2-4-2009

City of Boise v. Ada County Appellant's Reply 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,

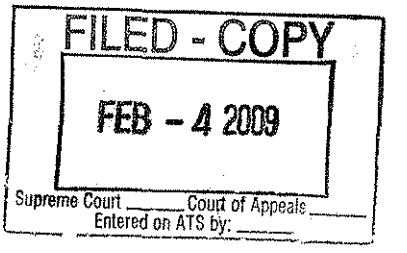
vs.

ADA COUNTY and the BOARD OF ADA COUNTY COMMISSIONERS,

Respondents.

Supreme Court No. 35432

REPLY 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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CONSTITUTIONAL PROVISIONS

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

A. THE DISTRICT JUDGES OF THE FOURTH JUDICIAL DISTRICT ERRED IN REFUSING TO VACATE THE 1980 ORDER BECAUSE IT IS UNDISPUTED THAT ADA COUNTY CURRENTLY PROVIDES THE MAGISTRATE FACILITIES.

The interpretation of a statute is a question of law that is to be reviewed de novo by the appellate court. *Kidd Island Bay Water Users Coop. Ass'n v. Miller*, 136 Idaho 571, 573 (2001). Idaho Code §§ 1-2217 and -2218 were interpreted in *Twin Falls County v. City of Twin Falls (In re Idaho Code 1-2218)*, 143 Idaho 398 (2006) and the interpretation contained therein controls the outcome in this case.

Ada County argues that Idaho Code §§ 1-2217 and -2218 are not "mutually exclusive." *Twin Falls County* held otherwise: "These statutes clearly contemplate two distinct scenarios". *Id.*, at 400. The decision was clear that under these statutes either the county provides the magistrate facilities in which case it pays the expenses to operate it ***or*** the city provides the magistrate facilities in which case it pays the expenses to operate it.

Both the Order of the Fourth Judicial District Judges and the argument of Ada County elevates form over substance. The district court reasoned that because Boise City accounts for the greatest number and percentage of misdemeanor and infraction filings it was appropriate that Boise City fulfill its obligations under the 1980 Order "by paying for a portion of the operating expenses of the new courthouse and by reimbursing Ada County for the expenses of those Boise City employees who became Ada County employees." (R. p. 71, Ls. 7 - 9) Yet, the Fourth Judicial District Judges justified their decision by rationalizing that because the 1980 Order did not require Boise City to contribute to the costs of operating the Ada County Courthouse, it does

not violate Idaho Code §1-2217 or -2218 and it does not violate the holding in *Twin Falls County*. (R. p. 11, Ls. 6 - 14) In 2008, the Fourth Judicial District Judges were not ordering Boise City to provide its own building, they were ordering Boise City to continue to pay a portion of the operating expenses for the new courthouse and the personnel necessary to operate the new courthouse. The Fourth Judicial District Judges erred because once Ada County began providing the facilities for the magistrate's division in 2002, the 1980 Order, Idaho Code §§ 1-2217 and -2218 make it clear that Ada County is responsible for the costs of operating the facilities. The decision in *Twin Falls County* makes it impossible to justify continuation of the 1980 Order under the facts of this case.

Ada County argues that there "is *nothing* in the Idaho Code, including §1-2218, which prohibits a city, once properly ordered by the district judges to provide suitable and adequate quarters for a magistrate's division, from arranging with a county to move its magistrate court into a county-owned building, and contracting with that county to pay its proportionate share of expenses." (Resp't Br., p. 15) This is precisely the effect that the decision in *Twin Falls County* held was not permitted by Idaho Code §§ 1-2217 and -2218. "Idaho Code section 1-2218 simply does not include district judges ordering the Cities to put up the money for the operations of a court house provided by the County." *Twin Falls* County, 143 Idaho at 400. It cannot be disputed that the intended effect of the 2008 Order entered by the Fourth Judicial District Judges was to require Boise City to continue to reimburse Ada County for a proportionate share of the expenses Ada County incurs to provide the magistrate facilities. Boise City has no such statutory obligation under the facts which exist today. Only Ada County is obligated to provide the expenses to operate the magistrate facilities it alone provides.

