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CASE NUMBER: S-23-0062

IN THE SUPREME COURT, STATE OF WYOMING

CITY OF LARAMIE, WYOMING,

Appellant
(Defendant),

v.

UNIVERSITY OF WYOMING and
UNIVERSITY OF WYOMING BOARD
OF TRUSTEES,

Appellees
(Plaintiffs).

S-23-0062

**BRIEF OF THE WYOMING ATTORNEY GENERAL IN HER OFFICIAL
CAPACITY ADDRESSING THE CONSTITUTIONALITY OF WYO. STAT.
ANN. § 21-17-126**

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STATEMENT OF JURISDICTION

This appeal is taken under Wyo. R. App. P. 1.05(a) from a January 5, 2023 *Order Granting Summary Judgment as to City of Laramie's Remaining Claims* in Civil Action No. 35517, issued by the District Court, Second Judicial District, Albany County, Wyoming (the “district court”). (R. 448-450); (Appellant Br. at 1-2). The district court’s *Order Granting Summary Judgment* is an order “affecting a substantial right in an action” that “in effect determine[s] the action and prevent[s] a judgment.” Wyo. R. App. P. 1.05(a); (R. 444-445); *see also In re E.R.C.K.*, 2013 WY 160, ¶ 28, 314 P.3d 1170, 1176 (Wyo. 2013) (describing that for an order to be appealable under Rule 1.05, it must affect a substantial right, determine the merits of the controversy, and resolve all outstanding issues); *Estate of McLean ex rel. Hall v. Benson*, 2003 WY 78, ¶ 8, 71 P.3d 750, 753 (Wyo. 2003) (stating “[t]o be final, the order must determine all liabilities of all parties and leave nothing for future consideration”). During the pendency of the district court action, the district court also entered an October 29, 2021, *Order on Motion to Dismiss*, which partially dismissed claims brought by Appellant, City of Laramie, Wyoming. (R. 448-450). That *Order* is also on appeal. (Appellant Br. at 1-2).

The City of Laramie timely filed its notice of appeal under Wyo. R. App. P. 2.01(a) on February 2, 2023. This Court is now vested with jurisdiction of the appeal pursuant to Wyo. R. App. P. 6.01(b).

STATEMENT OF THE ISSUES

- I. Is Wyo. Stat. Ann. § 21-17-126 a “special” law which violates article 3, section 27 of the Wyoming Constitution?

- II. By authorizing the University of Wyoming to develop and operate nonpotable water systems for use on University property notwithstanding any county or municipal ordinance, does Wyo. Stat. Ann. § 21-17-126 delegate to a “special commissioner, private corporation or association,” the power to interfere with or perform a “municipal function” in violation of article 3, section 37 of the Wyoming Constitution?

STATEMENT OF THE CASE

I. Nature of the Case

The City of Laramie (“the City”) appeals from a district court decision which dismissed the City’s claims that Wyo. Stat. Ann. § 21-17-126 (“section 126”) is unconstitutional. Section 126 authorizes the University of Wyoming (“the University”) to develop and use nonpotable water systems for landscape-type watering on University property, and prohibits any city or county from restricting the University’s use of any such water system. Wyo. Stat. Ann. § 21-17-126(b). The City asserts that section 126 is a special law and that it is an unconstitutional delegation of municipal power to the University. The Wyoming Attorney General limits her arguments to the constitutional issues before this Court. This Court should affirm the district’s court’s determination that the City’s unconstitutional claims are without merit because section 126 is a general law rather than a special law that does not delegate to the University any power to interfere with municipal property or to perform any municipal function.

In addressing whether section 126 is constitutional, this Court will need to determine whether the Legislature’s classification of the University as a singular entity to provide for the management of the University and its property was reasonable, and whether by doing so it delegated to the University any power to perform a municipal function or to interfere with municipal property, namely the City’s municipal water system.

II. Statement of Facts Relevant to Determining the Constitutionality of Section 126

In the 2015 general appropriations bill, the Legislature appropriated 2.6 million dollars to the University for the following purpose:

Funds from this appropriation shall be directed to the University of Wyoming and shall only be expended for development and implementation of a university-wide irrigation system independent of the city of Laramie potable water system. The university is authorized and directed to pursue future funds for this project through the Wyoming water development commission.

(2015 Wyo. Sess. Laws 490-491 (Ch. 142, § 345)). The following year, the Legislature authorized an additional \$270,000 for a Wyoming Water Development Program level II “UW irrigation well” feasibility study. (2016 Wyo. Sess. Laws 238 (Ch. 38, § 2)).

After obtaining permits to develop exploration wells, the University applied for two permits to appropriate groundwater from the Wyoming State Engineer’s Office. (R. 44-50, 51-57). Those wells were named UW 2019 Well A and UW 2019 Well B. (R. 44, 51). The University sought to use water from both wells for the purposes of “landscape watering, lawns, athletic fields, trees, shrubs, and flowers” on University property in Laramie. (R. 45, 52). The Wyoming State Engineer granted both permits on November 23, 2020. *Id.* Both permits specifically provide, “[t]his application is approved subject to the condition that the proposed use shall not interfere with any existing rights to groundwater from the same source of supply[.]” *Id.* Both of the permits also contain multiple conditions which require aquifer testing, metering, and data reporting. (R. 46-47, 53-54).

