STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: May 3, 2018)

421 PINE STREET REALTY, LLC.	:	
Plaintiff/Appellant,	:	
	:	
v.	:	**C.A. No. PC-2014-3571**
	:	
PROVIDENCE WATER SUPPLY BOARD AND THE RHODE ISLAND PUBLIC UTILITIES COMMISSION	:	
Defendants/Appellees.	:	

DECISION

STERN, J. Before the Court is the Plaintiff-Appellant's—421 Pine Street Realty, LLC. (Pine Street Realty), a single-member entity managed by John Verdecchia (Verdecchia) (collectively, Appellant)—administrative appeal request to reverse and vacate Report and Order No. 21401 (Order) issued by the Division of Public Utilities and Carriers (Division) dismissing the September 5, 2013 complaint filed by Verdecchia. Order at 17. The Division concluded the "Providence Water [Supply Board] is not barred from the provisions of [G.L. 1956] § 46-13-22 from requiring the installation of back-flow prevention devices on *all* of the water service connections to its distribution system," including Verdecchia's six-unit property located at 421 Pine Street in Providence (the Property). *Id.* at 14. Defendants-Appellees—Providence Water Supply Board (PWSB or Providence Water) and the Rhode Island Public Utilities Commission (Commission) (collectively, Appellees)—separately object to the within administrative appeal. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

In 2008, Verdecchia received a written notification from the PWSB regarding PWSB's Cross-Connection Control Program that, among other directives, mandates the installation of a backflow preventer valve on the Property. Verdecchia contacted the PWSB and was further informed by the PWSB that the Property was required to purchase and hire a plumber to install a backflow preventer device at the Property. Following the installation of a backflow preventer device at the Property, Verdecchia would also be required to inspect and generate a report of the backflow preventer valve annually.

Throughout the next several years,[1] Verdecchia received a series of written notices from the PWSB that mandated "immediate" participation in the Cross-Connection Control Program that "requires the installation of reduced-pressure-zone types of devices in commercial and industrial settings" for "[m]ulti-family housing[] consisting of (4) four or more dwelling[] units . . . ." *See* Appellees' Ex. 25. In a letter dated July 13, 2011, PWSB issued a notice to Verdecchia and directed him to install a reduced-pressure-zone (RPZ) backflow preventer within forty-five days of the notice. *Id.* On October 4, 2011, PWSB issued another notice to Verdecchia and directed him to install a RPZ backflow preventer on the Property and provided him with thirty days to comply with the notice. *Id.* On November 28, 2011, PWSB sent another notice to Verdecchia directing him to install a RPZ backflow device on the Property and provided him

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[1] John Verdecchia received written notifications from the PWSB on or about December 1, 2008; February 19, 2010; July 21, 2010; September 29, 2010; July 13, 2011; October 4, 2011; November 28, 2011; and October 4, 2012 regarding PWSB's Cross-Connection Control Program that, among other directives, mandates Pine Street Realty to install a backflow preventer valve on the Property. *See* Stipulation, March 29, 2018.

with ten days to comply with the notice. *Id.* Verdecchia failed to comply with all of the aforementioned notices sent by the PWSB.

On October 4, 2012, PWSB issued a "Notice of Violation and Order of Penalty" to Verdecchia informing him that "421 Pine Street is in violation of the 'Public Drinking Water Protection' Act, Chapter 46-13-22 of the Rhode Island General Laws as amended, and the Rules and Regulations of the Providence Water Supply Board Cross Connection Program." *See id.* Specified in this notice was a directive by the PWSB to allow Verdecchia until October 18, 2012 to install the required backflow device at the Property or face "appropriate action up to *AND* including termination of water service" at the Property. *Id.* After receiving the October 4, 2012 Notice of Violation, Verdecchia requested an exemption for the Property's participation in PWSB's Cross-Connection Control Program. Following Verdecchia's exemption request for the Property, in a letter dated February 28, 2013, the PWSB denied Verdecchia's exemption request and further mandated that he comply with § 46-13-22 and PWSB's rules and regulations for backflow protection. *See* Appellees' Ex. 26.

