

NO. A11-0067

State of Minnesota
In Court of Appeals

County of Washington,

Respondent,

vs.

City of Oak Park Heights,

Appellant.

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. AS AN ERROR-CORRECTING COURT, THIS COURT IS OBLIGATED TO APPLY THE LAW AND THE LAW ESTABLISHES THAT THE DISTRICT COURT ERRED IN FAILING TO DISMISS THE COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION.

Rather than rely on Socrates or Shakespeare for the defense of its position, the City of Oak Park Heights will rely on the law. Respondent Washington County does not dispute that:

1. Washington County's suit challenges the October 13, 2009 City of Oak Park Heights City Council decision to deny the County's request for a refund.

2. Absent statute vesting district court jurisdiction, claims attacking a quasi-judicial decision of a governmental entity are to be heard via writ of certiorari. *Tischer v. Hous. & Redev. Auth.*, 693 N.W.2d 426, 428 (Minn. 2005).

3. The *Handicraft* test is the test for determining whether a decision rendered by a governmental entity is quasi-judicial. *See Handicraft Block P'Ship v. City of Minneapolis*, 611 N.W.2d 16, 20 (Minn. 2000).

4. Application of the *Handicraft* test to the facts of this case dictates that the October 13, 2009 decision by the City Council to deny Washington County's appeal was quasi-judicial in nature because it was a binding decision that followed investigation into a set of facts, application of facts to a proscribed standard, and consideration of arguments by opposing parties.

5. There is no statute providing for district court review of a municipal decision to deny an appeal seeking refund of sewer and water charges. *See Resp. Brief p. 14 citing*

Minn. Stat. Ch. 444, 412, 465, 471 (enumerating municipal powers, including the provision of sewer and water services and ability to charge for the same, but lacking statutory authority for district court review and jurisdiction). Because Respondent did not refute any of the foregoing facts or law, Appellant is entitled to reversal of the district court's decision.

What Respondent does is to argue to this error-correcting court that it should create an exception to the *Handicraft* test. Washington County proffers two possible exceptions that would have the law read as follows:

1. decisions made by a governmental entity that would otherwise be held to be quasi-judicial in nature under *Handicraft* are not entitled to such designation if rendered in cases where the underlying conduct at issue is proprietary in nature.

Or, in the alternative,

2. decisions made by a governmental entity that would otherwise be held to be quasi-judicial in nature under *Handicraft* are not entitled to such designation, if there is no statutory authority allowing the entity to make the challenged quasi-judicial decision.

First, this court is an error-correcting court. As such, this court is bound to apply the existing law; it is not vested with the authority to create new law where there is existing law. *Anderson v. Federated Mut. Ins. Co.*, 465 N.W.2d 68, 75 (Minn. App. 1991)(citation and quotations omitted). Second, existing case law does not support Washington County's argument; and, in fact, contradicts it.

A. There is no proprietary exception to the quasi-judicial test.

Washington County cites the following cases in support of its proprietary exception

argument:

1. *The City of Crookston v. Crookston Water Works, P. & L. Co.*, 185 N.W. 380 (Minn. 1921). In *Crookston*, the city sold the operation of a water plant to the defendant. The city had a dispute with the defendant over the terms of the franchise agreement between them. The city entered into a settlement agreement with the defendant, but subsequently brought suit claiming that the settlement agreement was invalid. The court dismissed the city's claim, holding that it had the capacity to contract and was bound by the contract. The case did not involve an appeal of sewer and water charges, nor the issue of whether the city council was acting in a quasi-judicial manner.

2. *Keever v. City of Mankato*, 129 N.W. 158 (Minn. 1910). *Keever* involved a wrongful death action where it was alleged that a user of the city water system contracted typhoid fever and died as a consequence of the city negligently allowing pollution of the water system. The question was whether the wrongful death claim was barred by immunity (at that time sovereign immunity). The case did not involve an appeal to the city council, nor the issue of whether the city council was acting in a quasi-judicial manner.

3. *City of Staples v. Minnesota Power and Light Co.*, 265 N.W. 58, 59 (Minn. 1936). In this case, the city contracted with the defendant for the purchase of electrical power. The city brought suit seeking to have the contract declared null and void on the basis that it was without the authority to enter into the contract. The court dismissed the suit on the basis that the city's claim was barred by laches and equitable estoppel. The case did not involve an appeal of sewer and water charges, nor the issue of whether the city council was acting in a quasi-judicial manner.