Ada County argues that *Twin Falls County* "would seem to encourage" such an outcome. (Resp't Br., p. 15) *Twin Falls County* does not encourage it. It recognized that the statutory scheme was not necessarily the most efficient method of handling the issue, but it was for the legislature to change it, not the courts.

> While it may seem inefficient to order each of the Cities to provide their own building, instead of ordering each City to contribute cash to the County to pay its proportionate share, that does not justify ignoring the plain wording of the statute. An amendment to the statutes to provide greater efficiency is left to the legislature, not the courts.

Twin Falls County, 143 Idaho at 400.

Although the Fourth Judicial District Judges stated at the outset of their decision that the "validity and effect" of the 1999 Memorandum of Understanding between Boise City and Ada County was not at issue, it could not be ignored. (R. p. 68) The Fourth Judicial District Judges observed that by approving and executing the 1999 Memorandum of Understanding, Boise City "acknowledged" that it "remained obligated by the 1980 Order to continue to provide facilities for a magistrate's division" even after the Ada County Courthouse was operational. (R. pp. 70 - 71) Ada County argues that by not rescinding the 1980 Order, the Fourth Judicial District Judges "correctly found that Boise City does in fact have a continuing obligation under the [1980] Order." (Resp't Br., p. 15)

While giving lip service to the right of a city to decide how it will provide facilities if ordered to do so by the district judges, the clear implication is that the Fourth Judicial District Judges and Ada County consider that the only way is for Boise City to continue to comply with the 1999 Memorandum of Understanding and pay Ada County for its proportionate share of the expenses of operating the magistrate court facilities provided by Ada County. That result, of

course, is driven by the undisputed fact that Ada County has, since 2002, provided "suitable and adequate facilities for the magistrate's division of the district court." *Twin Falls County* made it clear that the "entity which provides the building also provides the expenses associated with operating it." *Twin Falls County,* 143 Idaho at 400. Boise City has no obligation to reimburse Ada County for a proportionate share of the expenses of operating the magistrate court facilities. Based on the decision in *Twin Falls County*, Boise City has a valid legal argument that the 1999 Memorandum of Agreement is not enforceable. *Miller v. Haller*, 129 Idaho 345, 351 (1996) (The general rule is that a contract prohibited by law is illegal and hence unenforceable and this same rule applies equally to contracts that are violative of public policy.) Ada County would like to avoid direct litigation over whether the 1999 Memorandum of Agreement is enforceable. The 1980 Order is no longer necessary and the only possible purpose to be served by it today is to force Boise City to continue to contribute and reimburse Ada County for costs Ada County is required by statute to provide.

This case did not involve an exercise of discretionary authority by the Judges of the Fourth Judicial District.[1] "Whether a statute applies to a given set of facts is a question of law." *Kidd Island Bay Water Users Coop. Ass'n v. Miller*, 136 Idaho 571, 573 (2001). Ada County provides the facilities and must also provide the expenses to operate it. The cause and effect are clear under Idaho Code §§ 1-2217 and -2218.

[1] The Fourth Judicial District Judges suggested that the decision was an exercise of discretionary authority. (R. p. 75) Statutory interpretation is a question of law. Application of the statute to the facts is also a question of law. Idaho Code §§ 1-2217 and -2218 are not discretionary. The use of the term "shall" in these statutes is mandatory and enforcement is not discretionary with the district court. *Beehler v. Fremont County*, 182 P.3d 713 (Idaho Ct. App. 2008).

