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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 78516-8-I
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND
SEWER DISTRICT, a Washington municipal corporation; and
TOWN OF WOODWAY, a Washington municipal corporation,

Respondent (Defendant-Appellants),

v.

RONALD WASTEWATER DISTRICT, a Washington municipal corporation,

Petitioner (Plaintiff-Respondent),

KING COUNTY, a Washington municipal corporation;

Petitioner (Defendant-Respondent),

and

SNOHOMISH COUNTY, a Washington municipal corporation;
CITY OF SHORELINE, a Washington municipal corporation,

Defendants.

KING COUNTY'S PETITION FOR REVIEW

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I. INTRODUCTION & IDENTITY OF PETITIONER

More than thirty years ago the King County Superior Court entered an order approving a sewer system transfer from King County to the Ronald Wastewater District (the "1985 Transfer Order") in accordance with RCW 36.94.440. The 1985 Transfer Order annexed the area served by the sewer system to the Ronald Wastewater District ("Ronald") in accordance with RCW 36.94.410 and RCW 36.94.420, which authorized the transfer and annexation proceedings. The annexed "area served" included territory within King County and territory in southwest Snohomish County (the "Point Wells Service Area"). Ronald has been the sole provider of sewer collection services to the Point Wells Service Area ever since the effective date of that transfer. More than three decades after the 1985 Transfer Order was entered, Snohomish County, Olympic View Water & Sewer District ("Olympic View") and the Town of Woodway ("Woodway") sought to collaterally attack and overturn the 1985 Transfer Order. Despite the significant passage of time and the plain language of the statute authorizing the superior court to accomplish the sewer system transfer and annexation, the Court of Appeals found that the King County Superior Court lacked subject matter jurisdiction to approve an annexation by Ronald of any territory within the Point Wells Service Area and thus declared the 1985 Transfer Order void. That was error. The Court of

Appeals misapplied settled law regarding what constitutes subject matter jurisdiction in voiding a thirty-plus year old superior court order upon which King County and Ronald have justifiably relied. This appeal presents issues "of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4).

Moreover, review is appropriate under RAP 13.4(b)(1) because the Court of Appeals' decision conflicts with this Court's decisions regarding subject matter jurisdiction.

Because the Court of Appeals' decision satisfies the standards of RAP 13.4(b)(1) and (4), this Court should grant King County's Petition for Review and ultimately reverse the Court of Appeals' decision.

II. COURT OF APPEALS DECISION

King County seeks review of the Court of Appeals unpublished decision filed on July 1, 2019, attached as Appendix A, reversing the Superior Court order and granting, in part, Woodway's motion for summary judgment (the "Opinion"). The July 31, 2019 Orders Denying Ronald's and the City of Shoreline's Motions for Reconsideration are attached as Appendix B.

III. ISSUES PRESENTED FOR REVIEW

Woodway, Olympic View and Snohomish County failed to challenge the 1985 Transfer Order within 30 days after its issuance,

instead waiting over three decades to challenge the order. Did the Court of Appeals err by holding that the superior court lacked subject matter jurisdiction to issue the 1985 Transfer Order?

IV. STATEMENT OF THE CASE

A. HISTORY OF SEWER SERVICE TO THE POINT WELLS SERVICE AREA.

The Richmond Beach Sewer System was built in 1939 and 1940, and King County Sewer District No. 3 (KCSD #3) was formed at the same time to operate the system. In 1945, King County assumed responsibility for the sewer system, administering it as KCSD #3 and delegating authority for its operation to the King County Department of Public Works. CP 802, 817-32.

In 1970 and 1971, KCSD #3, entered into an agreement with Standard Oil Company of California (which later became Chevron USA Inc.) to provide sewer service to the Point Wells Service Area in Snohomish County. CP 900-14.

The elected officials of Olympic View never objected to KCSD #3's provision of sewer service. Rather they consented to KCSD #3's provision of services to the Point Wells Service Area, confirming in a 1971 letter that "[t]he Commissioners of the Olympic View Water District have no objections to permitting the Department of

Public Works, King County, to serve the lift station located approximately 180 feet north of the King County line on Richmond Beach Drive, within our service area." CP 909-12. KCSD #3 continued to provide sewer service to the Point Wells Service Area through the mid-1980s.

In 1983, King County entered into negotiations with various municipalities, including Ronald, in order to transfer King County-operated sewer systems to other municipalities. CP 933-90, 996-1008, 1033-45. In 1984, the Legislature enacted RCW 36.94.410 through 36.94.440[1] which provided an expedited process for transferring sewer systems by counties to sewer districts and annexing territory to sewer districts, without a public vote or review by a boundary review board (BRB).

In preparation for the transfer of the Richmond Beach Sewer System to Ronald, King County and Ronald formally adopted sewer plans recognizing that KCSD #3 provided sewer service in Snohomish County to "a Chevron Petroleum plant on Point Wells just north of the King-Snohomish border." CP 915-32, 1014-18, 1048-50, 1051-52.

[1] Attached for the Court's convenience as part of Appendix C.

A two-step process occurred to transfer the Richmond Beach Sewer System to Ronald, as authorized by RCW 36.94.410 through 36.94.440.

In June 1984, KCSD #3 and King County initiated the first step in the transfer process by filing a petition with the King County Superior Court seeking approval of the proposed district-to-county transfer pursuant to RCW 36.94.340. CP 1112-48. In July 1984, the Superior Court held a hearing and issued an order approving the transfer of the Richmond Beach Sewer System from KCSD #3 to King County.

In 1985, King County and Ronald then initiated the second step in the transfer process when they approved an agreement setting forth the terms and conditions for the transfer of the Richmond Beach Sewer System from King County to Ronald (the "1985 Transfer Agreement"). CP 1090-1111. Pursuant to the express statutory authority provided in RCW 36.94.420, enacted in 1984, the 1985 Transfer Agreement stated that "the area served by the System shall be deemed annexed to and part of the District" upon completion of the transfer. CP 95.

King County and Ronald filed a petition seeking approval of the proposed transfer pursuant to RCW 36.94.410 through 36.94.440. CP 1088-1111. The Superior Court issued an order setting a hearing and notice of the hearing was published. CP 1086-87. At the conclusion of the

hearing, the court issued the 1985 Transfer Order. CP 1082-83. The order stated that the transfer of the Richmond Beach Sewer System "is to be accomplished in accordance with" the 1985 Transfer Agreement "effective as of January 1, 1986"; and that "the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer."

In 1986, a representative of the King County Records and Election Division sent a letter to Snohomish County's Superintendent of Elections stating that the transfer of the Richmond Beach Sewer System had "extended the boundaries of Ronald Sewer District *into Snohomish County*." CP 1155-56.

For thirty years, Ronald operated, maintained and expended funds to improve its infrastructure in the Point Wells Service Area and passed a resolution, without objection, reaffirming that Ronald's corporate boundary included the Point Wells Service Area in Snohomish County. CP 1321-22, 1626-36. Indeed, in 2007, Olympic View adopted a similar sewer plan amendment recognizing the entire Point Wells Service Area as "served by Ronald Wastewater District." CP 1448. Snohomish County formally approved Ronald's and Olympic View's 2007 comprehensive sewer plans pursuant to RCW 57.16.010. CP 1465-68, 1917-30.

In 2010, Ronald approved its 2010 sewer plan, designating the Point Wells Service Area as part of Ronald's sewer service area, and updating Ronald's plans to make service available to future development in the service area. CP 842-83. The Snohomish County Council likewise approved Ronald's 2010 sewer plan, adopting findings stating that the 2010 Ronald Plan was consistent with the Snohomish County Comprehensive Plan and Snohomish County incorporated Ronald's 2010 plan (along with Olympic View's 2007 plan) into the Snohomish County land use plan required by the Growth Management Act. CP 5926-28. The Court of Appeals failed to acknowledge or address the fact that Ronald, Olympic View and Snohomish County all took actions recognizing Ronald's provision of sewer services to the Point Wells Service Area.

In addition, King County has provided sewage treatment and disposal services to the Point Wells Service Area and has made plans for significant capital improvements for service to the Point Wells Service Area.

B. PROCEDURAL HISTORY.

In 2015, Olympic View abruptly announced that it was proposing an amendment to its sewer plan under which Olympic View would begin to provide sewer service within the Point Wells Service Area (the "Olympic View Amendment"). CP 1494-1538. The Snohomish County

Council approved the Olympic View Amendment (CP 1540-41), prompting Ronald to file the superior court action. Ronald also filed a petition for review with the Central Puget Sound Growth Management Hearings Board (GMHB), in which King County intervened, arguing that Snohomish County's approval of the Olympic View Amendment was inconsistent with Snohomish County's existing plans, which recognized Ronald as the sewer provider to the Point Wells Service Area. The GMHB agreed and issued an order ruling that Snohomish County's action was a "de facto" GMA amendment that created an "internal inconsistency between Ronald's and Olympic View's sewer plans. CP 1542-78.

Ronald and Olympic View, Woodway and Snohomish County (the "Snohomish County Parties") then filed cross-motions for summary judgment leading to the 2017 summary judgment order at issue in the appeal.

The trial court ruled that (1) the 1985 Transfer Order was done pursuant to statutory authority, (2) the 1985 Transfer Order lawfully transferred the Richmond Beach Sewer System to Ronald and annexed the Point Wells service area to Ronald's corporate boundary, (3) the 1985 Transfer Order was a final judgment "in rem" and was binding on all

parties, and (4) RCW 57.02.001 validated and ratified Ronald's annexation of the Point Wells service area.[2]

The Court of Appeals reversed. It concluded that the superior court's 1985 Transfer Order was void because the court lacked subject matter jurisdiction to grant an annexation by Ronald of territory within the municipal corporate boundaries of Olympic View.

