

Joseph V. Cavanagh, Jr.  
William R. Landry  
Edmund L. Alves, Jr.  
Stephen J. Reid, Jr.  
Scott T. Spear  
Mary Cavanagh Dunn  
Joseph V. Cavanagh, III  
Robert J. Cavanagh, Jr.  
Matthew J. Landry  
Thomas J. Alves

Commerce Center  
30 Exchange Terrace  
Providence, RI 02903-1765

Tel (401) 831-8900  
Fax (401) 751-7542

[www.blishcavlaw.com](http://www.blishcavlaw.com)

Lynne Barry Dolan  
*Of Counsel*

John H. Blish  
(1986-2007)

March 2, 2015

Via E-Mail Only

Rosemary Booth Gallogly, Director of Revenue  
State of Rhode Island  
Department of Revenue  
One Capitol Hill  
Providence, RI 02908-5800

**RE: Woonsocket Litigation Summary**

Dear Rosemary:

In accordance with your request, I enclose a Memorandum summarizing the present status of the Cournoyer litigation.

Thank you.

Yours truly,



Edmund L. Alves, Jr.

ELA:vm  
encl.

cc: Dina Dutremble, Chair  
Woonsocket Budget Commission/via e-mail w/encl.

## MEMORANDUM

### LITIGATION SUMMARY

**TO:** Woonsocket Budget Commission

**FROM:** Edmund L. Alves, Jr., Legal Counsel 

**DATE:** March 2, 2015

**RE:** COURNOYER, et.al. v. WOONSOCKET BUDGET COMMISSION, et.al.  
C.A. NO. PC-2013-4082

---

This case is pending in the Providence County Superior Court. Plaintiffs, James C. Cournoyer, Shaun R. Cournoyer, Marc A. Cote, Roland M. Michaud, and Roger C. Jalette, Sr., filed suit against the Woonsocket Budget Commission ("Commission") and the City of Woonsocket ("City") on August 15, 2013 challenging the validity of the supplemental tax levied on approximately 23,691 taxpayers for fiscal year 2012-13. The Commission authorized the supplemental tax by enacting Ordinance No. 7 on July 8, 2013 in accordance with the enabling act, R.I. Gen. Laws § 44-5-74.4. This statute made the supplemental tax contingent upon the City's "realization" of \$3,750,000 "in savings resulting from municipal enactment or concessions from collective bargaining agreements with applicable Woonsocket unions and retirees."

The original Complaint has been amended twice to add additional plaintiffs and new counts. There are now 171 plaintiffs. The case has been assigned to Superior Court Justice Netti Vogel.

The Third Amended Complaint contains the following counts, all of which have been denied by the Commission and the City:

1. Count I alleges that Ordinance No. 7 contravenes R.I. Gen. Laws § 44-5-74.4 because it is based on "projected" savings rather than "realized" savings.
2. Count II alleges that the Commission's enactment of Ordinance No. 7 violated the Presentment Clause of the Rhode Island Constitution since the Ordinance was enacted after the General Assembly passed the enabling act, but before the Governor signed the enabling act.
3. Count III alleges that as of the date the Commission enacted Ordinance No. 7, the requisite \$3,750,000 in savings had not been "realized" by the City because some of the savings were subject to legal challenge by municipal employees, retirees, and unions, as well as other uncertainties.

4. Count IV alleges that assuming the Commission did not have the legal authority to levy the supplemental tax for fiscal year 2012-13, the inclusion of the supplemental tax in the calculation of the maximum tax levy for fiscal year 2013-14 was illegal.
5. Count V alleges that the Commission did not have the legal authority to include the supplemental tax in the calculation of the maximum tax levy for fiscal year 2014-15.
6. Count VI alleges that the Commission denied Plaintiffs their procedural due process rights since it determined that the requisite savings of \$3,750,000 had been “realized” without providing them an evidentiary hearing, independent analysis, administrative procedures, or an opportunity for appeal.
7. Count VII alleges that the levy and collection of the supplemental tax resulted in an unlawful “taking” of private property without just compensation.
8. Count VIII alleges that the Commission violated the Open Meetings Act since it did not file the minutes of its July 8, 2013 meeting with the Secretary of State within thirty-five (35) days after the meeting.

The Third Amended Complaint also contains allegations that the suit should be certified as a class action. The Plaintiffs seek the following relief: a declaratory judgment on all counts; injunctive relief from Plaintiffs’ obligation to pay increases in their taxes based upon the supplemental tax; injunctive relief prohibiting the Defendants from taking future action to levy and collect increases in taxes based upon the supplemental tax; damages for any increase in taxes that Plaintiffs paid based upon the supplemental tax; interest; attorney’s fees; and costs.

On September 6, 2013, the Commission and the City filed an Answer denying all Plaintiffs’ legal claims, and also filed a Counterclaim against Plaintiffs seeking an award of reasonable attorney’s fees pursuant to a provision of the Fiscal Stability Act, R.I. Gen. Laws § 45-9-23.

After the Answer was filed, the parties began a lengthy process of discovery. Defendants served interrogatories and requests for production of documents on each of the named Plaintiffs on September 9, 2013. They responded to these interrogatories and requests by October 24, 2013. After several additional Plaintiffs joined the suit, Defendants served interrogatories and document requests on them as well; answers and responses to which were received in piecemeal fashion. Plaintiffs served interrogatories on the Commission on January 6, 2014, to which the Commission responded on April 4, 2014.

