12-16-2008

City of Boise v. Ada County Appellant's Brief Dckt. 35432

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN RE: FACILITIES AND EQUIPMENT PROVIDED BY THE CITY OF BOISE,

CITY OF BOISE,

Petitioner-Appellant,

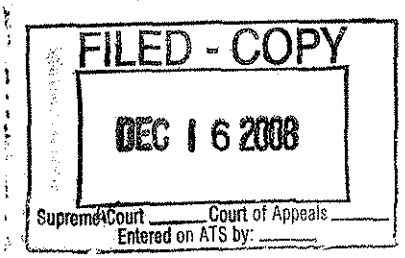
vs.

ADA COUNTY and the BOARD OF ADA COUNTY COMMISSIONERS,

Respondents.

Supreme Court No. 35432

APPELLANT'S BRIEF



APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Judges of the Fourth Judicial District
Sitting *en banc*

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COMES NOW, the Appellant, City of Boise City, by and through its attorneys of record, and hereby files its initial brief in the above-captioned matter.

STATEMENT OF THE CASE AND PROCEDURE

I. NATURE OF THE CASE

This appeal involves the complicated relationship between cities, counties and the district courts in Idaho and specifically presents for resolution the question whether the district court can, under the current statutory scheme, order the City of Boise to provide facilities, personnel and equipment for a Magistrate's Division of the District Court when Ada County is already providing those same facilities, personnel and equipment at taxpayer's expense.

II. COURSE OF PROCEEDINGS BELOW

On September 14, 2007, the City of Boise filed a Petition to set aside an Administrative Order dated October 9, 1980, which required the City of Boise to provide facilities and equipment for a Magistrate's Division of the Fourth Judicial District Court. (R., pp. 6 - 11) Ada County moved to intervene and objected to setting aside the 1980 Administrative Order. (R., pp. 17 - 28) Over Boise City's objection to the intervention by Ada County (R., pp. 31 - 38), the District Judges allowed Ada County to Intervene and oppose Boise City's Petition to Set Aside the 1980 Administrative Order. (R., pp. 44 - 50) After oral argument before the Fourth Judicial District Judges *en banc*, the District Court denied Boise City's Petition to Set Aside the 1980 Administrative Order in a Memorandum Decision filed on May 16, 2008. (R., pp. 60 - 76) The City of Boise filed its Notice of Appeal on June 19, 2008.

III. STATEMENT OF FACTS

A historical perspective is necessary to fully appreciate the position in which the City of Boise found itself in 2007. The relevant history begins with the Idaho court reform legislation which was enacted in 1969 and became effective in 1971. (R., pp. 60 - 62) Of particular significance to this case are Idaho Code §§ 1-2217 and 2218 which were part of the court reform legislation. Idaho Code § 1-2217 requires counties to provide quarters, facilities, equipment, staff, supplies and other expenses for the magistrate's division of the district court. Cities, however, are only required "upon order of a majority of the district judges in the judicial district" to provide quarters, facilities, equipment, staff, supplies and other expenses for the magistrate's division of the district court.

a. The City of Boise Initially Provided Magistrate Services in 1971 when the Court Reform Legislation became Effective.

On January 11, 1971, the effective date of the court reform legislation, the district judges of the Fourth Judicial District entered an order requiring the City of Boise to "provide suitable and adequate quarters for two magistrates of the Fourth District Court Magistrates Division, including two courtrooms with related facilities . . . ." (R., p. 10) Boise City complied with the Order by continuing to provide facilities to handle Boise City's misdemeanors and traffic court in an old fire station on Kootenai Street in Boise. (R., p. 63; R. Ex. 19, Second Navarro Aff., para. 7)

b. Nine Years Later, Boise City constructed the Barrister facility to house a "Magistrate's Division of the District Court."

On October 9, 1980, the district judges of the Fourth Judicial District entered a new order requiring the City of Boise to provide quarters, facilities, equipment, staff, supplies and other

with the Order and built a court facility with five courtrooms, commonly called Barrister, and provided other facilities, equipment, staff, supplies and expenses to operate it.

To help fund the Barrister facility, Boise City received the Idaho Code § 31-3201A(b) and (c) $5.00 city general fund court fee allocation and the $2.50 city capital facilities court fee allocation. (R., p. 64; R. Ex. 19, Second Navarro Aff., para. 21-22)

c. By 1983 the District Court Moved All Misdemeanors, etc., to Barrister.

Initially the Barrister facility handled only Boise City cases, but that soon changed. In 1983, Ada County Administrative Judge Warren H. Gilmore directed that all misdemeanors, animal control, parking, open container, tobacco, drinking violations, infractions, Fish and Game violations, Outfitter and Guide violations, water and watercraft violations, bicycle and pedestrian violations and littering cases would be conducted at Barrister. (R., p. 88, Ex. 29, Allen Aff., Ex. F.) All other misdemeanors not listed were to be filed in the magistrate's division at the county courthouse. Walk-in arraignments for Boise City, Ada County, Meridian and Garden City were to be conducted at Barrister. *Id.*

d. Ada County Provided Staff in 1989 Due to the Growing Magistrate Court System.

In 1989, the Trial Court Administrator approached the Ada County Clerk and requested that Ada County employ a manager supervisor at the Barrister court. (R. p. 88, Ex. 19, Second Navarro Aff., para. 13.) Ada County eventually contributed clerks and a supervisor at Barrister due to "the growing magistrate court system". (R., p. 64; R. Ex. 19, Second Navarro Aff., para. 13; R. Ex. 29, Allen Aff., Ex. I)

e. Discussion of Merger of Barrister Employees Began Around 1991.

In the late '80s the concept of a consolidated courthouse was mulled over. In 1990 the Ada County Commissioner's purchased 14.5 acres of property at Third and Front Streets for building a new courthouse. (R., pp. 65 - 66; R. Ex. 11, Simmons Aff.) This was the first official step in laying a foundation for a consolidated courthouse in Ada County. The next step was consolidation of court employees. In a letter by the Ada County Trial Court Administrator (TCA),[1] John Traylor, relates he met on September 10, 1991, with Ada County representatives Ted Argyle, Terry Johnson[2] and Dave Navarro to discuss the County taking over Boise City's employees at traffic court. (R., p. 88, Ex. 29, Allen Aff., Ex. K, p. 1.) In the letter, which was titled "Traffic Court Personnel Merger," the TCA recounts the 1991 meeting explaining that all of the Ada County meeting participants agreed the merger needed to take place. The TCA instructed the City to make the next move so the merger was ready for the upcoming fiscal year. He also suggested revisions to a 1989 draft proposal transferring the City's Barrister employees over to the County. *Id.*

f. Discussions in 1992 with Other Cities in Ada County Proved Fruitless.

