

A11-0067

STATE OF MINNESOTA

IN COURT OF APPEALS

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County of Washington,

Respondent,

vs.

City of Oak Park Heights,

Appellant.

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**RESPONDENT'S BRIEF**

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## STATEMENT OF LEGAL ISSUE

### I. WAS THE DISTRICT COURT CORRECT IN ITS DETERMINATION THAT IT HAD SUBJECT MATTER JURISDICTION OVER RESPONDENT'S UNJUST ENRICHMENT ACTION?

The district court correctly held it had subject matter jurisdiction over Respondent's unjust enrichment action.

## STATEMENT OF THE CASE

This interlocutory appeal has its genesis in Appellant's failed attempt to usurp the district court's jurisdiction over Respondent's unjust enrichment action. The Appellant essentially demands the district court yield to Appellant's self-decreed utility bill appeal policy its constitutional prerogative to entertain what is a matter in assumpsit. Appellant argues that the City of Oak Park Heights City Council's decision to deny Respondent's requested reimbursement of \$114,000 in overcharges for sewer and water services was quasi-judicial in nature, and, therefore, Respondent is limited to certiorari review of the City Council's decision. The district court did not accept Appellant's theoretical abstraction and held the City Council's decision was rendered in furtherance of its proprietary responsibility. Therefore, Appellant's action was not governmental and *a fortiori* not a quasi-judicial decision. District Court Order (hereinafter D.C.O.), Findings #11, A.3-7. In articulating its reasoning for its dismissal of Appellant's motion, the district court determined that the Appellant "in providing water...acts in its proprietary capacity," *citing to City of Crookston v. Crookston Waterworks*, 185 N.W. 380 (Minn. 1921) and, thus, is only accorded "...the

same rights...as private corporations,” *citing to Keever v. City of Mankato*, 129 N.W. 158 (Minn. 1910). D.C.O., Finding #11, A.6-7.

The Respondent concedes interlocutory appeal of Appellant’s jurisdictional claim is properly before this Court, *McGowan v. Our Savior’s Lutheran Church*, 527 N.W.2d 830, 832-833 (Minn. 1995); and, inasmuch as the appeal raises the specter of subject matter jurisdiction, it is an issue to be reviewed *de novo*. *Odenthal v. Minn. Conf. of Seventh Day Adventists*, 649 N.W.2d 426, 434 (Minn. 2002).

### STATEMENT OF THE FACTS

There is little quarrel with the factual prelude to Appellant’s challenge of the district court’s subject matter jurisdiction over this matter. If there is a factual variance in the jurisdictional aspect of this suit, it is in the rendering.

The Appellant is a political subdivision of the State of Minnesota, and more specifically a statutory City under the auspices of Minnesota Statutes Chapter 412. The Appellant is the owner and operator of a municipal water and sanitary sewer system and is sanctioned to carry on this activity by Minnesota Statutes Chapter 444. A.27-32. The Respondent is one of Appellant’s sewer and water service customers. A.18.

In February, 2009, while performing an audit in furtherance of a change in the sales tax law, the Respondent discovered that during the period January 1, 2005 to June 30, 2006, the Appellant had charged Respondent for approximately twenty (20) million gallons of water which the Appellant had not provided, resulting in an overcharge to Respondent that was a “little north” of one-hundred-fourteen thousand (\$114,000) dollars. Needless to say

Respondent made the overcharge known to the City.

Parley amongst City and County staff members concerning the overcharge was had but to no avail. A.18-26. To bring negotiations to a close, the City Administrator suggested the Respondent place its claim before the City Council. Under Appellant's internal utility bill appeal policy (hereinafter the utility bill policy), the City Council is Appellant's arbiter of last resort. A.54. However, it is important to note for future reference that under the utility bill policy compromise may be had at the staff level, and the City Council need not be involved in the settlement. Although it was evident from the tenor of negotiations at the staff level that appearing before the City Council would be an exercise in futility, the Respondent nevertheless acceded to the promptings of City staff and presented its claim to the City Council. A.11-13.

