment. To the extent Appellants allude to some remedy in the form of remand for consideration of their CR 23 motion, such a request is without merit. It is clear from our case law, federal cases reviewing Federal Rule of Civil Procedure 23, and statements analysis by prominent commentators, that a trial court retains discretion, for purposes of judicial economy, to delay ruling on a motion for class certification until after hearing dispositive motions. See, e.g., *Wash. Educ. Ass'n v. Shelton Sch. Dist.* No. 309, 93 Wn.2d 783, 789, 613 P.2d 769 (1980) ("certification of class need not always be accomplished before turning to other questions in a proposed class action"); *Wright v. Schock*, 742 F.2d 541, 544 (9th Cir. 1984) ("It is reasonable to consider a Rule 56 motion first [prior to certification] when early resolution of *808a motion for summary judgment seems likely to protect both the parties and the court from needless and costly further litigation."); 5 James Wm. Moore et al., *Moore's Federal Practice* § 23.81 2 (3d ed. 2005) ("The general rule is that pre-certification dispositive rulings are not prohibited. A district court may, in proper circumstances, rule on a dispositive motion before ruling on class certification.").

5. Appellants' Request for Attorney Fees

¶34 Assuming a favorable outcome on one or more of their issues on appeal, Appellants request attorney fees from the two classes of beneficiaries they purport to represent. Because we affirm the trial court in all respects, no substantive issues remain and the case is dismissed. The request for attorney fees is therefore denied.

CONCLUSION

¶35 We hold that there is no basis for concluding that the MVET imposed by Sound Transit and the Monorail are constitutionally or statutorily prohibited. We therefore affirm the trial court's grant of summary judgment in favor of the Authorities in all respects. We also affirm the trial court's ruling that Appellants' CR 23 motion for class certification is moot. Alexander, C.J.; C.

Johnson, Madsen, Chambers, and Fair-hurst, JJ.; and Baker, J. Pro Tern., concur. In 2002, Washington voters approved Initiative Measure 776 (1-776), see Laws of 2003, ch. 1, and in doing so, repealed RCW 81.104.160(1). Id. § 6. This court upheld 1-776. See *Pierce County v. State*, 150 Wn.2d 422, 78 P.3d 640 (2003). Amici A.H. Larson et al. move to include nonrecord material in the form of argument and transcript from separate cases. The Authorities filed an opposition brief, which we consider as a motion to strike. The motion to strike is granted, as the material in question is outside the scope of the record and irrelevant to our resolution of the issues in this case. Appellants suggest that a valid excise tax on the privilege of driving would require taxation based on mileage as determined by periodic odometer readings. Appellants afford this issue a single six-sentence paragraph in 57 pages of briefing. See Br. of Appellants at 23-24.