Nearly six months after Verdecchia's exemption request was denied, in a letter dated September 5, 2013, Verdecchia filed a complaint to the Division appealing the notices he had received from the PWSB. *See* Appellees' Ex. 10. Specifically, Verdecchia appealed to the Division and argued that the Legislature repealed § 46-13-22 that afforded the PWSB the right to require the installation of a backflow device on the Property. In addition, Verdecchia argued the PWSB did not possess legal authority to require him to install the device as PWSB claimed. *Id.*

On January 7, 2014, the Division conducted a duly noticed hearing on the Appellant's complaint pursuant to the Administrative Procedures Act of §§ 42-35-1, *et seq.* and the Division's authority under G.L. 1956 §§ 39-4-3 and 39-4-10. During the hearing, PWSB

presented two witnesses: Mr. Peter McLaughlin (McLaughlin) and Mr. Jeffrey Lykins (Lykins). McLaughlin is a "[m]anager and engineer in customer service" for the PWSB. *See* Appellees' Ex. 3; Tr. at 67:2-5, Jan. 7, 2014. During McLaughlin's testimony, he explained the dynamics of a "cross-connection" and the importance of a backflow preventer as this device relates to a commercial property and identified the Property as "commercial." McLaughlin also testified that the PWSB's recent policy requires properties with four units or more to have backflow devices. Also, during his testimony, McLaughlin supported several of PWSBs exhibits, including Exhibit 13 (Section 608.1 of the commercial plumbing code, which requires the installation of backflow preventers on all commercial properties), and Exhibit 14, which included several notices, the first of which he expressed was sent on July 13, 2011 and the final notice, which was sent in October 2012 to the Appellant, regarding the backflow responsibilities of the Property. McLaughlin's testimony is based on his years of managing PWSB's cross-connection control program and his belief that the Property was required to have a backflow preventer.

Lykins, the Director for the Department of Inspections and Standards for the City of Providence and a local and national registered architect for over thirty years, expressed that one and two-family buildings are residential and three or more family buildings are commercial buildings. During his testimony, Lykins further explained that although a building may seem residential inside, the building may be required to meet commercial standards, which calls for a backflow prevention device pursuant to the plumbing code. Based on his professional opinion, Lykins concluded that a backflow device is required for the six-unit Property.

After a daylong hearing, the Division issued Order No. 21401 on May 5, 2014 denying and dismissing the Appellant's complaint. The Division found "abundant evidence on the record" to conclude that Providence Water is not barred from the provisions of § 46-13-22 from

requiring the installation of backflow prevention devices on all the water service connections to its distribution system. Order at 14. Furthermore, the Division was "unable to accept [Verdecchia's] argument that . . . § 46-13-22 prohibits Providence Water from requiring the installation of a back-flow prevention device on his six-unit residential property by virtue of the property's residential nature." *Id.* at 15. The Division also found that "an assessment of the 'commercial' vs. 'residential' nature of the property is essentially unimportant" and "only relevant in terms of separating the so-called 'high hazard' properties for immediate enforcement." *Id.* at 15-16. However, the Division referred the issue of whether PWSB's cost-shift to the property owners constitutes an illegal tax or a constitutional violation to the Courts, which exclusively possess the authority to address such inquiries. *Id.* at 17.

On July 7, 2014, following the Division's issuance of Order No. 21401, the Appellant filed a motion to stay the effect of Order No. 21401 with the Division. On July 17, 2014, the Division issued Order No. 21511, which denied the Appellant's motion for stay. On July 17, 2014, Appellant filed an administrative appeal for Order No. 21511 in Superior Court. On April 20, 2015, Appellant's motion for stay was heard and denied. Thereafter, on April 20, 2015, Appellant petitioned the Rhode Island Supreme Court for writ of certiorari and filed a Motion for Stay. Following Appellant's unsuccessful Motion for Stay, Appellant withdrew his petition, in part, because the denial of the Motion for Stay rendered the request for certiorari moot.

Appellant appeals Order No. 21401 on grounds that the decision of the hearing officer should be reversed as it was clearly erroneous, against the weight of the evidence presented, and in violation of law. The Appellant makes two main contentions. First, the Appellant argues against the requirement of § 46-13-22(b) to install a backflow valve device, because he believes the Property is exempt based on the Legislature amending § 46-13-22(b) which removes the

requirement that cross-connection control devices be installed at residential service connections. Second, the Appellant argues that the action of PWSB in only requiring those owners of properties of four units or more to install backflow prevention devices at their own expense constitutes an illegal tax and violation of the Equal Protection Clause under both the Rhode Island and Federal Constitutions.