The Respondent's request for an accounting went before the City Council at its September 8, 2009 regularly scheduled meeting. A.14-15. It is instructive to note, in passing, that although Appellant portrays the City Council's decision making process in this matter as quasi-judicial the agenda noticed the Respondent's presentation as new business rather than public hearing, A.14-15, somewhat belying Appellant's contention that the Council was acting as a fact finder. A decided lack of discussion among the council members and staff over the matter, which is reflected in the minutes, adds credence to this conclusion. A.14-15. Although the City Attorney did suggest "the Council could deliberate on the matter if they wish," the minutes clearly indicate the council members did not take him up on his invitation. A.15. (It is presumed the council members did not discuss the matter outside the confines of

the public meeting as such discourse would violate the strictures of the Minnesota Open Meeting Law).

After ruminating on the matter, the council chose to hold over until its October 13, 2009 meeting any decision on Respondent's claim at which time the City Council rendered its decision rejecting Respondent's request for reimbursement. A.17. The Council's denial was memorialized in Resolution #09-10-39. A.18-26.

After receiving Appellant's aforementioned resolution, the Respondent filed an original unjust enrichment action in the district court. A. 41-53. In answer to the complaint, the Appellant, *inter alia*, interposed a defense of lack of subject matter jurisdiction, averring that the City Council's decision denying Respondent's reimbursement claim was quasi-judicial in nature; and, therefore, appeal of the Council's decision must be had on writ of certiorari to the Court of Appeals. The Appellant furthered this notion via a motion for summary judgment which the district court denied in a November 4, 2010 Order. A.3-7. The City appeals from that order.

The Respondent also moved for summary judgment, contending there was an absence of material facts in dispute. By the same order, the district court found there were issues of material fact present regarding the amount of overcharge and denied Respondent's motion for summary judgment. The Respondent has opted not to proceed pursuant to Rule 106 of the Minnesota Rules of Appellate procedures to obtain review of its denial of summary judgment.

## ARGUMENTS

### I. INTRODUCTION

Appellant's continued quixotic tilting against the proposition that Respondent's unjust enrichment action is properly before the district court on an original action is affirmation that fantasy knows no limit and brings to mind the words of the Greek philosopher Demosthenes who prosed that "[m]an is his own easiest dupe, for what he wishes to be true he generally believes to be true." In the case of Appellant, it wishes to believe the inveterate principle of proprietary capacity with attendant devolution of governmental prerogatives does not apply to the City Council's decision to deny Respondent's reimbursement claim; and, despite the fact the City Council's decision was no more than an ordinary business decision, it was nonetheless insinuated with quasi-judicial posture. However, contrary to Appellant's mistaken belief, the district court viewed Appellant's arrogation for what it is, a mythical pretense; and much to Appellant's chagrin concluded that Appellant was acting in a proprietary capacity and was, therefore, only due those privileges accorded any private corporation or individual in like circumstance. D.C.O., Finding #11, A.3-7. To borrow from the old idiom "what is good for the goose is good for the gander", if Respondent had brought its unjust enrichment suit against Xcel Energy, for example, there would be no question that an original action in the district court would be the proper method of proceeding.

Because the purveyance of water and sewer services by municipalities has been long deemed a proprietary activity, *City of Staples v. Minnesota Power and Light Co.*, 265 N.W. 58, 59 (Minn. 1936); *Keever v. City of Mankato*, *supra.*; *Reed v. City of Anoka*, 88 N.W.981

(Minn. 1902), Appellant's claim to quasi-judicial conduct in this matter is no more than an appellation, a label without substance, a mere phantasm. If the district court had transmuted into a quasi-judicial decision Appellant's action in denying Respondent's reimbursement request, it would have engaged in legal alchemy.

