



MEMORANDUM
CITY ATTORNEY'S OFFICE

To: Mayor and Council

From: Linda A. Marousek, Assistant City Attorney

Re: Legal Opinion Regarding Block Veto and Change in CTRAN Board Composition

Date: September 9, 2013

Question Presented: What is the effect on the City's (and the County's) block veto power as set forth in CTRAN Bylaw 4.5.1 if the number of City of Vancouver or Clark County CTRAN Board seats is changed by the pending Composition Review Committee action?

Brief Response: Under well-established rules of statutory construction, the block veto power remains in effect for both the City and the County, regardless of the change in the number of Board seats designated for the City and County, unless, as is clearly stated in Bylaw 4.5.1, a change to the block veto is "approved by vote of *all* members representing the City of Vancouver and Clark County." (emphasis added).

Discussion:

The CTRAN Board Composition Review Committee is considering two options that would change the number of Board seats for the City, the County, or both. The question has arisen as to how such a change would affect the City and County "block veto" power set forth in CTRAN Bylaw 4.5.1. CTRAN's counsel has provided a very brief memorandum stating that in the event of any change in composition, "Section 4.5.1 would require revision as the present veto provisions would not be enforceable." Memorandum, July 30, 2013. While legal advice to the CTRAN Board is within the sole authority of CTRAN's counsel, the Vancouver City Attorney's Office provides this opinion, which reaches a different conclusion, for the use of the City's CTRAN board members, and for public dissemination as appropriate, to better inform discussion of the block veto issue.

CTRAN Bylaw Section 4.5.1 reads as follows:

4.5.1 Vetoes

Three negative votes by the representatives of the City of Vancouver, or three negative votes by the representatives of Clark County, on any action to be taken by the governing board shall constitute a veto of that action, provided that such veto authority may be amended or deleted by resolution adopted by the governing board which resolution itself must be approved by vote of all members representing the City of Vancouver and Clark County.

Bylaw 4.5.1. The July 30, 2013 Memorandum expresses the opinion, without elaboration, that "Section 4.5.1 would require revision as the present veto provisions would not be enforceable." However, the block veto is exercised by "three negative votes," but the block veto may be amended or deleted only by vote of "all" members. There is a strong legal argument, based on rules of statutory construction, that the block veto is preserved even if the City or County loses a representative: "all" might mean "two."

Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language. *State v. Roggenkamp*, 153 Wn.2d 614, 621 (2005). Reading the plain words on the page, if the number of City or County representatives were changed from three to two, the first clause would indeed be unenforceable, because there would no longer be three voters who could exercise the block veto:

Three negative votes by the representatives of the City of Vancouver, or three negative votes by the representatives of Clark County, on any action to be taken by the governing board shall constitute a veto of that action;

If the number of voters changes, the first clause is unenforceable as written, and thus would require that the CTRAN Board revise its bylaw.

However, under well-settled rules of statutory construction, the second clause is not unenforceable if the number of board seats changes. In the second clause, which governs the existence of the block veto power (not its exercise), the Bylaw uses the word "all," rather than the word "three."

provided that such veto authority may be amended or deleted by resolution adopted by the governing board which resolution itself must be approved by vote of all members representing the City of Vancouver and Clark County.

It is a fundamental rule of statutory construction that the legislative body is deemed to intend a different meaning when it uses different terms. When the legislature uses different words within the same statute, the courts recognize that a different meaning is intended. *State v. Roggenkamp*, 153 Wn.2d 614, 625 (2005). In this case, the CTRAN

Bylaw uses “three” when it discusses exercise of the block veto, but it uses the word “all” when it discusses the continuing existence, amendment, or deletion of the block veto power itself. Because the words are different, it is presumed that the meaning is different. *Id.* The second clause should be read to mean that regardless of how many City or County representatives are actually on the Board, “all” of them must approve any amendment to the block veto power. Reading the second clause in this manner is supported by another well-settled rule of statutory construction:

[E]ach word of a statute is to be accorded meaning. The drafters of legislation are presumed to have used no superfluous words and we must accord meaning, if possible, to every word in a statute. We may not delete language from an unambiguous statute: Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.

State v. Roggenkamp, 153 Wn.2d 614, 624 (2005) (citations omitted). Reading the second clause so that it preserves the block veto gives meaning to the use of the word “all,” and gives effect to the second clause. On the other hand, reading the second clause to be unenforceable if the number of votes changes renders the entire clause meaningless, in violation of the rules of statutory construction. The City would suggest that use of the word “all” was meant exactly for this situation: the number of representatives changes, but the block veto persists.

Preserving the enforceability of the block veto is also consistent with the legislative history of the CTRAN Bylaws. Legislative history is appropriate guidance in construing the meaning of an ambiguous statute. *State v. Roggenkamp*, 153 Wn.2d 614, 621 (2005). The block veto power was the result of the negotiations surrounding the founding of CTRAN. The City gave up control of its buses and bus company in exchange for the block veto power, which allowed it to exercise some measure of control over CTRAN; and the County gave up some measure of control over its larger territory in exchange for the block veto power.

Preserving City (and County) block veto control is still factually appropriate at the present time. The City contributes 60% of CTRAN’s sales tax revenue and 80% of its ridership; the County contributes 25% of the revenue and 16 % of the ridership, and is the local government over the large unincorporated territory within CTRAN’s boundaries.

Finally, the PTBA statute provides some support for population-proportional power, such as the block veto, to be exercised on the CTRAN Board. RCW 36.57A.055 provides:

If an area having a population greater than fifteen percent, or areas with a combined population of greater than twenty-five percent of the population of the existing public transportation benefit area as constituted at the last review meeting, annex to the public transportation benefit area, or if an area is added

under RCW 36.57A.140(2), the representatives of the component county and cities shall meet within ninety days to review and change the composition of the governing body, if the change is deemed appropriate.

RCW 36.57A.055. While no annexation has occurred, this statute supports the idea that population-proportional representation is appropriately considered in determining representation on a PTBA governing body.

In summary, there are well-established legal principles and undisputed facts that support the continued existence of the City and County block veto unless and until all City and County representatives on the CTRAN Board vote to delete or amend it, even if the number of representatives to the Board from each jurisdiction changes.