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No. 86796-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 1 dba
SKAGIT VALLEY HOSPITAL,

Appellant,

vs.

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT No. 304,
dba UNITED GENERAL HOSPITAL,

Respondent.

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

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I. COUNTER- STATEMENT OF THE CASE

United General and Skagit Valley Hospital are each rural public hospital districts, established pursuant to Chapter 70.44 RCW, each having defined legal boundaries exclusive of each other. Skagit Valley Hospital entered into an agreement with a private medical group known as Skagit Valley Medical Center, whereby it has acquired and/or is acquiring all of the assets of the medical group and pursuant to which the physicians and other employees previously employed by the medical group became employees of Skagit Valley Hospital.

Skagit Valley Hospital requested an agreement from United General to permit Skagit Valley Hospital to engage in business and provide services within the territorial boundaries of United General. The Board of Commissioners of United General denied the request of Skagit Valley Hospital by formal resolution.

Among the medical group employees, now employed by Skagit Valley Hospital, are five physicians who, with assistance of their support staff (who are also employees of Skagit Valley Hospital) practice out of a facility known as the "Pavilion" located on land belonging to United General upon which a medical office building was constructed. The ownership of the building was converted to a condominium, subject to a ground lease held by

United General. One unit of the condominium is owned by an entity, which in turn, is owned by some or all of the physicians formerly employed by Skagit Valley Medical Center. That unit has been leased to Skagit Valley Hospital, as part of the above-referenced acquisition. The five Skagit Valley Hospital employed physicians referenced above, are providing healthcare services at the Pavilion within the territorial boundaries of United General. See, Findings of Fact, Conclusions of Law, Judgment and Stay, a copy of which is attached as an Appendix referenced in Section IV A (1) below.

II. ARGUMENT

The lower court's decision – which is predicated on well settled law - should be affirmed expeditiously to avoid perpetuation of the unlawful invasion of the territorial boundaries of United General by Skagit Valley Hospital.

2.1 The Controlling Law Is Well Settled That Two Like Kind Municipal Corporations May Not Provide Like Services in the Same Territory.

Long-established Washington municipal law provides that a municipal corporation is limited in its powers to those expressly granted and to those necessarily implied or incident to the declared objects and purposes of the corporation. Washington Pub. Util. Dists.' Utils. Sys. v. PUD 1, 112 Wn.2d 1, 6, 771 P.2d 701 (1989).

If there is a doubt about a claimed grant of power, it must be denied. Port of Seattle v. Washington Utils. & Transp. Comm'n, 92 Wn.2d 789, 795, 597 P.2d 383 (1979).

The controlling law provides that two municipal corporations of like kind with like powers may not co-exist in the same legal territory and, accordingly, one public hospital district may not operate within the territorial boundaries of another, without the latter's consent pursuant to an inter-local agreement.

As stated in *McQuillin on the Law of Municipal Corporations*, 2 *McQuillin Mun. Corp.* §7:8 (3rd Ed.) states in pertinent part:

It is firmly established that there cannot be, at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges. This rule does not rest on any theory of constitutional limitation, but instead on the practical consideration that intolerable confusion instead of good government would obtain in a territory in which two municipal corporations of like kind and powers attempted to function coincidentally. However, this inhibition is limited to a situation where the powers and privileges conferred on the separate governmental agencies are substantially coextensive in scope and objective. In the absence of constitutional restrictions, the legislature may authorize the formation of two municipal corporations in the same territory at the same time for different purposes, and municipal corporations organized for different purposes may include the same territory. The identity of territorial limits of separate public corporations is immaterial if these entities have

separate and distinct governmental purposes.
[Footnotes omitted and underlining added]

This rule of law was followed by the Supreme Court in *Alderwood Water District v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 382 P.2d 639 (1963). The Superior Court relied upon the *Alderwood Water District* case as well as the Washington State Attorney General's opinion, AGO 1988, No. 15 (copy attached as an Appendix, referenced in Section IV C (1) below), which applied the rule to public hospital districts.

As with water districts, at issue in the *Alderwood Water District, supra*, public hospital districts are given the power to provide services extra-territorially for their residents, but not within the territorial boundaries of another public hospital district. While Skagit Valley Hospital argues that the power to provide services outside its territorial boundaries, empowers it to unilaterally operate within the boundaries of United General, the Washington State Supreme Court rejected the same argument in *Alderwood Water District, supra*.

AGO 1988 No. 15, relying on the holding in *Alderwood Water District, supra*, concluded that a public hospital district may not operate health care facilities or provide health care services, within the boundaries of another public hospital district, without

the latter's consent. Said AGO set forth it's rationale, as follows, at pages 6-7:

We have reviewed the Alderwood Water District case in some detail because we believe the prohibition on one water district operating inside the boundaries of another water district applies equally to public hospital districts. As with water districts, the development and operation of health care facilities by one district within the boundaries of another district would be contrary to the statutory scheme as a whole.

First, the construction and operation of health care facilities by one district within the boundaries of another district would be inconsistent with the statutory emphasis on district planning. For example, the hospital district superintendent is required to prepare yearly estimates of district expenses and yearly recommendations to the hospital commission regarding what development work should be undertaken. RCW 70.44.090. Also, whenever a district acquires, constructs, or improves a hospital or other health care facility, the hospital district commission must adopt a plan dealing with the work proposed, declare the estimated costs thereof, and provide for the method of financing. RCW 70.44.110.

In engaging in these planning functions, a hospital district must necessarily project into the future the probable health care needs of the residents of the district, population changes and demographics, and the availability of resources to the district. To paraphrase the court in Alderwood Water District, "the careful consideration of these factors in creating a comprehensive plan could be rendered meaningless if another district is permitted to purloin potential customers from a [hospital] district by invading its territory." 62 Wn.2d at 322.