## **II. THE WRIT OF CERTIORARI'S INTENDED PURPOSE IS TO REVIEW GOVERNMENTAL ACTIONS AND WILL NOT ISSUE TO REVIEW A PROPRIETARY DECISION**

The writ of certiorari is of a class of prerogative writs extraordinary in nature and meant to review the decisions of inferior tribunals. *Johnson v. City of Minneapolis*, 295 N.W. 406, 407 (Minn. 1940). Therefore, certiorari will not lie when there is an adequate remedy at law for the grievance complained. *State ex rel. Wischstadt v. Olson*, 57 N.W. 477 (Minn. 1894). The writ of certiorari was born of the principle of separation of powers as a check against the judiciary's intrusion upon the constitutional prerogatives of the other two branches of government, *See Dokmo v. Independent School Dist. No. 11*, 459 N.W.2d 671, 674 (Minn. 1990), and, bred to vouchsafe review where no other right of appeal has been provided. *See Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992); *Youngstown Mine Corp. v. Prout*, 124 N.W.2d 328, 351 (Minn. 1963). Because the stated purpose of certiorari review is to give affect to the separation of powers and to preclude judicial intrusion into the privileges of the other branches of government, the *sine qua non* of its application is governmental action. Since the City Council was acting on a proprietary matter when it passed on Respondent's request for reimbursement, *See Keever v. City of Mankato*, *supra*, the requisite governmental imperative warranting the issuance of a writ of certiorari

was lacking; and a direct action in the district court was Respondent's sole means of obtaining redress. *See Meath v. Harmful Compensation Bd.*, 550 N.W. 2d 775 (Minn. 1996). As the district court recognized in denying Appellant's motion for summary judgment, the underlying governmental action was absent from the City Council's denial of Respondent's request for reimbursement. D.C.O., Finding #11, A.7.

It is axiomatic under Minnesota jurisprudence that when a municipality acts in a proprietary capacity it does so without governmental license and is only given those pretensions accorded other businesses in the field. *Youngstown v. Prout*, *supra* at 344; *Reierson v. City of Minneapolis*, 118 N.W.2d 223 (Minn. 1962). As the Supreme Court reasoned in *Keever v. City of Mankato*, 129 N.W. at 160: "when a municipality enters the field of ordinary private business, it does not exercise governmental powers. Its purpose is not to govern its inhabitants but to make a profit." As alluded to previously, if it were Xcel Energy denying Respondent's reimbursement request, there would be no question certiorari would not lie from the denial; and, since Respondent would be obligated to bring a direct action in the district court against Xcel to seek redress, it must *a fortiori* bring a direct action against Appellant as a restorative for the overcharge. *See Sloan v. City of Duluth*, 259 N.W. 393 (Minn. 1935), (district court is the proper forum for Plaintiff's unjust enrichment action against City for overcharges for water services).

**III. THE ACTION OF APPELLANT'S CITY COUNCIL IN DENYING RESPONDENT REIMBURSEMENT FOR THE OVERCHARGE WAS NOT A QUASI-JUDICIAL DECISION.**

Appellant's entire dissertation is dedicated to the vacuous assertion that when it denied

Respondent's reimbursement claim the City Council was acting in a quasi-judicial capacity, but its pretense is no more than a vacant, talismanic invocation of the term quasi-judicial. Absent from its expostulation is any foundation for its claim save the intriguing assumption that city councils always act as government *qua* government and, thus, governmental prerogatives are insinuated in all city council actions. In proceeding in the *a priori* belief governmental action is derivative of all city council decisions, the Appellant fails to give pay to the dual roles assumed by municipalities. Whether Appellant is oblivious to the notion of proprietary capacity or has chosen to "whistle through the graveyard", Appellant neglects to explain how an issue emanating from a City's proprietary function in owning and operating a waterworks sublimates to a governmental decision when the matter reaches the City Council for determination.

Appellant's dogmatic insistence on the City Council's quasi-judicial action revolves around and is totally dependent upon the purported three-part test developed by the Minnesota Supreme Court in *Handicraft Block P'Ship v. City of Minneapolis*, 611 N.W.2d 16 (Minn. 2000). Appellant's Brief pp. 4-8. However, *Handicraft* serves as no anodyne for what ails Appellant's argument, which is a failure to address the nettlesome reality that the utility bill policy concerns the City Council in one of its proprietary roles.

