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Greg Lind
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Appendix B

TRANSCRIPT

Comments from Greg Petesch to the EQC Study Subcommittee - Meeting of January 26, 2006
Transcribed April 25, 2006

I was asked to discuss the concept of freeholder with the work group. First of all, a freeholder is a person who has titled property that is either legal or equitable title. A freeholder is also further defined as a person who holds an estate in real property either by inheritance or for life. A taxpayer is a different concept because taxes can be paid on personal property in addition to real property. The courts further interpreted freeholder to mean the purchaser and not the seller under a contract for deed and that is the equitable title aspect of the concept. This is a major policy change and that is the reason I am here to discuss this.

Under current fire district laws, those people who own title to real property are the ones who are authorized to petition for the creation or dissolution of a fire district. There have been a large number of cases that have challenged the concept of whether a freeholder status is appropriate.

In a fairly recent case (1995), the Montana Supreme Court said that not allowing people who didn't own real property, those who weren't freeholders, was not inappropriate for an irrigation district, because irrigation districts are special limited purpose units of local government whose function has a disproportionate effect on landowners in the district as a group. Therefore it was appropriate to depart from the usual "strict scrutiny standard" under equal protection that applies to statutes that impact your right to vote, and to use a "rational basis standard" instead. Under equal protection analysis, the minimum standard is the "rational basis". There is a middle tier scrutiny for certain constitutionally recognized functions, and then there is a "strict scrutiny standard" that applies to a specific constitutionally protected entity, and under a "strict security" analysis, essentially the statute is always stricken down.

So with that concept in mind, we discussed some of the varying interpretations of "freeholder". I admit I can't grasp a consistent line of reasoning through the cases that have attempted to apply the equal protection test to a freeholders status. The reason I say that is with regard to annexation laws, the court said that neither a corporation, nor a partnership is considered a freeholder for purposes of annexation. However, for purposes of a planned unit development in Montana they are a resident freeholder. I really can't see the distinction between bringing property into a city, and a statute that tells how you develop property within a city.

The purpose of a fire district is to provide fire protection to people residing in the district. You can reside in the district without owning property. Fire protection is a governmental service that falls within traditional police power of government--it is one of those fundamental things that government is organized for--it is public safety--the same way as police protection is a public safety concept. I believe it's not unlikely that if a challenge were

brought to the freeholder concept for fire protection that a higher standard than a "rational basis" would be likely to be applied.

The same concept was applied to building codes, as to whether a person who didn't own real property could want to be included in an area that had building codes, for example municipalities have residential building codes but the state doesn't, so could you petition to be brought into the "donut area", when we allowed those, if you weren't a property owner. Because you were renting a space in a building, it was felt that it was appropriate that those people who were registered voters in the donut area would be allowed to participate in that type of decision.

I think the same analogy would be applied to a person who was renting property and residing in a fire district. Certainly you want your personal property protected to the same extent you want real property protected. But that is a significant policy change. That is the discussion that was had with the work group. The work group felt that fire protection was a generally applicable provision even though the payment for the fire protection is through levies, and those do fall on the property owners, that fire protection is afforded to everyone in the district whether they are property owners or not once the district is created. So that was the basis upon which the working group proposed making the change from a freeholder requirement for creation or elimination of a fire district and went with the concept of those registered voters.