Ronald and the City of Shoreline filed timely motions for reconsideration which the Court of Appeals denied. King County now petitions this Court for review.

V. ARGUMENT

A. REVIEW IS WARRANTED BECAUSE ALLOWING THE UNTIMELY CHALLENGE TO THE 1985 TRANSFER ORDER IS CONTRARY TO THIS COURT'S PRECEDENT.

1. The 1985 Transfer Order Was A Final Judgment Conclusively Binding On The Whole World.

The 1985 Transfer Order is a product of the statutory framework surrounding boundary changes to sewer districts. As recognized by the Court of Appeals, the legislature has plenary authority over such boundary changes. Opinion at 29. The legislature thus had wide discretion to create and modify the processes by which territory may be annexed to sewer

[2] Olympic View and the Town of Woodway sought direct review by this Court which Ronald, the City of Shoreline and King County opposed as the issues presented did not raise "urgent issues of broad public import."

district boundaries. In this case, the legislature chose to create an "in rem" like process under which the Superior Court had authority to issue annexation orders that are binding on the "whole world," as are "in rem" judgments. The Snohomish County Parties have alleged that certain notice requirements associated with "in rem" judgments were not met here, but those requirements are not applicable here. The only process that was due was the process the legislature chose to provide.

2. The 1985 Transfer Order Was Not "Void Ab Initio."

Subject matter jurisdiction is the fundamental authority of the court to hear and determine the class of actions to which the case belongs. In this case, the legislature gave superior courts the explicit authority to consider and enter orders for petitions to transfer and annex sewer systems from a county to a sewer district. While the Court of Appeals believed that the King County Superior Court's statutory interpretation of the term "area served" was in error and that the Superior Court lacked authority to approve annexation of Point Wells, the Court of Appeals failed to recognize the distinction between the binding effect of an erroneous decision that exceeds the Court's authority and one that must be declared void ab initio for lack of subject matter jurisdiction.

An order or ruling is not void just because a party or court believes it to be erroneously made or an erroneous interpretation of the law. *Marley*

v. Dept. of Labor & Industries, 125 Wn.2d 533, 541-43, 886 P.2d 189 (1994) (quoting *Dike v. Dike*, 75 Wn.2d 1, 8, 448 P.2d 490 (1968)) (stating the court should not transform mistakes in statutory construction or errors of law into jurisdictional flaws and "[t]he power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that is correct"); *Mead School District No. 354 v. Mead Education Ass'n*, 85 Wn.2d 278, 280, 534 P.2d 561 (1975); *see also Doe v. Fife Mun. Court*, 74 Wn. App. 444, 874 P.2d 182 (1994) (holding erroneous judgments – as opposed to void judgments - are not subject to collateral attack). As this Court explained in *Marley*:

> The term "subject matter jurisdiction" is often confused with a court's "authority" to rule in a particular manner. This has led to improvident and inconsistent use of the term . . . Courts do not lose subject matter jurisdiction merely by interpreting the law erroneously. If the phrase is to maintain its rightfully sweeping definition, it must not be reduced to signifying that a court has acted without error . . .

Marley, 125 Wn.2d at 539 (quoting *In re Marriage of Major*, 71 Wn. App. 531, 534-35, 859 P.2d 1262 (1993)).

As this Court has further explained in *Marley,* a court lacks subject matter jurisdiction only when "it attempts to decide a type of controversy over which it has no authority to adjudicate . . . [T]he focus must be on the words 'type of controversy.' If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something

other than subject matter jurisdiction." *Marley,* 125 Wn.2d at 539 (quoting Robert J. Martineau, *Subject Matter Jurisdiction as a New Issue on Appeal: Reining in an Unruly Horse*, 1988 B.Y.U.L. Rev. 1, 28). More specifically, "[a] court or agency does not lack subject matter jurisdiction solely because it may lack authority to enter a given order." *Id.* at 539.

Courts in other cases have similarly warned against confusing a court's subject matter jurisdiction with its authority to rule in a particular way:

> "Such imprecise use of the term "subject matter jurisdiction" should be avoided because to misclassify an issue as "jurisdictional" transforms it into one that may be raised belatedly and opens the way to making judgments vulnerable to delayed attack . . . Treating subject matter jurisdiction as though it were a fleeting and fragile attribute of a court diminishes the authority of the court, creates a trap for the unwary, and prevents worthy cases from being heard on the merits even when the procedural violation has not prejudiced the opposing party."

Housing Authority of City of Seattle v. Bin, 163 Wn. App. 367, 376, 260 P.3d 900, 904-05 (2011) (quoting *Sprint Spectrum, LP v. Dep't of Revenue*, 156 Wn. App. 949, 965, 235 P.3d 849 (2010)).

Even assuming that the superior court lacked the specific *statutory authority* to approve a transfer of the Richmond Beach Sewer System to Ronald and/or the annexation of the Point Wells Service Area to Ronald's corporate boundary, the Court did not lack general *subject matter*

jurisdiction over the proceedings that led to the 1985 Transfer Order. "Subject matter jurisdiction is a particular type of jurisdiction, and it critically turns on the 'type of controversy.'" *ZDI Gaming Inc. v. State ex rel. Washington State Gambling Comm'n*, 173 Wn.2d 608, 617, 268 P.3d 929, 933 (2012).

3. All Jurisdictional Prerequisites To The 1985 Transfer Order Were Met.

In this case, subject matter jurisdiction was conferred by the legislature. RCW 36.94.410 states that a county can transfer a sewer system to a special purpose district following the process set forth in 36.94.310 through 36.94.340[3]. In RCW 36.94.340, the transfer "proceedings may be initiated in the superior court for that county by filing of a petition." The plain language of this provision does not limit the "type of controversy" the superior court can hear.

To conclude that RCW 36.94's use of "area served" actually limited the King County Superior Court to entering a ruling as to territory located solely within the bounds of King County is contrary to the plain meaning of "area served." Moreover, it is contrary to the Legislature's directive that RCW 36.94 be liberally construed. RCW 36.94.910.

[3] Attached for the Court's convenience as part of Appendix C.

Additionally, the Court of Appeals' conclusion that the King County Superior Court incorrectly interpreted the meaning of "area served" is a question of the Superior Court's authority, not a prerequisite to subject matter jurisdiction. As such, any error in the superior court's interpretation of the meaning of "area served" did not divest the King County Superior Court of jurisdiction to enter orders regarding petitions to transfer and annex sewer system territory between a county and a sewer district.

In this case, the Legislature authorized parties to initiate county-to-district sewer system transfer and annexation proceedings by filing a petition and requesting judicial approval, providing a parallel to the process provided for district-to-county transfers in RCW 36.94.310 through 36.94.340. The phrases "approved by the superior court for such county" (in RCW 36.94.310) and "in the superior court for that county" (in RCW 36.94.340) go to venue, not jurisdiction. *Shoop v. Kittitas County*, 149 Wn.2d 29, 35, 65 P.3d 1194, 1196 (2003) (holding statute stating that "[a]ll actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest counties" goes to venue, not subject matter jurisdiction).

The language in RCW 36.94.410 authorizing transfers of sewer systems from counties to districts "in the same manner as is provided for

the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340," is procedural, not jurisdictional. *See Conom*, 155 Wn.2d at 162 ("[W]e will not elevate this procedural requirement, even though it is a statutory procedural requirement, to a jurisdictional threshold requirement.").

RCW 36.94.410 through RCW 36.94.440 and RCW 36.94.310 through 36.94.340, do not contain the type of legislative directive that courts have found rise to the level of a jurisdictional prerequisite. When interpreting a statutory grant of subject matter jurisdiction, courts look for unequivocal legislative language demonstrating "jurisdictional intent." *Weyerhaeuser Co. v. Bradshaw*, 82 Wn. App. 277, 283, 918 P.2d 933, 936 (1996). Compare, for example, cases involving the mandate for timely filing and service under the Land Use Petition Act (LUPA), Chapter 36.70C RCW. The Supreme Court has held that LUPA's requirement to timely file and serve a land use petition is jurisdictional because the statutory language includes the following express jurisdictional directive: "A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served." *Conom v. Snohomish County*, 155 Wn.2d 154, 158, 118 P.3d 344, 346 (2005).

To the extent that the superior court's jurisdiction in the 1985 transfer and annexation proceedings was limited or obtained by virtue of

language in Chapter 36.94, rather than being derived wholly from the Constitution, the only jurisdictional requirement would have been the filing of a petition with the superior court as provided in RCW 36.94.440. That step is analogous to the filing of a notice of intention with a Boundary Review Board (BRB). In *Leer v. Whatcom County Boundary Review Board*, 91 Wn. App. 117, 957 P.2d 251 (1998), the Court held that the BRB's jurisdiction "arises from the filing of a notice of intention under RCW 36.93.090," and that once a notice of intention was filed, "no further action was required for the Board to obtain jurisdiction over the matter." *Id*. at 120, 122.