In 1992, the TCA, began discussions with Garden City and Meridian to obtain their contribution to the cost of providing the Barrister facility. The TCA fully understood that the facility should not be funded solely by Boise residents. One month prior to the merger letter written to Boise City, the TCA wrote letters to the mayors of Meridian and Garden City in an attempt to get them to provide funding for Barrister employees. (R. p. 88, R. Ex. 29, Allen Aff.,

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[1] The TCA is a position first created by the Idaho Supreme Court in the 1970s with a federal grant. MERLIN S. YOUNG ET AL., JUSTICE FOR THE TIMES: A CENTENNIAL HISTORY OF THE IDAHO STATE COURTS, 188 (Carl F. Bianchi, ed., Idaho Law Foundation, 1990).

[2] Director of Ada County Human Resources.

Ex. I and J.) The TCA explained to the mayors that Barrister was used by every law enforcement entity in Ada County and Boise City was footing most of the bill:

> [A]ll traffic citations, formal misdemeanor complaints and any other citation issued by an Idaho law enforcement officer in Ada County are processed through the Ada County/Boise City Traffic Court . . . . That building was built in 1980 by Boise City . . . in compliance with an Order of the District Court to provide the building, staff and necessary supplies and equipment to operate an adequate court facility. Each year, Boise City provides approximately $663,000 for operation of the Traffic Court, 20 city-paid full-time employees . . . and equipment and supplies. In addition, more funds are budgeted for the operation and maintenance of the building and grounds.

Id. p. 1. The TCA and Boise City worked well together. As he explained to the mayors in 1992, Boise City had funded most of his requests:

> Since I assumed my position with the court in 1984, with the exception of one year, I have asked Boise City for funding additional clerical staff every budget year. For the most part, they have been very generous and understanding.

Id. p. 2. The TCA pushed the mayors to pay just enough to staff their portion, not maintenance and operating expenses. Neither Garden City nor Meridian agreed to reimburse Ada County for Barrister employees. Their respective mayors either "refused to budget sufficient funds or have indicated they [did] not have sufficient funds." (R. p. 88, R. Ex. 29, Allen Aff., Ex. L.)

g. Boise City and Ada County File a Petition to Get Meridian and Garden City to Contribute.

Working on the assumption the District Court could force contribution, the TCA confidentially suggested that the City and County file a joint petition for contribution requesting an appointment of "a Special Master to gather facts and make recommendation to the Court." *Id.* He had already "received authority for payment of a Special Master." *Id.*

Complying with the TCA's suggestion, Ada County and Boise City jointly filed a petition on June 21, 1994, with the TCA asking for contribution from Meridian and Garden City. (R. p. 88, R. Ex. 29, Allen Aff., Ex. M.)

On August 12, 1994, the district judges of the Fourth Judicial District entered an order requiring Garden City and Meridian to provide quarters, facilities, equipment, staff, supplies and other expenses for a "magistrate's division of the District Court." Neither city complied with the Order. (R., pp. 64 - 65; R. Ex. 20, Second Reiner Aff., Ex. A; R. Ex. 29, Allen Aff., Ex. L)

h. A Consolidated Courthouse Concept was Adopted in 1994.

Also in 1994 a plan had been adopted for a "consolidated" courthouse which would house all of the district courts and magistrate courts in Ada County. (R., pp. 65 - 66; R. Ex. 11, Simmons Aff.) In 1996 the voters of Ada County approved the County Commissioners' concept when they voted to approve an advisory question contained on the primary election ballot:

> If there is NOT an increase in property taxes, do you favor the construction of a Consolidated Courthouse and Administration Center through a public-private partnership?

(R., p. 11)

i. In 1999 Boise City and Ada County Enter into an Agreement to Consolidate Court Employees and Functions under One Roof.

Before ground was broken for the new Ada County Courthouse, Boise City and Ada County finally entered into a Memorandum of Agreement (MOA) on October 1, 1999. (R., pp. 65 - 66; R. Ex. 19, Ex. C to Second Navarro Aff.; R. Ex. 11, Simmons Aff., R. Ex. 12, Walker Aff., para. 5) This appears to be the consummation of the 1991 "Traffic Court Personnel Merger".

In the MOA, Boise City and Ada County agreed that it was in the best interests of the community to consolidate court employees and functions under one roof. Ada County represented that it:

> has elected to provide at its sole cost and expense a single courthouse complex for both the District Court and the Magistrate's Division thereof, including the functions of the District Court, both civil and criminal, and probate court, police court and justice courts as those functions existed prior to judicial reorganization . . .;

(R. Ex. 19, Ex. C to Second Navarro Aff.)

In that same 1999 MOA, Boise City agreed, subject to review and renegotiation, to provide funding to Ada County for municipal court employees who were transferred to Ada County as well as provide funding for maintenance and operating costs and equipment. (R. Ex. 19, Ex. C to Second Navarro Aff.) The MOA was approved by a Resolution of the Boise City Council. (R. Ex. 19, Ex. D to Second Navarro Aff.)

j. Consolidated Courthouse Opens in 2002.

In 2002, the Ada County Courthouse opened and the Barrister court facility closed. (R., pp. 66 - 67) The Ada County Courthouse is a County facility and the City of Boise has no ownership in the facility. (R., p. 66) While Boise City was providing the Barrister facility, it received the $5.00 and the $2.50 fees authorized by Idaho Code § 31-3201A(b) and (c) for all cases filed at the Barrister facility. (R., p. 64; R. Ex. 19, Second Navarro Aff., para. 22; R. Ex. 7, Faw Aff., para. 3) After the Barrister court functions were consolidated into the new Ada County Courthouse, Boise City stopped receiving these fees. (R., p. 67) Ultimately, however, Ada County agreed to give Boise City a "credit" equivalent to the $5.00 fee. Boise City still does

not receive the $2.50 fee because the facility is not a City-owned facility. (R., p. 67; R. Ex. 19, Second Navarro Aff., para. 23; R. Ex. 7, Faw Aff., para. 4; R. Ex. 10, Rock Aff., para. 7 & 8)

k. Attempts to Renegotiate Agreement.

The 1999 MOA has never been reviewed or renegotiated. (R., Ex. 14, Simmons Aff.) Boise City's share of the funding for the Magistrate Court under the 1999 MOA is approximately between $750,000 - $800,000/year and approximately $200,000/year for trial court administrator fees associated with the Magistrate Court. (R., Ex. 1, Navarro Aff. dated 10/12/07, para. 5; R., Ex. 2, Reiner Aff. dated 10/12/07, para. 3; R., Ex. 13, Bower Aff.) Part of this obligation is paid by the $5.00 "credit" but the majority of Boise City's payment is paid from property tax revenues in its general fund. (R., Ex. 13, Bower Aff., para. 10; R., Ex. 7, Faw Aff., para. 4; R., Ex. 8, Houde Aff.)