Second, the ability of a district to finance its facilities and programs would likely be compromised by permitting hospital districts to develop and operate facilities within the

boundaries of another district. Hospital districts are financed by property tax levies, revenue bonds, general obligation bonds, interest-bearing warrants, assignment or sale of accounts receivable, and borrowing money on the credit of the district or the revenues of the district's hospitals. RCW 70.44.060(5), (6). Except for the property tax, these methods of financing are dependent in one degree or another upon the district's operation of hospital and other health care facilities and by the revenue derived from those facilities. Permitting one hospital district to "invade" another could result in a serious impairment of the invaded district's financial position. See Alderwood Water District, 62 Wn.2d at 322-23.

Third, there are sound policy reasons why one district should not be allowed to construct and operate a health care facility within the boundaries of another district, absent express statutory authorization. The ability of residents of a hospital district to identify and respond to the health care needs of their district could be significantly undermined if another district could, without the first district's approval, develop and operate a health care facility within the first district's boundaries. Furthermore, local control is closely related to local accountability. As long as the health care facilities in a district are operated by the elected representatives of the residents of that district, those representatives are accountable to the residents. The representatives of the "invading" district would not be similarly accountable to the residents of the invaded district.

Chapter 70.44 RCW, has been amended from time to time since the Attorney's General opinion was rendered¹ and at no time has the legislature elected to change the law to authorize and empower public hospital district's to operate co-extensively within

¹ RCW 70.44.060 has been amended six (6) times since the Attorney General's Opinion was issued in 1988 by the following Laws of Washington: 1990, c. 234 § 2; 1997, c.3 § 206; 2001, c.76 § 1; 2003, c. 125 § 1; 2010, c.95 § 1; 2011, c. 37 § 1.

the territorial boundaries of another public hospital district without the latter's consent. As this Court has consistently held that "although attorney general opinions are not controlling on us, they are persuasive authority." *Associated General Contractors of Washington v. King County*, 124 Wn.2d 855,860-861, 881 P.2d 996,999 (1994), citing *Bowles v. Washington Dept. of Retirement Systems*, 121 Wn.2d 52, 847 P.2d 440 (1993) which stated at 121 Wn.2d 63-64.

Additionally, the Attorney General issued an opinion agreeing that the Department's interpretation of this issue was correct. AGO 1 (1976). Although not controlling, Attorney General opinions are given "considerable weight". *Everett Concrete Prods., Inc. v. Department of Labor & Indus.*, 109 Wash.2d 819, 828, 748 P.2d 1112 (1988). **Moreover, the Attorney General opinion constitutes notice to the Legislature of the Department's interpretation of the law, and the Legislature has not acted since 1976 to overturn the Department's interpretation. Greater weight attaches to an agency interpretation when the Legislature acquiesces in that interpretation. See *Newschwander v. Board of Trustees*, 94 Wash.2d 701, 711, 620 P.2d 88 (1980). [Bolding added].**

The legislative purpose behind RCW 70.44.060(3), the statute authorizing limited extra-territorial activities by a public hospital district, must be read in the context of Chapter 70.44 RCW in its entirety. Chapter 70.44 sets forth a statutory framework through which a public hospital district may *choose* to enter a consensual contractual arrangement with another hospital

district for the provision of healthcare services. See, generally, RCW 70.44.240 and, for rural public hospital districts, RCW 70.44.450.

The legislature would not have enacted RCW 70.44.450 if it intended rural public hospital districts to have the power to unilaterally decide to provide hospital and other healthcare services inside the boundary of another district without the second district's consent. By authorizing "cooperative agreements and contracts" between rural public hospital districts, the Legislature indicated its disapproval of the type of unilateral, competitive action that Skagit Valley Hospital has attempted when it enacted RCW 70.44.450 which provides:

In addition to other powers granted to public hospital districts by chapter 39.34 RCW, *rural public hospital districts may enter into cooperative agreements and contracts with other rural public hospital districts in order to provide for the health care needs of the people served by the hospital districts.* These agreements and contracts are specifically authorized to include:

- (1) Allocation of health care services among the different facilities owned and operated by the districts;
- (2) Combined purchases and allocations of medical equipment and technologies;
- (3) Joint agreements and contracts for health care service delivery and payment with public and private entities; and
- (4) Other cooperative arrangements consistent with the intent of chapter 161, Laws of 1992. The provisions of

chapter 39.34 RCW shall apply to the development and implementation of the cooperative contracts and agreements.

The statement of legislative intent underlying RCW 70.44.450 is particularly instructive and applicable to the current situation involving Skagit Valley Hospital and United General:

Intent -- 1992 c 161: "The legislature finds that maintaining the viability of health care service delivery in rural areas of Washington is a primary goal of state health policy. The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation. *It is the intent of this act to foster the development of cooperative and collaborative arrangements among rural public hospital districts by specifically authorizing cooperative agreements and contracts for these entities under the inter-local cooperation act.*" [1992 c 161 § 1.] [Emphasis added.]

Contrary, to the argument of Skagit Valley Hospital, the Legislature expressly determined that rural public hospital districts such as Skagit Valley Hospital and United General should not compete with each other for the provision of health and hospital care services, within the defined territorial boundaries of each other. Skagit Valley Hospital's arguments about the desirability of allowing it to unilaterally invade United General's boundaries and compete (which are not factually supported by citation to the

record on review nor by the applicable law) should be addressed to the Legislature not the courts.

The legislature clearly recognized this basic rule of municipal law in adopting the statutes governing Washington public hospital districts (Chapter 70.44 RCW). Public hospital districts are created with specified non-overlapping district boundaries (RCW 70.44.020, 70.44.030, and 70.44.035) and representative governance elected from therein (RCW 70.44.040). The legislature has further provided distinct and formal legal processes for changing boundaries through division of public hospital districts (RCW 70.44.350-380); or consolidation of districts (RCW 70.44.190); or changing the lines between contiguous hospital districts (RCW 70.44.185); or annexing territory (RCW 70.44.200); or withdrawing territory (RCW 70.44.400).