The reductionism practiced by Appellant in its analysis of *Handicraft* was an exercise in avoidance. By appropriating the decision making process of the Minneapolis City Council while ignoring the context in which the decision was made, Appellant was able to further its tendentious argument. What Appellant omitted from its dialectic was the fact that the

Minneapolis City Council's action was enfranchised by the Municipal Heritage Preservation Act, and it was this sanction that gave rise to the quasi-judicial decision. The "test" developed by the Supreme Court in *Handicraft*, which Appellant purports was established to determine if a municipal governing body's decision was quasi-judicial, was in fact no more than a means to distinguish between quasi-judicial and quasi-legislative actions. The need to differentiate between the two types of actions was a result of the ambiguity in the Municipal Heritage Preservation Act, the statute pursuant to which the Minneapolis City Council implicitly drew its authority to act. Failure of Appellant's polemic to mention the Act was probably for good reason. The Act was the ingredient which made the Minneapolis City Council's decision making process in *Handicraft* quasi-judicial, not the three-part test, and it is a lack of statutory warrant for Appellant's utility bill policy that precludes decisions emanating from Appellant's policy from being considered quasi-judicial. The three-part test upon which Appellant bases its entire thesis is only a means of determining whether the decision making process proceeding from a particular statute is a quasi-judicial or a quasi-legislative decision. *Id.* at 20. *See also, MCEA v. Metropolitan Council*, 587 N.W.2d 838, 842 (Minn. 1999).

The courts have long struggled with the concept of the quasi-judicial act, recognizing that the phrase has been so broadly defined that executive branch actions have become the hobgoblins of the judiciary. However, notwithstanding these vicissitudes, quasi-judicial actions must have governmental underpinnings, and municipal activities associated with ordinary business decisions should not be accorded the status of governmental action. *Cf.*

*Meath v. Harmful Compensation Bd., supra.*

The overarching purpose of the writ of certiorari is to give pay to the vital principle of separation of powers; and, as such, the cases finding quasi-judicial actions have anonymously subsumed a governmental construct. This is the critical piece of the puzzle that Appellant has omitted from its analysis of quasi-judicial. Since governmental activity is an integral component of quasi-judicial analysis and usually not at issue, it is a factor not normally developed and discussed. To inane propose as Appellant does on page 8 of its brief that “it is improper to consider the proprietary nature of the underlying conduct because the *Handicraft* test does not include consideration of whether the municipal entity was engaging in a proprietary capacity at the time of its decision” is complete sophistry. To the contrary, governmental imperative is a latent component of such cases. As examples, one needs to look no further than the cases offered by Appellant in support of its dialectic. In the case of *Handicraft*, it was the Municipal Heritage Preservation Act, Minn. Stat. § 471.193, et. seq. which was implicated; in *Tischer v. Hous. and Redevelopment Authority*, 693 N.W.2d 426 (Minn. 2005), it is the deference to be accorded the executive branch of government in its employment practices; in *City of Moorhead v. Minn. Pub. Utilities Comm’n*, 342 N.W.2d 843 (Minn. 1984), it is the Public Utilities Commissions’ rate setting authority under Minn. Stat. Chpt. 216; and in *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981), it is a city’s zoning authority.

As reflected in its order, the district court recognized that the *sine qua non* of a quasi-judicial decision is an underlying governmental action, and activities arising from

Appellant's operation of its water and sewer service are proprietary in nature. Therefore, the district court determined the City Council decisions emanating from the utility bill policy were not quasi-judicial in nature.

The Appellant gain-sayed the district court's ruling that Appellant acted in a proprietary role not by denying the proposition but rather by dismissively questioning the propriety of the court's introduction of proprietary capacity into Appellant's analysis of the three-part *Handicraft* test. Appellant's Brief, p.8. The Appellant imperiously and hen-headedly decried that "...the district court was not at leisure to alter the *Handicraft* test nor to create exceptions to the test, [and]...there is no support in the law for the addition of a proprietary factor to the quasi-judicial decision test." The Appellant ended its harangue with the incongruous peroration that "[i]n fact, there is law directly to the contrary, *citing Youngstown v. Prout, supra*. Appellant's Brief, pp. 8-9. However, Appellant's assault should be recognized for what it is: "...a tale told...full of sound and fury, signifying nothing". Macbeth, Act V, Scene V. It is evident the Appellant hopes that through the assiduous incantation of "quasi-judicial" it can effect the transubstantiation of an ordinary business decision into a quasi-judicial action.