Ada County misunderstands the argument of Boise City regarding Idaho Code § 31-3201A. Ada County suggests that Boise City is arguing that it no longer has an obligation under the 1980 Order because it no longer receives the $5.00 fee which is to be paid to the city's general fund when the city provides the facilities for the magistrate's division. That is not the argument. Boise City's argument is that it no longer has an obligation under the 1980 Order because Ada County is providing the facilities and, as a consequence, must provide the expenses associated with operating it. The $5.00 fee is simply an additional statutory recognition that the entity providing the facilities is the entity which must pay its operation. *Twin Falls County* found that it was significant that the legislature already provided a statutory scheme for cost sharing: "any sharing of costs is accounted for in I.C. § 31-3201A, which, like I.C. §§ 1-2217 and -2218, makes a distinction between magistrate court facilities provided by a city and those provided by a county." *Twin Falls County,* 143 Idaho at 400. The fact that Ada County now receives the $5.00 fee in the first instance is further proof and recognition that Ada County provides the facilities and is, therefore, the only entity obligated to pay for the expenses of operating it.[2]

[2] In addition, the County is statutorily mandated to distribute a $2.50 fee to a city that provides the magistrate court facility. Idaho Code § 31-3210A(a) – (b). This is in addition to the $5.00 fee. Ada County has not distributed the $2.50 fee to the City since the beginning of the third quarter of FY-2000. (R., Ex. 7, Faw Aff. para. 6.)

B. NEITHER THE STATUTES NOR THE ORDERS ARE CONSTITUTIONAL.

The County's entire argument rests upon one assumption: That there are *two* magistrate divisions within the Ada County District Court. One magistrate division is "Boise City's." The other magistrate division is Ada County's. This flies in the face of Idaho's court reform. It is abundantly clear that cities no longer have city courts as a purpose.[3] Courts are a county purpose.

1. There is Only One Magistrate Division in each County.

The Idaho Constitution allows the *legislature* to establish courts inferior to the Supreme Court. Idaho Const., art. V, § 2. The legislature cannot delegate its power to make a law. It can only "empower . . . an official to ascertain the existence of the facts or conditions mentioned in [an] act upon which the law becomes operative." *Boise Redevelopment Agency v. Yick Kong*, 94 Idaho 876, 885 (1972) (quoting *Foeller v. Housing Authority of Portland*, 256 P.2d 752 (Or. 1953)). The legislature has established *one* magistrate's division in each county within a judicial district. Idaho Code § 1-2201. The legislature may grant authority to the district court to create a separate unit *within* the magistrate division. For instance, a district court may have a Small Claims Department. Idaho Code § 1-2301. However, there is no statutory authority for the creation of a separate magistrate division or department for a city's misdemeanors and infractions. The Ada County District Court has one magistrate division.

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[3] City misdemeanor courts may only be established by the legislature and it may only do so when it is necessary.

> The legislature may provide for the establishment of special courts for the trial of misdemeanors in incorporated cities and towns, where the same may be necessary.

Idaho Const. art. V, § 14. This legislative authority is non-delegable. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 885 (1972).

2. The Order Imposes a Financial Liability Upon the City Thus Forcing a Tax Levy.

The County argues that the Order is not the equivalent of a tax because the "language of the 1980 Order . . . does not even contemplate taxation." (Resp't Br. at 19.) Whether the language "contemplated" a tax is not the point. The Order imposes a duty or financial liability upon the City to spend City money. The Order upon the City in essence forced a tax levy on city residents. In *Idaho County v. Fenn Highway District*, 253 P. 377 (Idaho 1926), the Court explained that it was unconstitutional for a highway district to

> impose a duty upon the county to expend county money, because of its determination to build a road which may, in effect, benefit the county at large. *To do so would be to vest in the district, through a court, the power to determine that that was for the county's benefit in whatever great or slight degree it might adjudicate, and in effect impose a burden upon the county and thus force a tax levy.*"

Id. at 379. The same is true here. The Administrative Orders impose a duty upon the City to expend City money, and impose a burden upon the City, thus forcing a tax levy. It binds the City financially. It is a forced tax levy not by the choice of the city residents or their elected officials, but by the 1980 and 2008 Orders.

3. County's Three-Legged Stool Taxation Argument Is Missing a Leg.

The County argues that there is no duplicate or non-uniform taxation. To illustrate its point, the County analogizes the court funding to a three-legged stool.

> An analogy regarding the funding of the district court in Ada County, including the entire magistrate division, is a three-legged stool – Ada County's general funds finances the first leg (the Court Clerk), the district court fund finances the second leg (district court clerks, secretaries for district judges, all jury costs, the operations of the office of the Trial Court Administrator, mediation, interpreter and guardian services, and the operations of the marshal's office), and Boise City's reimbursement payments under the Agreement finances the third leg (that portion of the magistrate court attributable to Boise City's usage).