In response, Appellees argue that the Appellant's appeal should be dismissed on substantive and procedural grounds. The Appellees argue that § 46-13-22(b) mandates that PWSB's cross-connection control policy is legal and does not violate the Rhode Island Constitution. Specifically, Appellees argue the substantive evidence on the record supports the Division's finding that the Property is a commercial property and that section 9.4(a) of the Rhode Island Department of Health's (the DOH) Rules and Regulations Pertaining to Public Drinking Water requires the PWSB to enforce the policy against the Appellant. Appellees further argue that, even if the Property is residential, § 46-13-22(b) does not preempt the cross-connection control policy. Specifically, Appellees argue that § 46-13-22(b) authorizes the DOH to require the installation of cross-connection control devices at residential properties; section 9.4(a) of the DOH's Rule and Regulations mandates that water utilities such as PWSB require that customers install cross-connection control devices at preexisting residential properties such as the Property; and that section 9.4(a) is not *ultra vires* of § 46-13-22. Additionally, Appellees argue the cross-connection control policy does not violate either the Rhode Island or the Federal Constitution. Specifically, the Appellees argue the cross-connection control policy does not constitute an unlawful tax; it does not violate the Equal Protection Clause; and PWSB has applied it fairly and rationally. Finally, the Appellees argue procedurally that the Appellant's appeal should be

dismissed because the appeal was not properly filed, nor does the Appellant name the correct respondent.

II

Standard of Review

The Superior Court's appellate review of a final administrative decision is governed by the Administrative Procedures Act. Sec. 42-35-15; *Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I.*, 943 A.2d 1045, 1048 (R.I. 2008) (citing *Rossi v. Emps.' Ret. Sys. of R.I.*, 895 A.2d 106, 109 (R.I. 2006)). Section 42-35-15(g) delineates the applicable standard of review for administrative appeals to this Court:

> "(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> "(1) In violation of constitutional or statutory provisions;
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> "(2) In excess of the statutory authority of the agency;
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> "(3) Made upon unlawful procedure;
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> "(4) Affected by other error or law;
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> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

"In essence, if 'competent evidence exists in the record [to support the agency's conclusion], the Superior Court is required to uphold the agency's conclusions.'" *Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation*, 996 A.2d 91, 95 (R.I. 2010) (quoting *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 485 (R.I. 1994)). In

reviewing the record, this Court may not substitute its own judgment for that of the agency as to the weight of evidence on questions of fact. *Interstate Navigation Co. v. Div. of Pub. Utils. & Carriers of R.I.*, 824 A.2d 1282, 1286 (R.I. 2003). However, when considering questions of law, the Court is not bound by the agency's decision, but instead may review the decision "to determine the relevant law and its applicability to the facts presented in the record." *State Dep't of Envtl. Mgmt. v. State Labor Relations Bd.*, 799 A.2d 274, 277 (R.I. 2002). Therefore, the Superior Court's review of "questions of law—including statutory interpretation—[is] . . . *de novo*." *Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I.*, 943 A.2d at 1049.

III

Applicable Law

The crux of this administrative appeal concerns the Appellant's refusal to comply with PWSB's General Policy[2] and the Cross-Connection Control Program Rules and Regulations[3] (collectively, the Policy), which increased the minimum goals set by the General Assembly in § 46-13-22. Section 46-13-22, entitled "Cross-connection control," is the enabling legislation that authorizes the director of the DOH to establish regulations governing the installation of cross-connection control devices.

On June 27, 2007, the General Assembly enacted P.L. 2007, ch. 127, § 1, which provided, in pertinent part, as follows:

> "The regulations governing cross-connection control plans adopted by the director shall at a minimum include: the installation of cross-connection control valves at all newly constructed service connections prior to the provision of water service; ***the installation of cross-connection control valves at all non-residential service connections; and the installation of cross-connection control devices at all residential service connections***; provided, however,

[2] *See* Appellees' Ex. 16.
[3] *See* Appellees' Ex. 20.

> that installation of cross-connection control devices shall not be made a mandatory condition of a transfer of a residential property that exists as of the effective date of this act [June 27, 2007]." *Id.* (emphasis added); Sec. 46-13-22(b).

On June 25, 2010, the General Assembly amended § 46-13-22(b) to provide:

> "The regulations governing cross-connection control plans adopted by the director shall at a minimum include: the installation of cross-connection control valves at all newly constructed service connections prior to the provision of water service; ***the installation of cross-connection control valves at all commercial and industrial service connections***. The installation of cross-connection control devices shall not be made a mandatory condition of a transfer of a residential property that exists as of the effective date of this act [June 27, 2007]." *Id.* (emphasis added); P.L. 2010, ch. 129, § 1.