After the decision in *Twin Falls County v. City of Twin Falls*, 143 Idaho 398 (2006), Boise City sought unsuccessfully to review and renegotiate the 1999 MOA with Ada County. (R., Ex. 29, Ex. P and Q to Allen Aff.) At approximately the same time the City of Boise filed its Petition to set aside an Administrative Order dated October 9, 1980, it stopped making payments to Ada County. (R., p. 67) The validity of the 1999 MOA and its enforcement were not before the District Court and were not decided by the District Court in its Memorandum Decision and Order. (R., p. 48)

ISSUES ON APPEAL

1. Where Ada County provides the physical facilities and other amenities for the magistrate division, can the district judges in the Fourth Judicial District legally order Boise City to continue to also provide facilities and other amenities for the magistrate division when no additional or different facilities are needed?
2. Whether the district judges erred in holding that the continuation of the 1980 Order requiring Boise City to provide the county magistrate court facility and functions was constitutional.
3. Whether the district judges of the Fourth Judicial District erred in allowing Ada County to intervene.
4. Whether the district judges of the Fourth Judicial District imposed an erroneous burden of proof upon the City of Boise.
5. Whether the district judges of the Fourth Judicial District failed to properly and thoroughly evaluate the necessity of the 1980 Order pursuant to law.

ARGUMENT

A. THE LEGAL JUSTIFICATION AND THE FACTUAL NECESSITY FOR THE 1980 ORDER NO LONGER EXIST WHICH REQUIRES THAT IT BE VACATED.

1. Standard of Review.

This issue involves the interpretation of Idaho Code §§ 1-2217, 1-2218 and 31-3201A. The decision in *Twin Falls County*, identified the correct standard of review:

> The interpretation of a statute is a question of law over which this Court exercises free review. Interpretation of a statute begins with an examination of the statute's literal words. Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory

> construction. In other words, where statute is clear, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the Legislature.

Twin Falls County, 143 Idaho at 399 (citations omitted).

2. Legal Analysis and Argument.

The Fourth Judicial District Judges, sitting *en banc*, decided that since the 1980 Order does not require the City of Boise to pay a pro rata share of the cost of operating and maintaining the Ada County Courthouse, the Order does not violate this Court's holding in *Twin Falls County* and should not be vacated. This rationale fails to acknowledge the undisputed fact that today Ada County provides the building which houses the magistrate's division in Ada County. The Judges paid lip service to this fact by acknowledging that circumstances had, indeed, changed but reasoned that because "Boise City accounts for the greatest percentage and the greatest number of misdemeanor and infraction filings in Ada County" such fact "alone militates against setting aside the Court's Order of October 9, 1980." The decision simply does not square with the statutory scheme which governs the undisputed facts in this case.

It is undisputed that since 2002 Ada County has owned the building which currently houses the magistrate's division for Ada County.[3] Under the 1971 Order and under the 1980 Order Boise City provided the building and the expenses associated with operating magistrate courtrooms to handle its cases. Now Ada County provides the building and there is no legal justification for continuance of the Order. In *Twin Falls County*, this Court explained:

[3] The only exception is that juvenile proceedings are handled in separate facilities, but this fact does not change the analysis or the decision. (R., p. 64, L. 10; p. 65, Ls. 16 - 17; p. 66, L. 20)

> I.C. §§ 1-2217 and 2218 do not envision entwined or shared facilities and expenses. The entity which provides the building also provides the expenses associated with operating it. Thus, the district judges only had the authority to order the Cities to provide courthouse facilities.

143 Idaho at 400.

In Twin Falls County, just as it is in Ada County since 2002, there was only one courthouse facility which housed both the district court and the magistrate's division of the district court. The statutory scheme, and the decision in *Twin Falls County,* envisions in such a situation that there is no legal basis or justification for an Idaho Code § 1-2218 Order requiring the cities in such a county to provide magistrate facilities. The Order in *Twin Falls County* went beyond the language of Idaho Code § 1-2218 and actually ordered the cities to pay a proportionate share of the cost of operating the magistrate's division. The Fourth Judicial District Judges in this case reasoned that because the 1980 Order did not require Boise City to pay a proportionate share of the expenses, the decision in *Twin Falls County* was not controlling. Boise City disagrees.

The only justification for an Idaho Code § 1-2218 Order requiring Boise City to provide magistrate facilities would be an actual necessity for such separate facility. The Fourth Judicial District Judges did not find that separate facilities were feasible or necessary.[4] There is, in fact, no basis for such a finding. It is undisputed that the Ada County Courthouse was built for the specific purpose of providing a consolidated courthouse where both the district court and the magistrate's division would be housed and, in fact, it has functioned since 2002 as a consolidated

[4] During oral argument before the Judges of the Fourth Judicial District, sitting *en banc*, counsel for Ada County suggested that additional separate facilities possibly made sense, but there was no evidence presented on the necessity or feasibility of doing so and there were no findings by the Judges on this issue. (Tr., p. 25, L. 3 - p. 26, L. 2)

courthouse. (R., pp. 11, 65 - 66; R. Ex. 11, Simmons Aff.) Unless the Fourth Judicial District Judges intend to require Boise City to provide *separate* physical facilities for the magistrate's division, Idaho Code § 1-2218 does not provide the legal authority for entry of an Order requiring Boise City to provide facilities and expenses for the magistrate's division.

Idaho Code § 31-3201A(b) and (c) do not give cities and counties the authority to alter the method by which the provider of the facilities is reimbursed from court fees. The current reimbursement method employed by the Ada County Clerk in which Boise City is billed for a proportion of the expenses for operation of the magistrate's division and is credited for an amount equivalent to the $5.00 reimbursement provided for in Idaho Code § 31-3201A(b) and (c) is patently invalid. The Fourth Judicial District Judges were incorrect when they held that there was an "obligation" under the 1980 Order for Boise City to provide facilities or expenses. After Ada County opened the new consolidated courthouse in 2002, it receives the $5.00 fee by statute and pays the expenses for the magistrate's division. After Ada County began providing the facilities, Boise City is not entitled to receive the Idaho Code § 31-3201A(b) and (c) fees nor is it obligated to pay for the expenses of operating the magistrate's division. *Twin Falls County,* 143 Idaho at 401. ("By ordering the Cities to reimburse the County, the district judges impermissibly blurred the line between a facility provided by a county and one provided by a city.") By holding that there was any continuing "obligation" under the 1980 Order after Ada County began providing the facilities impermissibly blurred the line between a facility provided by a county and one provided by a city.