Assuming this general reference in *Leer* to "jurisdiction" extends to questions about the scope of the court's *subject matter jurisdiction* in particular, it is undisputed that Ronald and King County filed the petition for court approval of the transfer in accordance with the statutory language of RCW 36.94.340, which is the only language in Chapter 36.94 RCW that a court could conceivably find to be "jurisdictional." As in *Leer*, once the petition was filed, "no further action was required for the [Court] to obtain jurisdiction over the matter." In short, the 1985 Transfer Order fell squarely within the superior court's subject matter jurisdiction and its subject matter jurisdiction was not limited by any jurisdictional language in RCW 36.94.410 through 36.94.440.

The Court of Appeals' conclusion that the 1985 Transfer Order is void "<u>to the extent</u> that the Transfer Order purports to authorize the Ronald Wastewater District's annexation of the area within Snohomish County and Olympic" demonstrates that the Court of Appeals is conflating legal error in statutory interpretation with lack of subject matter jurisdiction. Opinion at 31 (emphasis added). As described above, the Court of Appeals' conclusion that the King County Superior Court erred in its interpretation and application of RCW 36.94.440 to include the area being served by the Richmond Beach Sewer System in Snohomish County did not abrogate the Superior Court's subject matter jurisdiction to determine, correctly or incorrectly the "area served" in the 1985 Transfer Order.

B. REVIEW IS WARRANTED BECAUSE THIS CASE INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

As the court stated in *Sprint Spectrum, LP v. Dep't of Revenue, 156 Wn. App. 949, 966, 235 P.3d 849 (2010)*: "It must always be a matter of institutional concern to the courts when the casual and imprecise use of the term 'subject matter jurisdiction' leads to an increase in the number of decisions that are subject to attack indefinitely."

Courts in Washington State and other states have long recognized the importance of the finality of decisions, with early Washington

decisions holding that a challenge to an annexation proceeding "can be done only in a direct proceeding," and that an annexation "cannot be questioned in a collateral proceeding." *Kuhn v. City of Port Townsend*, 12 Wash. 605, 611-13, 41 P. 923, 925 (1895); *Frace v. City of Tacoma*, 16 Wash. 69, 70, 47 P. 219, 220 (1896) (citing *Kuhn*, 12 Wash. 605). *See also Griffin v. City of Roseburg*, 255 Or. 103, 108-09, 464 P.2d 691, 694 (1970) (holding that, "once the municipality exercises dominion over the annexed territory in a de facto capacity, the validity of the annexation cannot be attacked by a party other than the state.").

This case is of substantial public interest because the provision of sewer services is necessary to public health and safety. Here, it is undisputed that the 1985 Transfer Order was not appealed by any party before it became final. In reliance upon the 1985 Transfer Order, and for several decades, Ronald has been the sole sewer provider to the Point Wells Service Area, without objection, and both Ronald and King County have expended funds to maintain and improve the infrastructure serving that area. Both Ronald and Olympic View have continuously, until this lawsuit, adopted sewer plans, explicitly approved by Snohomish County, recognizing the entire Point Wells Service Area as served by Ronald. The superior court had the authority to enter the 1985 Transfer Order and the 1985 Transfer Order should not be found void.

VI. CONCLUSION

For the foregoing reasons this Court should grant King County's Petition for Review and reverse the Court of Appeals.

DATED this 29th day of August, 2019.

Respectfully submitted,

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Appendix A

FILED
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Court of Appeals
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD WASTEWATER DISTRICT, a Washington municipal corporation, Respondent, v. OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation, Appellants, SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; and CITY OF SHORELINE, a Washington municipal corporation, Defendants.	No. 78516-8-I DIVISION ONE UNPUBLISHED OPINION FILED: July 1, 2019

APPELWICK, C.J. — In 1985, the King County Superior Court entered an order approving an agreement to transfer a sewerage system from "King County" to Ronald. The order stated that the area served by King County was deemed annexed to Ronald. The description of King County's service area in the agreement included Point Wells, an area in "Snohomish County" located within Olympic's corporate boundaries.

In 2016, Ronald brought a declaratory judgment action, arguing in part that the order annexed Point Wells to Ronald. It then moved for partial summary

judgment on that basis. Snohomish County and Woodway also filed motions for summary judgment, arguing that the Transfer Order did not annex any Snohomish County territory to Ronald. The trial court granted Ronald's motion and denied the Snohomish County and Woodway motions. Olympic and Woodway appeal, arguing that the Transfer Order did not authorize the annexation of Point Wells to Ronald.

We hold that the superior court lacked subject matter jurisdiction to grant an annexation by Ronald of territory within the municipal corporate boundaries of Olympic. We reverse the trial court's grant of partial summary judgment to Ronald, remand for an order granting Woodway's motion for summary judgment in part, and for other proceedings consistent with this opinion.

FACTS

The Sewer Districts

In 1937, Olympic View Water District, now known as Olympic View Water and Sewer District, was formed under Title 57 RCW.[1] See former RCW 57.04.020 (LAWS OF 1929, ch. 114, § 1) (authorizing water districts). In 1946, it annexed the southwestern portion of Snohomish County, including Point Wells. Point Wells is an area in Snohomish County consisting of two portions, a low land area along Puget Sound and an upper bluff area above the Burlington Northern Santa Fe

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[1] See former RCW 57.04.020 (1929) (authorizing water districts). In 1996, the legislature consolidated water and sewer districts into water-sewer districts. LAWS OF 1996, ch. 230, § 101. Combined water-sewer districts are now governed by a revised Title 57 RCW. Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 570 n.1, 980 P.2d 1234 (1999).

railway tracks. Olympic has provided water service there since 1949. In 1966, Olympic began providing sewer service within its corporate boundaries.[2]

Around 1940, Sewerage and Drainage Improvement District No. 3 of King County (KCSD No. 3) formed.[3] KCSD No. 3 operated a sewer system, often referred to as the Richmond Beach sewer system (RBSS). The RBSS encompassed 350 acres in the northwest corner of King County, an area now within Ronald Wasterwater District's boundaries.[4] KCSD No. 3 was bounded on the north by Snohomish County, on the east and south by Ronald, and on the west by Puget Sound. KCSD No. 3 dissolved in 1984 upon transferring the RBSS to King County.

In 1951, Ronald formed as a sewer district under Title 56 RCW.[5] See former RCW 56.04.020 (1945) (LAWS OF 1941, ch. 210, §1) (authorizing sewer districts). It is located in the northwest corner of King County, within the cities of Shoreline

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[2] In 1963, the Washington Legislature enacted a law allowing water districts to establish, maintain, and operate a mutual water and sewer system, or a separate sewer system. LAWS OF 1963, ch. 111, § 1. Pursuant to former RCW 57.08.065 (LAWS OF 1963, ch. 111, § 1 (1963)), Olympic was subject to former Title 56 RCW for purposes of providing sewer services. We treat the issue between Olympic and Ronald as one between two sewer districts.

[3] By a 1940 resolution, the King County Commissioners appointed the county road engineer as supervisor of KCSD No. 3, delegating to him the governing authority for the district under former RCW 85.08.300 (1965). The county road engineer's duties were then assigned in part to the director of the King County Department of Public Works (King County DPW). After that assignment, the county road engineer and the director of King County DPW shared the function of governing KCSD No. 3.

[4] The RBSS was constructed in 1939 and 1940. The record does not indicate, and the parties do not argue, that the RBSS and KCSD No. 3 were separate legal entities. Rather, Olympic and Ronald argue that KCSD No. 3 was formed to operate the RBSS.

[5] See former RCW 56.04.020 (LAWS OF 1945, ch. 140, § 1) (authorizing sewer districts).

and Lake Forest Park. Ronald is bordered on the north by several municipalities, including Olympic.

The Service Extension Agreements

In 1971, KCSD No. 3 entered into a contract with Standard Oil Company of California (Standard) to operate and maintain a sewage lift station Standard installed in Point Wells (Lift Station No. 13).[6] Lift Station No. 13 was located approximately 180 feet north of the King County line, within Olympic's corporate boundaries at the time. Standard built Lift Station No. 13 in order to connect its marine terminal in Point Wells to KCSD No. 3's sewer system. Before entering the contract, Standard agreed it would install an eight inch gravity sewer line and a four inch pressure sewer line from KCSD's existing lift station to Lift Station No. 13. KCSD No. 3 agreed to reimburse Standard for the cost of the gravity sewer line, which would then become KCSD No. 3's property. Title to the pressure sewer line would also pass to KCSD No. 3 upon its installation. In the 1971 contract, Standard granted KCSD No. 3 a right of way and an easement to maintain, operate, repair, replace, and remove Lift Station No. 13.

In a 1971 letter, Seattle's superintendent of water told Olympic that King County DPW had asked the Seattle Water Department to provide water service to Lift Station No. 13, north of the King County line. Because Lift Station No. 13 appeared to be within Olympic's service area, he asked for Olympic's comments regarding King County DPW's request. In response, Olympic stated that it had "no

[6] Olympic and Ronald refer to the lift station as Lift Station No. 13 in their briefs.

objections to permitting [King County DPW] to serve the lift station located approximately 180 feet north of the King County line on Richmond Beach Drive, within our service area." The parties do not cite to any other correspondence between Olympic and King County regarding KCSD No. 3's service to Lift Station No. 13. There is no indication from the record that Olympic ever consented to KCSD No. 3 extending sewer services into Point Wells.[7]

In 1972, KCSD No. 3 entered into a contract with Daniel Briggs to serve his property in Woodway. The Briggs property "serves into the District's Pump Station No. 13." This area was also located within Olympic's corporate boundaries at the time. There is no indication from the record, and the parties do not argue, that Olympic or Woodway knew about or consented to KCSD No. 3's service to the Briggs property. Ronald does not address the 1972 contract in its brief, and the parties do not provide a citation to the contract in the record.[8]

King County Divests Its Sewer System Operations

In 1982, the King County Council began investigating whether to divest itself of sewer service responsibilities. In 1983, it directed the county executive to begin

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[7] Ronald argues that Olympic consented to KCSD's extension of sewer service in its 1971 letter stating that it had "no objections to permitting [King County DPW] to serve the lift station." But, Olympic made this statement in response to the Seattle Water Department's letter stating that King County DPW had asked it to provide water service to Lift Station No. 13. The Seattle Water Department's letter did not address sewer service.