**A. UNLIKE APPELLANT'S DECISION, THE ACTION IN YOUNGSTOWN WAS MADE PURSUANT TO STATUTE.**

Appellant's most confounding argument is that "absent authority for district court review, quasi-judicial decisions of a City are subject to review by certiorari alone," offering *Youngstown Mine Corp. v. Prout, supra* as support of this proposition. Appellant's Brief, pp. 9-10. In answer to Appellant, the district court's authority to entertain Respondent's unjust

enrichment action resides in Article VI, Section 3 of the Minnesota State Constitution. The more relevant inquiry concerns Appellant's statutory predicate for providing quasi-judicial stature to decisions made pursuant to its utility bill appeal policy.

A study of Appellant's *Youngstown* narration shows it to be stated with a beguiling accent and is no more than a continuation of Appellant's prior hackneyed argument. It suffers from the same ailment afflicting its analysis in *Handicraft, supra*, to wit: Omitting mention of the nominative statute from which the Commissioner in *Youngstown* drew its authority to act in a quasi-judicial manner. The Appellant's continued insistence that Respondent point to a statute or rule conferring the district court with authority to entertain Respondent's unjust enrichment action is actually placing the proverbial "cart before the horse." Because certiorari review is intended to give affect to the doctrine of separation of powers, it is incumbent upon Appellant to find a progenitor statute or rule investing it with the authority to act in a quasi-judicial manner.

*Youngstown Mine Corp. v. Prout, supra* is suffused with issues, but only one which bears upon this appeal. A distillation of *Youngstown* shows Youngstown Mine entered into a fifty year lease with the State of Minnesota, allowing Youngstown to extract iron ore from a portion of the bed of Rabbit Lake. In consideration of the lease, Youngstown paid the state royalties. *Id. at 334*. Subsequently, it was determined the state did not own the portion of the lake bed leased to Youngstown. Youngstown sought reimbursement of the royalties it paid the state by availing itself of Minn. Stat. § 6.136 (now Section 16A.48). *Id.* Section 6.136 (now Section 16A.48) is the vehicle persons seeking reimbursement for monies wrongly paid

to the state must use. It required a claimant to submit a verified claim to the head of a concerned agency which, in the case of *Youngstown*, was the Commissioner of Conservation and obligated “the agency head [to] consider and approve or disapprove the claim, attach a statement of reasons and forward...” the claim on for settlement. For a number of reasons, the Commissioner denied *Youngstown*’s refund claim. *Id. at 334*. In response to the denial, *Youngstown* petitioned the Ramsey County District Court for and was granted a writ of certiorari. *Id.* The Supreme Court found certiorari review of the Commissioner’s decision in this matter proper. However, there is a great divide between *Youngstown* and the case at bar. In *Youngstown*, the claimant was proceeding pursuant to a statute which required the presentment to the head of a concerned agency of a claim against the state. There is no similar grant of authority for the utility bill policy to which Appellant can point. The critical component missing from Appellant’s expostulation is the fact its utility bill policy is a creature of Appellant’s own making.

As the Supreme Court observed in *Youngstown*, the writ of certiorari is designed to afford review of the decision of an inferior tribunal, which if not reversed, would result in a final adjudication of some legal rights of petitioner. *Id at 351*. The Court went on to observe that the writ of certiorari is employed to review cases where the **legislature** has granted an official or agency the authority to adjudicate the rights of persons and property but has provided no attending appeal from the exercise of such power (emphasis added). *Id.* Appellant’s reductionism has papered over the overarching and determinative factor in *Youngstown*, which is that the legislature must invest the City Council with the power to act

quasi-judicially; it is not enough for the City to itself don the mantel of suzerainty. Therefore, the question to be answered is not what statute or rule allows the district court to entertain Respondent's unjust enrichment action – that matter was addressed long ago when the State of Minnesota's constitution came into being – rather, the question the City must but fails to address is what statute concedes to its Council quasi-judicial license over a utility bill dispute.