(Resp't Br. at 22.)

Ada County fails to discuss the fourth leg: the criminal magistrate court attributable solely to the other cities and unincorporated county. By the County's own calculation the other cities and the county account for nearly half of criminal magistrate cases. (Resp't Br. p. 33) Ada County omits this leg because it would have to explain that Boise City taxpayers pay for that portion of the criminal magistrate court attributable not just to its own cases, but also for the combined jurisdictions outside of the City (Meridian, Garden City, Kuna, Eagle, Star and unincorporated Ada County).

The County tries to ignore its taxation conundrum by simply explaining how the court is *funded*. "Since there is no overlapping of the funding . . . there can be no duplicative taxation." (Resp't Br. at 23.) This is fundamentally incorrect. Funding and taxation are two separate and distinct functions. Funding, which need not be uniform, is "how" a government entity *apportions or appropriates* its taxes and other revenue. *Board of Trustees v. Board of County Commissioners*, 83 Idaho 172, 178 (1961) (explaining that *proceeds* of a tax levy may be apportioned unevenly). Taxing, unlike appropriating, must be uniform and non-duplicative within the district. In *Robbins v. Joint Class A. School District No. 331*, 72 Idaho 500 (1952) (superceded by statute), a uniformity in taxation issue was raised. The school district in Minidoka County had recently reorganized as a Joint District. Prior to reorganization there had existed, wholly within the reorganized area, a Rural High School District. Some electors from the former Rural High School District petitioned the trustees of the newly reorganized Joint District to call an election within the former High School District to vote on whether to continue the High School. *Id.* at 503. The Joint School District Trustees failed to call the election.

Electors petitioned for a writ of mandate to compel the election. Amongst other issues, the Joint School District Trustees argued that if the election passed, there would be a lack of uniformity in taxation. *Id.* at 503, 506. The Court held otherwise. The Court acknowledged the difference between taxation and appropriations within a district. It explained that the "taxes throughout the confines of the re-organized district" would be uniform, "though obviously there might be different *costs* in the operation of different school units." *Id.* at 506 (emphasis added). The same analysis applies here. Taxes throughout the confines of Ada County for court purposes must be uniform, though obviously there may be different costs in the operation of different "units" of the court.

In order to comply with article VII, section 5, taxes for purposes of the magistrate division must be uniform throughout the county. Taxes are not uniform. Boise City taxpayers are taxed for the first leg (Court Clerk), the second leg (special levy for the district and magistrate court), the third leg (criminal magistrate attributable to Boise City), and the omitted fourth leg (criminal magistrate solely attributable to Ada County, Meridian, Garden City, Eagle, Star and Kuna). The remaining taxpayers in Ada County do not pay for all four legs.

4. Funding the Court in a Constitutionally Permissible Manner.

Ada County's main theme running throughout this appeal and before the District Judges is this: "Ada County should not have to bear the sole financial burden of providing for the magistrate court." (R., Ex. 21, Mem. in Opp'n, p. 6.) Ada County bears no burden. The taxpayers do! It is easy for the County to forget that Boise City's taxpayers are also county taxpayers. Boise City residents pay the same county taxes as every other county resident. In

addition, Boise's taxpayers pay to comply with the 1980 and 2008 orders to provide magistrate court.

Ada County would have this Court believe it has no ability to fund the magistrate court, but for the reimbursement provided by the City in accordance with the 1999 MOA. This is simply inaccurate.

Pursuant to a significant statutory framework put in place by a legislature mindful of a county's obligation (not burden) to provide court facilities, the County has myriad sources of revenue to fund court functions.