[8] In 1988, Ronald entered into another contract with Briggs to provide sewer service to three more lots, "Lots 2, 3, and 4," in his proposed subdivision. The contract noted that "Lot 1" was already served by Ronald pursuant to KCSD No. 3's 1972 contract with Briggs. Under the contract, Ronald agreed that it would "provide interim sanitary sewer service until such time when permanent sanitary sewer service is provided through the Town of Woodway."

negotiations to transfer the operation and responsibility for its sewerage systems. King County sent a request for proposals to Ronald and eight other agencies that "might be interested in assuming responsibility for King County's five sewer utilities." KCSD No. 3 was located immediately adjacent to Ronald's boundary on the west. Ronald's board then voted to send a proposal to acquire KCSD No. 3. The King County Executive's Office and King County DPW found that its proposal[9] was "an acceptable basis" for negotiating the transfer of King County's sewer district responsibilities.

On January 3, 1984, the King County Council passed a motion directing King County DPW to initiate the transfer of the RBSS. It also directed King County DPW to assist in "seek[ing] amendments to [c]hapter 36.94 RCW which provide for divestment of county sewer service responsibilities through petition to Superior Court." In its 1983 sewer divestment implementation report, King County noted that there were no provisions in existing statutes that specifically applied to the facts in its divestment effort. It stated that in order to divest itself of sewer system responsibilities, it would have to "follow statutes written for use by special purpose sewer districts to accomplish annexation of new territory." Specifically, it stated that divestment could be accomplished through the annexation procedures in former chapter 56.24 RCW.

However, King County noted that divestment of its sewer districts under the current statutes involved the risk that the required voter approval would not be

[9] The report referred to Ronald's proposal to acquire KCSD No. 3 as a proposal to assume the "Richmond Beach system."

obtained.[10] As a result, it proposed seeking legislative amendments to chapter 36.94 RCW, which already allowed a municipal corporation to transfer its sewerage system to a county through petition to a superior court, without voter approval. Its proposed amendments would "provide for a similar process of petition to [a superior court] to transfer a county-operated sewer system to another [municipal] corporation." The report ultimately recommended that King County seek these amendments.

On February 28, 1984, the Washington Legislature passed Substitute House Bill 1127 (SHB 1127). SHB 1127 authorized counties to transfer sewerage systems to a water or sewer district "in the same manner as is provided for the transfer of those functions from a water or sewer district to a county in RCW 36.94.310 through 36.94.340." LAWS OF 1984, ch. 147, § 1; see LAWS OF 1984, at 647 (setting out date it passed the House). Under RCW 36.94.310-.340, a county is allowed to acquire all or part of a sewer system from a municipal corporation by agreement. RCW 36.94.310. The authority is limited to acquisition of systems whose territory lies entirely within the county. Id. In lieu of the voter approval required by former Title 56 RCW for transfers of sewer district territory, the agreement was subject to a judicial hearing and notice of that hearing. Former RCW 36.94.340 (LAWS OF 1975, 1st Ex. Sess., ch 188, § 10). SHB 1127 was

[10] At the time of the report in November 1983, annexation under former chapter 56.24 RCW required voters residing in the territory to be annexed to approve the annexation through a special election. See former RCW 56.24.080 (LAWS OF 1967, Ex. Sess., ch. 11, §2) (providing for special election).

codified at RCW 36.94.410-.440. LAWS OF 1984, ch. 147. It took effect on June 7, 1984. See LAWS OF 1984, at ii (see 5(a) setting out effective date).

In addition to allowing the county to transfer a system without voter approval, SHB 1127 included an annexation provision. It stated that, if provided in the transfer agreement, "the area served by the [county's] system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system." LAWS OF 1984, ch. 147, § 2. It required a superior court to direct that the transfer be accomplished in accordance with the agreement if the court finds that the agreement is "legally correct and that the interests of the owners of related indebtedness are protected." Id. at § 4. It also exempted the transaction from boundary review board review. Id. at § 5.

In March 1984, the King County Council adopted a sewerage plan for the "Richmond Beach Sewer Service Area." The plan stated that KCSD No. 3 was "bounded on the north by Snohomish County," that "[n]o expansion of the present system boundary" was anticipated, and that "[s]ervice is also provided to a Chevron Petroleum plant on Point Wells just north of the King-Snohomish County border."[11]

The RBSS was transferred to Ronald in two steps. First, in June 1984, King County and KCSD No. 3 filed a joint petition with the King County Superior Court, seeking approval of the transfer of the RBSS from KCSD No. 3 to King County. The court approved the transfer.[12]

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[11] Standard later became Chevron U.S.A., Inc.

[12] The transfer was to be accomplished in accordance with the transfer agreement. King County and KCSD No. 3's transfer agreement provided for the

Second, King County and Ronald entered into an agreement to transfer the RBSS from King County to Ronald, effective January 1, 1986. The agreement stated that "[t]he area served by the System shall be deemed annexed to and a part of the District as of the above-stated effective date." In an addendum describing the "'area served' by the System," King County and Ronald included territory in Snohomish County. Ronald, Olympic, and Woodway agree that the description included Point Wells. The description also included the area in Woodway where the Briggs property is located.

The agreement stated that "the System serves approximately 1,022 customers directly and serves others by developer extension agreements." It incorporated those contracts into the agreement by reference, and assigned all of King County's rights and obligations under those contracts to Ronald. Those contracts included the agreement to operate and maintain Lift Station No. 13 in Point Wells.

King County and Ronald then filed a petition with the King County Superior Court, seeking approval of the transfer agreement pursuant to chapter 36.94 RCW. The court set a November 20, 1985 hearing date, and notice of the hearing was

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transfer of "all property and other assets from the District to King County." It also provided for the dissolution of KCSD No. 3 upon completion of the transfer. And, it stated, "The District is the owner of a certain sanitary sewer system located within King County. The location, size and other features of the system are specifically described in the February 1984 Richmond Beach Comprehensive Plan; a copy of which is attached hereto as Addendum A." According to that plan, KCSD No. 3 was bounded on the north by Snohomish County, and no expansion of that boundary was anticipated. Thus, KCSD No. 3 did not transfer any Snohomish County territory to King County.

published in The Seattle Times. At the end of the hearing, the court entered an order approving the transfer agreement (Transfer Order).

<u>Events Post Transfer Order</u>

In 1986, King County's Executive sent a letter to Snohomish County's Superintendent of Elections, stating that its transfer of the RBSS to Ronald extended Ronald's boundaries into Snohomish County. In Olympic's 1986 sewer plan, it did not include Point Wells in a map of its sewer service area. And, in Ronald's 1990 and 2001 sewer plans, it did not list any Snohomish County territory in its corporate boundaries.

In 2007, Ronald's board adopted a resolution recognizing that its corporate boundary "includes a portion of unincorporated Snohomish County which area lies north of and adjacent to the City of Shoreline, west of and adjacent to the Town of Woodway, south of and adjacent to the City of Edmonds, and east of and adjacent to Puget Sound." That same year, the Snohomish County Prosecuting Attorney's office sent a memorandum of advice to the county auditor, stating that the portion of Snohomish County described in the transfer agreement was annexed to Ronald. Olympic's 2007 sewer plan recognized that Ronald served Snohomish County territory, but still included that territory within its corporate boundaries. Going forward, Ronald's sewer plan listed Snohomish County territory in its corporate boundaries.

In 2015, Olympic proposed amended its 2007 sewer plan. The amendment involved providing service to a site in Point Wells that was being redeveloped into a mixed use urban center. In the amendment, Olympic stated that Ronald currently

provided sewer service to the industrial facilities in Point Wells and four adjacent homes in Woodway. But, Olympic affirmed that Point Wells was within its corporate boundaries. In 2016, the Snohomish County Council passed Amended Motion No. 16-135, approving the amendment to Olympic's 2007 plan.

Present Action

On July 15, 2016, Ronald filed the current action, seeking a declaratory judgment as to whether the Snohomish County Council complied with statutory requirements in approving Olympic's amendment, and whether the amendment affected its right to serve Point Wells. Ronald also sought a declaratory judgment as to whether its corporate boundary includes Point Wells. Ronald then filed a motion for partial summary judgment, seeking a declaratory judgment that (1) the Transfer Order annexed Point Wells to Ronald as of January 1, 1986, (2) the Transfer Order was binding on Snohomish County, Olympic, Woodway, and Edmonds as of January 1, 1986, and (3) RCW 57.02.001 validated and ratified Ronald's annexation of Point Wells, regardless of any defects in the Transfer Order.[13]

Woodway and Snohomish County then filed cross motions for summary judgment. In their motions, Woodway and Snohomish County sought a declaratory judgment that Ronald's corporate boundary does not extend into Snohomish

[13] Ronald did not refer to KCSD No. 3's contract with Briggs, or the Briggs property, in its motion. And, a map it provided in its motion showed the "Point Wells Service Area" as an area separate from, and immediately west of, Woodway. But, in describing Point Wells at the hearing on its motion, Ronald included the portion of Woodway where the Briggs property is located. Thus, Ronald argued at the hearing, but not in its motion, that the Transfer Order also annexed the area where the Briggs property is located.

