



# Washington State Legislature

September 26, 2017

The Honorable Bob Ferguson  
Attorney General of Washington  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, WA 98504-0100

Re: Request for the Attorney General to defend state constitutionality of state law, RCW 36.65.030 in *Kunath v. Seattle*, King County Superior Court No. 17-2-18848-4 SEA

Dear Attorney General Ferguson:

We write collectively to request your office defend the constitutionality of a state law which has recently been attacked in state courts. It has come to our attention that Economic Opportunity Institute ("EOI") has filed a motion to intervene in *Kunath v. Seattle*, the lawsuit challenging the legality of Seattle's recently enacted city-wide income tax.

EOI's arguments to invalidate state law are weak and disingenuous. In its motion of September 6, 2017, EOI asserts its intention to challenge the constitutionality of RCW 36.65.030, a state law on the books for more than 30 years which prohibits local governments from imposing taxes on net income. EOI argues the state law violates Article II, Section 19 of the state Constitution which prohibits legislation from having more than one subject. However, the title and subject of Senate Bill 4313 (1984), codified as RCW 36.65.030, is "An Act Relating to Local Government." A prohibition on local income taxes is clearly within the subject of that bill title. EOI's briefings to the court misleadingly refer to the session law *caption* "City-County Municipal Corporations" to build an argument that a limitation on cities as distinct from combined city-county governments would be a second subject in violation of Article II, Section 19. Code Reviser captions are not part of legislation.

EOI argues that its interests in the litigation are distinct from Seattle, because:

*First, EOI has a distinct interest in ensuring that the Ordinance is upheld on grounds that are not specific to first class or charter cities, as EOI advocates for adoption of local income taxes in code cities as well as in Seattle...and, Third, EOI's pleading alleges that RCW 36.65.030 is unconstitutional and void, thereby providing an alternative ground for rejecting Plaintiff's arguments that the statute precludes the Ordinance. The City has not thus far made a counterclaim that RCW 36.65.030 is unconstitutional nor provided notice to the Attorney General of its intent to do so.<sup>1</sup>*

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<sup>1</sup> *EOI Motion to Intervene*, p. 7, ln. 18-p.8, ln. 8



## Washington State Legislature

The fact that EOI seeks to see the Seattle ordinance upheld on broad grounds that would support its advocacy for adoption of local income taxes in multiple jurisdictions, not just Seattle, places new state interests at stake in this litigation.

State law provides that the attorney general shall appeal for and represent the state in all cases in which the state is interested. RCW 43.10.030. The state has a fundamental interest in establishing the rules and conditions for commerce within its borders, and the setting of tax policy, has long been viewed as an integral part of that function. For this reason, municipalities must have specific legislative authority to levy a particular tax. *King Cty. V. City of Algona*, 101 Wn.2d 789, 791 (1984). The legislature has not authorized cities generally to tax personal income. The ad hoc development of a varied patchwork of income tax regimes and administrations is a threat the interests of the state, and precisely the sort of thing that this state law has worked to prevent since its passage.

The plaintiff in this matter requested that your office go on the offense and seek to strike down the Seattle Ordinance on behalf of taxpayers. You declined via letter dated August 1, 2017. This letter makes a related but distinct request. It does not ask you to take a position on the constitutionality of Seattle's ordinance, but instead to vigorously defend the constitutionality of state law, to-wit: RCW 36.65.030.

The citizens we represent expect us to have done all we can to defend against the development of a patchwork of local income taxes, particularly if they come to be without ever having been expressly authorized by state law. We respectfully request that you consult with us about how your office intends to defend state law in this matter. In the alternative, we respectfully urge you, in the interests of public awareness and debate, to set forth in full the reasons of law or policy which may impel you to refrain from doing so. In the absence of your willingness to represent the state in this matter, this letter shall serve as the notification required under RCW 43.10.045 that the Legislature may choose to exercise its right to use the services of outside counsel to represent it in this matter. Given the pending legislation, we request a response by October 6, 2017.

Respectfully,

Members of the Washington State House Republican Caucus

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