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Introduction

When the City of Spokane thinks of homeless people, she thinks of unwanted people. So when the city sees a problem because people have come to Spokane and live where living is not permitted, the city takes action. From time to time, the police, following

orders, tell these citizens they must move. Once the moving begins, the people move away. But they come back; there is nowhere for them to go. They have no place to go, no place where they can create a place to live. They have no abode and cannot make one.

Circumstances for the homeless do not improve. The opposite takes place. Their condition worsens. There is something that can be done, must be done.

I submit that homeless have rights under the Washington State Constitution for "necessary support" because they are "poor and infirm." Wash. Const. Article VIII, Section 7.

I believe these rights can be enforced under the Constitution and pursuant to the laws and court rules of the State of Washington. Let me explain.

I. Governmental Function, Needs of the Poor and Infirm

It is a governmental function for the City of Spokane to address the needs of the poor, the needy, the infirm. This includes the realization homeless must-have and are entitled to a place of abode, a place to live.

In an opinion of the Washington Attorney General, we are reminded that "a core purpose of government is ensuring public health and promoting public welfare." *Concerning Housing Finance Comm'n v. O'Brien*, 100 Wn. 2d 491, 495 (Wash. 1983) (securing the health and welfare of the state's citizens is an essential government function); *Hudson v. City of Wenatchee*, 94 Wn. App. 990, 995-96, 974 P.2d 342 (1999) (describing "the preservation of the public health" and "promotion of the public welfare" as fundamental purposes of government)." AGO, April 6, 2020, at 7.

The Washington Supreme Court made it clear the Washington constitutional convention did not intend to hinder state government from carrying out its essential function to secure the health and welfare of the state's citizens. *In re Marriage of Johnson*, 96 Wn.2d 255, *Marriage of Johnson*, 96 Wn. 2d 255, 262, 634 P.2d 77 (1981); see also, *Rauch v. Chapman*, 16 Wn. 568, 48 P. 253 (1897).

II. Washington Constitution; Spending Money

The Washington State Constitution plays a significant role in what I have to say.

My focus herein is Article VIII Section 7, however, as we shall see, other articles and sections of the Constitution play and have bearing on the issues which arise in the effort fund programs and other efforts for the homeless.

Wash. Const. Article VIII, Section 7 provides for the rights of which I speak:

SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or

loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

The critical language is this "except for the necessary support of the poor and infirm."

The nature and character of the rights is found in other parts, vital parts, of the constitution.

In the PREAMBLE the constitution confirms it is a product of the "people" of the state:

We, the people of the State of Washington, grateful to the Supreme Ruler of the universe for our liberties, do ordain this constitution.

In ARTICLE I DECLARATION OF RIGHTS there are sections which establish that the rights homeless have and are fundament to the rights:

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

III. Washington Constitution; Spending Money

SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

The State Constitution specifically addresses the governmental function of care for the poor. It is found in the words "necessary support of the poor and infirm" found in Wash. Const. Art. VIII, Section 7, which provides:

Marriage of Johnson, 96 Wn. 2d 255, 269 (Wash. 1981) ("This court has recognized an exception to the above quoted constitutional prohibition when the State's money is disbursed to needy and infirm individuals. *Morgan v. Department of Social Security*, [14 Wn.2d 156](#), [127 P.2d 686](#) (1942). Providing care for these individuals is a "recognized public governmental [function]". *State v. Guaranty Trust Co.*, [20 Wn.2d 588](#), [592](#), [148 P.2d 323](#) (1944).")

Marriage of Johnson, 96 Wn. 2d 255, 262 (Wash. 1981) ("*Rauch v. Chapman*, 16 Wn. 568, 575, 48 P. 253 (1897). The public benefit achieved from such activities is the "consideration" for the funds expended. *State Highway Comm'n v. Pacific Northwest Bell Tel. Co.*, [59 Wn.2d 216](#), [227](#), [367 P.2d 605](#) (1961).

Marriage of Johnson, 96 Wn. 2d 255, 261-63 (Wash. 1981) ("Article 8, section 5 does not prevent the State from exercising a "recognized public governmental function." *State v. Guaranty Trust Co.*, [20 Wn.2d 588](#), [592](#), [148 P.2d 323](#) (1944); *Morgan v. Department of Social Security*, [14 Wn.2d 156](#), [127 P.2d 686](#) (1942). Recognized governmental functions are excepted because applying the constitutional debt limitations, such as article 8, section 5, would destroy the efficiency of the agencies established by the constitution to carry out the recognized and essential powers of government. It cannot be conceived that the people who framed and adopted the constitution had such consequences in view. *Rauch v. Chapman*, 16 Wn. 568, 575, 48 P. 253 (1897).