County.[14] Olympic filed a memorandum in opposition to Ronald's motion, and in support of Woodway and Snohomish County's cross motions.

The trial court granted Ronald's motion for partial summary judgment and denied Woodway and Snohomish County's motions. It found that (1) the Transfer Order annexed the "Point Wells Service Area" to Ronald, (2) the Transfer Order was a judgment in rem, binding against the Snohomish County defendants, and (3) RCW 57.02.001 validated and ratified Ronald's annexation of Point Wells, rendering moot any defect in the Transfer Order. It defined the "Point Wells Service Area" as the area described in addendum A to the transfer agreement, Point Wells and the Briggs property in Woodway. Olympic and Woodway appeal.[15]

DISCUSSION

Ronald claims to have annexed into its corporate boundaries in 1986 an area within Snohomish County that at all times prior had been within Olympic. The area was never within the boundaries of KCSD No. 3. It was never within the boundaries of King County. Annexation of territory between two sewer districts

[14] Woodway also argued that (1) Ronald has no exclusive right to provide sewer service in Point Wells, (2) Ronald is not entitled to a declaration regarding the legality of Olympic's amendment to its sewer plan or the amendment's effect on Ronald's service right, and (3) there is no factual or legal basis for Ronald's requested injunctive relief. Woodway does not address these additional arguments on appeal. Accordingly, we do not address them.

[15] Prior to the State Supreme Court transferring the case to this court, Olympic filed a motion to include extra-record materials in the appendix to its brief, and King County filed a motion to include additional evidence on review. The motions were transferred to this court. Olympic's additional evidence includes topographical maps and a depiction of the proposed development of Point Wells. King County's additional evidence includes flow swap agreements made between Edmonds and the Municipality of Metropolitan Seattle, and Edmonds and King County. Because the additional evidence in each motion is not necessary to resolve this case, we deny the motions.

was governed by the withdrawal and annexation procedures in former chapters 56.24 and 56.28 RCW.[16] No withdrawal or annexation under those chapters was undertaken here.

Ronald's claim relies on 1984 legislation codified at former RCW 36.94.410-.440. It applies only when a county is transferring a sewer system it operates to a sewer district. Former RCW 36.94.410 (1984). If the transfer agreement so provides, the sewer district acquiring the county's sewer system shall be deemed to have annexed the area served by the county system, upon court approval. RCW 36.94.440; former RCW 36.94.420 (1985). The agreement between King County and Ronald described its area served as including Point Wells and the Briggs properties and provided for Ronald to annex.

The annexation of the portion of the sewer district within the boundaries of King County is not in dispute. Nor is the transfer of the contracts by which King

[16] At the time of the Transfer Order in 1986, there was no provision in former Title 56 RCW providing for the direct transfer of territory between two sewer districts. Rather, the residents or commissioners of one sewer district would obtain approval from the county legislative authority to withdraw certain territory, or, if the petition for withdrawal was denied, a special election would be held. See former RCW 56.28.010 (1953) (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.020 (1982) (allowing residents to petition); former RCW 57.28.035 (1985) (allowing sewer district commissioners to commence withdrawal); former RCW 57.28.080 (1941) (providing for hearing before county legislative authority); former RCW 57.28.090 (1982) (providing for special election if petition is denied). Then, annexation of withdrawn territory by another sewer district required approval by the county legislative authority, a special election within the territory proposed to be annexed, and notice to the boundary review board. See former RCW 36.93.090(1)(a) (1985) (requiring that, for any proposed change to the boundary of a special purpose district, the initiators of the action file notice with the boundary review board); former RCW 56.24.080 (1985) (requiring approval by county legislative authority and special election).

County provided services to the property in Snohomish County. Only the annexation of the area within Olympic is at issue.

At the heart of this dispute is the meaning of the words "area served by the system" used in RCW 36.94.420. Did the legislature intend for a county to transfer and a sewer district to annex these areas served by contract, outside the boundaries of the transferring county and within the boundaries of a sewer district not party to the transfer?

I. Transfer and Court Proceedings

Olympic and Woodway argue that the Transfer Order relied on RCW 36.94.410-.440, and that the statutes never authorized the county to transfer or Ronald to annex any area outside of King County's borders. They contend that annexation is an action authorized by the legislature and ordinarily conducted with a vote of the people. Thus, they assert that the only way a superior court could have subject matter jurisdiction to order an annexation would be if the legislature provided it. They argue that the legislature limited annexations under RCW 36.94.410-.440 to the territory within the transferor county's borders. Therefore, they argue that the Transfer Order, which purports to annex Snohomish County territory, is void because the King County Superior Court lacked subject matter jurisdiction.

Conversely, Ronald argues that RCW 36.94.410-.440 did not limit transfers between a county and a municipal corporation to the territory within the transferor county's borders. And, even if the statutes contained such a limitation, it asserts

that the King County Superior Court's failure to comply with the statute did not affect its subject matter jurisdiction.

The trial court granted summary judgment that the Transfer Order lawfully annexed Point Wells to Ronald's corporate boundary. This court reviews summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Id.

II. Statutory Interpretation

Olympic and Woodway argue first that the Transfer Order was not legally authorized by RCW 36.94.410-.440. Specifically, they assert that RCW 36.94.410-.440 did not authorize any annexation outside of King County's borders.

A. Standard of Review

Statutory interpretation questions are questions of law that we review de novo. Dot Foods, Inc. v. Dep't of Revenue, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). The court's primary duty in interpreting the statute is to ascertain and carry out the legislature's intent. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Statutory interpretation begins with the statute's plain meaning. Id. "The 'plain meaning' of a statutory provision is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). We avoid a

reading that produces absurd results, because we presume the legislature does not intend them. Id. at 579. When the plain language is unambiguous, the legislative intent is apparent and we will not construe the statute otherwise. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

B. Context of Statutory Scheme

The legislature did not define the phrase "area served" in former RCW 36.94.420. See former RCW 36.94.010 (1981). Olympic and Woodway contend that "area served" is limited to the area served within the transferor county's borders, and does not include area served by contract outside its borders. Ronald disputes that this is the correct interpretation of "area served." It argues that the statute does not limit annexations to territory within the transferor county. Accordingly, we must determine whether, under the plain language of RCW 36.94.420, "area served" means the area only within the transferor county's borders, or includes areas outside the county that it serves by contract.

In 1985, sewer districts like Ronald and Olympic were governed by former Title 56 RCW. Former chapter 56.04 RCW governed their formation. To form or reorganize a sewer district, 25 percent of qualified electors residing within the proposed district had to present a petition to the board of county commissioners of the county in which the proposed sewer district was located.[17] Former RCW

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[17] If the boundaries or proposed boundaries of a sewer district included more than one county,

> all duties delegated by Title 56 RCW to officers of the county in which the district is located shall be delegated to the officers of the county in which the largest land area of the district is located, except that elections shall be conducted pursuant to [former] RCW 56.02.050

56.04.030 (LAWS OF 1945, ch. 140, § 2). The statutory provisions then required a hearing process before the board of county commissioners, and a special election. See former RCW 56.04.040 (1945); former RCW 56.04.050 (LAWS OF 1973 1st Ex. Sess., ch. 195, § 61). The process is purely legislative.

Since 1941, the legislature has prohibited the geographical overlapping of sewer districts. See LAWS OF 1941, ch. 210, § 5. Under former RCW 56.04.070 (1985), if two or more petitions for the formation of a sewer district were filed, the petition describing the greater area superseded all others. And, no lesser sewer district could be "created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420."[18] Id.

This prohibition against overlapping special purpose districts is evident in Alderwood Water District v. Pope & Talbot, Inc., 62 Wn.2d 319, 382 P.2d 639 (1963). There, the Washington State Supreme Court considered whether one water district could directly furnish water to the inhabitants located outside the boundaries of that district and within the boundaries of another water district. Id.

> [(1971)], actions subject to review and approval under [former] RCW 56.02.060 [(1971)] and 56.02.070 [(1971)] shall be reviewed and approved by only the officers or boards in the county in which such actions are proposed to occur, verification of electors' signatures shall be conducted by the county election officer of the county in which such signators reside, and comprehensive plan review and approval or rejection by the respective county legislative authorities under [former] RCW 56.08.020 [(1982)] shall be limited to that part of such plans within the respective counties.

Former RCW 56.02.055 (1982).

[18] The same rule applied to water districts. Former RCW 57.04.070 (1985) ("[N]o lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in [former] RCW 57.40.150 [(1981)] and [former RCW] 36.94.420 [(1985)].").

at 320. The court concluded that the legislative purpose in permitting water districts to supply water to individuals outside their districts "was meant to extend water services only to those individuals who were not within the boundaries of any other water district." Id. at 323.

In doing so, the court noted that, under former RCW 57.04.070 (1929), whenever two or more petitions for the formation of a water district are filed, the petition describing the greater area shall supersede all others. Id. at 321-22. And, no lesser water district shall ever be created within the limits in whole or in part of any water district. Id. It determined that "[t]his statutory prohibition against the geographical overlapping of water districts obviously carries with it an implication that one water district should not infringe upon the territorial jurisdiction of another water district by extending services to individuals therein." Id. at 322. It also observed, "If a water district refuses to serve a property owner whose premises are located within the district . . . an opportunity for relief is available to the property owner, pursuant to [chapter] 57.28[RCW], through a procedure for the withdrawal of territory from the district." Id. at 323. Former chapter 56.28 RCW contains a similar procedure to withdraw from a sewer district. See RCW 56.28.010 (1953).