In August of 2020, the City passed ordinance 1778 to assert the City’s authority over water development and use within the City’s corporate limits:

13.04.360 - Nonmunicipal water—Franchise or permit required.

It is unlawful to do the following unless a franchise or permit is granted by the city council upon a determination that such franchise or permit is in the best interest of the city:

- A. To develop, drill, construct, operate, maintain, or use any water line, system, well, or works within the corporate limits of the city in order to sell, distribute, provide, or use nonmunicipal water (potable and/or non-potable) within the city;
- B. To interconnect any building, facility, landscape, lot, premises, or structure of any kind within the corporate limits of the city to any water line, system, well, or works other than to the city's water utility; or
- C. To use any portion of the city's streets, alleys, easements, or rights-of-way, or other property owned or managed by the city, for such purposes.

A water well within the corporate limits of the city that was constantly (year to year) and legally producing water on or before June 1, 2020 may continue to operate for the same purpose and capacity, except when such use is prohibited or restricted by order of the city manager, if the landowner notifies the city of the well on or before May 31, 2021, allows the city to obtain a GPS reading of its location, and submits a water production report to the city manager each year. The report shall [identifies reporting requirements] ...

All potable and non-potable water shall be supplied by the city's water utility following annexation unless a franchise or permit is granted by the city council as provided in this section.

Any person violating the provisions of this section shall, upon conviction, be punished as provided in Chapter 1.28. The city attorney may also commence an action in the name and on behalf of the city for legal and equitable relief. In addition, any violation involving changes to the use or an increase in the capacity of a well that was in continuous and legal use on or before June 1, 2020 (as described above), without a permit granted by the city council, or any violation of the notification and reporting requirements in this section, shall be cause for immediate loss of the privilege to use such well. (Laramie, Wyo., Ord. No. 1778, § 1, Aug. 5, 2020) (R. 23).

During the 2021 General Session, the Wyoming Legislature enacted House Bill 198,

which provides:

AN ACT relating to the University of Wyoming; clarifying the authority of the university over water; making conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 21-17-126 is created to read:

21-17-126. University water system.

(a) Subject to title 41 of the Wyoming statutes and notwithstanding any municipal or county ordinance, the University of Wyoming may:

- (i) Develop, drill, construct, operate, maintain and use any water line, system, well or works on property owned by the university for the purposes of distributing, providing and using nonpotable water on property owned or leased by the university for miscellaneous use where water is to be used for landscape watering, lawns, athletic fields, trees, shrubs and flowers;
- (ii) Connect a building, facility, landscape, lot, premises or structure owned by the university to any water line, system, well or works operated, maintained or used by the university.

(b) No city or county shall restrict or prohibit the university from developing, drilling, constructing, operating, maintaining or using any water system independent of the city's or county's water system.

Section 2. W.S. 15-7-701 by creating a new subsection (d) is amended to read:

15-7-701. Authority to construct; rights of operator; limitations; applicability.

(d) Nothing in this article shall be construed to restrict, prohibit or otherwise affect the rights of the University of Wyoming under W.S. 21-17-126.

Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(2021 Wyo. Sess. Laws 333 (Ch. 93) (R. 21-22)).

III. Procedural History Relevant to the Constitutionality of Section 126

The City filed a complaint for declaratory judgment under the Uniform Declaratory Judgments Act (R. 2-79). In the complaint, the City alleged that section 126 was unconstitutional under article 3, section 27 and article 3, section 37 of the Wyoming Constitution. (R. 15). On June 8, 2021, and in accordance with Wyo. Stat. Ann. § 1-37-113, the City served a copy of the complaint upon the Wyoming Attorney General. (R. 90). On June 28, 2021, also in accordance with § 1-37-113, the Attorney General filed her notice of intent to be heard for the sole purpose of defending the constitutionality of section 126. (R. 89).

On July 14, 2021, the University filed a motion to dismiss the City's complaint. (R. 94). On August 25, 2021, the City filed its opposition to the University's motion to dismiss and, among other things, argued that section 126 was unconstitutional. (R. 139). On September 17, 2021, the Attorney General filed a brief regarding the constitutionality of section 126. (R. 178).

The district court determined that the City failed to state a claim of relief upon which it could conclude that section 126 was unconstitutional, and therefore dismissed the City's claims. (R. at 252).

In this appeal, the City once again alleges that section 126 is unconstitutional and served a copy of its opening brief on the Attorney General. The Attorney General in her

official capacity hereby submits this brief regarding the constitutionality of section 126 in accordance with Wyo. R. App. P. 7.07.

IV. Constitutional Rulings Presented for Review

Regarding article 3, section 27, the district court first found that section 126 does not fall within any of article 3, section 27's enumerated cases, and that the City's affairs are not directly affected by section 126. (R. 249-50). Second, the district court found that section 126 granted no special or exclusive privilege to the University and that it remained subject to the laws and regulations regarding the development and use of groundwater. (R. 250). Third, due to the distinguishing particularity of the state's only university, the constitutional mandate which requires the Legislature to provide for the University's management, and because section 126 applies to all cities and counties of the state, the district court found that section 126 is not a special law. *Id.*

Regarding article 3, section 37, the district court found that the University is not a special commissioner, private corporation, or association as provided in that section. (R. 243-45). Additionally, the district court found that nothing in the plain language of section 126 delegates any power to the University to interfere with the City's municipal water utility. (R. 247).