4. *McNaught v. City of James*, 269 N.W. 897 (Minn. 1936). The city contracted with Northern States Power for the purchase of electrical power. A resident brought suit seeking to have the contract declared null and void on the basis that the city did not have the authority to enter into such a contract without submitting the issue to the electorate. The court dismissed the suit on the basis that the city had the authority to enter into the contract without submitting the issue to the electorate. The case did not involve an appeal of sewer and water charges, nor the issue of whether the city council was acting in a quasi-judicial manner.

Respondent's reliance upon the foregoing cases is without merit. Case law that does not address the issue of whether writ of certiorari is the proper method of review may not be relied upon in arguing that certiorari is not the proper method of review. *Naegle Outdoor Advertising Inc. v. Minneapolis Development Agency*, 551 N.W.2d 235, 237 (Minn. App. 1996) , (citing *Neitzel v. County of Redwood*, 521 N.W.2d 73, 76 fn. 1 (Minn. App. 1994), review denied (Minn. October 27, 1994)). Because the foregoing cases cited by Washington County do not involve challenges to a governmental decision, determination of whether the decision was quasi-judicial in nature, and determination of whether certiorari review is proper, these cases are not dispositive in this matter and cannot be relied upon to create a proprietary exception to the quasi-judicial test.

As discussed below, two of the cases cited by Washington County do involve challenges to charges imposed upon users of a sewer and water system, but they do not involve an attack on a city council decision following an appeal, nor discuss whether such decision was quasi-judicial in nature.

1. *Crown Cork and Seal Corp v. City of Lakeville*, 313 N.W.2d 196 (Minn. 1981). In this case, the plaintiff purchased property in the city. Thereafter, the city levied a charge for connection to its sewage and water system. The plaintiff challenged the city's authority to levy such a charge. The parties did not argue, nor did the court address the issue of, whether the city was acting in a quasi-judicial manner, nor whether review was limited to certiorari review.

2. *Sloan v. City of Duluth*, 259 N.W. 393 (Minn. 1935). *Sloan* involved an unjust enrichment claim brought by the plaintiff who was challenging an assessment and seeking refund of overcharged water services. The plaintiff appears to have directly filed suit without appealing first to the city. There is no discussion in the case as to whether (1) there was an administrative appeal process, (2) the plaintiff had exhausted his administrative remedies, (3) if he used an appeal process, whether the city was acting in a quasi-judicial manner, nor (4) whether review was limited to certiorari review. Nor did the court rule on any of these issues.

Because neither *Sloan*, nor *Crown Cork and Seal* address whether a municipal decision was quasi-judicial in nature, nor whether the claims should have been reviewed by writ of certiorari, the cases may not be relied upon to argue that certiorari is not the proper method of review. *Neitzel*, 521 N.W.2d at 76 fn. 1.

Washington County does cite to a case that involves consideration of whether a municipal decision was quasi-judicial, but that case does not address whether writ of certiorari was the proper method of review. The case is *Oakman v. City of Eveleth*, 203 N.W. 514 (Minn. 1925). In this case, a separate lawsuit had been brought against nine former city officials. A taxpayer brought a mandamus action seeking a court order, ordering

the city to either pass an ordinance settling the lawsuit or placing the issue on a ballot. The court dismissed the mandamus action holding that a city's decision to settle a lawsuit is discretionary and quasi-judicial in nature and therefore mandamus could not lie. *See also Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178 (Minn. 2006)(mandamus is not the proper method of challenging discretionary decisions). Therefore, while *Oakman* is of assistance in determining whether the municipal decision here was quasi-judicial in nature, it is not specifically helpful in determining whether the proper method of review is writ of certiorari.

The only case cited by Washington County in which the issues involved (1) consideration of whether a decision of a governmental body was a quasi-judicial decision, (2) consideration of whether the proper method of review of the governmental decision was via writ of certiorari, and (3) a request for refund, is *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 124 N.W.2d 328 (1963). As detailed in Appellant's moving brief, the court in *Youngstown* held that the proper method for review of a governmental decision to deny a request for a refund, absent statute providing for district court jurisdiction, is via writ of certiorari. Because the parties and the court in *Youngstown* directly addressed the issues of whether (1) a decision of a governmental entity to deny a claim for a refund is quasi-judicial, and (2) writ of certiorari is the proper method of review for such decision, this court is bound to follow the principles set forth in *Youngstown*. *Wolner v. Mahaska Industries, Inc.*, 325 N.W.2d 39, 42 (Minn. 1982) (lower courts are bound by the existing law as set forth in Minnesota Supreme Court decisions).