First, the County has the statutory authority to increase the County's district and magistrate court special levy. In 2007, the special fund required $3,016.808, so the respective levy was 000088966. (R. Ex. 8, Houde Aff., Ex. 1) In accordance with Idaho Code § 31-867, the County may levy upon all taxable property of the county up to .04% for district and magistrate court functions. This simple, expedient (and statutorily sound) solution accomplishes several goals: (a) the courts would be adequately funded; (b) the ad valorem taxes would be equally and uniformly obtained from all taxpayers in Ada County, rather than on the backs of Boise City residents; and (c) it allows this Court to lift the 1980 Boise City Order and the 1994 Garden City and Meridian Orders requiring each entity to provide adequate separate courthouses and expenses.

The second funding source is the revenue stream directly from Boise City's caseload. The court fee distribution formula set forth in Idaho Code § 31-3201A(b) and (c) provides $5.00 for every misdemeanor and infraction in which an offender pleads guilty or is found guilty. This fee goes directly to the County and is for the purpose of providing services for such cases. Using the

numbers provided by the County for fiscal year 2007, the City of Boise's misdemeanor and infraction caseload could have provided Ada County with a potential $254,635. In fiscal year 2006 that amount would have been $288,010. This is revenue the County receives without any obligation to provide prosecutorial services to recover.

Finally, pursuant to Idaho Code § 19-4705(d), the County receives ninety percent of fines imposed on all non-fish and game, and non-driving related offenses (including Boise City's misdemeanors and infractions) for deposit into the district court fund of Ada County. With misdemeanor fines ranging from $300 to $1,000, this number is potentially very significant.

These revenue streams provide sufficient revenue to Ada County to fund the court.

5. Equal Protection Violation is Clear.

The equal protection violation in this case is glaringly clear. The County fails to cite to *one* case in support of its contention that there is no equal protection violation.

The County also fails to distinguish the disparate treatment of the district court continuing to enforce the 1980 Order against Boise City, yet failing to enforce the 1994 Order against Meridian and Garden City.

In 1994 the District Court understood that Boise City was unfairly shouldering the costs of magistrate court. The District Judges explained that Boise City and the other cities were in essence in the same class and therefore all needed to contribute. The District Court Judges found "it is no longer reasonable for the City of Boise and Ada County to bear sole financial responsibility for the processing of citations and complaints issued by other municipalities." (R., Ex. 20, Reiner 2nd Aff, Ex. A. at 1.) Yet despite this finding, the 1994 Order was not enforced.

Enforcement of the 1980 Order through the 2008 Order singles out the City and its taxpayers in violation of the equal protection clause.

C. THE COURT ERRED IN TREATING THE CITY'S PETITION AS CIVIL LITIGATION.

1. The 1980 Order is an Administrative Order.

Idaho Code § 1-2218 authorizes a majority of the district judges of a judicial district to order a city to provide a magistrate facility. Determining whether a magistrate facility is necessary for court functions is an act of court administration.

This section is located in Title 1 of Idaho Code. Title 1 comprises the administrative nuts and bolts of the courts in Idaho. It does not create a cause of action. Unlike traditional litigation wherein one judge presides, Idaho Code § 1-2218 contemplates the decision be made by a majority of the district judges of a judicial district. The statute simply does not provide for a traditional litigation process.

2. The Court Erred in Allowing the County to Intervene.

The court's error in granting Ada County's Motion to Intervene was its determination that the administrative matter between the City and the district judges was civil litigation. The City does not assert that the court improperly allowed the County to participate to the detriment of the City. The District Judges were within their purview to allow the participation of whomever they believe may have information to assist them in making a decision. While they may find it helpful to their decision making process to receive information from the City, the County, the Trial Court Administrator and others, full scale civil litigation, including

intervention, is not called for in Idaho Code § 1-2218. Indeed, the City and the County should not be pitted against each other as adverse parties in court administrative matters.

3. The City Satisfied its Burden by Coming Forward.

Pursuant to Idaho Code § 1-2217 the law in the state of Idaho requires that counties provide suitable and adequate facilities for a magistrate division of the district court. This obligation is only imposed upon a city under Idaho Code § 1-2218 when a majority of the district judges deem it necessary, (e.g., the county's magistrate facility was not suitable and/or no longer adequate to handle the caseload). The County is correct that there is no statutory guidance provided to district judges as to what criteria would justify an order requiring a city to provide facilities for the magistrate's division. However, in deference to the taxpayers, such a decision would require a finding of necessity. It would be arbitrary to order a city to provide a magistrate facility where the county facility is suitable and adequate.

