Case No. 90545-2

SUPREME COURT
OF THE STATE OF WASHINGTON

PUBLIC HOSPITAL DISTRICT NO. 1 OF KING COUNTY,

Appellant,

vs.

UNIVERSITY OF WASHINGTON AND UW MEDICINE,

Respondents.

ANSWER OF RESPONDENTS UNIVERSITY OF WASHINGTON AND UW MEDICINE TO *AMICI CURIAE*

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I. INTRODUCTION

The District properly exercised its powers when it decided to enter the Alliance with the University of Washington. The amicus brief does not raise any new issues. The questions for the Court are the same: (1) Was the District authorized by statute to enter the Alliance with the University? (2) Could the District commit to the Alliance through a long-term, binding contract? The answers to both questions are unquestionably yes, as both the trial court and unanimous Court of Appeals panel found. Review is unwarranted under RAP 13.4(b), and the Court should deny the District's Petition for Review.

II. DISCUSSION

A. The Alliance is Authorized by Statute.

Amici curiae acknowledge that municipal corporations derive their powers from the legislature, but also contend municipal corporations "are created by and derive their authority from the people, the voters of their districts." Memorandum of Amici Curiae ("Amicus Br.") at 3. It is true voters can choose to create a hospital district by following the procedures set out in the public hospital district statute. *E.g.*, RCW 70.44.040. But when voters choose to establish a hospital district, they do so under the statutory framework authorizing and governing hospital districts. Thus, voters may establish a hospital

district, but, once one is created, the *legislature* has already decided, as a general matter, what that district can and cannot do. *E.g.*, RCW 70.44.060 (outlining the powers of a hospital district). This is a well-settled legal principle. Municipal corporations are "creatures of the state" and "derive their authority and powers from the state's legislative body." *Skagit Cnty. Pub. Hosp. Dist. No. 1 v. Dep't of Revenue*, 158 Wn. App. 426, 445, 242 P.3d 909 (2010).

Accordingly, when voters establish a public hospital district, the district they create can exercise the powers authorized by the legislature by statute. Those powers include authority to construct and operate a hospital, issue bonds, hire physicians and other employees, and levy taxes up to a cap imposed by the legislature. RCW 70.44.060. Those powers also include authority to "enter into ***any contract*** with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out ***any of the powers***" conferred by statute on the hospital districts. [1] RCW 70.44.060(7) (emphasis added). As the Court of Appeals correctly held, "The plain language of this provision authorizes the district to

[1] This biennium, five of the amici curiae sponsored a bill, Senate Bill 6425, which would have amended a portion of the Public Hospital Districts statute to forbid the "delegat[ion]" of certain specified "authority granted" to hospital districts by the statute. That bill did not pass out of the state Senate.

contract with the university, a state entity, to carry out any of the district's powers." *Pub. Hosp. Dist. No. 1 of King Cnty. v. Univ. of Wash.*, --- Wn. App. ---, 327 P.3d 1281, 1284 (2014). The District thus did not disenfranchise voters, as amici curiae suggest, by entering the Alliance. To the contrary, the District exercised, on behalf of the District's voters, one of the powers the legislature chose to give it.

The Alliance is thus authorized by statute,[2] and this Court has consistently evaluated a municipal corporation's actions according to the statutory authority given to that municipal corporation by the legislature. *E.g.*, *Chem. Bank v. Wash. Pub. Power Supply Sys.*, 99 Wn.2d 772, 666 P.2d 329 (1983) (agreement invalid for failure to comply with statutory requirements); *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. Taxpayers & Ratepayers of Snohomish Cnty.*, 78 Wn.2d 724, 479 P.2d 61 (1971) (the actions challenged were permissible because "contemplated by the legislature"); *Roehl v. Pub. Util. Dist. No. 1 of Chelan Cnty.*, 43 Wn.2d 214, 261 P.2d 92 (1953) (upholding joint operating board because "clearly within the contemplation of the enabling legislation"); *State ex rel. Schlarb v. Smith*, 19 Wn.2d 109, 141 P.2d 651 (1943) (finding statutory authority for binding contract

[2] Not only is the Alliance authorized by RCW 70.44.060(7), but, as described in the University's Answer to Petition for Review at 10-12, the Alliance is also authorized by another provision of the Public Hospital Districts statute, RCW 70.44.240, and by the Interlocal Cooperation Act, RCW 39.34.030.

between two counties). This was the analysis undertaken by the trial court and Court of Appeals here, and both found that the relevant statutes authorized the Alliance between the District and the University.[3]

Although only this Alliance is at issue, amici curiae claim this case will affect other public entities across the state. *E.g.*, Amicus Br. at 4-5. It will not. This case does not involve school districts, utilities, or other governmental entities. Those entities have their own authorizing legislation that is subject, like the relevant statutes here, to the legislature's control. In this case, the District approached the University, another public entity, about entering a contract, conducted a thorough public process that showed overwhelming public support, and decided to exercise its power by entering a 15-year contract. *See* Answer to Pet. for Review at 4-6 (citing to clerk's papers). The District was thoroughly advised of the legal ramifications, and acknowledged it had the legal