Although the Fourth Judicial District Judges recognized that Boise's Petition did not present the opportunity to adjudicate the validity or enforcement of the 1999 MOA, the Judges

were unable to separate the disputes between Boise City and Ada County over that agreement from the questions presented in Boise's Petition. (R., p. 48) The only questions before the Fourth Judicial District Judges was whether there was a legal basis or factual necessity to retain the 1980 Order which required Boise City to provide the facilities and expenses for a magistrate's division. The Fourth Judicial District Judges justified their decision by stating "[B]oth the 1999 Agreement and the Boise City Council Resolution approving execution of the Agreement acknowledged that Boise City remained obligated by the 1980 Order to continue to provide suitable facilities for a magistrate's division of the district court." (R., p. 71)

There is no justification for linking the continuation of the 1980 Order to the enforcement of the 1999 MOA because *Twin Falls County* interpreted Idaho Code §§ 1-2217 and 2218 as *not* envisioning entwined or shared facilities and expenses. *Twin Falls County*, 143 Idaho at 400. Prior to the 2006 decision in *Twin Falls County*, many understood Idaho Code §§ 1-2217 and 2218 as providing a legal basis for cities to reimburse counties for the operation of magistrate courts in the county-provided courthouses.[5] However, *Twin Falls County* changed that. Whether the 1999 MOA has continuing validity or can be enforced was not before the District Judges of the Fourth Judicial District. It must stand or fall on its own in a separate proceeding. The only question presented here is whether Boise City should continue to be ordered to provide magistrate facilities when Ada County is providing those facilities. The only answer which is

[5] "The County argues the district judges were authorized to order reimbursement because I.C. § 1-2217 and I.C. § 1-2218 should be read together. Under the County's view, I.C. § 1-2217 requires that the County provide and pay for a magistrate court facility, which it has done and will continue to do. However, under I.C. § 1-2218, upon order of a majority of the district judges, the Cities must either provide their own building or provide for use of the County facilities by compensating the County for their proportionate share." *Twin Falls County*, 143 Idaho at 400.

consistent with the decision in *Twin Falls County* is "No." The 1971 Administrative Order was entered. Boise City complied with that order by providing the Kootenai Street facility. The 1971 Order was replaced with the 1980 Administrative Order. Boise City complied with the 1980 Order by providing the Barrister facility. The Barrister facility no longer exists, thus the legal justification and the factual necessity for the 1980 Order no longer exists. It should have been vacated.

B. THE CONTINUATION OF THE 1980 ORDER, AND THE 2007 ORDER, REQUIRING BOISE CITY TO PROVIDE MAGISTRATE COURT FACILITIES, EQUIPMENT AND PERSONNEL IS UNCONSTITUTIONAL.

Constitutional questions are purely questions of law. *Ada County Highway Dist. v. Total Success Investments*, 145 Idaho 360, 369 (2008). The standard of review is de novo. *Id.* "There is a presumption in favor of constitutionality . . . and the burden of establishing that the statute or regulation is unconstitutional rests upon the challengers." *American Falls Reservoir Dist. No. 2. v. Idaho Department of Water Resources,* 143 Idaho 862, 869 (2007).

The critical question in this case is whether the 2007 Order, the 1980 Order, and the statute upon which they are based, are constitutional. The Fourth Judicial District Judges labeled the constitutional issues raised by Boise City "creative." However, the constitutional questions at issue are serious questions that deserve more than short shrift by the District Court – especially when the issue is the court's own funding and its seemingly unquestionable authority to demand it.

1. The Orders and the statute upon which they are based are in direct violation of Article VII, Section 5, of the Idaho Constitution.

a) The Court Erred by Concluding that No Tax Is Levied on the Citizens of Boise City.

The Fourth Judicial District Judges began their constitutional analysis by proclaiming: "No tax was levied on the citizens of Boise City." (Mem. Order, p. 13.) Before reaching a legal conclusion that no tax was levied, it would be prudent to first take into consideration the definition of a tax. A tax is "a forced contribution by the public at large to meet public needs." *Brewster v. City of Pocatello*, 115 Idaho 502, 505 (1988). The Orders require the City of Boise to provide facilities, equipment, staff, personnel, and other expenses of the county-wide magistrate's division. This amounts to a forced contribution by the public at large to meet public needs. Whether the City provides for the functions of the court at Barrister or at the new Ada County Courthouse under an agreement is of no moment. The City's taxpayers are ordered to pay. The City has no other means to obtain a stream of revenue for courts other than an ad valorem tax. It is indeed a tax.

b) The Court Erred by Concluding that the Tax Is Uniform and Non-Duplicative.

The Fourth Judicial District Judges concluded that the taxes for courts in Ada County are uniform and non-duplicative. Article VII, Section 5 of the Idaho Constitution provides that taxes shall be uniform and non-duplicative.

> *All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax*, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property . . . *duplicate taxation of property for the same purpose during the same year, is hereby prohibited.*

(emphasis added.)

There is no disagreement that Ada County taxes all of its residents for court functions in two ways. First, County taxpayers (including those in incorporated areas) pay an ad valorem tax to the general fund, a portion of which pays for the functions of the district court (of which the magistrate division is a part). Second, each taxpayer also pays a special levy which "*provid[es] for the functions* of the district court *and the magistrate division* of the district court within the county." Idaho Code § 31-867(1) (emphasis added).[6] In 2007 the special levy for courts in Ada County was $3,016,808. (R. p. 87, Ex. 8, Houde Aff. Ex. 1.)

(1) Boise City taxpayers pay a duplicative court tax.

In addition to a general ad valorem tax and the special levy, Boise City taxpayers pay a duplicate tax in order to comply with the Order. The Fourth Judicial District Judges concluded, erroneously, that Boise City's payment to Ada County is 'proportionate' to its usage, and therefore not 'duplicative'. The district judges provided no authority to support its 'use/proportionality test.'[7] (Mem. Order, p. 14.) The test for whether a tax is duplicative is not proportionality. Rather, the test is the *purpose* of the tax. As articulated in *Humbird Lumber Co. v. Kootenai County,* 79 P. 396 (Idaho 1904),

> The prohibition . . . against duplicate taxation was undoubtedly directed against the taxing of the same property twice during the same year *for the same purpose*, while other like and similar property is taxed only once during the same period for the same purpose.

Id. at 398 (emphasis added). The key, then, is to first look at the *purpose* of each tax. The tax

[6] Yet Boise City was still under the 1980 Order and was still providing the facility, equipment, staff, personnel, supplies and other expenses of the Magistrate's Division.

[7] Moreover, the Court's own Order does not limit the City's contributions to only its proportionate use. The Order requires the City to pay for the magistrate division in its entirety.

imposed by the 1980 Order – which mirrors the language of Idaho Code § 1-2218 verbatim – requires Boise City to tax its residents for the *purpose* of providing a facility, equipment, personnel, etc., and other expenses for the functions of the Ada County District Court's magistrate division. Likewise, the purpose of the special levy is to "provid[e] for the *functions* of the district court *and the magistrate division* of the district court within the county" including all court expenditures and the salaries of deputy court clerks.[8] Idaho Code § 31-867(1) (emphasis added). With the exception of the facility requirement, the tax imposed by the Order has the same purpose as the special levy's purpose – to provide a county magistrate facility. Unlike any other county taxpayer, Boise taxpayers pay not only the general ad valorem taxes for courts and the special court levy, but also a tax to comply with the 1980 Order by the Ada County District Court. No other taxpayers in the County pay three times for the same purpose. This constitutes a duplicative tax.

(2) The Taxes for Ada County District Court Magistrate Division Are Non-uniform.