On April 28, 2014, Plaintiffs filed a Motion seeking to certify the Plaintiffs’ case as a class action, to which Defendants filed an Objection with a supporting Memorandum of Law on July 7, 2014. The Defendants maintain that the Plaintiffs can assert their own individual tax grievances, but may not pursue claims on behalf of all 23,691 taxpayers, most of whom have paid the supplemental tax without objection.

Dispositive motion practice then began on September 2, 2014 with the Commission and the City filing a Motion for Summary Judgment seeking a ruling in their favor on all counts of the Complaint. On that same date, Plaintiffs filed a Motion for Partial Summary Judgment and a Motion to Dismiss Defendants' Counterclaim. On October 7, 2013, Defendants filed Objections and Memoranda opposing each of Plaintiffs' Motions, while Plaintiffs filed an Objection and Reply to Defendants' Motion for Summary Judgment.

The arguments raised in the motions for summary judgment can be summarized as follows:

1. As to Count I, the Defendants assert that savings in excess of \$3,750,000 had been "realized" as of the date of passage of Ordinance #7 since all actions necessary to achieve the savings by enactment and union concessions had been taken. The word "projected" in the Ordinance refers only to the fact that on the date of passage it was impossible to measure with exact precision the total amount of savings which had already been realized since minor variables might increase or decrease the savings slightly.
2. As to Count II, the Plaintiffs argue that Ordinance No. 7 is void because it was enacted before the Governor signed the enabling act. In fact, the express terms of the enabling act state that the act becomes effective on passage. Since Ordinance No. 7 was enacted after General Assembly passage of the enabling act, it is valid.
3. As to Count III, Plaintiffs argue that savings were not "realized" because some savings were subject to challenge and were uncertain. Defendants' counter-argument is that "realization" occurs when the obligation to pay is relieved since § 44-5-74.4 refers to "realization" of savings "resulting from municipal enactment or concessions from collective bargaining agreements". Therefore, the enactments, concessions, and reorganization measures achieved by the Commission resulted in a realization of savings. The fact that some segment of the savings is the subject of a court challenge does not change the fact that the Commission had completed all actions necessary to achieve and realize the savings as of the date that Ordinance No. 7 was passed.
4. As to Count IV, Plaintiffs argue that the inclusion of the supplemental tax in the calculation of the maximum tax levy for fiscal year 2013-2014 was illegal since the terms in R.I. Gen. Laws § 44-5-74.4 providing for such inclusion are not severable from that portion of the statute that require "realized" savings. Defendants assert that such savings were "realized," and thus the inclusion of the supplemental tax in the maximum tax levy calculation was valid. Furthermore, the Fiscal Stability Act (R.I. Gen. Laws § 45-9-4) provides independent authority for a municipality under the jurisdiction of a budget commission to exceed the maximum tax levy.
5. As to Count V, Plaintiffs argue that R.I. Gen. Laws § 44-5-74.4 contains no specific authorization to include the supplemental tax in the calculation of the

maximum tax levy for fiscal year 2014-2015, and thus the inclusion of the supplemental tax in the tax base for fiscal year 2014-2015 was illegal. Defendants assert that the supplemental tax was legal and properly includible in the fiscal year 2013-14 tax base, and thus its inclusion in the tax levy for fiscal year 2014-2015 was likewise legal. In addition, the Fiscal Stability Act (R.I. Gen. Laws § 45-9-4) provides independent authority for the Commission to include the supplemental tax in the fiscal year 2014-2015 tax levy.

6. As to Count VI, Plaintiffs argue that their procedural due process rights were violated by the Defendants' failure to afford them an evidentiary hearing prior to enacting Ordinance No. 7. Defendants counter with the fact that enactment of Ordinance No. 7 was a legislative proceeding to which the claimed procedural due process rights do not apply. The public hearing which preceded ordinance passage was sufficient. Furthermore, R.I. Gen. Laws § 44-5-26 and 27 provide an avenue of appeal for aggrieved taxpayers to challenge the supplemental tax. This is their sole remedy.
7. As to Count VII, while Plaintiffs argue that the supplemental tax resulted in an unlawful "taking" of private property without just compensation, Defendants assert that the tax was lawfully enacted and that a taxing statute provides just compensation in the form of services, benefits, and protections of government.
8. As to Count VIII, Plaintiffs argue that the Commission violated the Open Meetings Act by failing to file the minutes of its July 8, 2013 meeting with the Secretary of State within thirty-five (35) days after the meeting. The minutes were filed on October 22, 2013. Defendants deny this claim since the Commission is not a public body within the executive branch of state government and therefore is not required to file its minutes with the Secretary of State.

With regard to Plaintiffs' Motion to Dismiss the Counterclaim, R.I. Gen. Laws § 45-9-23 provides that if any person violates the Fiscal Stability Act or ignores a written demand made by a budget commission member, then he or she shall be responsible for the reasonable attorneys' fees incurred in the successful enforcement of the Fiscal Stability Act. Plaintiffs argue that this statute does not apply to lawsuits seeking relief from illegal taxation. Defendants assert that the statute must be liberally construed and that violations of the Fiscal Stability Act, including disputes concerning taxation, are within the scope of R.I. Gen. Laws § 45-9-23.

Currently, the matters pending before the Court for decision are: (1) Defendants' Motion for Summary Judgment and Plaintiffs' Objection thereto; (2) Plaintiff's Motion for Partial Summary Judgment and Defendants' Objection thereto; (3) Plaintiffs' Motion for Class Certification and Defendants' Objection thereto; and (4) Plaintiffs' Motion to Dismiss Counterclaim and Defendants' Objection thereto.