The public benefit achieved from such activities is the "consideration" for the funds expended. *State Highway Comm'n v. Pacific Northwest Bell Tel. Co.*, [59 Wn.2d 216, 227, 367 P.2d 605](#) (1961). Aid to the poor and infirm is one example of a governmental function, and hence it has been excepted from the section 5 [amd prohibition. *Guaranty Trust, supra; Morgan, supra; Health Care Facilities, supra*. The State has been permitted to intervene in such proceedings, and hence to expend state monies, to protect several compelling interests. *State v. Meacham*, [93 Wn.2d 735, 741, 612 P.2d 795](#) (1980); *State v. Wood*, [89 Wn.2d 97, 102, 569 P.2d 1148](#) (1977).

IV. Washington Education Funding Case

What I assert in this letter, is supported by what the Washington Supreme Court has said and done regarding the governmental function of providing for the "education of of all children residing within the borders of the state."

The case is known as Washington's Education Funding Case. The case, *McCleary v. State*, 173 Wn 2d 477, 269 P.3d 227 (2012), addressed the assertions of the plaintiffs that the state, state legislature, had a the state constitutional duty "to make ample provision for the education of all children residing within its borders." Wash. Const. Art. IX, Section 1 (Preamble) provides:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Judge John Erlick, the King County Superior Court trial judge, sided with the plaintiffs, stating that the State was failing to adequately provide for basic education of the children, saying "State funding is not ample, it is not stable, and it is not dependable."

The Supreme Court agreed with Judge Erlick.

The Court held: ("Article IX, section 1 of the Washington State Constitution makes it the paramount duty of the State to amply provide for the education of all children within its borders.")

The Court went on to say "This duty requires the State to provide an opportunity for every child to gain the knowledge and skills outlined in *Seattle School District*, ESHB 1209, and the EALRs."

The Court then directed that ("the legislature must develop a basic education program geared toward delivering the constitutionally required education, and it must fully fund that program through regular and dependable tax sources.")

McCleary v. State, supra, 173 Wn 2d 477, 546-47.

V. Significance of the Term "Exception" in Art. VIII, Section 7

The term "exception" has significant meaning. It implies that a decision on the **exception** in the democratic **state** must take the form of an exercise of the people's constituent power. Here, the constituent power is that of people of the state, the people who adopted the constitution.

Here, the exception is an exercise of the people's constituent power contained in the Constitution of the State of Washington. A **state of exception** state of emergency but based peoples ability to transcend the rule of law in the name of the public good. ¹

VI. Decisions In Other States

Other states in the United States have constitutions with provisions like Washington, which include "necessary support of the poor." North Dakota is one such state.

"Article X, § 18, N.D. Const., currently provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation." [emphasis added].

Haugland v. City of Bismarck, 818 N.W.2d 660, 669 (N.D. 2012) ("[T]o ascertain the meaning of the current language of N.D. Const. art. X, § 18, we trace the historical development of that provision. As originally adopted by the people in 1889, the "gift" clause provision precluded the State and political subdivisions from making a "loan," giving its "credit," or making "donations" to any individual, association or corporation, except for necessary support of the poor. :

Haugland v. City of Bismarck, 818 N.W.2d 660, 670 (N.D. 2012) ("Why did not the conventions which formed the organic law for North and South Dakota simply copy the language which, with this exception, is borrowed from the other constitutions, without inserting the excepting clause under consideration?

To our mind, the answer to these questions is found in the peculiar and alarming condition of the people of Dakota territory in the year 1889, when the two Dakotas assumed the responsibilities of statehood. Such conditions had not before existed, and hence the constitutions of other

¹ https://en.wikipedia.org/wiki/State_of_exception.

states had made no provisions to meet such necessities. When the two states formed and adopted their constitutions the fact was well known and recognized by the people of Dakota that the condition of many farming communities was such that some comprehensive measure for their relief was an imperative necessity. Id.

In such a conjuncture the words were interpolated into section 185 of the constitution, which permit counties to loan their aid for the "necessary support of the poor ."

The court in *Haugland* further opined: ("In our opinion, this power is conferred in the organic law expressly to meet the exigencies of the situation then existing, and that it is our duty to give it that effect. We believe, and so hold, that the class referred to in the exception contained in section 185 of the state constitution is the poor and destitute farmers of the state, and that the first legislature which met after the state was admitted has, by the seed-grain statute, put a proper construction upon the language in question. We therefore refuse to grant the writ applied for, and hold that the seed-grain statute is a valid enactment. *Nelson County*, 1 N.D. at 99–101, 45 N.W. at 37–38.") Id.

VII. Washington Declaratory Judgments Act RCW Chapter 7.24

Under the Declaratory Judgments Act the court can act to address the issues I have presented. RCW 7.24.010 provides"

"Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

CONCLUSION

I believe it would be worthwhile to address the concerns of the homeless as I have described.

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