Applying *Youngstown*, it is clear that Washington County's argument for a proprietary exception to the quasi-judicial test is without merit. The court in *Youngstown*

reached its conclusion that the decision that was being attacked was quasi-judicial in nature even though it specifically found the underlying conduct to be proprietary. The focus of the jurisdictional inquiry is not the nature of the underlying conduct, but the nature of the decision that is being attacked. *Youngstown*, 266 Minn. at 482-483; *Handicraft*, 611 N.W.2d at 20. Accordingly, Washington County's request for a proprietary exception to the quasi-judicial test is without merit.

Because Washington County has not challenged the fact that application of the *Handicraft* test results in a conclusion that the October 13, 2009 decision of City Council was quasi-judicial; and, because there is no proprietary exception to the *Handicraft* test, the exclusive method of review and remedy for Washington County was via writ of certiorari. Accordingly, Appellant is entitled to reversal of the district court order.

B. There is no exception to the *Handicraft* test for instances where there is no statute granting authority, or imposing a duty, to render a quasi-judicial decision.

Washington County argues, alternatively, that the City Council's decision here cannot be held to be quasi-judicial absent specific authority allowing it, and/or imposing upon it a duty, to make a quasi-judicial decision. In essence, the County argues that before a governmental body may act in a quasi-judicial manner, the legislature must pass a statute imposing a duty upon it to act in a quasi-judicial manner. Washington County, however, misconstrues the law.

For this proposition, the County cites *Youngstown*. The court in *Youngstown*, however, makes no such finding. *Id.*, 124 N.W.2d at 334. In fact, a proper reading of the

case law, including those cases cited by Washington County undermines the County's argument. Quasi-judicial powers are not a creature of statute.

A quasi judicial power is one imposed upon an officer or a board involving the exercise of discretion, judicial in its nature, in connection with, and as incidental to, the administration of matters assigned or entrusted to such officer or board. A quasi judicial duty is one lying in the judgment or discretion of an officer other than a 'judicial officer,' and the function is termed 'quasi judicial' when such an officer is charged with looking into and acting upon facts not in a way which the law specifically directs, but after a discretion, in its nature judicial; quasi judicial functions are those which lie midway between the judicial and ministerial ones."

Oakman, 163 Minn. at 108.

In other words, the power to act in a quasi-judicial manner does not have to be statutorily bestowed upon a municipality, or other governmental entity, it may occur incidental to government operations. It occurs on those occasions, where a governmental entity, incidental to its operations, conducts an investigation into a disputed manner, applies a statute, regulation, ordinance, handbook, protocol or other rule, and reaches a conclusion that without further review would leave a person without remedy.

For example, in all of the following cases, the decision under attack was deemed to be quasi-judicial even though the decision was merely incidental to the entity's operations:

1. Settlement of litigation. *Oakman*, 163 Minn. at 108.
2. Refusal to reinstate a teacher. *Dokmo v. Independent School District No. 11*, 459 N.W.2d 671, 676 (Minn. 1990).
3. Alteration of township boundaries. *Township of Honner v. Redwood County*, 518 N.W.2d 639, 641 (Minn. App. 1994)
4. Denial of a liquor license application. *Micius v. St. Paul City Council*, 524 N.W.2d 521 (Minn. App. 1994).

5. Denial of solid waste permit application. *Pierce v. Otter Tail County*, 524 N.W.2d 308 (Minn. App. 1994), review denied (Minn. Feb. 3, 1995).
6. Termination of an employee. *Dietz v. Dodge County*, 487 N.W.2d 237 (Minn. 1992).
7. Designation of a building for heritage preservation. *Handicraft*, 611 N.W.2d at 20.
8. Rescission of a civil service exam. *Mahnerd v. Canfield*, 297 Minn. 148, 151 (Minn. 1973).
9. Filling of an employment position. *Bahr v. City of Litchfield*, 420 N.W.2d 604 (Minn. 1998).
10. Determination of attendance boundaries. *Neighborhood School Coalition v. Independent School Dist. No. 279*, 484 N.W.2d 440, 441 (Minn. App. 1992).