STANDARD OF REVIEW

The constitutionality of a statute is a question of law reviewed *de novo*. *Kordus v. Montes*, 2014 WY 146, ¶ 5, 337 P.3d 1138, 1139 (Wyo. 2014). The party challenging the constitutionality of a statute “bears a heavy burden” of proving that the statute is unconstitutional “beyond any reasonable doubt.” *Dir. of Office of State Lands & Inv. v. Merbanco*, 2003 WY 73, ¶ 32, 70 P.3d 241, 252 (Wyo. 2003); *see also Cathcart v. Meyer*, 2004 WY 49, ¶ 7, 88 P.3d 1050, 1056 (Wyo. 2004) (explaining that the appellant must clearly and exactly show the unconstitutionality beyond a reasonable doubt) (citation omitted).

In Wyoming, “every statute is presumed constitutional and not to be held in conflict with the constitution unless such conclusion is clear, palpable, unavoidable, and beyond a reasonable doubt.” *Merbanco*, ¶ 32, 70 P.3d at 252. A statute should “never be construed unconstitutional where it can be, in any possible way, reconciled with the provisions of the constitution.” *Hanson v. Town of Greybull*, 183 P.2d 393, 401 (Wyo. 1947). Courts are “duty bound to uphold statutes where possible and resolve all doubts in favor of constitutionality.” *Merbanco*, ¶ 32, 70 P.3d at 252; *see also Thomson v. Wyo. In-Stream Flow Comm.*, 651 P.2d 778, 789-90 (Wyo. 1982); *Powers v. State*, 2014 WY 15, ¶ 7, 318 P.3d 300, 303 (Wyo. 2014). This Court also presumes that the Legislature “recognize[s] its legislative duty to act constitutionally.” *Appleby v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2002 WY 84, ¶ 28, 70 P.3d 613, 622 (Wyo. 2002).

“In construing constitutional provisions, [this Court] follow[s] the same rules that govern the construction of statutes and [is] guided primarily by the intent of the drafters,

looking first to the plain and unambiguous language used to discern that intent.” *Harmon v. Star Valley Med. Ctr.*, 2014 WY 90, ¶ 16, 331 P.3d 1174, 1178 (Wyo. 2014) (alterations added). “[T]he constitution should not be interpreted to render any portion of it meaningless, with all portions of it read in *pari materia*[.]” *Geringer v. Bebout*, 10 P.3d 514, 520 (Wyo. 2000) (alterations added).

When interpreting a statute, this Court seeks to discern the Legislature’s intent in enacting the statute. *Wegner v. State*, 2007 WY 121, ¶ 12, 163 P.3d 824, 827 (Wyo. 2007). To discern legislative intent, this Court first must determine whether the statute is unambiguous. *Sinclair Oil v. Wyo. Dep’t of Revenue*, 2010 WY 122, ¶ 7, 238 P.3d 568, 570 (Wyo. 2010). This Court “read[s] the text of the statute and pay[s] attention to its internal structure and the functional relation between the parts and the whole.” *Ahearn v. Town of Wheatland*, 2002 WY 12, ¶ 12, 39 P.3d 409, 418 (Wyo. 2002). The words in the statute are given “their ordinary and obvious meaning according to their arrangement and connection.” *Andersen v. Hernandez*, 2005 WY 142, ¶ 7, 122 P.3d 950, 951 (Wyo. 2005). The statute is interpreted “as a whole, giving effect to every word, clause, and sentence,” with all parts of the statute interpreted *in pari materia*. *In re RB*, 2013 WY 15, ¶ 18, 294 P.3d 24, 29 (Wyo. 2013). “A statute is unambiguous if its wording is such that reasonable persons are able to agree as to its meaning with consistency and predictability.” *Sinclair Oil*, ¶ 7, 238 P.3d at 570. If the statute is unambiguous, this Court gives effect to the plain meaning of the statutory language. *Bear Cloud v. State*, 2013 WY 18 ¶ 28, 294 P.3d 36, 44 (Wyo. 2013).

ARGUMENT

I. Section 126 Does Not Violate Article 3, Section 27 of the Wyoming Constitution.

The City contends that the district court erred when it determined that section 126 is not a “special law.” (Appellant Br. at 21). In the complaint, the City initially asserted that section 126 unconstitutionally regulates township affairs and grants a corporation, association or individual a special or exclusive privilege or franchise, but has not furthered those claims in this appeal. (R. 14, ¶¶ 73, 74). The City also claimed that section 126 impermissibly segregates the University into a class by itself. (R. 162). In this appeal, the City now asserts that section 126 is unconstitutional under this Court’s three-element equal protection test. (Appellant Br. at 26-31). Under any of the City’s theories, section 126 is a general law and does not violate article 3, section 27 of the Wyoming Constitution.

A. Section 126 is a General Law.

Under article 3, section 27, the City claims that “the Legislature had no rational basis to prefer the University over every other comparable property owner needing irrigation water.” (Appellant Br. at 31). Article 3, section 27 prohibits the Legislature from enacting a special law “in all other cases where a general law can be made applicable.” Wyo. Const. art. 3, § 27. However, section 126 relates to the management of the University and its property and is not a special law.