As enacted by the General Assembly in 2007, § 46-13-22(b) authorizes the director of the DOH to adopt statewide regulations that govern cross-connection control plans that protect the public water distribution and transmission infrastructure system from contamination through cross-connections. *See* § 46-13-22(a). The regulations set forth by the General Assembly provide that cross-connection control plans adopted by the director of DOH are required to contain at a minimum the installation of cross-connection control valves at all non-residential and residential service connections. *See* § 46-13-22. In June of 2010, the General Assembly amended § 46-13-22(b) and removed the requirement that cross-connection control devices be installed at residential service connections, and required at a minimum that cross-connection control valves be installed at all commercial and industrial service connections.

At the time of the Appellant's alleged initial violation in October 2012, adhering to the General Assembly's directive in § 46-13-22(b), DOH promulgated a specific regulation contained in DOH's "Rules and Regulations Pertaining to Public Drinking Water" with § 9.4(a), which requires "[a]ll community and non-transient, non-community public water system," such

as the PWSB, "to comply with the provisions of this subsection and self-certify to the Department of the preparation and implementation of a plan, detailing their cross-connection control program," which shall "requir[e] the installation of backflow preventers at all newly constructed service connections prior to the provision of water service and at all pre-existing residential and non-residential service connections."[4] As required by § 9.4(a) of DOH's "Rules and Regulations Pertaining to Public Drinking Water," the PWSB implemented "Cross-Connection Control Program Rules and Regulations," which were initially adopted in September of 1992 and later revised in July of 2009.[5] The PWSB's "Cross-Connection Control Program" "requires the installation of an approved backflow prevention device at the water meter by the owner at the owner's expense" and further requires that the "[i]nstallation of an approved backflow device is a condition of service with the PWSB." *See* Appellees' Ex. 20 at 4.

IV

Analysis

A

Regulatory Authority

The Appellant concedes the Legislature delegated its authority to PWSB to develop regulations for the installation of backflow prevention devices, but argues the Legislature did not delegate the authority to any state agency, including the PWSB, to determine which category of property was exempt from the requirements of § 46-13-22. This determination, the Appellant argues, is reserved exclusively for the Legislature. In response, PWSB argues that based on the statutory language of § 46-13-22 and the Policies promulgated by the DOH and PWSB, pursuant

[4] *See* Appellees' Ex. 27 at 151.
[5] *See* Appellees' Ex. 20.

to its policy, they are required to mandate the installation of a backflow preventer device on the Property.

Under Rhode Island law,

> "[t]o determine whether a rule is to be classified as legislative or interpretive, one must consider the power assigned to the administrative agency. If a statute expressly delegates power to interpret and define certain legislation to an agency, regulations promulgated pursuant to that power are legislative rules having the force of law. *Batterton v. Francis,* 432 U.S. 416, 97 S.Ct. 2399, 53 L.Ed.2d 448 (1977). If the lawmaking branch has not conferred such authority upon the agency promulgating the rule, the promulgation is interpretive and is not to be considered controlling by the courts." *Lerner v. Gill*, 463 A.2d 1352, 1358 (R.I. 1983) (citations omitted).

"Since the agencies themselves are creations of the legislature, they have no inherent power in and of themselves to promulgate regulations absent specific or implied grants of statutory authority." *State v. Patterson*, No. N3-2002-0325A, 2002 WL 31749398, at *4 (R.I. Super. Nov. 20, 2002) (citing *Berkshire Cablevision of R.I., Inc. v. Burke,* 488 A.2d 676, 679 (R.I. 1985)). When agencies, such as the DOH, promulgate rules and regulations, they do so with authority that is "limited and defined by the statute conferring the power." 2 Am. Jur. 2d *Administrative Law* § 152.

Per § 46-13-22(a), which was amended in June of 2010 and in effect at the time of Appellant's alleged initial violation in October 2012, the director of the DOH is legislatively authorized to "adopt consistent statewide regulations governing the content of cross-connection control plans and to require that all community public water systems and all non-transient, non-community public water systems," such as the PWSB, "prepare a cross-connection control plan." Section 46-13-22(a). In order to properly fulfill the legislative directive found in § 46-13-22(a), the director of the DOH is required to adhere to the legislative directive found in § 46-13-22(b).

Per § 46-13-22(b), which was in effect at the time of Appellant's initial alleged violation in October 2012, "[t]he regulations governing cross-connection control plans adopted by the director [of the DOH] shall at a minimum include: . . . the installation of cross-connections control valves at all commercial and industrial service connections." Sec. 46-13-22(b).