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[3] Amici curiae claim, in a footnote, that "[t]here is a genuine question whether the Strategic Alliance Agreement violates article VIII, section 7 of the Washington Constitution as a gift of the District's property or loan of its credit." Amicus Br. at 4 n.1. This issue has not been raised by any party, and is not before the Court. This case involves no constitutional issues. Regardless, this new claim has no merit. Amici curie suggest that "it is not clear from the record that the persons gaining control of the District—the trustees appointed from U.W. Medicine—are exempt from article VIII, section 7's prohibition" because they do not "make up a public entity." *Id.* This is incorrect. The Strategic Alliance Agreement is a contract between the District and the University of Washington. The University of Washington is undoubtedly a public entity with a public purpose, and would be exempt from any prohibition associated with article VIII, section 7. *Anderson v. O'Brien*, 84 Wn.2d 64, 66-67, 524 P.2d 390 (1974) (public entities exempt from constitution's prohibitions on gifts or loans of public resources). Moreover, the District, which participates directly in the Alliance, has not made a "gift" or a "loan" to a third party that would otherwise be prohibited.

authority to enter the contract. CP 74-75 (Strategic Alliance Agreement § 8.1(a)); *see* Answer to Pet. for Review at 4-8 (citing to clerk's papers). The contract was carefully drafted to ensure the District and the University appropriately share responsibility for the new Alliance, and that the District retains key powers.[4] *See* Answer to Pet. for Review at 4-8 (citing to clerk's papers). Both the trial court and Court of Appeals found the contract was authorized by statute and that the commissioners lawfully entered it for the benefit of the District. Additional review is unwarranted.

B. Municipal Corporations Can Enter Long-Term Contracts.

Amici curiae also object to the Alliance because the District's commissioners agreed to share control over the Alliance with other board members who are not elected by the District's voters. "In a representative government," amici curiae argue, "elections are the people's opportunity to participate by choosing their representatives." Amicus Br. at 4. However, the elected representatives may then exercise the powers the voters elected them to wield. In the case of a public

[4] In upholding the Alliance, the Court of Appeals also noted that the District retains many of the powers (including taxing authority, bonding authority, and the power to incur indebtedness) the District and amici curiae allege the District has delegated: "Additionally, despite the district's arguments to the contrary, we note that the express terms of the Strategic Alliance Agreement provide that the district retains powers that it now argues have been delegated." *Pub. Hosp. Dist. No. 1 of King Cnty.*, 327 P.3d at 1285-86.

hospital district, those powers are described by the legislature, which controls the powers of a municipal corporation.

Among a hospital district's powers is the power, described above, to "enter into ***any contract***" with a state agency "for carrying out ***any of the powers***" conferred by statute on the hospital districts. RCW 70.44.060(7) (emphasis added). The District's commissioners exercised that power when entering the Alliance. And like other entities, municipal corporations, including public hospital districts, are held to the contracts they sign. This is true even when a municipal corporation has committed to use its taxing power in support of a common undertaking that will last years into the future. *E.g.*, *Schlarb*, 19 Wn.2d at 111-13 (requiring King County to exercise its taxing power to support 25-year contract it signed with Pierce County). It is also true when voters themselves change their minds about a policy underlying a contract already entered by a municipal corporation. *Pierce Cnty. v. State*, 159 Wn.2d 16, 43-44, 51-52, 148 P.3d 1002 (2006) (upholding appointed board and striking down ballot initiative that would have interfered with contractual promise made by Sound Transit, a municipal corporation).

Cases cited in the amicus brief also show that courts hold government entities to the contracts they enter, even when those

contracts require future elected officials to abide by the contracts. *E.g.*, *Municipality of Metro. Seattle v. Div. 587, Amalgamated Transit Union*, 118 Wn.2d 639, 826 P.2d 167 (1992) (upholding arbitration provision in union contract despite municipal entity's argument that it lacked authority to bind future elected boards to arbitration); *Gruen v. Tax Comm'n*, 35 Wn.2d 1, 54, 211 P.2d 651 (1949) ("That contracts, when entered into by a state, cannot be changed by legislative enactment is fundamental . . . . If the people's representatives deem it in the public interest they may adopt a policy of contracting in respect to public business for a term longer than the life of the current session of the Legislature."), *overruled in part by State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 663, 384 P.2d 833 (1963).