As an initial matter, the specific constitutional provision regarding the management of the University under article 7, section 17 controls over the more generalized provision of article 3, section 27. The Constitution specifically tasks the Legislature with

management of the University and its property. Wyo. Const. art. 7, § 17. Among other things, the Wyoming Constitution directs the Legislature to provide by law for the “management of the university, its lands and other property by a board of trustees[.]” *Id.* If a specific provision and a more general provision on the same subject cannot be harmoniously interpreted, the specific provision controls over the general provision. *Thunderbasin Land, Livestock & Inv. Co. v. Cnty. of Laramie Cnty.*, 5 P.3d 774, 782 (Wyo. 2000); *see also Harmon*, ¶ 16, 331 P.3d at 1178 (stating that when interpreting or construing the Wyoming Constitution, this Court follows the same basic methodology and rules that govern the interpretation and construction of statutes).

It would be a strange result if by enacting a law relating specifically to the management of the University’s lands and property—as the Constitution requires under article 7, section 17—the Legislature could violate article 3, section 27. *See Cantrell v. Sweetwater Cnty. Sch. Dist. No. 2*, 2006 WY 57, ¶ 11, 133 P.3d 983, 986-87 (Wyo. 2006) (internal citations omitted) (stating that constitutional provisions should not be read so as to produce absurd results).

Even if the more general constitutional provision controls over the more specific provision, section 126 is a general law. To be a general law, statutes are not required to affect everyone the same. The purpose for prohibiting special legislation is “so a statute operates alike upon all persons in the same circumstances.” *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1274 (Wyo. 1995). The mere fact that a statute does not affect everyone the same way does not render it unconstitutional:

The prohibition against special legislation does not mean that a statute must affect everyone in the same way. It only means that the classification contained in the statute must be reasonable, and that the statute must operate alike upon all persons or property in like or the same circumstances and conditions.

Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351, 1356 (Wyo. 1978) (citations omitted). In this case, the classification contained in section 126 is reasonable and it operates alike on all persons and property in the same circumstances and conditions.

Section 126 relates to the only university of the state, and that classification is reasonable. “In order to constitute a general law, as opposed to a special law, there must be some distinguishing peculiarity which gives rise to the necessity for the law as to the designated class.” *May v. City of Laramie*, 131 P.2d 300, 306 (1942). The University is a unique part of the State of Wyoming. The Wyoming Constitution itself provides the University’s distinguishing particularity. It is the only university of the state, no other person or property shares the same class. Further, the Constitution tasks the Legislature with management of the University and its property. Wyo. Const. art. 7, § 17. To provide for the University’s management, the Legislature must enact laws. *Id.* It has enacted over ninety laws specifically related to the University. *See, e.g.*, Wyo. Stat. Ann. §§ 21-17-101 through -451. Specifically in Wyo. Stat. Ann. § 21-17-204, the Board of Trustees has the authority to manage any real estate that is conducive to the welfare of the University. Additionally, the Board of Trustees possesses “all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law[.]” Wyo. Stat. Ann. § 21-17-203.

Because the University occupies a singular status in the Constitution and in the state, the fact that section 126 only relates to the University is reasonable and the law operates uniformly upon all persons or property in like or the same circumstances and conditions. Accordingly, section 126 is a general law, not a special law.

Section 126 also applies equally to all cities and counties of the state. Although the Constitution establishes the City of Laramie as the University's location, the University also owns or leases property elsewhere in the state. Wyo. Const. art. 7, § 23 ("The state university shall be centered at the City of Laramie, in the County of Albany."); Wyo. Stat. Ann. § 21-17-302 (identifying experimental farms near Sheridan, Powell, and in Goshen County). Under section 126, no city or county shall restrict or prohibit the University from drilling or using wells or water systems for the stated purposes. Wyo. Stat. Ann. § 21-17-126(b). This provision applies to all twenty-three counties and ninety-nine municipalities alike. "Since the statute here in question applies to all cities and towns in the state, it is quite plain that it is not a special law, but a general law[.]" *State ex rel. Keefe v. McInerney*, 182 P.2d 28, 38 (Wyo. 1947) (alteration added). Section 126 does not grant privileges to certain cities or counties while denying them for others, but instead applies equally statewide. *See Baessler v. Freier*, 2011 WY 125, ¶ 16, 258 P.3d 720, 726 (Wyo. 2011) (defining a special law as granting privileges to some while denying them to others). Thus, any classification related to cities and counties made by section 126 is also reasonable and applies uniformly to all of them.

The City contends that no rational basis exists to prefer the University over every other comparable property owner needing irrigation water. (Appellant Br. at 31). Without

citing any authority, the City claims that any entity seeking to appropriate the use of water in Wyoming must comply with both local ordinances and the requirements of Title 41 of the Wyoming Statutes (“Title 41”). (Appellant Br. at 27). However, subject to Title 41—which requires a permit issued by the Wyoming State Engineer—any entity in the state is entitled to drill wells to supply beneficial uses like irrigation or watering landscapes. *See* Wyo. Stat. Ann. § 41-3-930 (stating any person may apply for a permit to use underground water in Wyoming); Wyo. Const. art. 8, § 3 (“No appropriation shall be denied except when such denial is demanded by the public interests.”); Wyo. Stat. Ann. § 41-3-931 (providing that applications for ground water well permits in areas not designated as control areas “shall be granted as a matter of course” unless the State Engineer finds that to grant the applications “would not be in the public’s water interest.”). Accordingly, to the extent that the University and other landscape irrigators are similarly situated, they are treated equally under Title 41.