When a city has been ordered to provide a facility, and the city subsequently provides that facility, it is reasonable for that city to ask the court to reconsider the order where circumstances have changed significantly over time. In doing so the district judges have an obligation to make reasonable inquiries – just as they presumably made in putting the order into place originally. Acting in this administrative capacity the district judges are mandated to examine the current state of magistrate facilities in the district in light of the statutory language as set forth in Idaho Code §§ 1-2217 and -2218. In short, are the current magistrate facilities suitable and adequate such that an order to the City to provide a separate magistrate facility is not necessary?

The City of Boise satisfied its burden in coming forward with the request that the 28-year-old order be reconsidered. The court failed to meet its obligation to analyze the condition of the existing magistrate facility and the need for the City to provide a separate magistrate facility.

4. The Court did not Consider the Factors Provided in Idaho Code § 1-2217.

The County is wrong in asserting that the District Judges are compelled to look at the suitability and adequacy of the *City* facility. When the City of Boise filed its Petition to lift the order, it was incumbent upon the court to consider the suitability and adequacy of the current *County* magistrate court facility pursuant to Idaho Code § 1-2217. While the court may well consider a city's caseload, it is error not to consider the adequacies of the current facility.

5. The 1999 Memorandum of Understanding was Not a Court Consolidation Agreement and is Not the Subject of this Administrative Matter.

The 1999 Memorandum of Understanding was not a court consolidation agreement. Contrary to Ada County's assertions and the finding of the District Judges, the agreement between the City and the County was little more than a transfer of employees from the City's employ to the County's. The language of the agreement makes it clear that the parties were simply transferring a group of employees and limited equipment.

Paragraph 4 of the Memorandum makes it clear that the City's obligation would continue until the "function moved to the new Ada County Courthouse," or until renegotiated by the parties. In fact, the Agreement delineates the contractual financial obligations of the City for only two fiscal years – FY2000 and FY2001. (R., Ex. 19, Navarro 2nd Aff., Ex. C Attachment.) The payment schedule goes no further than 2001, nor does the agreement mention items more

traditionally associated with a consolidation agreement where parties will be sharing a building and equipment. There is no mention of timelines for a move, or space allocation.

6. The City was Compelled to Use the New County Facility.

Ada County unilaterally built, pursuant to an advisory vote, a consolidated court and administration building sufficient in size for all of the magistrate judges in Ada County to be chambered. The City does not claim the County forced the City to move into the new facility. It was the Trial Court Administrator (TCA) and the Administrative Judge who had the authority to determine where judges would be chambered and where the cases would be handled. The TCA and the Administrative Judge dictated the move of the magistrate judges from Barrister to the new courthouse. That decision was based on an informal finding that the City's magistrate facility was no longer necessary. The City was and is without authority to direct such a move or make such a decision.

D. THERE IS NO CONTINUING NECESSITY FOR BOISE CITY TO PROVIDE SUITABLE AND ADEQUATE QUARTERS FOR A MAGISTRATE'S DIVISION.

Ada County attempts to support the 2008 Order by pointing out that Boise City has provided separate facilities for the magistrate's division since 1971 pursuant to Court Order. While that is true, it is undisputed that the Ada County Courthouse was inadequate during those years to accommodate the number of courtrooms necessary to conduct the business of the magistrate's division after court reform. The question is whether that necessity still exists. Neither Ada County nor the Judges of the Fourth Judicial District suggest that the current Ada County Courthouse is unable to house the magistrate's division.

Ada County's argument that Boise City was in some way involved in the decision to consolidate the County courts ignores that Ada County

> 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, Navarro 2nd Aff., Ex. C) (emphasis added) The most significant statutory requirement for deciding which entity pays the expenses of the magistrate's division is which entity provides the facilities. It is undisputed that Ada County elected to provide the facilities. It is of no consequence that other governmental entities agreed with Ada County's decision to be the sole provider of the facilities.