**B. THE LEGISLATURE HAS PROVIDED APPELLANT NO STATUTORY AUTHORITY TO ENTERTAIN WATER BILL DISPUTES AS A QUASI-JUDICIAL BODY.**

Examination of Minnesota's statutory and constitutional frameworks reveal nothing authorizing the Appellant to implement a utility bill appeal policy – not the Waterworks Statute, Minn. Stat. Chapt. 444 which authorizes the City to establish and operate its sewer and water system; not the municipalities general powers statute contained in Minn. Stat. Chapt. 465 and 471; not the Statutory Cities statute, Minn. Stat. Chapt. 412 and not any other statutory or constitutional provision, obscure or manifest.

It is significant that while the legislature accorded cities authority to establish waterworks and set rates, *see Crown Cork and Seal Corp. v. City of Lakeville*, 313 N.W.2d 196 (Minn. 1981), cities were not given the statutory wherewithal to enact a bill dispute ordinance or policy that even remotely resembles the one provided to the state in *Youngstown*. Instructive is the Supreme Court's determination in *City of Crookston v. Crookston Waterworks*, 185 N.W. 384 (Minn. 1921) where it found that entering into a contract and granting a franchise to a company to provide a waterworks for the City did not involve the exercise of a

governmental function but only implicated the City's proprietary powers. The Court went on to observe that the only governmental function left the City with respect to its water utility was the setting of rates which was a legislative act. It is very likely that the legislature gave pay to the obvious which is a dispute involving the operation of a utility would either arise in contract, *see e.g. McNaught v. City of St. James*, 269 N.W. 897 (Minn. 1936) or in tort, *see e.g. Keever v. City of Mankato, supra*, with recognition that such actions are better left to the constitutional prerogatives of the courts. *Cf. Willis v. County of Sherburne*, 555 N.W.2d 277 (Minn. 1996) (certiorari is the established method for reviewing governmental employment termination cases given that employment contracts do not involve actions for failure to perform on a contract for goods and services. Moreover, a government employee's common law defamation claim was not limited to review by certiorari).

**IV. APPELLANT'S UTILITY BILL APPEAL POLICY IS MERELY A PROTOCOL TO SETTLE CLAIMS PRIOR TO, DURING OR AFTER LITIGATION AND ARISES FROM A CITY'S POWER TO SUE OR BE SUED.**

The Respondent does not contend that the City is precluded from implementing an internal utility bill appeal policy but takes exception to the breadth of authority Appellant assigns itself. While Appellant relies entirely on what it characterizes as the three-part "test" for quasi-judicial action established by the Supreme Court in *Handicraft* as the foundation of its quasi-judicial conduct, Appellant's Brief, p. 4, it does so completely in the abstract. As developed previously, *Handicraft* was decided within the context of the Municipal Heritage Preservation Act while Appellant's attempt to assert quasi-judicial action is fashioned around an internal utility bill appeal policy legitimized solely on its own authority. In making its

claim, Appellant totally disregards the old aphorism “*ex nihilo nihil fit*” – from nothing comes nothing – and runs counter to the axiom that municipalities have no inherent authority but only such powers as are expressly conferred to them by statute or implied as necessary in aid of those powers conferred. *See Village of Brooklyn Center v. Rippen*, 96 N.W.2d 585, 587 (Minn. 1959). If the legislature had seen fit to allow cities leave to pass on bill disputes, it could have included a provision in Minnesota Statutes Chapter 444 similar to the presentment statute in *Youngstown*.