In each of the foregoing cases, as in *Youngstown*, the determination of whether a governmental decision was quasi-judicial was not governed by whether a statute imposed a duty upon, or granted authority to, the entity to make a quasi-judicial decision. Rather, the inquiry was focused on the nature of decision made.

Further, in making the jurisdictional determination, the only statutory question addressed by the court in those cases was whether there was a statute that provided for district court review of the quasi-judicial decision under attack. For example, in *Youngstown*, Minn. Stat. § 6.136 (now Minn. Stat. § 16A.48) created a process for filing refund claims and having those heard by state agencies, but there was no statute that provided for district court review of the decision made by the agency head should the refund claim be denied. *Youngstown*, 124 N.W.2d at 334. Because there was no statute providing

for district court review of the quasi-judicial decision in *Youngstown*, nor in any of the ten cases cited above, the exclusive method for review of the quasi-judicial decisions under attack was via writ of certiorari.

Here, there is no dispute that the City has been granted the specific authority to provide sewer and water services. Minn. Stat. §§ 412.321, 444.075. The City's ordinance and appeal policy, like Minn. Stat. § 6.136 in *Youngstown*, provided the process for seeking a refund.

Respondent admits that the City is not precluded from implementing ordinances and policies related to the provision of sewer and water services. *Resp. Brief p. 15*. What Respondent claims, however, is that the City's appeal policy is too broad in that it should only be considered "a protocol to settle bill disputes", *Resp. Brief p. 16*, and it should not "wrest from the [c]ourts their original jurisdiction over the claims." *Resp. Brief p. 17*.

Washington County is partially correct; the fault with this argument, however, is that Washington County is confusing two separate and distinct concepts. It is correct to say that the City's ordinance and appeal process set the standard for settling the dispute here. But it is not correct to say that the ordinance and appeal policy eliminated judicial review and jurisdiction.

The ordinance and appeal process adopted by the City of Oak Park Heights serve as the measure for determining whether the City made an arbitrary and capricious decision when it denied the refund appeal. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981)(in order to determine whether city rendered an erroneous quasi-judicial decision, the court reviewed in that case the applicable rule—the city's zoning ordinance). The determination of jurisdiction and proper method for review of that decision is, however,

found in statute and case law. *See e.g. Neitzel*, 521 N.W.2d at 76 (noting that there is a statute providing for district court review of quasi-judicial zoning decisions made by municipalities, but no similar statute for quasi-judicial zoning decisions made by counties, and, thus, allowing for review only by writ of certiorari).

For this same reason, the County's argument that it would be deprived of a remedy if it were forced to litigate this case before the Court of Appeals instead of the district court (or even the conciliation court if a lower amount in controversy had been at issue) is without merit. In *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 fn. 3 (Minn. 1996), the court specifically rejected an argument that limiting review to writ of certiorari deprived the claimant of a remedy. Review by writ of certiorari does not deprive a claimant of a remedy, it merely "specifies the appropriate remedy". *Id.*

The City of Oak Park Heights did nothing to deprive Washington County of a judicial remedy. Washington County always had available to it a remedy for the claimed erroneous denial of its refund—via writ of certiorari. The County, however, chose the wrong remedy and the City is entitled to reversal of the district court order.

CONCLUSION

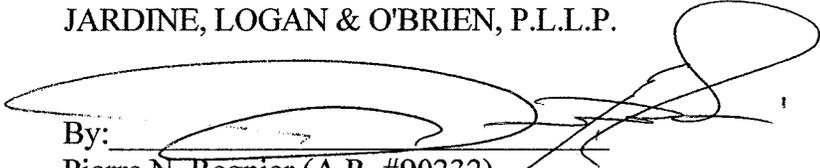
It is undisputed that under *Handicraft* the October 13, 2009 decision of the City of Oak Park Heights' City Council was quasi-judicial. Further, it is undisputed that there is no statute providing for district court review of the quasi-judicial decision rendered by the City in this case.

There is no recognized exception, rendering the City's decision anything other than quasi-judicial. There is no proprietary exception to the quasi-judicial test, nor does there have to be a statute vesting authority in the City to make the quasi-judicial decision at issue.

Accordingly, review by writ of certiorari was the exclusive method for review and the City is entitled to reversal of the district order and dismissal of the complaint with prejudice.

DATED: 3/18/11

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a Brief produced with a proportional font. The length of the Brief is 3,199 words. This Brief was prepared using Microsoft Word 2003.

DATED: 3/18/11

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