Ada County also suggests that the rationale in the 1994 Order, which found the volume of work generated by the cities of Garden City and Meridian justified those cities to provide facilities for the magistrate's division, "still holds true today." (Resp't Br. at 33.) But the fact is the District Judges have *never* enforced that Order. Moreover, since 2002 there has been no need for Garden City, Meridian or Boise City to provide facilities for the magistrate's division. Ada County is providing adequate and suitable facilities.

Ada County now attempts to justify continuation of the 1980 Order on grounds that Boise City agreed to and did physically move its magistrate court to the Ada County Courthouse Complex because it recognized a continuing obligation to provide magistrate court facilities. Ada County does not explain how such a fact scenario, even if true, would result in ignoring Idaho Code §§ 1-2217 and -2218 and the holding in *Twin Falls County*. The Court could not have been clearer when it held that:

> 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.

Twin Falls County, 143 Idaho at 400.

The District Judges did not provide a valid factual or legal basis for continuing the 1980 Order. The fact that Boise City generates a substantial percentage of the infractions and misdemeanors that are handled by the magistrate's division is not a valid legal basis for endorsing, encouraging or requiring Boise City to pay a portion of the expenses for the operating the new Ada County Courthouse Complex. The statutes and case law are clear that the entity providing the building, Ada County in this case, is responsible for providing the expenses associated with operating it.

E. ADA COUNTY IS NOT ENTITLED TO ATTORNEY'S FEES.

The City's Petition was a request that a 28-year-old order, which has cost the City's taxpayers millions and millions of dollars, be reconsidered. As the County points out in its briefing, the City has been under the order of the court to provide some level of magistrate facilities for forty years. Simple prudence dictated that it was appropriate for the City to request the court reconsider the necessity of the order in light of years of changed circumstance, a new County-provided magistrate court facility and *Twin Falls County*. Yet the County asks this Court to award attorney fees to it under Idaho Code § 12-121.

Idaho Code § 12-121 does not provide the County a basis for an award of fees. First, this is an administrative act, not an adversarial case, so the statute is inapplicable.

Second, the statutory language in § 12-121 states that it is not intended to "alter, repeal or amend any statute which otherwise provides for the award of attorney's fees." Idaho Code § 12-121. Idaho Code § 12-117 specifically applies to civil actions where a county is an adverse party. The more specific attorney fee statute applies where more than one statute seems to authorize an award of fees in a particular case. *Shay v. Cesler*, 132 Idaho 585, 588 (1999). The more specific statute in this case is Idaho Code § 12-117 to which Ada County did not cite.

Furthermore, although the County states that it is entitled to attorney fees under Idaho Code § 12-121 because it is the prevailing party, the test under § 12-121 is not whether the County prevailed, but whether the position the City presented was so plainly fallacious that it was not fairly debatable. *Childres v. Wolters*, 115 Idaho 527, 529 (Ct. App. 1988) citing *Gulf Chemical Employees v. Williams*, 107 Idaho 890 (Ct. App. 1984). "Attorney fees can be awarded on appeal under [Idaho Code § 12-121] only if the appeal was brought or defended frivolously, unreasonably, or without foundation." *Teton Peaks Inv. Co., LLC v. Ohme*, 146 Idaho 394, 398 (2008) (citing *Downey v. Vavold*, 144 Idaho 592, 596 (2007); *Bingham v. Montane Resources Associates*, 133 Idaho 420, 427 (1999) (fee award improper under Idaho Code § 12-121 unless all claims frivolous).

The City's request after forty years of providing magistrate facilities, considering the County's building of a consolidated courthouse which houses all of the magistrates formerly chambered at the City's Barrister location, cannot be said to be unreasonable or frivolous.

CONCLUSION

Based upon the above arguments, the Appellant requests the District Judges' 2008 Order be reversed, the 1980 Order be set aside and Idaho Code § 1-2218 be held unconstitutional.

DATED this 4 day of February 2009.

BOISE CITY ATTORNEY'S OFFICE

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of February 2009, served the foregoing APPELLANT'S REPLY BRIEF on counsel for the Respondents as follows:

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