Although Appellant chooses not to articulate an enabling grant for its utility bill policy, Respondent will. The utility bill policy has its genesis in the City’s power to sue and be sued, but the authority is limited to settlement of claims. *Oakman v. City of Eveleth*, 203 N.W. 514, 515 (Minn. 1925). *See* Minn. Stat. §412.211. As the court recognized in *Oakman*, all the ordinary rules of business conduct governing the settlement, adjustment and compromise of their affairs apply to public municipalities. *Id. at 516*. This tenet meshes with the doctrine established in such cases as *Keever v. City of Mankato*, 129 N.W. at 160 and *Youngstown v. Prout*, 124 N.W.2d at 344, which hold that a municipality acting in a proprietary capacity stands in the shoes of private businesses. However, it is evident from *Oakman* that the City’s warrant does not displace a district court’s original jurisdiction over a matter. The right to settle a claim is prior to, during or after litigation. *Id. at 515*. Therefore, drawing the reasoning from *Oakman*, Appellant’s utility bill policy is merely a protocol to settle bill disputes, a policy instituted under the City’s authority to sue and be sued.

Appellant miscasts the City Council as a transcendent body which always acts with

governmental imperative. *See* Appellant's Brief, p. 8 (district court erred by adding proprietary factor to the quasi-judicial decision test). In reality, inasmuch as the City Council is the procurator of City affairs, the Council is merely the final level of authority in a protocol implemented by the City to compromise utility bill disputes. *See* Minn. Stat. § 412.241. The statutes which deliver to the City Council the warrant to manage City affairs merely give leave to the City Council to compromise and settle claims; these statutes do not endow the Council with an imperium to wrest from the Courts their original jurisdiction over the claims. *See e.g., Old Second Nat. Bank of Aurora v. Town of Middletown*, 69 N.W. 471 (Minn. 1896) (where a claim is properly prescribed to the town board and is disallowed, the claimant may commence an action against the town for the amount of the claim). For example, Minn. Stat. § 412.271 requires certain liquidated claims be presented to the City Council prior to payment. However, the Courts' have found that the purpose of the statute is to allow the City Council to sit and define the obligation as a board of audit. The Courts have emphatically declared that such statutes were not intended to allow the Council to sit in sufferance as a tribunal for assessing damages. *Lund v. Village of Princeton*, 85 N.W.2d 197, 205 (Minn. 1957). *See also Manson v. Village of Chisholm*, 170 N.W. 924 (Minn. 1919).

**V. ARTICLE VI, SECTION 3 OF THE MINNESOTA CONSTITUTION IS THE AUTHORITY INVESTING THE DISTRICT COURT WITH ORIGINAL JURISDICTION OVER RESPONDENT'S SUIT.**

The Respondent has brought suit against Appellant for approximately \$114,000 in overcharges for municipal water and sanitary sewer services. The action has been brought under the equitable principle of unjust enrichment. It is a theory that has been part of Anglo-

American jurisprudence since being first introduced into the law by the redoubtable Lord Mansfield in *Moses v. Macferlan*, 2 Burr. 1005 (K.B. 1760) and is a matter clearly within the prerogatives of the district court. The Appellant insists that notwithstanding the district court's constitutional license over this case, the district court must still bow to the City Council's decision made pursuant to the Appellant's utility bill policy. Appellant's postulation is indeed an intriguing concept to ponder; but to consecrate as quasi-judicial, a decision which traces its source to the will and pleasure of a self-imposed City policy is no mean determination and would have profound consequences as it regards a municipality's proprietary role.

Quasi-judicial action is a manifestation of the separation of powers; but while separation of powers is a vital concept to our tripartite form of government, care must be shown that in its zeal to give the executive deference, the courts not erode their own prerogatives. *Holmberg v. Holmberg*, 588 N.W.2d 720, 723 (Minn. 1999). Should a policy such as Appellant's be found to oust the district court from its jurisdiction, the resultant expansion of quasi-judicial actions would indeed be vexing, and the Court should be reticent to add to jurisdictional contraction by insinuating governmental action into a decision that is clearly proprietary. See *Wulff v. Tax Court of Appeals*, 288 N.W.2d 221, 223 (Minn. 1979).