The legislature has empowered public hospital districts to contract with one another for services or joint activity (RCW 70.44.240), but absent such agreement, there is no statutory provision permitting one public hospital district to invade another. The legislature has acquiesced to the opinion of the State's attorney general over the past twenty-three (23) years when amending the statutory powers of public hospital districts (set out

in RCW 70.44.060) on six (6) different occasions. See, Footnote 1, supra. (A copy of RCW 70.44.060 is attached as an Appendix, referenced in Section IV C (2) below). A public hospital district, as a municipal corporation, has only those powers expressly granted to it by the legislature, those necessarily implied to carry out such express powers, and those essential to this declared object and purpose for which it was formed. *Noe v. Edmonds Sch. Dist.* 15, 83 Wn.2d 97, 515 P.2d 821 (1973). As the Superior Court properly held, Washington public hospital districts do not possess the power to unilaterally invade another district.

2.2. This Appeal Should be Decided Expeditiously and the Stay Lifted.

The law described above is well settled. However, as a result of the Superior Court's stay of the Writ of Prohibition, the relief sought by United General and awarded by the Superior Court is being delayed and denied pending the outcome of this appeal. Skagit Valley Hospital has already sought and received two (2) extensions of time in this appeal which has resulted in further extension of the stay.

While the stay persists, Skagit Valley Hospital is being permitted to continue its unlawful invasion and raiding of United General. The Superior Court expressly so noted in its Oral Opinion on October 24, 2011, (RP 5 at L 11 and 12 and at L 15-

21). (See copy attached as an Appendix referenced in Section IV (B) below).

A. Skagit Valley Hospital is engaged in “an illegal activity”. (RP 5, L 12);

B. The Court was “sympathetic, however, to the people that didn’t have a voice in this whole thing, the patients of these doctors and of United General, and I don’t want them to be harmed any more than necessary”. (RP 3, L 17-20);

C. So the Court stayed the implementation of the Writ of Prohibition “...until such time as the Court of Appeals has had an opportunity to review this matter and has had an opportunity to rule on the matter.” (RP 4, L 20-24); and

D. The Court did not want the illegal activity “...to be perpetuated.” (RP 5, L 11-12).

United General believes that this was not a proper case for the issuance of a stay in the first place. Our courts have long held that in cases not involving a decision affecting property or a money judgment;

“ . . . [A] stay . . . should not be granted if it would result in denying the equitable relief to which the respondent would be entitled in the event of the affirmance of the judgment.”

State ex rel Glesin v. Superior Court of Washington for King County, 125 Wash. 374, 378, 216 P. 353, 355 (1923).
See also Cooper v. Hindley, 70 Wash. 331, 176 P. 916 (1912).

The Superior Court stated that it was issuing the stay out of concern for the "...people that didn't have a voice in this whole thing, the patients of these doctors and of United General, and I don't want them harmed any more than necessary." See Reporter's Transcript of Oral Opinion of the Court (October 24, 2011), RP 3 at L 17-20. (Copy attached as an Appendix referenced in Section IV (B) below.) The fact is the people of United General did have a voice through their elected Board of Commissioners who denied the request from Skagit Valley Hospital for an agreement to permit its operation within United General. It is worthy of note that Skagit Valley Hospital did not offer even one declaration or affidavit from a patient stating that he or she believed there would be any personal harm or an inability to or hardship in obtaining healthcare if Skagit Valley Hospital vacated United General's territory. What Skagit Valley Hospital did present were declarations noting the inconvenience to it and Skagit Valley Medical Center in having to cease its unlawful activity and relocate some of its employees. Declarations of Darrin Gillis (CP 681-683) and John Bond, MD (CP 678-680).

2.3 Response to Appellant's Arguments.

United General submits the following in response to the two arguments presented by Skagit Valley Hospital that the

Superior Court abused its discretion in issuing the Writ of Prohibition because: (i) Skagit Valley Hospital has the legal authority to freely invade, raid, and compete with United General within United General's territorial boundaries; and (b) United General had a plain, speedy and adequate remedy in the course of legal procedure without requiring the issuance of a Writ of Prohibition.

2.3.1 The Superior Court Properly Issued the Writ of Prohibition Based Upon Its Determination That Skagit Valley Hospital Was Acting In Excess of Its Jurisdiction and Lawful Authority.

The Court is referred back to Section 2.1 of this Brief which clearly sets forth the applicable law establishing that Skagit Valley Hospital is, indeed, exceeding its lawful authority by virtue of its operations within the territorial boundaries of United General as the Superior Court held. Skagit Valley Hospital argues that there are four flaws in the Superior Court's reasoning.

First, it argues, without any citation, whatsoever, to the record in this case to support this statement that various "large regional networks" "all compete in public hospital districts without restriction." The Court should not consider this argument, at all, as there is nothing in the record to support it and if the argument is that nonpublic hospital health care providers may provide services and compete within a public hospital district, the argument is

irrelevant and immaterial to the construction of the public hospital district statute before this court and should appropriately be addressed to the Legislature if the law is to be changed. The legislature is the proper place to address changes in public policy and the powers of municipal hospital districts.

The second argument is that the Attorney General's 1988 opinion is neither binding nor persuasive authority. Again, the court is referred back to Section 2.1 of this Brief, *supra* at page 7, which provides that, under the circumstances of this case, the Court should give the opinion considerable weight, particularly in light of the fact that the Legislature has elected not to amend the public hospital district statutes to provide Skagit Valley Hospital with the authority it claims herein, notwithstanding the fact that it has otherwise amended the public hospital district's statute, empowering public hospital districts, six times since the Attorney General's opinion was published.