Section 126 does not contain or create the classification asserted by the City. Instead, section 126 reasonably creates a class occupied only by the state’s University due to its special status under the State Constitution. *See, Hanson*, 183 P.2d at 401 (stating that “[a] statute [should] never be construed unconstitutional where it can be, in any possible way, reconciled with the provisions of the constitution”) (alterations added). Accordingly, the City has not satisfied its “heavy burden” proving section 126 is unconstitutional. *See Merbanco*, ¶ 32, 70 P.3d at 252.

B. Identifying the University as a Singular Class is Rationally Related to the Objective of Providing for Management of the University and its Property.

For the first time on appeal, the City asserts that section 126 is unconstitutional under this Court’s three-element equal protection test. (Appellant Br. at 26-31). However, the equal protection analysis urged by the City is no different from the district court’s analysis in this case. The question for this Court is whether a rational basis exists justifying the legislatively drawn distinction contained in section 126.

When considering a claim that a statute violates the equal protection guarantees of the Wyoming Constitution, this Court applies the following three-element test: “(1) identification of the legislative classification at issue; (2) identification of the legislative objectives; and (3) determination of whether the legislative classification is rationally related to the achievement of an appropriate legislative purpose.” *Krenning v. Heart Mountain Irrigation Dist.*, 2009 WY 11, ¶ 33, 200 P.3d 774, 784 (Wyo. 2009) (citing *Greenwalt v. Ram Rest. Corp.*, 2003 WY 77, ¶ 40, 71 P.3d; 717, 732 (Wyo. 2003)). In applying this three-element test, the City still fails to meet its heavy burden in proving that section 126 is unconstitutional. *See Greenwalt*, ¶ 39, 71 P.3d at 730 (holding that “[a] party attacking the rationality of the legislative classification has the heavy burden of demonstrating the unconstitutionality of a statute beyond a reasonable doubt”).

Application of the three-element test reveals a rational basis for section 126. First, section 126 clearly identifies the University as a singular class. To identify the legislative class, this Court will look to the text of the statute being challenged. *Id.* at 733. A classification in a statute comes with a “strong presumption” of validity. *Id.* Section 126

authorizes the University to develop a nonpotable water system for water use on University property. It creates no other class. Section 126 does not draw a distinction between the University and all others as a product of some unprecedented legislative judgment in 2021. This singular classification finds its source in the Wyoming Constitution. It is the only university of the state, no other person or property shares the same class.

Second, the Legislature’s objective of section 126 was to provide for management of the University and its property. It authorizes the University to drill wells and develop water systems for the use of water on property owned or leased by the University. Wyo. Stat. Ann. § 21-17-126(a)(i). Section 126 provides for the development and use of nonpotable water sources. *Id.* To implement a legislative appropriation made in 2015, it provides authorization for development and implementation of a university-wide irrigation system. 2015 Senate Enrolled Act 56; 2015 Wyo. Sess. Laws Ch. 142, § 345. The title of the law—“AN ACT relating to the University of Wyoming; clarifying the authority of the university over water”—also speaks to the authority objective of section 126. 2021 Wyo. Sess. Laws ch. 93) (R. 21-22). To that end, subject to Title 41, the Legislature granted the University autonomy in managing its nonpotable water supply at all of its properties statewide by prohibiting any city or county from restricting the University’s use of any such water system. Wyo. Stat. Ann. § 21-17-126(b).

Third, identifying the University as a singular class is rationally related to the objective of providing for management of the University and its property, an appropriate legislative purpose. As recognized by the City, “there must be some distinguishing peculiarity which gives rise to the necessity for the law as to the designated class.” *May*,

131 P.2d at 306. The Wyoming Constitution itself provides the University's distinguishing particularity. The Constitution tasks the Legislature with management of the University and its property. Wyo. Const. art. 7, § 17. To provide for the University's management, the Legislature must enact laws. *Id.* It has enacted over 90 laws specifically related to the University. *See, e.g.,* Wyo. Stat. Ann. §§ 21-17-101 through -451. Specifically in Wyo. Stat. Ann. § 21-17-204, the Board of Trustees has been given the authority to manage any real estate that is conducive to the welfare of the University. Additionally, the Board of Trustees possesses "all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law[.]" Wyo. Stat. Ann. § 21-17-203.

The City argues that the Legislature has no rational basis to prefer the University over every other comparable property owner needing irrigation water. (Appellant Br. at 31). However, as recognized by the district court, this situation is unique because the Wyoming Constitution requires that the Legislature manage the University and its property. Conversely, the Constitution does not require the Legislature to manage the property of every other comparable property owner needing irrigation water. According to the district court, "it is nonsensical to conclude that a law must be made 'general,' or applicable to a larger audience, when the intent of the Wyoming Legislature is specifically to comply with Wyoming Constitution article 7, section 17 so as to manage the University and its property." (R. 250).