The uniformity provision states that "[*a*]*ll taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax.*" The Fourth Judicial District Judges erred when they proclaimed that, because Boise City's taxes are uniform *throughout the city*, there is no uniformity problem. The analytical flaw stems from proclaiming Boise City as the "taxing authority" and the taxpayers of Boise as the "class of subjects."

Relating to the authority to fund the courts, a historical perspective is helpful. Prior to the 1970s, the Idaho courts were not consolidated. For instance, cities had municipal courts. A

[8] An amendment to the special levy law in 1997 added the ability for the special court fund to pay for all court functions (except a facility) *including salaries of deputy court clerks.* 1997 Idaho Sess. Laws p. 91.

constitutional amendment and statutory amendments changed that effective January 11, 1971. Boise City's authority, along with all other cities throughout the state, to provide a court for its taxpayers was repealed by the legislature in 1969 and effective in 1971. 1969 Idaho Sess. laws p. 344-346. Functions of the old municipal courts were transferred to the magistrate's division of the district court. MERLIN S. YOUNG ET AL., JUSTICE FOR THE TIMES: A CENTENNIAL HISTORY OF THE IDAHO STATE COURTS, 176-177 (Carl F. Bianchi, ed., Idaho Law Foundation, 1990). The magistrate courts' jurisdiction included the types of cases previously heard by probate, police, justice *and* municipal courts. Later in the 1970s, the magistrate courts' jurisdiction expanded to take on additional responsibilities of domestic relations, child support, child custody, parental right's termination, and habeas corpus proceedings. JUSTICE FOR THE TIMES, at 182-18. These responsibilities far exceed those of the former municipal courts.

(a) The Taxing Authority is with the District Court, Not the City of Boise.

The authority to force contributions from a city for court functions is found not in Title 50 (Municipal Corporations) of the Idaho Code; rather, it is found in Title 1 (Courts and Court Officials). Idaho Code § 1-2218 does not provide a city with taxing authority. Title 1 confers on the *county* district judges the authority to make the decision that a city will provide for the functions of the magistrate court. The district judges, by a majority vote, can order a city to provide court functions. Once that decision is made, a city has no discretion. The statute is mandatory (and apparently ad infinitum). Once the district judges enter an order, the result is necessarily a tax. The taxing authority to initiate the magistrate court to be funded by city taxpayers rests with the Ada County District Court.

The district judges discussed *Independent School Dist. No. 6 v. Common School Dist. No. 38*, 64 Idaho 303 (1942), to arrive at the conclusion the tax is uniform. *ISD No. 6* is easily distinguishable. It involved a school district which was statutorily authorized to enter into contracts with other school districts to provide schooling. Upon the "initiative and the agreement" of the school district's own board of trustees, School District No. 6 entered into a contract to provide schooling for the pupils of two other independent school districts in exchange for payment. Later, School District No. 6 argued, partly upon the uniformity clause, to recover the difference between the per capita cost and what the other districts had paid. The Court held the statute and the contract were not in violation of the uniformity clause. The statute conferred the authority and power on the district trustees to combine with another school district for the purpose of education. The arrangement "imposed no additional tax, imposition or burden." *Id.* at 789.

Unlike the school district in *ISD No. 6*, the city is not statutorily authorized to provide court facilities and functions. Rather, another entity, the district judges, is authorized to *order* the city to provide court facilities and functions. The school district arrangement involved the purpose for which school districts exist – to educate students. The district judges' Order imposes additional taxes and burdens upon the city taxpayers to pay for a purpose for which cities are no longer authorized. Finally, unlike the independent school districts who did not share the same taxpayers, the City's taxpayers live in, and already pay taxes to, the County for court purposes.

This Court has explained: "[I]f there is any ground for the interest of a county in the spending of money, it must be a county purpose to authorize the levy and the levy must be uniform throughout the county." *Idaho County v. Fenn Highway District*, 43 Idaho 233, 378

(1926). The case at bar is closer to *Fenn*, wherein Idaho County attempted to compel the Fenn highway district to repair part of the highway within the boundaries of the district. The district refused. The Supreme Court held that the county had no authority to do so. The Court explained that taxes levied by a county must be uniform. *Id.* at 378. If the county has authority to spend the money, it must be for a county purpose. *Id.* Simply put, providing district magistrate courts are a county purpose and the taxes for that purpose must be uniform within the county.

On the other hand, should this Court determine that courts are a *city* purpose, the statute is still constitutionally infirm. The *Fenn* Court articulated that the uniformity requirement works hand-in-hand with Article VII, Section 6, of the Idaho Constitution, which prohibits the legislature from imposing a tax on a city for city purposes. The provision implicitly prohibits the legislature from doing indirectly what it cannot do directly. *Id.* at 378. As such, the legislature cannot confer upon the district judges (or the county) the "power to initiate and impose a tax upon and for the purposes of the [city]." *Id.*

(b) The Class of Subjects Is All County Taxpayers.

The next question is whether the tax is uniform upon the same class of subjects. The class of subjects is all taxpayers within the territorial limits of the county, not just the taxpayers in Boise. There is only one magistrate division in each county. "[T]here is hereby established in each county of the state of Idaho a magistrate division of the district court." Idaho Code § 1-2201. The magistrate division has jurisdiction throughout the entire county and serves all taxpayers within the county, whether in an incorporated city or in an unincorporated area.[9]

[9] It should be noted that magistrates are retained in county-wide elections in the county for which the magistrate is a resident. Idaho Code § 1-2220.

There is no Boise City Municipal Court.[10] Nor is there a Boise City Magistrate Division of the Ada County District Court. The uniformity provision requires all taxes on the same class of subject to be uniform. This tax is not uniform

c. The Orders and Idaho Code § 1-2218 Violate Equal Protection.

Interestingly, the Fourth Judicial District Judges completely failed to provide an equal protection analysis. For equal protection in tax cases, the rational basis test is the appropriate standard. *Bon Appetit Gourmet Foods, Inc. v. State*, 117 Idaho 1002, 1004 (1989). An act of the legislature is presumed to be constitutional, but whether the act is reasonable or arbitrary or discriminatory is a question of law for determination by this Court. *Id.* at 1003.

The equal protection analysis is in two steps. The first step is to determine if there is a conceivable public purpose. The City willingly concedes that providing county magistrate court functions and facilities is a public purpose.

The second step is to determine whether the classification is reasonably related.

> The principle underlying the equal protection clauses of both the Idaho and United States Constitutions is that all persons in like circumstances should receive the same benefits and burdens of the law. This Court has held that a classification for tax purposes is reviewed on the rational basis test. The rational basis test requires that a statutory classification be rationally related to a legitimate government objective.

Bon Appetit Gourmet Foods, 117 Idaho at 1004 (citations omitted).