Skagit Valley Hospital goes on to assert that the Attorney General's opinion is outdated because when it was issued in 1988 "Rural public hospital districts were the only health care providers in their areas" There is absolutely no support for that

statement in the record and none is cited and there is no support for that statement in the law.²

Following the issuance of the Attorney General's Opinion, the Legislature, in 1992, adopted RCW 70.44.450 to provide for cooperative and collaborative arrangements upon mutual agreement among rural public hospital districts pursuant to the Inter-local Cooperation Act, specifically declaring that it was not cost effective, practical nor desirable to provide quality health care and hospital care services in such areas on a competitive basis. See, Section 2.1 of this Brief, *supra*, at page 6. Again, if Skagit Valley Hospital believes that circumstances have changed sufficiently to warrant a change in the Legislation, the argument should be addressed to the Legislature to determine that it is appropriate and permissible for the same type of municipal corporation to provide the same services in the same territory, each with its own taxing power.

Skagit Valley Hospital argues that the Attorney General's opinion "presumes that a district is the sole or primary provider of health care services." There is nothing in the Attorney General's

² It is submitted that Skagit Valley Hospital, upon direct inquiry by the Court, would have to admit that there were other health care providers within its district at the time the Attorney General's Opinion was issued, including Skagit Valley Medical Center which it acquired.

opinion stating any such assumption or presumption. It merely presumes, as it applies the law announced by this Court in the Alderwood Water District case, *supra*, at page 7 of this motion, that there is only one public hospital district lawfully operating within a defined territory unless a mutual interlocal agreement is in place. Indeed, the Legislature has acknowledged the existence of other health care providers, operating health care facilities by qualifying the power of eminent domain granted the public hospital districts, so as to exclude condemnation of any health care facility. See, RCW 70.44.060(2).

Third, Skagit Valley Hospital argues that the Alderwood Water District case, *supra*, should not apply to hospital districts, attempting to distinguish public hospital districts from water districts stating that water customers only need one provider in a district (without any citation to support the statement) and that utilities like water suppliers have been regulated monopolies. Again, no citation.

Skagit Valley Hospital goes on to argue that competing health care providers decrease costs through competition³ and

³ The Court may note that the Legislature disagrees, rejecting the notion that free competition is the best method for allocating high cost health care resources and has continued to maintain the Washington State Certificate of Need (“CON”) program which requires the issuance of a CON before a new healthcare facility

specialization, citing RCW 43.72.300(1), the first sentence of which is quoted at pages 1 and 2 of the opening brief of appellant. Skagit Valley Hospital argues from that sentence that the Legislature has decreed that competition benefits the state health care system. What Skagit Valley Hospital overlooks is that the statutory statement is expressly conditioned upon the existence of a large number of buyers and sellers, easily comparable health plans and services, minimal barriers to entry and exit in the health care market and adequate information. Skagit Valley Hospital omits from its quotation the second sentence of that statute which sets forth the Legislature's finding that purchasers of health care services and health care coverage do not have adequate information. The statute cited, does not deal with the power and authority of public hospital districts to operate within each other's territories, without consent and agreement but, rather, is intended to provide a fee-based system to cover the costs of reviewing petitions for anti-trust immunity for activities approved under that Chapter (Chapter 43.72 RCW) where those activities might otherwise be constrained by anti-trust laws and was intended to "displace competition" in the market place to achieve desired cost

may be constructed, developed or established or before a hospital may be sold, purchased or leased. RCW 70.38.105.

containment, innovation and access, by permitting “cooperative activities among health care providers and facilities”⁴

Again, that is not inconsistent with the requirement that a public hospital district consent and enter into an inter-local agreement with another public hospital district before the latter can legally operate within the territorial boundaries of the former.

Finally, the fourth reason asserted by Skagit Valley Hospital is that the Legislature did not intend to bar competition by allowing public hospital districts to enter into inter-local agreements. The argument is that RCW 70.44.450 allows two rural public hospital districts to collaborate when neither has the capacity to provide all of the services alone. It argues that isolated districts with few patients are authorized to enter into inter-local agreements to permit them to provide essential services where no alternatives exist. While that may be true, it is up to each district’s board of elected commissioners to decide what is best for the district and whether or not to enter into agreements to permit another district to operate within its boundaries.

Skagit Valley Hospital asserts, without citing any support for the statement, that rural health care benefits more from competition not less and do not operate in isolation immune from

⁴ See RCW 43.72.310(2) and see the Final Bill Report (ESHB2264), a copy of which is attached as Appendix C-3.

competition. It argues that public hospital districts “. . . must survive in a market with high costs, large regional competitors, and increasing regulation.” Appellant’s Opening Brief, page 19. In essence, Skagit Valley Hospital is saying that its Board of Commissioners is entitled to decide what is best for the residents of United General, notwithstanding the decision of the United General Board of Commissioners to the contrary.

The Legislature in its wisdom has not chosen to permit additional competition from neighboring public hospital districts without the consent of the invaded district and, indeed, the rationale of the Alderwood Water District case, *supra*, and the Attorney General’s Opinion cited by the Superior Court, both point out the additional burdens and detriments that a public hospital district may suffer when invaded without its consent.

In the end, it is up to the elected Board of Commissioners of each public hospital district to determine whether or not to permit another public hospital district to operate and the extent to which it would be permitted to operate within its territorial boundaries.

2.3.2 The Superior Court Did Not Abuse Its Discretion in Issuing the Writ of Prohibition Because United General Had No Other Plain, Speedy and Adequate Remedy.

As Skagit Valley Hospital concedes, the standard of review is abuse of discretion, which is stated in Detention of G.V. v. Podrebarac, M.D., 124 Wn.2d 288,295, 887 P.2d 680 (1994), as follows:

An action constitutes an abuse of discretion if the discretion is “manifestly unreasonable, or exercised on untenable grounds or for untenable reasons.... Whether this discretion is based on untenable grounds, or is “manifestly unreasonable, or is arbitrarily exercised, depends upon the comparative and compelling public or private interests of those affected by the order or decision and the comparative weight of the reasons for and against the decision one way or the other”. *In re Schuoler*, 106 Wash.2d 500, 512, 723 P.2d 1103 (1986).