This Court should affirm the decision of the district court with respect to its determination that section 126 is constitutional under article 3, section 27 of the Wyoming Constitution.

II. Section 126 Does Not Violate Article 3, Section 37 of the Wyoming Constitution.

The City claims that section 126 delegates power to the University to perform the municipal function of providing water to landscapes and golf courses utilized by the public in violation of Wyo. Const. art. 3, § 37. (Appellant Br. at 33) (R. 15, ¶ 80). According to the City, the delegation contained in section 126 interferes with the City's operation of its municipal water system, which includes interference with the water source which supplies its system. (Appellant Br. at 41).

Article 3, section 37 states, “[t]he legislature shall not delegate to any special commissioner, private corporation or association, any power to make, supervise or interfere with any municipal improvements, moneys, property or effects, whether held in trust or otherwise, to levy taxes, or to perform any municipal functions whatever.” Wyo. Const. art 3, § 37. The City must prove at least two things to show that section 126 is unconstitutional under article 3, section 37. First, the City must show that section 126 delegates power to a special commissioner, private corporation, or association. Second, the City must show that the power delegated in section 126 interferes with “municipal improvements, moneys, property or effects” or delegates performance of a “municipal function.” The City cannot prove either. The University is not a special commissioner, private corporation, or association. Even if the University did qualify as one of those entities, section 126 does not delegate any power to the University which interferes with the City's municipal water system.

A. The University is Not a “special commissioner, private corporation, or association.”

Article 3, section 37 prohibits the Legislature from delegating municipal power to, “any special commissioner, private corporation or association[.]” Article 3, section 37 prohibits “the Legislature from naming a commission, composed of members who were in no way connected with the constituted authorities of municipalities, which was to perform some duty of a municipal character.” *Stewart v. City of Cheyenne*, 154 P.2d 355, 367 (Wyo. 1944) (quoting *Stratton v. Allegheny Cnty.*, 91 A. 894, 895 (Pa. 1914)).

The City asks this Court to interpret the terms “special commissioner, private corporation, or association,” as used in article 3, section 37, as any person or entity beyond municipal control, to whom the Legislature has delegated municipal power. (Appellant Br. at 32-33). This Court, however, cannot interpret the Constitution in such a way that would render the specific words meaningless. *Geringer*, 10 P.3d at 520. If the City’s interpretation were true, the specific terms used in article 3, section 37 would have no meaning or effect at all. The terms special commissioner, private corporation, and association each must be given effect. *See In re RB*, ¶ 18, 294 P.3d at 29 (citations omitted) (stating that the court must “construe the statute as a whole, giving effect to every word, clause, and sentence”).

In Colorado, which has a nearly identical constitutional provision, the Colorado Supreme Court has “defined a special commission as a ‘body or association of individuals separate and distinct from the city government; that is created for different purposes, or else created for some individual or limited object not connected with the general administration of municipal affairs.’” *Anema v. Transit Constr. Auth.*, 788 P.2d 1261, 1264

(Colo. 1990) (citations omitted). This Court has not affirmatively defined “special commissioner” like in Colorado, but it has determined what the term does not include, and it has refused to read the term as broadly as the City proposes.

In fact, in *Town of Pine Bluffs v. State Board of Equalization*, the Wyoming Supreme Court held that the State Board of Equalization is not a special commissioner under article 3, section 37. *Town of Pine Bluffs v. State Bd. of Equalization*, 333 P.2d 700, 705 (Wyo. 1958). In that case, multiple municipalities claimed that the Legislature delegated power to the State Board of Equalization to levy taxes in violation of article 3, section 37. *Id.* at 705. However, this Court held that the State Board of Equalization “is neither a special commissioner nor a private corporation nor an association within the meaning of” article 3, section 37. *Id.* Instead, this Court found that it was a board recognized by the Wyoming Constitution engaged in its constitutional function as prescribed by law. *Id.* at 705-06; Wyo. Const. art. 15, §§ 9 & 10. Similar to the State Board of Equalization, the University was confirmed by the Wyoming Constitution and engages in its constitutional functions as prescribed by law.

The University was established in 1886 when Wyoming was still a territory, then was confirmed under article 7, section 15 of the Wyoming Constitution. Wyo. Const. art. 7, § 15. That provision also directs the Legislature to provide by law for the “management of the university, its lands and other property by a board of trustees[.]” Wyo. Const. art. 7, § 17 (alteration added). Through section 126, the Legislature authorized the University to develop a nonpotable water system to supply water to property owned or leased by the University. Consistent with the constitutional mandate, section 126 relates directly to

management of the University's lands and other property, a constitutional function as prescribed by law. Thus, like the State Board of Equalization, the University is neither a special commissioner nor a private corporation nor an association within the meaning of article 3, section 37. *See Thomson*, 651 P.2d at 790 (stating that the court must “read and examine the constitution in pari materia with all its provisions”).

The City argues that the only salient question is whether the statute delegates municipal power to the University. (Appellant Br. at 37). The City urges this Court to ignore the status of the non-municipal entity and instead focus on the function performed by that entity. *Id.* at 36. According to the City, the University should be considered a special commissioner like the board of utilities in *Stewart v. City of Cheyenne*. *See Stewart*, 154 P.2d 355.