The City disputes the classification both in the statute and as applied in the orders. The purpose of the statute is to provide county magistrate court facilities and functions; yet the classification authorizes a court to order only city residents to provide for the county magistrate

[10] Indeed, only the Legislature has the authority to provide for the establishment of a trial court within a City. Idaho Const. art. V, § 14. This authority is non-delegable.

court. Ultimately, this results in classification between taxpayers within an incorporated area which is under a § 1-2218 order and all other taxpayers within the county. It is not rational to classify one city's taxpayers as the providers of a county-wide magistrate court.

To make matters worse, the statute provides no standard upon which the district judges should order one city to provide it and not another. In the 2007 Order, the Fourth Judicial District Judges' after-the-fact justification is that "Boise City accounts for the greatest percentage and the greatest number of misdemeanor and infraction filings in Ada County." (Mem. Order at 12.) To be clear, Boise City accounts for about 51% of misdemeanors and infractions. (Mem. Order at 8.) To state the obvious, this means the rest of the cities, the county, etc., account for 49% of the misdemeanors and infractions filed in the Ada County magistrate court.

Idaho Code § 1-2218 articulates no such 'proportionality' standard. The statute empowers district judges to order *any* city of any size, with no mention of proportionality, to provide magistrate court quarters, etc., for the entire county. For all other county purposes, taxes are borne by all county residents. Location of a taxpayer's property within a city is not a legitimate tax classification for imposition of a tax to support a county-wide magistrate court. No special benefit accrues to a taxable parcel within an "ordered" city as opposed to taxable parcels outside an "ordered" city. See *Richmond County v. Richmond County Business Assoc.*, 228 Ga. 281 (1971) (holding an ordinance in violation of equal protection where the ordinance assessed fees on businesses within a county, but outside of municipality where the revenue from fees supported services for all county residents including those in municipalities and the burden of the tax was "classified geographically" with no reasonable basis.)

County residents who reside within the City of Boise are being treated differently than county residents who reside outside the City of Boise. Boise City taxpayers are shouldering more of the burden. The classification is clearly arbitrary and not reasonably related to the purpose. The statute violates the equal protection clauses of the U.S. and Idaho constitutions.

Even if this Court finds the classification is not unreasonable, the statute and orders are being applied by the district judges in violation of equal protection. Other cities similarly situated are not treated the same.

As explained in 1994, the Fourth District Judges ordered Garden City and Meridian to provide suitable and adequate quarters for the magistrate's division, as well as staff, personnel, equipment, etc. (Reiner Second Aff., Ex. A, Aug. 12, 1994, Order.) They did not comply.

In March of 1995, the Trial Court Administrator ("TCA") wrote to the City Attorneys for Garden City and Meridian to inform them the Order was still in effect.

> On February 27, 1995, the District Judges of the Fourth Judicial District met and confirmed that their previous Order issued August 12, 1994 requiring your client cities to provide suitable quarters, etc., for the magistrate division is still in effect and expected to be complied with, and directed that I contact each of you regarding this matter.

(Allen Aff., Ex. O, March 8, 1995, Letter from TCA to Attorneys of Garden City and Meridian.) The TCA agreed to honor an Administrative Judge's determination to extend the Order until October 1, 1995. Again, Garden City and Meridian did not comply. The TCA recalls that he "determined not to further pursue this matter with Garden City and the City of Meridian." (R. p. 88, R. Ex. 25, Traylor Aff., para. 13.) The Garden City/Meridian administrative order has not been enforced by the district judges. Only the administrative Order against the City of Boise has ever been enforced by the district judges.

The district judges fail to articulate a reasonable justification for the disparate treatment. They merely state the Garden City and Meridian order "*was not implemented,* although there was no formal order vacating or rescinding the Order." (Mem. Decision at 6) (emphasis added). While the equal protection clause does not require that all persons be treated identically, distinctions in treatment between those similarly situated must rest on "some ground of difference having a fair and substantial relation to the object of the legislation." *Stanton v. Stanton*, 421 U.S. 7, 14 (1975). Merely not being "implemented" is not a ground of difference. As applied, the disparate treatment of the administrative orders in question singles out the City and taxpayers of Boise, who are similarly situated to those in Garden City and Meridian, for no rational reason. The orders as applied fail an equal protection analysis.

C. THE DISTRICT JUDGES' DECISION TO ALLOW ADA COUNTY TO INTERVENE IN THE CITY'S PETITION TO SET ASIDE ADMINISTRATIVE ORDER WAS ERROR.

Before the County was ever a party to this petition, the Ada County District Administrative Judge requested that the City serve Ada County with the City's Petition to Set Aside the 1980 Order. The judge's clerk called the City and requested service on Ada County. The City complied as directed. (Colaianni Letter to Hon. Darla Williamson, dated 9/20/2007 attached hereto as Attachment 1.) Before the County was a party and before it had even moved to intervene, the Ada County Court provided the County with notice of a hearing in this matter. (R. p. 16 – 17.) Shortly thereafter, the County moved to intervene. The motion was granted.

1. Standard of Review.

The standard of review for granting a motion to intervene in an administrative order of district judges appears to be an issue of first impression in Idaho. Article V, § 9 provides the Supreme Court jurisdiction to review "any decision of the district courts, or judges thereof." No standard of review is established in this section of Idaho's Constitution. Further, Idaho Code provides no clear standard of review when an appeal is taken from a decision of the district judges of the Fourth Judicial District pursuant to Idaho Code § 1-2218. Idaho Rule of Civil Procedure 1(a) applies in all "actions, proceedings and appeals of a civil nature." The Petition filed by the City of Boise concerns an administrative order directing the City to provide magistrate facilities. The 1980 Order was not the result of a civil action, proceeding or appeal.

In absence of a clear legal standard of review, it is for this Court to determine how and whether the district judges fulfilled their obligation under the law. "The specific standards governing review...depend upon the nature of the power exercised in making the decision." *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984) (citing *Cooper v. Board of County Commissioners of Ada County*, 101 Idaho 407, 614 P.2d 947 (1980)).

2. Idaho requires an "action" be filed before an intervention may be permitted.

The earliest Idaho case cited for the proposition that the right to intervene requires an underlying action was decided in 1869 by the Supreme Court of the Territory of Idaho. *Glidden v. Green*, 1 Idaho 235 (1869). *Green* explains that "[t]he right to intervene has been taken from the code of Louisiana, and adopted into our practice." *Id.* And the "statute uses the word 'action' in speaking of the right to intervene." *Id.* Specifically, the territorial judiciary adopted this code as follows:

> Section 601, p. 204, Laws of Idaho, first session, says: 'Any person shall be entitled to intervene in an *action* who has an interest in the *matter in litigation*...An intervention takes place when a third person is permitted to become a *party to an action* between other persons. . . .'

Id. (emphasis added.)

Some 22 years after the Territorial Supreme Court made its ruling in *Green* and about a year after statehood, the Idaho Supreme Court ruled "[a]n action cannot be pending until it has been commenced. Civil actions in the courts are commenced by filing a complaint." *Gold Hunter Mining & Smelting Co. v. Holleman,* 2 Idaho 839, 27 P. 4113 (1891). Where there is no underlying case there can be no intervention.