Skagit Valley Hospital argues, at page 21 of its Opening Brief, that the issuance of a writ of prohibition is an abuse of discretion because it should have decided the case on the standard for injunctive relief because United General included within its complaint a request, “in the alternative” for an injunction prohibition the same conduct that it sought to prevent through a writ of prohibition. Skagit Valley Hospital argues that injunctive relief would have provided a plain, speedy and adequate remedy in the course of the legal proceedings. As the Court of Appeals stated

in *Butts v. Heller*, 69 Wn. App. 263, 266, 848 P.2d 213 (1993),
relying on cited holdings of the Supreme Court:

What constitutes a plain, speedy and adequate remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought.
[underlying added and citations omitted]

It should be noted that as the case was presented to the Court, United General sought only the writ of prohibition in its Motion to Show Cause (CP-353). In any event, Skagit Valley Hospital then argues that United General could not qualify for an injunction because, in essence, it could not show that Skagit Valley Hospital was acting in excess of its jurisdiction, which circles back to the first prong of the two (2) prong test for issuance of the writ of prohibition.

It was just this type of circularity of Skagit Valley Hospital's argument that the Superior Court noted in finding that United General also met the second prong of the test, there is no other plain, speedy and adequate remedy available in the ordinary course of the legal proceedings. The Superior Court expressly acknowledged the second prong (CP 733-734) and rejected Skagit Valley Hospital's circular argument, finding that suit for injunction did not provide a plain, speedy and adequate remedy. (CP-734). That conclusion is not "manifestly unreasonable" and therefore cannot be deemed an abuse of discretion. A public entity that is

exceeding its statutory authority should not be allowed to perpetuate that unlawful conduct with impunity.

As the Court recognized in *Alderwood Water District*, *supra*, 62 Wn. 2d at 322-323, an invasion by one hospital district of another district results in the loss of local accountability. However, there is no “plain, speedy, adequate” way to remedy such loss of local control, other than by a Writ of Prohibition. It is clear that the Court properly determined that requiring United General to wait until it suffers and demonstrates substantial injury from Skagit Valley Hospital’s unlawful invasion in order to seek an injunction, does not provide a plain, speedy and adequate remedy.

Skagit Valley Hospital cites Spokane v. Local No. 1553, 76 Wn. App. 765, 888 P.2d 735 (1995) for the proposition that a writ of prohibition should not issue if an injunction provides an available remedy. In the Local No. 1553 case, the City sought a writ of prohibition against a threatened employee strike on the grounds that a public employee strike is illegal. The Court held that while a public employee strike is unlawful, it involves private action and does not implicate a public action in excess of lawful “jurisdiction” and, therefore, a writ of prohibition directed against

a private individual will not lie. Since there is no private action in the current case, Local No. 1553 is not applicable.

III. CONCLUSION

Considering the Washington public hospital statutory provisions and well-settled municipal law in Washington, it is clear that the Superior Court correctly concluded that Skagit Valley Hospital has unlawfully invaded the territorial boundaries of United General and is illegally operating therein. The Superior Court did not abuse its discretion in determining that United General did not have another plain, speedy and adequate remedy in the ordinary course of legal proceedings. Thus, issuance of the Writ was appropriate.

However, the Stay included in the Superior Court's decision temporarily makes lawful that which the legislature has not authorized, i.e. the operations of Skagit Valley Hospital within United General's territorial boundaries. United General submits that the Court should expeditiously affirm the Superior Court and lift the stay.

IV. APPENDIX

The following portions of the record below are relevant to the Court's decision on United General's Motion on the Merits

and are attached hereto for the convenience of the Court in its review.

- A) Clerk's Papers ("CP"):
 - 1) Findings of Fact, Conclusions of Law Judgment and Stay (CP 720-753)
 - 2) Portion of Exhibit "B" to Affidavit of Greg Reed in Support of Motion for Order to Show Cause (CP 469-470)

- B) Report of Proceedings:
 - 1) Verbatim Report of Proceedings Reporter's Transcript of Oral Opinion of the Court October 24, 2011 ("RP")

C) Additional Authority:

Copies of the following authorities are provided to assist the Court in determining whether or not to grant this Motion:

- (1) RCW 70.44.060;
- (2) Washington AGO 1988; No. 15; and
- (3) Final Bill Report (ESHB2264) C274L97

Respectfully submitted this 5th day of June, 2012.

ANDERSON HUNTER LAW FIRM, P.S.

By: 

G. Douglas Ferguson, WSBA #5126
Christopher J. Knapp, WSBA #19954
Attorneys for Respondent, Skagit County Public
Hospital Dist. No. 304, d/b/a United General Hospital

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that I am over the age of eighteen years; am a legal assistant employed by the Anderson Hunter Law Firm. On the date stated below, I e-filed the original of this document with the Supreme Court; and mailed, postage prepaid thereon, via regular U.S. Mail, a copy of this document to the following attorneys:

Mr. Philip Buri
Buri Funston Mumford,
1601 F Street
Bellingham, WA. 98225-3011

Mr. Roger L. Hillman
Garvey Schubert Barer
1191 2nd Avenue, Suite 1800
Seattle, WA. 98101-2996

Mr. Michael Craig Subit
Frank Freed Subit & Thomas
705 2nd Avenue Suite 1200
Seattle, WA. 98104-1798

Mr. Bradford Edward Furlong
Furlong Butler Attorneys
825 Cleveland Avenue
Mount Vernon, WA. 98273

Dated this 5th day of June, 2012.



Linda Nelson, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Linda Nelson
Cc: Philip@Burifunston.com; rhillman@gsblaw.com; bef@furlongbutler.com; msubit@frankfreed.com
Subject: RE: Supreme Court No. 86796-8; Respondent's Brief

Rec. 6-5-12

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Subject: Supreme Court No. 86796-8; Respondent's Brief

Attached hereto for filing is Respondent's Brief. The attached 62 pages as Appendices are being mailing today.