However, *Stewart* involved a legislatively created Board of Public Utilities to which the Legislature delegated “the exclusive control of all municipally owned water works[.]” *Id.* at 357 (alteration added). In that circumstance, the Wyoming Supreme Court held “[i]t is too plain for argument that under the statute, as it stands, the Board of Public Utilities is an independent, special commission to perform municipal functions.” *Id.* at 369. Unlike the University, the Board of Public Utilities was not created by the Constitution but was instead a legislatively created commission. *Id.* at 361. Further, the Board was explicitly delegated control of municipal property, or all municipally owned water works, outside the control of elected municipal officials. *Id.* at 357. In *Stewart*, this Court was not faced with an authorization to a constitutionally created entity relating to the management of that

entity's property in accord with the Legislature's specifically prescribed constitutional duty.

Article 3, section 37 prohibits the Legislature from naming a commission to perform some duty of a municipal character. *Stewart*, 154 P.2d at 367 (citing *Stratton v. Allegheny Cnty.*, 91 A. 894, 895 (Pa. 1914)). Here, the Legislature did not name or create any such commission. And the University is not in control over the City's municipally owned water system. Instead, the Legislature complied with the constitutional directive to provide by law for the management of the University, its lands and other property. Accordingly, the University is not a special commissioner within the meaning of article 3, section 37.

B. Section 126 Does Not Delegate to the University Any Power to Interfere With Municipal Property or to Perform Any Municipal Function.

The City also argues that section 126 interferes with the City's municipal water system and its water supply. (Appellant Br. at 41). However, nothing in the plain language of section 126 delegates any power to the University to interfere with "any municipal improvements, moneys, property or effects" or delegates performance of any "municipal function." Wyo. Const. art. 3, § 37. Any detrimental impact to the City from the University's development and utilization of its own landscape watering system does not equate an unconstitutional delegation by the Legislature that gives the University the power to interfere with municipal improvements or perform municipal functions.

Section 126 relates directly to the management of the University's lands and other property, not to the operation of any municipal water system. It authorizes the University to drill wells and develop water systems on property owned by the University for the

purpose of supplying nonpotable water to property owned or leased by the University. Wyo. Stat. Ann. § 21-17-126(a)(i). Section 126 only authorizes the University to supply water for its own landscape-type water uses, not any other type of use, such as a municipal use. *Id.*

Nothing in section 126 authorizes the University to supply water to any other person or entity or to operate a municipal water utility. *Id.* Further, nothing in section 126 delegates any power to the University to control or otherwise use any city's municipal water system. *Id.* While section 126 does prohibit any city or county from restricting or prohibiting the University from developing and using its own water systems, the prohibition only applies to University water systems independent of a city or county's water system. Wyo. Stat. Ann. § 21-17-126(b). Nothing in the plain language of section 126 delegates any power to interfere with a city's municipal water utility or to perform a municipal function.

The City does not identify any specific language in section 126 that gives the University power to interfere with the City's municipal water system. In fact, no such language exists. Even so, the City argues that section 126 "empowers the University to interfere with the City's water supply." (Appellant Br. at 41). More specifically, the City claims that even though the City's wells are senior to the University's wells, it would need to re-drill at least one of its wells to pursue an interference claim under state law. (Appellant Br. at 41). According to the City, by simply authorizing the University to develop and use its wells, section 126 delegates power to the University to interfere with the City's municipal water system. However, section 126 makes the University's authority "subject to Title 41", which protects senior water rights from interference.

Under Title 41, the University cannot interfere with the City's senior water rights. Rights to use groundwater in Wyoming are subject to the doctrine of prior appropriation. *See* Wyo. Stat. Ann. §§ 41-3-911, -930(c), -936. Under that doctrine, “[p]riority of appropriation for beneficial uses shall give the better right.” Wyo. Const. art. 8, § 3.

Contrary to the City's assertions, the mere existence and use of junior groundwater wells from the same source of supply does not equate to interference. Instead, the State Engineer must determine whether interference exists. Wyo. Stat. Ann. § 41-3-911. If the City as a senior appropriator believes a junior appropriator is unreasonably interfering with its water rights, it can file a complaint with the State Engineer. *Id.* The State Engineer must then investigate the alleged interference, determine if the alleged interference exists, and issue a report stating his findings. *Id.* If either appropriator is dissatisfied with the State Engineer's investigation, determination, and findings, they can appeal to the Board of Control for a contested case hearing. *Id.* From there, all Board of Control decisions may be appealed to the Wyoming courts. Wyo. Const. art. 8, § 2. Thus, under Title 41, the City's senior water rights are protected from interference by the University's junior water rights by the State Engineer, the Board of Control, and the courts, not the City itself.