As with case law, an historical survey of state and federal intervention statutes from statehood to the present shows no substantial changes in the law: absent an underlying action there can be no intervention, whether mandatory or permissive. Accordingly, and as a matter of long-standing and well-settled case and statutory law, the County's Motion to Intervene should have been denied.

3. Idaho Rule of Civil Procedure 24 also requires an "action."

Idaho Rules of Civil Procedure 24(a) and 24(b) begin with identical language: "Upon timely application anyone shall be permitted to intervene in an *action*." (emphasis added).

Idaho Rule of Civil Procedure 3(a) states "A civil *action* is commenced by the filing of a complaint with the court . . .," (emphasis added).

The City has filed no complaint upon which the County should have been permitted to intervene. There was simply no *action* (i.e., complaint or lawsuit) filed by the City against any person or entity upon which intervention could attach. The City merely filed a *petition* to the district judges requesting them to set aside, quash, or vacate a purely administrative order the

district judges issued 28 years ago directing the City to provide courtroom facilities for the Magistrate's Division. There is no evidence to suggest the County was permitted to intervene 28 years ago.

4. The County's attempt to impose itself into a purely administrative function of the district judges was an impermissible interference with the administrative duties of the judiciary.

The 28-year old Order the City petitioned the court to set aside was issued by the majority of the district judges pursuant to the statutory authority found at Idaho Code § 1-2218 dealing with facilities and equipment provided by the city.

> Any city in the state shall, upon order of a majority of the district judges in the judicial district, provide suitable and adequate quarters for a magistrate's division of the district court, including the facilities and equipment necessary to make the space provided functional for its intended use, and shall provide for the staff personnel, supplies, and other expenses of the magistrate's division.

The power to issue orders and make changes to them is found at Idaho Code § 1-1603(8) which permits the court to "amend and control its process and orders, so as to make them conformable to law and justice." The Order only involves Boise City and the district judges of the Fourth Judicial District, not Ada County. The statutory authority for the Order is Idaho Code § 1-2218 which only involves the relationship between a city and a majority of the district judges in the judicial district. *Twin Falls County*, 143 Idaho at 400. Ada County had no authority to address or interfere in the decision making process contemplated by Idaho Code § 1-2218.

D. THE DISTRICT JUDGES OF THE FOURTH JUDICIAL DISTRICT IMPOSED AN ERRONEOUS STANDARD OF PROOF UPON THE CITY.

The court in its Memorandum Decision and Order established a standard of proof as set forth in *Noble v. Fisher,* 126 Idaho 885, 888, 894 P.2d 118 (1995), which was to demonstrate "good and sufficient cause" to set aside the Order. *Noble* involved a divorce proceeding. The Petition filed by the City is an administrative matter. It is clear in divorce proceedings that Idaho Rule of Civil Procedure 60(b) and Idaho Code § 32-709 apply. It is also clear in civil litigation that Rule 60(b) governs. There is no authority for the proposition that Rule 60(b) applies in a purely administrative matter. Idaho Rule of Civil Procedure 1(a) does not provide authority for the proposition that the rules apply to administrative hearings. The court erred in erroneously and arbitrarily imposing such a burden of proof on the City.

The District Judges' imposition of a burden of proof is in error. The City of Boise was provided no notice that it had a burden of proof, let alone the significant burden of demonstrating good and sufficient cause. This amounts to a violation of the City's due process rights. Because the subject of the City's Petition was an administrative order from the District Judges of the Fourth Judicial District, the Idaho Rules of Civil Procedure do not apply. No court rule or statutes other than Idaho Code §§ 1-2217 and 1-2218 establish a burden of proof upon the City. Further, there is no indication in either statute that a City has any burden other than coming forward to the Court and requesting re-examination of the necessity of the Order.

E. THE DISTRICT JUDGES HAD AN OBLIGATION TO ANALYZE THE ELEMENTS IDENTIFIED IN THE STATUTE AND CONSIDER CHANGED CIRCUMSTANCES.

Idaho Code § 1-2217 makes it very clear that in Idaho, counties have the obligation to provide suitable and adequate quarters for the magistrate's division of the district court. Only

upon action of the majority of the district judges pursuant to Idaho Code § 1-2218 does a city receive that obligation. Common sense would dictate, in absence of statutory guidance to the contrary, that the court, when faced with such a decision would look to the words of the statute for guidance regarding the issues to be considered. Here, Idaho Code §§ 1-2217 and 1-2218 refers to "suitable and adequate" facilities. Upon a request for relief from an Idaho Code § 1-2218 Order, it is incumbent upon the district judges, as the administrative apparatus of the court system, to analyze the adequacy of the existing facility. The judges must be convinced that the existing facility is inadequate and that a city should be made to expend taxpayer funds to provide an additional magistrate court facility. In this case, the judges neglected this duty.

The City argued the judges should consider a number of issues constituting changed circumstances and warranted reconsideration of the 28-year old Order. The most significant reason the circumstances have changed is the construction and operation of a new consolidated courthouse in Ada County. A courthouse that was intended to house all of the magistrate judges in Ada County, with the exception of those housed at the juvenile detention facility. When the new courthouse opened in 2002, all magistrate matters previously held at the Barrister facility were moved to that facility. The court, in its Memorandum Decision and Order, found that the City allowed, "the Barrister courthouse functions to be transferred to the new Ada County Courthouse." (Mem. Order, p. 11, Ls. 18-19) No evidence was ever provided to demonstrate that the City had any authority to determine where the magistrate judges of the Fourth Judicial District were chambered. This decision was solely that of the Trial Court Administrator and the Administrative Judge. The City of Boise had and has no authority to tell the judicial branch of government how to operate.

The court determined that the City of Boise opted to pay some costs to Ada County and is somehow now foreclosed forever from requesting the court reconsider the 1980 Order based upon changed circumstances. The court cites no authority for the proposition that the City has missed its opportunity to request the reconsideration of this 28-year old Order. By its very nature, an administrative order may become obsolete, antiquated or unnecessary based upon population growth or recession, technology and other intervening administrative decisions. The court simply must be willing to review the necessity of administrative orders, particularly 28-year old orders.

The court concludes that the City entered into an agreement with the County in 1999 and that this agreement serves to satisfy the City's obligation under the 1980 Order. Further, the court finds that, "[t]he decision by Boise City to fulfill its obligation to provide suitable magistrate's facilities by contracting with Ada County is not an appropriate basis to set aside the October 9, 1980 Order." (Mem. Order, p. 12, Ls. 9-11) The court misses the point with this analysis. While the City concedes it entered into an agreement in 1999, the reality is that since that time, circumstances have changed significantly and the interpretation of the law has changed. All of the taxpayers of Ada County have paid for a new consolidated court facility which currently houses all of the magistrate duties of the County, except for juvenile. It is absolutely appropriate and prudent to request the District Court Judges revisit the 1980 Order as the circumstances that caused the Order to come into existence are drastically different than those now existing.