Linda Nelson
Legal Assistant to G. Douglas Ferguson/Christopher J. Knapp ANDERSON HUNTER LAW FIRM
2707 Colby Avenue #1001 | Everett, WA 98201 P.O. Box 5397 | Everett, WA 98206
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APPENDIX A (1)
Findings of Fact, Conclusions of Law Judgment and Stay

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6
7 SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

8 SKAGIT COUNTY PUBLIC HOSPITAL)
9 DISTRICT NO. 304, dba United General)
10 Hospital,)

11 Plaintiff,)

12 vs.)

13 SKAGIT COUNTY PUBLIC HOSPITAL)
14 DISTRICT NO. 1 and the BOARD OF)
15 COMMISSIONERS THEREOF, dba Skagit)
16 Valley Hospital,)

17 Defendant.)

18 Dr. TEACKLE W. MARTIN, et al.)

19 Plaintiffs,)

20 vs.)

21 SKAGIT COUNTY PUBLIC HOSPITAL)
22 DISTRICT NO. 304 dba UNITED)
23 GENERAL HOSPITAL,)

24 Defendant.)

No. 11-2-00816-1
(CONSOLIDATED)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
JUDGMENT AND STAY

25 This matter having come on for hearing and the Court having considered the
26 pleadings, memoranda and declarations on file, and having heard argument of counsel, the
Court hereby makes the following Findings of Fact, Conclusions of Law and enters the
following judgment and stay:

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 1

AH:Doc No. 628501

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I. FINDINGS OF FACT

1.1 Skagit County Public Hospital District No. 1, dba Skagit Valley Hospital ("SVH"), is a Washington municipal corporation and public hospital district organized under Chapter 70.44 RCW. The jurisdictional boundary of SVH encompasses the majority of the City of Mount Vernon and areas southwest of the City of Burlington.

1.2 Skagit County Public Hospital District No. 304, dba United General Hospital ("United General") is a Washington municipal corporation and public hospital district organized under Chapter 70.44 RCW. The jurisdictional boundary of United General encompasses the Cities of Sedro-Woolley, Burlington, areas west to and including the towns Bayview, Samish Island, Bow and Alger; and areas including an eastern portion of the City of Mount Vernon and extending east to include the townships of Lyman, Hamilton, Concrete, Marblemount, and Rockport.

1.3 United General owns certain real property, located within its jurisdictional boundaries, with a physical address of 1990 Hospital Drive, Sedro Woolley, WA 98284. Subject to a long-term ground lease, a commercial office building (the "Pavilion") has been constructed on that property. The Pavilion was developed as a condominium, and Skagit Valley Medical Center, Inc., P.S., a multi-specialty physician group acquired Unit 2 of the Pavilion in October 2007.

1.4 Pursuant to an "Integration Agreement" dated April 30, 2010 (the "Integration Agreement") SVH has entered into arrangements with Skagit Valley Medical Center to acquire all or substantially all of the medical group's assets and hire most of its employees, including physicians. The assets SVH acquired in the merger included Pavilion Condominium Unit 2.

1.5 On May 27, 2010, the Board of Commissioners of United General adopted Resolution No. 2010-23 which specifically denied SVH's request to provide healthcare

1 services inside United General's jurisdictional boundaries following the SVH/SVMC
2 merger.

3 1.6 On July 1, 2010 SVH entered into contracts of employment whereby it is
4 now employing four full time and three part time health care providers who were formerly
5 employed by Skagit Valley Medical Center at Pavilion Unit 2. In the scope and course of
6 their current employment by SVH, those health care providers have continued to provide
7 health care services at Pavilion Condominium Unit 2.

8 1.7 SVH has stated that it intends to appeal this Court's judgment, set forth
9 below.

10 1.8 Implementation of this Court's judgment prior to resolution of such an
11 appeal, if any, would disrupt the health care provided to patients by the health care
12 providers at Pavilion Unit 2.

13 II. CONCLUSIONS OF LAW

14 2.1 Two conditions must be met to grant the writ of prohibition; (1) the party to
15 whom the writ is directed must be acting without or in excess of its jurisdiction; and (2)
16 there must be an absence of plain, speedy, and adequate remedy in the course of legal
17 procedure. The writ may be issued where it appears the person to whom it is directed is
18 about to act in excess of his or her jurisdiction. See, *Brower v. Charles*, 82 Wn. App. 53,
19 914 P.2d 1202 (1996).

20 2.2 The Court concludes that the second prong of the requirements for a writ of
21 prohibition has been met, i.e., there is no plain, speedy and adequate remedy available in
22 the course of legal procedure.

23 2.3 The Pavilion is a health care facility within the definition of the statute. (Ch.
24 70.44 RCW).
25

1 2.4 The health care providers employed by SVH who work at the Pavilion,
2 either on a full-time or part-time basis, are providing health care services within the United
3 General hospital district boundaries and accordingly, SVH is providing health care services
4 with the United General district boundaries.

5 2.5 Both SVH and United are hospital districts that are established pursuant to
6 RCW 7.44. Each is a municipal corporation. Each are established as rural hospital districts
7 with defined geographic boundaries. Each has the power to maintain health care facilities.
8 Each has the power to provide health care services. And within their respective districts as
9 municipal corporations, they are able to levy taxes, exercise power of eminent domain,
10 they are managed by a board of commissioners that are elected by the residents of the
11 respective districts.
12

13 2.6 Public Hospital districts are in a different category than private corporations.
14 The law is universal that municipal corporations may exercise only those powers which are
15 expressly granted or implied in the enabling statutes.
16

17 2.7 Reviewing the statute creating public hospital districts in its entirety, this
18 Court concludes that one rural hospital district may not invade the geographic limits of
19 another hospital district, by providing hospital or other healthcare services inside the
20 boundaries of the invaded district, without first obtaining the other district's permission
21 and/or consent.
22

23 2.8 To allow one district to operate in another district without such an agreement
24 would vitiate the entire purpose of the statute creating public hospital district, for the
25

1 reasons that are stated in AGO 1988 No. 15, as well as in the *Alderwood Water District vs.*
2 *Pope & Talbot*, 62 Wn. 2d 319, 382 P. 2d 639 (1963).