Title 41 also requires the University to obtain permits from the State Engineer before drilling and developing its wells. Wyo. Stat. Ann. § 41-3-930; *see also* Wyo. Stat. Ann. § 41-3-901(a)(i) (defining persons subject to Wyoming's groundwater laws and including municipalities and the State of Wyoming). When issuing groundwater permits, the State Engineer can make them “subject to such conditions as he may find to be in the public interest.” Wyo. Stat. Ann. § 41-3-933. Both of the University permits assailed by the City

contain many conditions, including a prohibition against interfering with senior rights. Those permits specifically provide, “[t]his application is approved subject to the condition that the proposed use shall not interfere with any existing rights to groundwater from the same source of supply[.]” (R. 45, 52). Both of the permits also contain multiple conditions which require aquifer testing, metering, and data reporting. (R. 46-47, 53-54). The State Engineer can use all of this information should he receive a complaint that the University wells are interfering with the City’s senior rights. Under Title 41 and the permits issued by the State Engineer, the University cannot interfere with senior water rights, including those held by the City. Accordingly, section 126 does not delegate the University power to interfere with the City’s water supply or the operation of its municipal water system.

The City essentially argues that it has the independent statutory authority under Title 15 to determine and prevent interference from the University’s junior wells. (Appellant Br. at 41). However, the City has no better right to its source of supply than any other appropriator. “Municipal corporations **shall have the same right** as individuals to acquire rights by prior appropriation and otherwise to the use of water for domestic and municipal purposes[.]” Wyo. Const. art. 13, § 5 (alteration and emphasis added).

The City does own water rights which are supplied by the same aquifer which supply the University’s wells. And the right to use water in Wyoming is a real property right. *DeWitt v. Balben*, 718 P.2d 854, 860 (Wyo. 1986). But the appropriation of water and the acquisition of a water right do not confer an ownership interest in the water itself; the owner of a water right does not own the water, simply the protectable right to use it. *In re Gen. Adjudication of All Rights to Use Water in Big Horn River Sys.*, 835 P.2d 273, 283 (Wyo.

1992); *see also Mitchell Irrigation Dist. v. Sharp*, 121 F.2d 964, 967 (10th Cir. 1941) (stating “the right of the appropriator attaches not to the water while running in the natural channel but to the use of a limited quantity thereof for beneficial use.[.]” *Johnston v. Little Horse Creek Irrigating Co.*, 79 P. 22, 24 (Wyo. 1904) (recognizing that “the only property in the water owned by the appropriator is a right to use it as measured by his appropriation.”); Wyo. Stat. Ann. § 41-3-101 (stating that “[b]eneficial use shall be the basis, the measure and limit of the right to use water at all times[.]”). Like any other appropriator, the City’s rights to its source of supply do not extend past its right to use water up to the limit of its appropriation. *See Holt v. City of Cheyenne*, 137 P. 876, 880 (1914) (holding that the city had the right to apply its surplus water to a beneficial use up to the amount of its appropriation).

The State, not the City as a single water appropriator amongst many, has the authority to control the use of water in Wyoming. Wyo. Const. art. 1, § 31. The State holds title to water in a sovereign capacity as representative of all the people for the purpose of guaranteeing that the common rights of all are equally protected. *Id.*¹; *Merrill v. Bishop*, 287 P.2d 620, 625 (Wyo. 1955), *overruled on other grounds by In re Gen. Adjudication of All Rights to Use Water in Big Horn River Syst.*, 753 P.2d 76 (1988). Under Wyoming constitutional and statutory law, the Board of Control and the State Engineer supervise the

¹ The City cites multiple statutes for the proposition that municipal water systems are comprehensive. (Appellant Br. at 38-39). However, none of those statutes express authority of a city to deny the appropriation and beneficial use of water by another.

waters of the state and of their appropriation, distribution, and diversion. Wyo. Const. art. 8, §§ 2, 5; *See, e.g.*, Wyo. Stat. Ann. § 41-3-911. “Water is the lifeblood of Wyoming. It is a scarce resource which must be effectively managed and efficiently used to meet the various demands of society.” *In re Gen. Adjudication of All Rights to Use Water in Big Horn River Syst.*, 835 P.2d at 279-80. “Water is simply too precious to the well-being of society to permit water right holders unfettered control over its use.” *Id.* The City’s claim that its authority extends to the entirety of its source of supply stands Wyoming water law on its head. The City’s approach would supplant the state and place one water appropriator in control of other appropriators. Water appropriators, like the City, do not have the right to control the use, or prevent the use, of water by other appropriators.

The City’s rights to its source of supply, the Casper Aquifer, do not extend beyond the limits of its water rights. Title 41 and the permits issued by the State Engineer prevent the University from interfering with the senior water rights held by the City. Accordingly, section 126 does not delegate to the University any power to perform a municipal function or to interfere with any “municipal improvements, moneys, property or effects,” including the City’s municipal water system.

For the foregoing reasons, this Court should affirm the decision of the district court with respect to its determination that section 126 is constitutional under article 3, section 37 of the Wyoming Constitution.

CONCLUSION

For the reasons stated above, the City has not proven beyond a reasonable doubt that Wyo. Stat. Ann. § 21-17-126 is unconstitutional under article 3, sections 27 or 37. Accordingly, this Court should affirm the ruling of the lower court and uphold the constitutionality of section 126.

DATED this 19th day of June, 2023.

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CERTIFICATE REGARDING ELECTRONIC FILING

I certify on this 19th day of June 2023 the foregoing Brief of the Wyoming Attorney General was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System on the following parties:

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The undersigned also certifies that no privacy redactions have been made and the document submitted in digital form or scanned .pdf is an exact copy of the written document filed with the Clerk, and that the document has been scanned for viruses and is free of viruses.

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