As a result of the minimum regulations provided by the Legislature to the director of the DOH in § 46-13-22, the DOH promulgated regulations titled "Rules and Regulations Pertaining to Public Drinking Water," which was in effect in September 2012—a month prior to the Appellant's violation notice in October 2012. *See* Appellees' Ex. 27. In section 9.4, titled "Cross-Connection Control," the DOH expressed the following standard, in pertinent part:

> "Applicability. . . . All community and non-transient, non-community public water system are required to comply with the provisions of this subsection and self-certify to the Department of the preparation and implementation of a plan, detailing their cross-connection control program. The containment approach shall be used, requiring the installation of backflow preventers at all newly constructed service connections prior to the provision of water service and ***at all pre-existing residential and non-residential service connections***." *Id.* at 151 (emphasis added).

Pursuant to section 9.4(a), the director of the DOH requires "[a]ll community and non-transient, non-community public water system[s]," including the PWSB, to "comply with the provisions of [section 9.4(a)] and self-certify to the Department of the preparation and implementation of a plan, detailing their cross-connection control program." *Id.* In addition, the director of the DOH "requir[es] the installation of backflow preventers at all newly constructed service connections prior to the provision of water service and at all pre-existing residential and non-residential service connections." *Id.*

The director of the DOH has the authority to adopt regulations governing the content of cross-connection control plans and to require all community and non-transient, non-community

public water systems, including the PWSB, to prepare a cross-connection control plan. However, the Court finds, pursuant to § 46-13-22, the Legislature did not delegate its authority to the PWSB, but rather to the director of the DOH, to determine which category of property is exempt from the requirements of § 46-13-22. Section 46-13-22 unmistakably requires that "[t]he director is hereby authorized to adopt consistent statewide regulations . . . ." Section 46-13-22. Under § 46-13-22, included in the director of the DOH's authority, is the legislative requirement for "all community public water systems and all non-transient, non-community public water systems," which include the PWSB, to "prepare a cross-connection control plan." *Id.* By requiring the regulation of a cross-connection control plan, the Legislature does not delegate its authority to the PWSB to determine which category of property is exempt from the requirements of § 46-13-22. Although the Legislature did not specifically delegate its authority to the PWSB to determine which category of property was exempt from the requirements of § 46-13-22, the Court finds the Legislature delegates its powers to the director of the DOH, who has the authority to adopt rules and regulations that require the PWSB to prepare and implement plans that require the installation of a backflow prevention device at "all pre-existing residential and non-residential service connections." Appellees' Ex. 27, § 9.4(a). Therefore, the Court finds it is the director of the DOH, not the PWSB, who has the delegated authority from the Legislature to determine which category of property is exempt from requirements of § 46-13-22.

B

Residential

When an administrative agency interprets a regulatory statute that the General Assembly empowered the agency to enforce, a court reviewing the agency's interpretation of the statute as applied to a particular factual situation must accord that interpretation "weight and deference as

long as that construction is not clearly erroneous or unauthorized." *In re Lallo,* 768 A.2d 921, 926 (R.I. 2001). Furthermore, when the language of the statute is clear and unambiguous, the Court must interpret it literally, giving the words of the statute their plain and ordinary meanings. *Stebbins v. Wells*, 818 A.2d 711, 715 (R.I. 2003). "An agency cannot modify the statutory provisions under which it acquired power, unless such an intent is clearly expressed in the statute." *Little v. Conflict of Interest Comm'n,* 121 R.I. 232, 236, 397 A.2d 884, 886 (1979). However, when "the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized" *In re Lallo,* 768 A.2d at 926. This is true even when other reasonable constructions of the statute are possible. *Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket,* 622 A.2d 452, 456–57 (1993) ("[D]eference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied."); *Labor Ready Ne., Inc. v. McConaghy*, 849 A.2d 340, 344–45 (R.I. 2004).