3 2.9 The law is that one hospital district cannot invade another hospital district's
4 geographic boundaries without first obtaining permission or consent and United has not
5 granted such permission or consent.

6 2.10 The Court hereby adopts and incorporates by reference the analysis and
7 conclusions from the Oral Opinion of the Court, dated September 12, 2011, as set forth in
8 Reporter's Transcript of same attached hereto as Exhibit "A."

9 2.11 Based upon the foregoing Findings of Fact and Conclusions of Law, the
10 Court will grant the Writ of Prohibition prohibiting Skagit Valley Hospital District from
11 operating health care facilities or providing health care services within the geographic
12 boundaries of the United General Hospital District.

13 III. JUDGMENT

14
15 IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS: Judgment be
16 and is hereby entered in favor of United General and a Writ of Prohibition is to be issued
17 directed to Defendant, Skagit Valley Hospital and said Defendant Skagit Valley Hospital is
18 hereby ORDERED to cease, desist and refrain from operating health care facilities or
19 providing health care services within the legal boundaries of Plaintiff United General,
20 including but not limited to providing health care services through its employed health care
21 providers at the premises referenced to herein as the Pavilion (1990 Hospital Drive, Sedro-
22 Woolley, WA).

23 IV. STAY

24
25 IT IS FURTHER ORDERED that the effective date of this Writ shall be stayed until
26 such time as the Court of Appeals (or the Supreme Court should direct review be sought

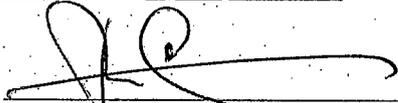
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1 and granted) issues its decision and mandate (or until such other time as may be directed by
2 the Appellate Court), or until the expiration of the time for appeal, if no timely appeal is
3 taken.

4 IT IS FURTHER ORDERED that while the stay is in effect, there shall be no
5 further expansion of Defendant Skagit Valley Hospital's health care services or operations
6 - either in terms of the number of health care providers, or the type, quantity or quality of
7 health care services provided -- within the boundaries of United General's hospital district.
8 Further, to the extent that any of Skagit Valley Hospital's health care health care providers
9 who are currently providing services within the boundaries of United General (set forth on
10 Exhibit "B") should cease to provide such services (through attrition, relocation or similar
11 change of practice), those health care personnel shall not be replaced (temporary coverage
12 for absences due to illness, bereavement, maternity/paternity leave, professional education
13 or vacation will be allowed).

14 The above is a Final Judgment on all claims of United General as against SVH in
15 the within action pursuant to RAP 2.2 (a) (1).

16 DONE IN OPEN COURT this 9 day of Nov, 2011.

17
18 
19 JUDGE RONALD L. CASTLEBERRY

20 Presented by:

21 ANDERSON HUNTER LAW FIRM P.S.

22
23 By 

24 Christopher J. Knapp, WSBA #19954
25 Attorneys for Plaintiff, United General Hospital
26

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 6

AH:Doc No. 628501

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Approved as to form, notice of presentation waived:

GARVEY SCHUBERT BARER

By 
Roger L. Hillman, WSBA #18643
Attorneys for Defendant, Skagit Valley Hospital

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 7

AH:Doc No. 628501

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EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

SKAGIT COUNTY PUBLIC)
HOSPITAL DISTRICT 304,)
)
Plaintiff,) Cause No. 11-2-00816-1
)
vs.)
)
SKAGIT COUNTY PUBLIC)
HOSPITAL DISTRICT 1, et al.,)
)
Defendants.)

REPORTER'S TRANSCRIPT

ORAL OPINION OF THE COURT

THE HONORABLE RONALD L. CASTLEBERRY
Department No. 9
Snohomish County Courthouse
September 12, 2011

A P P E A R A N C E S

For the Plaintiff: CHRISTOPHER KNAPP
DOUGLAS FERGUSON
Attorneys at Law

For the Defendants: ROGER HILLMAN
BRAD FURLONG
Attorneys at Law

For the Doctors: MICHAEL SUBIT
Attorney at Law

1 EVERETT, WASHINGTON, MONDAY, SEPTEMBER 12, 2011

2 AFTERNOON SESSION

3 --oo0oo--

4
5 THE COURT: Let's proceed on the other matter. 01:45

6 All right. Good afternoon. We're ready to proceed.

7 First, I want to thank all counsel for their professional
8 manner in which all of you have approached this case, not
9 only in terms, at least that I'm aware of, in terms of
10 your conduct towards each other, but towards the court. I 01:47
11 also want to commend you for the briefing and the
12 arguments that were provided to the court. I found them
13 to be most interesting and insightful.

14 Obviously I've had a chance to review all of the
15 materials, the memorandums, and the records and files 01:47
16 herein. For convenience, I'm going to refer to the Skagit
17 County Public Hospital District No. 304 as the United
18 General Hospital, and I'm going to refer to Skagit County
19 Public Hospital District No. 1 as Skagit Valley Hospital.

20 Skagit Valley operates its hospital district primarily 01:47
21 in the Mount Vernon area whereas the United General
22 Hospital operates primarily in Sedro Woolley. Both are
23 established pursuant to the statute as rural health
24 districts.

25 Obviously the memorandums that have been filed go into 01:48

1 an extensive recitation of the history of the hospital
2 districts and their involvement with the entity known as
3 Skagit Valley Medical Center. I'm not going to go into a
4 detailed review of that, but obviously for purposes of
5 adopting any sort of findings of facts or conclusions of
6 law, I would obviously adopt appropriate facts from those
7 memorandums.