Former RCW 56.08.060 (1981) also gave sewer districts the authority to "provide sewer service to property owners in areas within or without the limits of the district." But, as of 1981, if any such area was located within another existing district authorized to exercise sewer district powers in that area, service could not be provided "without the consent by resolution of the board of commissioners of

such other district."[19] LAWS OF 1981, ch. 45, § 4. Clearly, no sewer district had a right to unilaterally extend service into the territory of another sewer district.

Former chapters 56.24 and 56.28 RCW governed the annexation of territory between two sewer districts.[20] First, residents within a sewer district had to file a petition to withdraw that territory from the district with the county election officer in each county where the district is located.[21] See former RCW 56.28.010 (1953) (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.020 (1982) (allowing residents to petition). Hearings would then occur before the sewer district commissioners and county legislative authority in each county where the district is located. See former RCW 56.28.010 (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.050 (1941) (hearing before sewer district commissioners); former RCW 57.28.080 (1941) (hearing before county

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[19] The same rule applied to water districts. See former RCW 57.08.045 (1981) (providing that a water district may not extend water services into another existing district authorized to exercise water district powers in that area "without the consent by resolution of the board of commissioners of such other district").

[20] Former chapter 57.24 RCW governed the annexation of territory by water districts. The chapter provided for similar petition, hearing, and election procedures. See former RCW 57.24.010 (1982); former RCW 57.24.020 (1982); former RCW 57.24.040 (1929).

[21] If there were no qualified electors residing in the territory to be withdrawn, the landowners of the majority of the acreage of that territory could file a petition for withdrawal with the sewer district commissioners. See former RCW 56.28.010 (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.030 (1941) (allowing landowners to petition). Alternatively, the board of commissioners of a sewer district could commence the withdrawal of certain territory within that district by resolution. Former RCW 57.28.035.

legislative authority). A special election to determine the withdrawal would be held if the petition was denied. Former RCW 57.28.090 (1982).

Next, like the formation process, annexation of territory adjoining or in close proximity to a district had to be initiated by 20 percent of registered voters residing in the territory filing a petition with the sewer district commissioners. Former RCW 56.24.070 (1985). If there were no electors residing in the territory, the petition could instead be signed by the owners of a majority of the acreage in the territory. Id. The statutory provisions then required a hearing process before the county legislative authority, and a special election.[22] See former RCW 56.24.080 (1985); former RCW 56.24.090 (1967).

When the Transfer Order took effect in 1986, former RCW 56.02.060 (1971) provided that, "[n]otwithstanding any provision of law to the contrary, no sewer district shall be formed or reorganized under chapter 56.04 RCW, nor shall any sewer district annex territory under chapter 56.24 RCW . . . unless such proposed action shall be approved as provided for in [former]RCW 56.02.070[(1971)]." If the proposed annexation were to take place in a county without a boundary review board, the county legislative authority had to approve the action. Former RCW 56.02.070 (1971). If the proposed annexation were to take place in a county with

[22] The legislature also provided for an alternative petition method for "annexation of an area contiguous to a sewer district." Former RCW 56.24.120 (1985). The petition had to be filed with the board of the sewer district commissioners, and signed by the owners of at least 60 percent of the area of land for which annexation was petitioned. Id. The statutory provisions then required a hearing process before the board of commissioners, after which the board would determine by resolution whether to annex the land. See RCW 56.24.130 (1967); RCW 56.24.140 (1967).

a boundary review board, notice of intention of the proposed action had to be filed with the board, and a copy had to be filed with the legislative authority. Id. If the county legislative authority approved the proposed action, such approval was final. Id. If it did not, the board would review the action. Id. The board's decision superseded approval or disapproval by the county legislative authority. Id. There was no role for a superior court in this process. Clearly, no sewer district had a statutory right to unilaterally annex a portion of another sewer district.

Former chapter 36.94 RCW governs a county's operation of its sewerage, water and drainage systems. It provides that "[t]he construction, operation, and maintenance of a system of sewerage and/or water is a county purpose." Former RCW 36.94.020. Every county, either individually or in conjunction with another county, has the power to "adopt, provide for, accept, establish, condemn, purchase, construct, add to, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plans, and facilities necessary for sewerage treatment and disposal . . . within all or a portion of the county." Id. (emphasis added). Counties may also contract to do things outside their borders:

> Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, or any city or town, within or without the county, and with any other county, and with any municipal corporation created under the laws of the state of Washington and not limited as defined in [former]RCW 36.94.010[(1981)], or political subdivision, and with any person, firm or corporation in and for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply.

RCW 36.94.190.

Former Title 36 RCW provides different procedures for the transfer of sewerage systems and annexation of territory by sewer districts, where one of the parties to the transfer is a county. See RCW 36.94.310; former RCW 36.94.410-.420. The approval of any annexation by a sewer district is before the superior court, rather than county commissioners and voters. RCW 36.94.440.

RCW 36.94.310 provides that a municipal corporation may transfer to a county "within which all of its territory lies" all or part of the property constituting its system of sewerage. Since a county already had statutory authority to provide sewer service county-wide, the statutes governing this type of transfer, RCW 36.94.310-.340, do not include any annexation provisions nor implicate boundary review. See former RCW 36.94.020 ("[E]very county has the power [to] maintain a system of sanitary and storm sewers . . . within all or a portion of the county.").

Under former RCW 36.94.410, a county's water or sewerage system may be transferred from that county to a water or sewer district "in the same manner as is provided for the transfer of those functions from a water or sewer district to a county in RCW 36.94.310 through 36.94.340." Under former RCW 36.94.420, if provided in the transfer agreement, "the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system." In contrast to annexations under former Title 56, annexations by a sewer district under former RCW 36.94.410-.440 are not subject to review by a boundary review board. Former RCW 36.93.105 (1984).

In 1967, the legislature authorized the creation of boundary review boards by a county. LAWS OF 1967, ch. 189, § 3. In describing the purpose of boundary review boards, it noted,

> [T]he competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan areas so that such problems may be avoided.

Id. at § 1. Former RCW 36.93.090(1)(a) (1985) required that, for any proposed change to the boundary of a special purpose district, the initiators of the action file a notice of intention of the action with the board. In defining a "special purpose district," the legislature included sewer districts. Former RCW 36.93.020 (1979). It also required that the initiators of an action to permanently extend sewer service outside the boundaries of a sewer district file a notice of intention of the action with the board. Former RCW 36.93.090(5).

Annexation addresses boundaries of municipal districts. No sewer district is authorized to provide sewer service within another district without that district's consent. The statutory scheme for sewer districts is clearly intended to avoid overlapping boundaries of sewer districts. Both former Title 56 RCW, which governed sewer districts, and chapter 36.93 RCW, which governs boundary review of such special districts, protect the ability of sewer districts to provide sewer services within their corporate boundaries. See former RCW 36.93.090(3)-(4); former RCW 56.04.070 (providing that no lesser sewer district shall be created within the limits in whole or in part of any other sewer district); former RCW

56.08.060 (providing that a sewer district shall not provide sewer services within another existing district authorized to exercise sewer district powers without the consent by resolution of the board of commissioners of such other district).

C. Plain Meaning of Area Served

The result Ronald seeks is an annexation of territory from Olympic, without Olympic's involvement, let alone consent. The basis of its claim is that the transfer agreement with King County provided for the annexation. But, the area to be annexed was not within King County's boundaries. It would be unreasonable to read the statute as authorizing King County to transfer territory, within another special purpose district, within another county, as part of its divestment of its own sewer system.

Had the legislature been aware of the conflict between RCW 36.94.410-.440 and former Title 56 RCW, and had it intended the result Ronald seeks, it would surely have written an explicit exemption from the conflicting provisions in former Title 56 RCW. No such exemption or even cross-reference appears in RCW 36.94.410-.440. Former Title 56 RCW does not allow a hostile annexation by one sewer district against another. It prohibits a sewer district from providing sewer service within another district authorized to exercise sewer district powers, unless that district consents. Former RCW 56.08.060. The reasonable inference from the language in the statutes is that the legislature did not anticipate that RCW 36.94.410-.440 conflicted with former Title 56 RCW, did not intend to exempt the transaction from former Title 56 RCW, and did not intend the result Ronald seeks.

The exemption from boundary review board review in SHB 1127 is also consistent with a legislative expectation that no boundary issues are implicated. If the legislature intended for the area being annexed by a sewer district to be solely within the boundaries of the county making the transfer, then no boundary issues with other districts are implicated. Review would serve no purpose. However, if the legislature was aware that the area being annexed could be outside the boundaries of the transferring county, it would be aware of a potential conflict with the boundaries of other districts and the resulting conflict between SHB 1127 and former Title 56 RCW. If the legislature had anticipate this scenario, it would have addressed the conflict between these statutes.

But, because SHB 1127 contained no exemption from former Title 56 RCW to eliminate the conflict between the two statutes, former RCW 56.02.060 would apply to the conflicting claims of Ronald and Olympic. Thus, the statute would control over the boundary review board exemption for transfers under RCW 36.94.410-.440. Former RCW 56.02.060 provides, "Notwithstanding any provision of law to the contrary, no sewer district shall be formed or reorganized under [former]chapter 56.04 RCW, nor shall any sewer district annex territory under [former]chapter 56.24 RCW . . . unless such proposed action shall be approved as provided for in [former]RCW 56.02.070." (Emphasis added.) Former RCW 56.02.070 required boundary review board approval.[23]

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[23] For counties without a boundary review board, former RCW 56.02.070 required approval by the county legislative authority.