Indeed, municipal entities would be severely limited in their authority without the power to contract. Consider the impracticality of a municipal entity embarking on any major public infrastructure project, for example, without the ability to enter into long-term contracts. *See Pierce Cnty.*, 159 Wn.2d at 52 ("If we accepted the intervenors' invitation to fundamentally alter our contracts clause jurisprudence, we would imperil the ability of state and local governments to finance essential public works projects such as elementary schools, fire stations, highways, and bridges, by casting considerable doubt on the reliability of

pledged funding sources."). Therefore, "[a] municipal corporation authorized to do an act has, in respect to it, the power to make all contracts that natural persons could make." 10 Eugene McQuillin, *The Law of Municipal Corporations* § 29.8 (3d ed. 2009); *see also, e.g.*, *Tyrpak v. Daniels*, 124 Wn.2d 146, 157, 874 P.2d 1374 (1994) (invalidating legislation that interfered with contract between Port of Vancouver and bondholders); *Swinomish Indian Tribal Cmty. v. Skagit Cnty.*, 138 Wn. App. 771, 779-80, 158 P.3d 1179 (2007) (approving contract between tribe, Skagit County, and other parties, requiring those parties to take actions to manage water flows in Skagit basin, and citing statutory authority for the agreement, including the Interlocal Cooperation Act); *Concerned Citizens of Hosp. Dist. No. 304 v. Bd. of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App. 333, 340-48, 897 P.2d 1267 (1995) (approving establishment and actions of new entity and joint operating board created to administer hospitals in two public hospital districts).

The decision made by the District's commissioners to enter the Alliance thus does not, as amici curiae argue, "reduce the District commissioners to silent butlers." Amicus Br. at 8. They are active participants in an Alliance they sought out, negotiated, and chose to

enter—for the benefit of the District—in accordance with their statutory authority.

Nor does it matter that the District's commissioners do not hold a majority of seats on the joint board. Amici curiae equate lack of a majority with lack of a voice, but they are not the same. The statutes authorizing the Alliance allow for minority representation on a joint board.[5] RCW 70.44.240 ("The governing body of [any new] legal entity . . . *shall* include representatives of the public hospital district, which representatives *may* include members of the public hospital district's board of commissioners." (Emphasis added.)); RCW 39.34.030(4)(a) (Interlocal Cooperation Act requires only that public agencies in joint agreements "be represented" on any joint board). If the legislature had wanted to require greater representation, it could have done so.[6]

In addition, if every public entity were required to have majority control over any new collaborative enterprise, two public entities could

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[5] Because joint boards are not required to include commissioners, the amici curiae's complaint that commissioners can be removed from the joint board is inconsequential. Amicus Br. at 8. Commissioners can be removed from the Board of Trustees only for cause, and if removed a replacement is selected by the remaining commissioner trustees. CP 49-50 (Agreement § 3.7(b)). More importantly, the community is represented by ten people on the thirteen member board, which more than satisfies the statutory requirement that a public hospital district have "representatives" on a joint board. RCW 70.44.240.

[6] In fact, the legislature has acted to require *less* representation. Before 2004, the Public Hospital District's statute did require representation by public hospital district commissioners—but not majority representation—on any joint governing boards. In Senate Bill 6485, which passed the state House and Senate unanimously in 2004, the legislature specifically removed that requirement.

never engage in an alliance similar to the one at issue. Two public entities cannot both have majority control over the board. A legal rule prohibiting such collaborations between public entities would unquestionably frustrate the legislature's purpose in authorizing joint action in the Public Hospital Districts statute and the Interlocal Cooperation Act.

III. CONCLUSION

Amici curiae ask the Court to grant review to determine whether the Alliance was properly entered "without giving the public any say in the decision." Amicus Br. at 10. In fact, the public has had its say, and further review is not warranted here. The Alliance is an example of democracy working the way it should. The legislature authorized the creation of public hospital districts and described their powers. The voters established the District and elected commissioners to carry out the District's legislatively granted powers. The commissioners then entered the Alliance pursuant to those statutory powers. The public was well represented by the commissioners, and by the legislators who authorize and control the powers of public hospital districts. No democratic crisis exists. The trial court and Court of Appeals upheld the Alliance as a proper exercise of statutory authority, and additional review is not necessary or appropriate under RAP 13.4(b).

RESPECTFULLY SUBMITTED this 13th day of October, 2014.

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CERTIFICATE OF SERVICE

On the date indicated below, I hereby certify that I caused to be served upon all counsel of record, via email and U.S. Mail, a true and correct copy of the foregoing document.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of October, 2014, at Seattle, Washington.

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RE: Public Hospital District No. 1 v. University of Washington, Supreme Court Case No. 90545-2

Attached is a copy of the Answer of Respondents University of Washington and UW Medicine to Amici Curiae, with Certificate of Service.

The person submitting this brief is Mary Crego Peterson, Telephone: (206) 623-1745, WSBA No. 31593, e-mail address: mary.peterson@hcmp.com.

This brief is being served on all counsel of record by email and U.S. mail.

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