Here, the Court finds the Division's determination that "Providence Water's treatment of Mr. Verdecchia's property at 421 Pine Street as [a] 'commercial' property is not unreasonable" and has not affected the substantial rights of the Appellant, because the Division's decision is not affected by any error or law. Order at 16. Because the General Assembly did not define the terms "residential" or "commercial" in § 46-13-22, and because these terms are subject to more than one reasonable interpretation, the Court finds the terms "residential" and "commercial" to be ambiguous. Accordingly, "when [a] statute 'is silent or ambiguous' [this Court] must defer to a reasonable construction by the agency charged with its implementation." *Barnhart v. Thomas*,

124 S. Ct. 376, 380 (2003) (quoting *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)). Although the Division could have reasonably interpreted the distinction between the terms "residential" and "commercial" in an alternate manner, the Division chose a reasonable interpretation of these undefined terms, construing each term in accordance to the building and safety codes. *See* Order at 16. Far from being erroneous or unauthorized, the Division's decision adopted one of several extant definitions or interpretations of the undefined terms "residential" and "commercial" and reasonably applied it to the factual situation before the Division. Furthermore, even though a reviewing Justice may disagree with an agency's conclusion because a reviewing Justice would prefer a narrower definition of the undefined statutory terms "residential" and "commercial" than the one the Division chose to apply, the Justice is not free to reverse that administrative decision because it was not clearly erroneous or unauthorized. *Labor Ready Ne., Inc.*, 849 A.2d at 346. Therefore, the Division's classification of the Property as a commercial property was not clearly erroneous in view of the reliable, probative, and substantive evidence on the whole record.

C

Illegal Tax

Appellant contends that the action by the PWSB constitutes an illegal tax and a violation of the Equal Protection Clause under both the Rhode Island and the Federal Constitution. A tax is defined as "[a] charge, us[ually] monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue . . ." *Inland Am. Retail Mgmt., LLC. v. Cinemaworld of Fla., Inc.*, 68 A.3d 457, 463 (R.I. 2013). The installation of a backflow preventer is not a monetary charge, nor is it intended to yield public revenue, as the definition of a tax may suggest. Here, the backflow preventer is required based on the parameters laid out in

§ 46-13-22 pursuant to § 9.4(a) of the "Rules and Regulations Pertaining to Public Drinking Water" as a safety precaution. Therefore, the Court finds the Division's classification of the mandate of the device for the Property was not clearly erroneous in view of the reliable, probative, and substantive evidence on the whole record.

D

Equal Protection

Appellant further contends that the PWSB violated equal protection standards, and there is no rational basis to impose the requirement of a cross-connection control device because the requirement singles out a small percentage of rate payers to bear the cost of the backflow prevention device. In *R.I. Depositors Econ. Prot. Corp., et al v. Brown*, the Court stated "[w]hen deciding if a statute complies with equal protection standards, we must examine both the nature of the classification established by the act and the individual rights that may be violated by the act." 659 A.2d 95, 100 (R.I. 1995); *Boucher v. Sayeed*, 459 A.2d 87, 91 (R.I. 1983). Pure economic legislation that does not disadvantage a suspect class or impinge upon a fundamental right passes constitutional muster if a rational basis exists for it. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

Here, the installation of a cross-connection control device is considered pure "economic legislation." *Cleburne Living Center, Inc.* 473 U.S. at 440 (finding "[w]hen social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude . . . and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes"). Therefore, in this instance, the Appellees have the burden of demonstrating that there is a rational basis for subjecting a specific group of property owners to its requirements to install a cross-connection control device. The Appellees provide that the

installation of a cross-connection control device is a reasonable public utility requirement authorized by law to safeguard Providence Water's distribution system and to prevent contamination within the water system. Although the equal protection doctrine is reserved for protecting individual citizens from state agencies, the PWSB is reasonably connected to the state agency because it serves as a public utility. *Hoffman v. City of Warwick*, 909 F.2d 608, 621-22 (1st Cir. 1990) (finding "[w]here a statutory scheme adopts a classification that neither burdens a suspect class nor impinges on a fundamental right, the classification will withstand an Equal Protection challenge if it is rationally related to a legitimate state purpose"). Therefore, the Court finds the Division's Order No. 21401 was not in violation of any constitutional or statutory provision.

V

Conclusion

After a review of the entire record, this Court concludes Division Order No. 21401 did not prejudice substantial rights of the Appellant due to its findings that it was not in excess of the statutory authority of the agency, not in violation of constitutional provisions, and not erroneous in view of the reliable, probative, and substantial evidence on the entire record. Therefore, as the record contains competent evidence in support of the Appellees' conclusions, this Court affirms Division Order No. 21401 and denies and dismisses Appellant's administrative appeal. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**421 Pine Street Realty, LLC. v. Providence Water Supply Board and the Rhode Island Public Utilities Commission**
CASE NO:	**PC-2014-3571**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**May 3, 2018**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**John M. Verdecchia, Esq.**
For Defendant:	**Leo J. Wold, Esq.** **Michael R. McElroy, Esq.** **Leah J. Donaldson, Esq.**