The result is that no boundary review board review would occur as to transfer of the portion of the sewerage system within the county's boundaries, but would occur as to transfer of any portion of the sewer system outside the county boundaries within another sewer district. It is unreasonable to believe that the legislature exempted an RCW 36.94.410-.440 transaction from boundary review board review, without qualification, if it anticipated any boundary issues with a sewer district not a party to the county transfer.[24]

Both former Title 56 RCW and chapter 36.93 RCW protect the authority of municipal corporations to provide services within their corporate boundaries. Accordingly, we conclude that no boundary conflicts with a third party district were anticipated when RCW 36.94.410-.440 was enacted, no exemption from former Title 56 RCW was stated, and none can be inferred.

It is clear from the context and the 1986 statutory scheme as a whole that the plain meaning of "area served" for purposes of annexation means only the area

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[24] For the first time in 1995, the legislature included and defined the word "service area" in this statute. LAWS OF 1995, ch. 131, § 1. It stated that, for extensions of sewer services outside of a special purpose district's service area, "service area" includes "the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110." LAWS OF 1995, ch. 131, § 1. A permanent extension of this area was subject to review by a boundary review board. Id. "It is a well-recognized rule of statutory construction that 'where a law is amended and a material change is made in the wording, it is presumed that the legislature intended a change in the law.'" Guillen v. Pierce County, 144 Wn.2d 696, 723, 31 P.3d 628, 34 P.3d 1218 (2001) (quoting Home Indem. Co. v. McClellan Motors, Inc., 77 Wn.2d 1, 3, 459 P.2d 389 (1969)), rev'd in part on other grounds, 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003). Accordingly, this change should be construed such that, prior to the legislature defining "service area" to include area outside of a district's corporate boundaries, a district's service area did not include area outside of its corporate boundaries.

of the sewer system within the boundaries of the county making the transfer. It does not include the area outside its borders, served by contract, and within the corporate boundaries of another municipal corporation with sewer district powers.

III. Subject Matter Jurisdiction

The transfer agreement between King County and Ronald provided that "[t]he area served by the System shall be deemed annexed to and a part of the District as of" January 1, 1986. In an addendum describing the "'area served,'" King County and Ronald included Snohomish County territory. That territory included Point Wells, and the area in Woodway where Briggs's property is located.

Point Wells and the area in Woodway where Briggs's property is located were never within King County or KCSD No. 3's boundaries. Thus, after KCSD No. 3 transferred the RBSS to King County, King County acquired no right to provide service in Snohomish County beyond that in its contracts with Standard and Briggs. Yet, in the Transfer Order, King County purported to transfer and allow Ronald to annex this territory by including it in the legal description of its service area.

The Transfer Order stated, "As provided in the transfer agreement, the area served by the System shall be annexed to and become a part of the District." Thus, in directing that Snohomish County territory be annexed to Ronald, the King County Superior Court directed an annexation that was not legally authorized by RCW 36.94.410-.440. Under the plain meaning of "area served" in former RCW 36.94.420, Ronald could annex only the area served within King County's borders. It was not permitted to annex Snohomish County territory within Olympic's

boundaries that King County served by contract. Accordingly, the King County Superior Court committed legal error in directing that Snohomish County territory be annexed to Ronald.

Ronald contends that, even if the King County Superior Court lacked statutory authority to enter the Transfer Order, the order is not void because the court had subject matter jurisdiction. Where a court has personal and subject matter jurisdiction, a procedural irregularity renders a judgment voidable, not void. In re Marriage of Mu Chai, 122 Wn. App. 247, 254, 93 P.3d 936 (2004). Ronald argues further that estoppel, laches, and acquiescence bar Olympic and Woodway from seeking relief from the order. Olympic and Woodway argue that the King County Superior Court lacked subject matter jurisdiction over the "cross-border annexation." To the extent that King County asked the court to approve Ronald's annexation of territory in Snohomish County, they contend that the action was void.

A court order is void only if there is a defect in subject matter or personal jurisdiction. Trinity Universal Ins. Co. of Kan. v. Ohio Cas. Ins. Co., 176 Wn. App. 185, 198, 312 P.3d 976 (2013). Jurisdiction is the "'power and authority of the court to act.'" Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 315, 76 P.3d 1183 (2003) (quoting 77 AM. JUR. 2D Venue § 1 at 608 (1997)). "The critical concept in determining whether a court has subject matter jurisdiction is the 'type of controversy.'" Id. at 316 (quoting Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). If the type of controversy is within the court's subject matter jurisdiction, then all other defects or errors go to something else. Id. In light of the state constitution's broad grant of subject matter jurisdiction to

the superior court, "we may find a lack of subject matter jurisdiction only under compelling circumstances, such as when it is explicitly limited by the legislature or Congress." Hous. Auth. v. Bin, 163 Wn. App. 367, 375, 260 P.3d 900 (2011).

The state constitution does not grant superior courts the power of annexation. See WASH. CONST. art. IV, § 6. Rather, the legislature "enjoys plenary power to adjust the boundaries of municipal corporations and may authorize annexation without the consent of the residents and even over their express protest." Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 813, 83 P.3d 419 (2004). While the State may delegate its annexation power and prescribe the mode, method, and conditions under which the delegated authority may be exercised, the ultimate power of annexation rests exclusively in the State. Id.

When the Transfer Order took effect in 1986, the legislative scheme for sewer district formation was governed by former chapter 56.24 RCW. Annexation of territory by a sewer district was to be accomplished through a hearing and election process. Former RCW 56.24. 080. It required county legislative authority and voter approval of the annexation. See former RCW 56.24.080 (requiring county legislative authority to approve petition); former RCW 56.24.090 (requiring special election). Superior courts had no role in these procedures.

In 1984, the legislature granted superior courts narrow jurisdiction to approve the annexation of territory by a sewer district. See RCW 36.94.440; former RCW 36.94.410; former RCW 36.94.420. That authority was limited to transactions in which a county was transferring by agreement a water or sewerage

system it operated to a water or sewer district. See former RCW 36.94.410. In that two party transaction, approval was vested in the superior court, rather than the county legislative authority and voters within the territory to be annexed. See RCW 36.94.440.

Under those procedures, if a superior court finds that an agreement to transfer a county's water or sewerage system to a water or sewer district "is legally correct and that the interests of the owners of related indebtedness are protected," then the court "shall direct that the transfer be accomplished in accordance with the agreement." Former RCW 36.94.440. If provided in the transfer agreement between the county and the water or sewer district, "the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the . . . sewer district acquiring the system." Former RCW 36.94.420. As established above, "area served" means only the area within the borders of the county making the transfer.

A county could not transfer what it did not have. King County did not have a statutory right to provide sewer service in Snohomish County. Thus, pursuant to the transfer agreement, Ronald could annex only King County territory from King County, not Snohomish County territory from Olympic.

Point Wells and the Briggs properties were within Olympic's corporate boundaries at the time of the Transfer Order. Olympic was not a party to King County and Ronald's transfer agreement or petition to approve the agreement. Any potential annexation and boundary adjustment between Ronald and Olympic

was controlled by former Title 56 RCW, not by Title 36 RCW, and superior courts lacked jurisdiction over annexation under former Title 56 RCW.

By enacting former RCW 36.94.410-.440, the legislature did not give superior courts general jurisdiction to approve annexations. It did not grant to superior courts jurisdiction to allow a sewer district to annex territory from another municipal corporation not party to a transfer agreement under chapter 36.94 RCW and contrary to former Title 56 RCW. Rather, it gave superior courts only narrow jurisdiction to approve the annexation of territory within a county by a sewer district, based on an agreement to transfer a sewerage system from that county to the sewer district. See former 36.94.410; 36.94.420; 36.94.440. Thus, the King County Superior Court lacked subject matter jurisdiction to approve an annexation of any area within Olympic by Ronald.

Accordingly, to the extent that the Transfer Order purports to authorize Ronald's annexation of area within Snohomish County and within Olympic, the order is void.[25] Ronald's corporate boundaries do not extend into Snohomish County.

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[25] Because we conclude that the Transfer Order is void due to a lack of subject matter jurisdiction, we do not reach Ronald's arguments regarding estoppel, laches, and acquiescence, or Olympic's remaining arguments that would apply only to a voidable order. A court has a nondiscretionary duty to vacate a void judgment. Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323, 877 P.2d 724 (1994). Void judgments may be vacated regardless of the lapse of time; not even laches bars a party from attacking a void judgment. Id. at 323-24. And, unlike personal jurisdiction, a party cannot waive subject matter jurisdiction. Sullivan v. Purvis, 90 Wn. App. 456, 460, 966 P.2d 912 (1998).

IV. RCW 57.02.001

Ronald argues that enactment of RCW 57.02.001 validated its annexation of Point Wells, "rendering moot any technical defect in the 1985 Annexation Order." (Boldface omitted.)