The court points out that the City has a substantial portion of the magistrate court caseload. Based upon this fact alone, the court finds it unpalatable to set aside the Order. No

authority was provided for the court's finding that the City's caseload warrants continuation of a 28-year old Order to provide facilities. Noticeably absent in the court's analysis is any mention of the adequacy of the new Ada County Courthouse to process the current caseload. The court made not one finding that there were not enough magistrate courtrooms, or that the building is somehow unable to accommodate the personnel necessary to process the current caseload. There is nothing in Idaho Code § 1-2218 to authorize the court to arbitrarily consider caseload alone and neglect the suitability and adequacy of the current courthouse.

In its Decision and Order, the court ultimately concludes that, "Boise City has failed to meet its burden in demonstrating that there is sufficient and good cause to set aside the October 9, 1980 Order. Accordingly, the Petition of Boise City is denied." (Mem. Order, p. 16, Ls. 3-5) The court failed in its responsibility to administer the court system in Ada County. No inquiry or analysis was conducted regarding the significant change in circumstances since October 9, 1980. No consideration was made regarding the size and condition of the existing Ada County Courthouse. No discussions of the fact that the current facility was built to accommodate all of the magistrate judges for the County, except juvenile magistrates, was had.

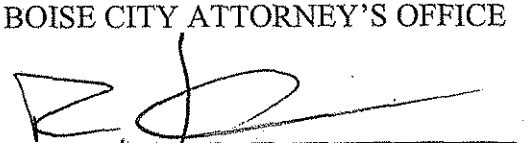
The court appeared pre-disposed at the outset to make this process something not contemplated by Title 1, Idaho Code. Instead of treating the City's Petition as an administrative matter between the court and the City, the subject of the Order, the court made the process to look more like civil litigation. Instead of engaging in a meaningful and comprehensive analysis of the suitability and adequacy of the existing courthouse, the court focused upon caseloads and a 10-year old agreement between the City and County that was not the subject of this matter. Instead of considering the numerous changed circumstances of the 28 years since the Order was

put into place, the court focused on some notion of equity not contemplated by Idaho Code § 1-2218. Instead of focusing on whether or not the Order was necessary for the proper administration of justice in Ada County, the court was co-opted by the County's assertion that this is a zero sum game. This is not a matter of us versus them, as both the City and the County represent the taxpayers. The reality is that County taxpayers are mostly City taxpayers as well, and all deserve the court's serious consideration of the City's Petition so not as to unnecessarily expend taxpayer dollars.

CONCLUSION

Based upon the arguments and analysis set forth above, the City of Boise respectfully requests this Court find Idaho Code § 1-2218 unconstitutional, further find that Ada County was not entitled to intervention, and set aside the 1980 Administrative Order.

BOISE CITY ATTORNEY'S OFFICE



R. STEPHEN RUTHERFORD
Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 17th day of December, 2008, served the foregoing APPELLANT'S INITIAL BRIEF on counsel for the Plaintiff(s) as follows:

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September 20, 2007

Hon. Darla Williamson
Administrative District Judge
Fourth Judicial District – Ada County
200 W. Front St. Rm. #5149
Boise, ID 83702

Facsimile: 287-7529

Re: In Re: Facilities and Equipment Provided by the City of Boise
Case No. CV OT 2007-16638

Dear Judge Willliamson:

Please be advised that I received a phone message from your clerk today about the above-captioned matter, requesting that we serve Ada County with the City's Petition filed herein on September 14, 2007.

We did not serve the County for several reasons. First, the Order at issue was directed exclusively at the City of Boise by the Fourth District Judges, sitting at that time. The court and cause of the Order states: "In Re: Facilities and Equipment Provided By The City of Boise" and it refers solely to Idaho Code § 1-2218 and the City of Boise's obligation at that time. The County was not a party to that Order, nor does my copy indicate the County was served.

Second, the statute at issue leads us to the conclusion that this matter is, in law, exclusively a matter between the majority of District Judges and the City of Boise in relation to magistrate court facilities:

> Any city in the state shall, upon order of a majority of the district judges in the judicial district, provide suitable and adequate quarters for a magistrate's division of the district court, including the facilities and equipment necessary to make the space provided functional for its intended use, and shall provide for the staff personnel, supplies, and other expenses of the magistrate's division. (emphasis added).

Idaho Code § 1-2218.

Of course, it is the City's position in its Petition that, in accordance with the Idaho Supreme Court's holding in *Twin Falls County v. Cities of Twin Falls and Filer*, 146 P.3d 664 (2006), that the County has the statutory obligation under Idaho Code § 1-2218 to provide the court facilities along with associated operational costs. The outstanding Order at issue in this matter is now moot as Ada County has provided the consolidated court facility and now owns the building that formerly housed the magistrate court facility built as a result of the Order.

Finally, although Twin Falls County was a party in *Twin Falls County v. Cities of Twin Falls and Filer,* it was so because the Fifth Judicial District Court's order in that case specifically directed the cities to reimburse Twin Falls County. That is not the case with the Order at hand.

We do realize that the City had a contract with the County that is related, but we believe that to be a separate matter. As a courtesy, however, we have now sent a copy of the City's petition to the County's attorney.

Finally, we enclose a proposed order for the Fourth District Judges in relation to the City's Petition. If the Court has further direction, please do not hesitate to advise my office.

Respectfully,

Cary B. Colaianni
Boise City Attorney

CBC/dga
Enc.
c. Ted Argyle
Ada County Prosecutor's Office

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN RE: FACILITIES AND EQUIPMENT PROVIDED BY THE CITY OF BOISE	Case No. CV OT 2007-16638 **ORDER**

Pursuant to *Twin Falls County v. Cities of Twin Falls and Filer*, 143 Idaho 398, 145 P.3d 664 (2006), the Order dated October 9, 1980, is hereby satisfied, mooted, and otherwise set aside.

DATED this _____ day of _____, 2007.

_____
Honorable Darla J. Williamson
Administrative District Judge

_____
Honorable Deborah Bail
District Judge

_____
Honorable Michael McLaughlin
District Judge

_____
Honorable Ronald Wilper
District Judge

_____
Honorable Kathryn Sticklen
District Judge

_____
Honorable Mike Wetherell
District Judge

_____
Honorable Cheri Copsey
District Judge

_____
Honorable Thomas Neville
District Judge

_____
Honorable Patrick Owen
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of September, 2007, served the foregoing **Order** as follows:

Cary B. Colaianni
City Attorney
City of Boise
P.O. Box 500
Boise, ID 83701-0500

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☐ Other: _____

J. DAVID NAVARRO
Clerk of District Court

By: _____
Deputy Clerk

FAX COVER SHEET

CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701
(208) 384-3870
fax (208) 384-4454

To:	Hon. Darla Williamson	**Fax #:**	(208) 287-7529
At:	Administrative District Judge	**Date:**	September 20, 2007

From: **Cary Colaianni**

City Attorney

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Additional Comments:

Please see attached Letter and proposed Order.