The overarching constitutional principle with which the courts must be concerned is contained in Article I, Section 8 of the Minnesota State Constitution which provides that "every person is entitled to a certain remedy in laws for all injuries or wrongs which he may receive..." In simple words, it stands for the proposition that every person is entitled to his

or her “day in court.” Article IV Section 3 of the state constitution can be said to be a derivative of this constitutional purpose, and the furtherance of the principle it espouses is the *raison d’être* of the judicial system. See *Owens v. City of Independence*, 445 U.S. 622, 647 (1980). This ideal of a person’s right to his or her day in court was insinuated in the district court’s order wherein Judge Hoffman noted in a footnote that “to require that anyone who wishes to contest their water and sewer bill must file a writ of certiorari with the Minnesota Court of Appeals would most definitely result in consumers being placed at a great disadvantage, and few would have resources to challenge an alleged overcharge.” D.C.O. Fn. 2. In a querulous rejoinder, the Appellant huffily stated that “[q]uestions of cost do not determine jurisdiction in this case; rather it is the supremacy clause. [citing to] *Tischer*, 693 N.W.2d at 429.” Appellant’s Brief, p. 8 fn.1. (Appellant’s reference to the supremacy clause which is Article VI of the United States Constitution and ostensibly makes federal law the law of the land is a bit enigmatic, and a reading of *Tischer* offers little in the way of enlightenment except to indicate that the principle of separation of powers may be the endpoint of Appellant’s paroxysm). In any event, Appellant misconstrues the significance of Judge Hoffman’s footnote.

While Appellant is correct in its assertion that cost is not a determinative factor in passing on a point of law, it is certainly an interpretative indicator. In determining if the original jurisdiction of the courts is being usurped by an administrative body’s decision, the Courts view the origins of the rights the administrative body oversees and the relief it may provide. *Holmberg*, 588 N.W.2d at 724. In this case, the City Council would be a quasi-

judicial overseer of its own business enterprise, creating the anomalous situation of the “fox guarding the hen house.” The issue of whether the governing body of a municipality can fairly adjudicate the propriety of its own conduct has always been a compelling subject for the courts, more so when the conduct is in furtherance of its proprietary function. *Manteuffel v. City of North St. Paul*, 538 N.W.2d 727, 730 (Minn. App. 1995). While certiorari review does provide judicial oversight, implicit in Judge Hoffman’s footnote is the realization that most utility bill disputes are of such small amount that bringing certiorari review to the Court of Appeals would not be worth the cost and trouble. *Cf. Holmberg*, 588 N.W.2d at 726. Therefore, finding Appellant’s utility bill policy a quasi-judicial activity with review limited to certiorari would for most claimants *de facto* close the door to Conciliation Court. Not only does it provide claimants with their “guaranteed” day in court, but the specter of Conciliation Court also prompts the City Council to take “real politick” out of its decision making process.

Notwithstanding Appellant’s assertion to the contrary, it is evident that cost was not an imperative in Judge Hoffman’s decisional brew. It was merely offered in a footnote as insight into his decision. The issues of which Judge Hoffman was mindful are also those to which the legislature pays heed and is likely the reason it has chosen not to bestow upon municipalities governmental license over their proprietary functions.

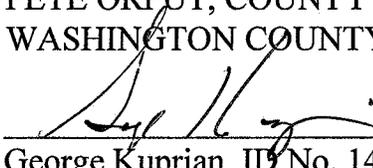
## CONCLUSION

Appellant’s entire dialectic “leans against a reed”, and its fatuous attempt to divest the district court of its jurisdiction must fall. It is unequivocally established law that when a municipality provides sewer and water services it does so in its proprietary capacity and is

only entitled to the privileges accorded a private business. The Appellant's utility bill policy has no statutory foundation supporting its claim of quasi-judicial action and is merely a means for the Appellant to settle utility bill disputes prior to, during, or after litigation. The Appellant may not by means of its self-prescribed utility bill policy assign itself a quasi-judicial role and demand the district court yield its original jurisdiction to a City Council decision made pursuant to it. Therefore, this Court should affirm the district court's denial of Appellant's motion for summary judgment for lack of subject matter jurisdiction.

DATED: March 7, 2011.

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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, subs. 1 and 3, for a Brief produced with a proportional font. The length of the Brief is 5,830 words. This Brief was prepared using Microsoft Office Word 2007.

DATED: March 7, 2011.

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