RCW 57.02.001 provides:

> Every sewer district and every water district previously created shall be reclassified and shall become a water-sewer district, and shall be known as the ". . . . . Water-Sewer District," or "Water-Sewer District No. . . . . ." or shall continue to be known as a "sewer district" or a "water district," with the existing name or number inserted, as appropriate. As used in this title, "district" means a water-sewer district, a sewer district, or a water district. All debts, contracts, and obligations previously made or incurred by or in favor of any water district or sewer district, and all bonds or other obligations issued or executed by those districts, and all assessments or levies, and all other things and proceedings done or taken by those districts or by their respective officers, are declared legal and valid and of full force and effect.

Ronald asserts that the broad language validating "'all acts' . . . clearly encompasses Ronald's annexation of the Point Wells Service Area."

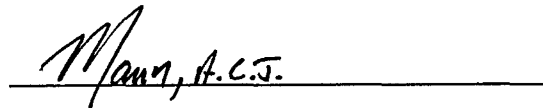
In 1996, the legislature eliminated distinct water and sewer districts and created combined water-sewer districts, all under a revised Title 57 RCW. Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 570 n.1, 980 P.2d 1234 (1999). RCW 57.02.001 provides that each water and sewer district be reclassified as a water-sewer district. In this context, it is clear that the legislature intended to ensure that the previous valid actions of the municipal corporations were not called into question by virtue of the reclassification, renaming or amended statutory authority. The statutory language does not legalize invalid or illegal actions nor insulate the districts from then existing claims. To infer such an intention would be

absurd, and we presume that the legislature does not intend absurd results. See Engel, 166 Wn.2d at 579.

Moreover, the lack of subject matter jurisdiction over the type of annexation King County and Ronald proposed was not a technical defect in the Transfer Order. It was a fatal defect. Nothing in this statute remedies the lack of subject matter jurisdiction in the superior court to approve the annexation. Accordingly, to the extent that the Transfer Order purports to authorize Ronald's annexation of Snohomish County territory, RCW 57.02.001 does not render that annexation valid.

We reverse the trial court's grant of partial summary judgment to Ronald, remand for an order granting Woodway's motion for summary judgment in part, and for other proceedings consistent with this opinion.[26]

WE CONCUR:



[26] Specifically, we order that Woodway be granted summary judgment as to its argument for a declaration that, based on the Transfer Order, Ronald's corporate boundary does not extend into Snohomish County.

Appendix B

FILED
7/31/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RONALD WASTEWATER DISTRICT, a Washington municipal corporation,

Respondent,

v.

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation,

Appellants,

SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; and CITY OF SHORELINE, a Washington municipal corporation,

Defendants.

No. 78516-8-I

ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Ronald Wastewater District, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Chief Judge

FILED
7/31/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RONALD WASTEWATER DISTRICT, a Washington municipal corporation, Respondent, v. OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation, Appellants, SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; and CITY OF SHORELINE, a Washington municipal corporation, Defendants.	No. 78516-8-I ORDER DENYING MOTION FOR RECONSIDERATION

The defendant, City of Shoreline, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Chief Judge

Appendix C

RCW 36.94.310 Transfer of system from municipal corporation to county—Authorized.

Subject to the provisions of RCW 36.94.310 through 36.94.350 a municipal corporation may transfer to the county within which all of its territory lies, all or part of the property constituting its system of sewerage, system of water or combined water and sewerage system, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system, and the county may acquire such property on such terms as may be mutually agreed upon by the governing body of the municipal corporation and the legislative authority of the county, and approved by the superior court for such county.

RCW 36.94.320 Transfer of system from municipal corporation to county—Assumption of indebtedness.

In consideration of a transfer of property by a municipal corporation to a county in the manner provided in RCW 36.94.310 through 36.94.350, a county may assume and agree to pay or provide for the payment of all or part of the indebtedness of a municipal corporation including the payment and retirement of outstanding general obligation and revenue bonds issued by a municipal corporation. Until the indebtedness of a municipal corporation thus assumed by a county has been discharged, all property within the municipal corporation and the owners and occupants of that property, shall continue to be liable for taxes, special assessments, and other charges legally pledged to pay such indebtedness. The county may assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges and observing and performing the other contractual obligations of the municipal corporation. The legislative authority of the county may act in the same manner as the governing body of the municipal corporation for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection and perform all other acts necessary to insure performance of the contractual obligations of the municipal corporation in the same manner and by the same means as if the property of the municipal corporation had not been acquired by the county.

When a county assumes the obligation of paying indebtedness of a municipal corporation and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the municipal corporation prior to such assumption, the same when collected shall belong and be paid to the county and be used by such county so far as necessary for payment of the indebtedness of the municipal corporation existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county which have been collected for the purpose of paying any bonded or other indebtedness of the municipal corporation shall be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. No transfer of property as provided in *this amendatory act shall derogate from the claims or rights of the creditors of the municipal corporation or impair the ability of the municipal corporation to respond to its debts and obligations.

RCW 36.94.330 Transfer of system from municipal corporation to county—Transfer agreement.

The governing body of a municipal corporation proposing to transfer all or part of its property to a county in the manner provided by RCW 36.94.310 through 36.94.350 and the legislative authority of a county proposing to accept such property, and to assume if it so agrees any indebtedness of the municipal corporation in consideration of such transfer, shall adopt resolutions or ordinances authorizing respectively the execution of a written agreement setting forth the terms and conditions upon which they have agreed and finding the transfer and acquisition of property pursuant to such agreement to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such written agreement may include provisions, by way of description and not by way of limitation, for the rights, powers, duties, and obligations of such municipal corporation and county with regard to the use and ownership of property, the providing of services, the maintenance and operation of facilities, the allocation of costs, the financing and construction of new facilities, the application and use of assets, the disposition of liabilities and indebtedness, the performance of contractual obligations, and any other matters relating to the proposed transfer of property, which may be preceded by an interim period of operation by the county of the property and facilities subsequently to be transferred to that county. The agreement may provide for a period of time during which the municipal corporation may continue to exercise certain rights, privileges, powers, and functions authorized to it by law including the ability to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges and connection fees, and to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements and to issue general obligation bonds or revenue bonds in the manner provided by law, or the agreement may provide for the exercise for a period of time of all or some of such rights, privileges, powers, and functions by the county. The agreement may provide that either party thereto may authorize, issue and sell, in the manner provided by law, revenue bonds to provide funds for new water or sewer improvements or to refund or advance refund any water revenue, sewer revenue or combined water and sewer revenue bonds outstanding of either or both such parties. The agreement may provide that either party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions and covenants as the outstanding bonds of either or both such parties and such

new bonds may be substituted or exchanged for such outstanding bonds to the extent permitted by law.

RCW 36.94.340 Transfer of system from municipal corporation to county—Petition for court approval of transfer—Hearing—Decree.

When a municipal corporation and a county have entered into a written agreement providing for the transfer to such county of all or part of the property of such municipal corporation, proceedings may be initiated in the superior court for that county by the filing of a petition to which there shall be attached copies of the agreement of the parties and of the resolutions of the governing body of the municipal corporation and the legislative authority of the county authorizing its execution. Such petition shall ask that the court approve and direct the proposed transfer of property, and any assumption of indebtedness agreed to in consideration thereof by the county, after finding such transfer and acquisition of property to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such petition shall be signed by the members of the legislative authority of the county or chief administrative officer of the municipal corporation and the chair of the legislative authority of the county, respectively, upon authorization by the governing body of the municipal corporation and the legislative authority of the county.

Within thirty days after the filing of the petition of the parties with copies of their agreement and the resolutions authorizing its execution attached thereto, the court shall by order fix a date for a hearing on the petition not less than twenty nor more than ninety days after the entry of such order which also shall prescribe the form and manner of notice of such hearing to be given. After considering the petition and such evidence as may be presented at the hearing thereon, the court may determine by decree that the proposed transfer of property is in the public interest and conducive to the public health, safety, welfare, or convenience, approve the agreement of the parties and direct that such transfer be accomplished in accordance with that agreement at the time and in the manner prescribed by the court decree.

RCW 36.94.410 - Transfer of system from county to water-sewer district.

A system of sewerage, system of water or combined water and sewerage systems operated by a county under the authority of this chapter may be transferred from that county to a water-sewer district in the same manner as is provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340.

RCW 36.94.420 Transfer of system from county to water-sewer district—Annexation—Hearing—Public notice—Operation of system.

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage, a system of water, or combined water and sewer systems from a county to a water-sewer district, the water-sewer district shall operate the system or systems under the provisions of Title 57 RCW.

RCW 36.94.430 Transfer of system from county to water-sewer district—Alternative method.

The provisions of RCW 36.94.410 and 36.94.420 provide an alternative method of accomplishing the transfer permitted by those sections and do not impose additional conditions upon the exercise of powers vested in water-sewer districts and counties.

RCW 36.94.440 Transfer of system from county to water-sewer district—Decree by superior court.

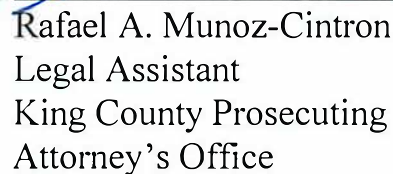
If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement.

CERTIFICATE OF SERVICE

I, RAFAEL A. MUNOZ-CINTRON, hereby certify that on August 29, 2019, I electronically filed the foregoing with the Clerk of the Court for the Washington Court of Appeals by using the Washington State Appellate Courts' web portal system.

I certify that all participants in the case are registered electronic users and that service will be accomplished by the appellate portal system.

Dated this 29th day of August, 2019 at Seattle, Washington.



Rafael A. Munoz-Cintron
Legal Assistant
King County Prosecuting
Attorney's Office

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

August 29, 2019 - 11:23 AM

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