01:49

8 Suffice it to say, sometime in July Skagit Valley
9 Hospital acquired the assets of an existing professional
10 corporation referred to as the Skagit Valley Medical
11 Center. The Skagit Valley Medical Center had a number of
12 different health care providers that historically had been
13 having privileges at both hospitals and they had referred
14 patients to both hospitals. As a result of acquisition,
15 those health care providers of the Skagit Valley Medical
16 Center became employees of the Skagit Valley Hospital.

01:49

17 Skagit Valley also acquired the leases or subleases of
18 the various clinics that had been previously operated by
19 the medical center. One of those clinics, and only one,
20 is located apparently across the street from the United
21 General Hospital and is obviously within the United
22 General Hospital District.

01:50

01:50

23 I've been informed that approximately four of the
24 health care providers who work at that clinic do so on a
25 full-time basis and there is approximately three others

01:51

1 who work there on a part-time basis. The clinic has in
2 these proceedings been referred to as the Pavilion, and I
3 may use that term throughout the oral decision.

4 United General asserts that now that these health care
5 providers are employees of Skagit Valley, the referrals 01:51
6 from those health care providers to United General have
7 declined. And, furthermore, United General asserts that
8 these health care providers will be loyal to Skagit Valley
9 to the detriment of United General. Obviously United
10 General asserts that this is all going to be harmful and 01:52
11 detrimental to United General.

12 Skagit Valley, on the other hand, argues that this
13 arrangement of these health care providers is just a
14 continuation of the relationship that had existed while
15 these health care providers were employees of the medical 01:52
16 center and that nothing has changed.

17 Furthermore, they assert that any drop in the hospital
18 referrals is a product of independent causes and in fact
19 their hospital, Skagit Valley, has suffered a greater
20 decline in referrals for that same period of time as has 01:53
21 been suffered by United General.

22 Quite frankly, that's about the only disputed fact
23 there is in this whole case of significance. Skagit
24 Valley, and the physicians affected, argue that the
25 granting of the writ of prohibition will ultimately harm 01:54

1 the residents and of the United General district. Those
2 people will not receive the same degree of care that they
3 have historically received. Quite frankly, if this were a
4 motion for injunctive relief, the court would be inclined
5 to deny the motion until at least a full hearing could be
6 had on those issues. As I say, they're hotly disputed and
7 this is not the forum in which I can decide as a matter of
8 law whether United General is correct or Skagit Valley is
9 correct.

01:54

10 However, this is a motion on a much more narrow basis.
11 United General seeks a writ of prohibition on the basis
12 that Skagit Valley cannot legally provide medical services
13 or operate health care facilities in United General's
14 health care district without first obtaining the consent
15 of United General.

01:55

16 The answer to that issue turns on an issue of law and
17 not on equities, not on a balancing of harm. Both sides
18 have cited the case of *Spokane County v. AFSCE*, found at
19 76 Wn.App. 765, and it provides a clear history and
20 definition of the writ of prohibition. Quoting from
21 Page 768, without using the cites, it says as follows:

01:56

22 "The common law writ of prohibition is of ancient origin.
23 The writ was one of the extraordinary remedies, a coercive
24 writ issued by a court of law rather than equity. The
25 purpose of the common law writ is to restrain the exercise

01:57

01:57

1 of unauthorized judicial or quasi judicial power. It does
2 not apply to acts of an executive, administrative, or
3 legislative nature.

4 "Washington has also enacted a statutory writ of
5 prohibition, RCW 7.16.290. A court's power under the 01:57
6 statutory writ are broader than under the common law writ.
7 Under the statutory writ, the actions of any tribunal,
8 corporation, board or person, whether they are acting in
9 judicial, legislative, executive or administrative
10 capacity, may be arrested, if acting in excess of their 01:58
11 power. Two conditions must be met to grant the writ; (1)
12 the party to whom the writ is directed must be acting
13 without or in excess of its jurisdiction; and (2) there
14 must be an absence of plain, speedy, and adequate remedy
15 in the course of legal procedure. The writ may be issued 01:59
16 where it appears the person to whom it is directed is
17 about to act in excess of his or her jurisdiction."

18 More or less the same thing is said in the case of
19 *Brower v. Charles*, found at 82 Wn.App. 53. At Page 57
20 that court stated: "Prohibition is a drastic remedy and 01:59
21 may be issued only where (1) a state actor is about to act
22 in excess of its jurisdiction and (2) the petitioner does
23 not have a plain, speedy and adequate legal remedy."

24 I want to address the second prong first, and that is
25 the petitioner does not have a plain, speedy and adequate 02:00

1 remedy. The cases are clear that if there is another
2 remedy available, that should first be used rather than
3 the writ of prohibition.

4 In this case it may be argued that one should seek the
5 remedy of injunctive relief. The problem with that
6 approach is that the defendant, Skagit Valley, vehemently
7 argues at this hearing and in its memorandum, that there
8 is no harm, there is no detriment, and none can be
9 established. And so if I were to deny the writ of
10 prohibition and say, well, you have available to you the
11 remedy of injunctive relief, it's a vicious circle because
12 then when the injunctive relief is sought, the defendant
13 turns around and says, well, there is no harm. That's
14 what this hearing is all about. You can't establish harm.
15 If you can't establish harm, you can't get injunction.
16 And if they can't get in the injunction, then there is no
17 other plain, adequate remedy available to them. So it
18 seems to me the second prong of the requirement has been
19 met.

20 The more fundamental vexing issue is whether Skagit
21 Valley is acting in excess of its authority in operating
22 the clinic at the Pavilion and using health care providers
23 who are its employees located at the Pavilion, obviously
24 both of those within the health care district of United
25 General.

02:00

02:01

02:01

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1 As indicated in terms of the argument of counsel, I
2 think the first question that needs to be answered is, is
3 the Pavilion a health care facility and is the activity of
4 the health care providers therein providing health care
5 services? If they don't meet this definition, obviously
6 game over, no writ of prohibition can issue. But it does
7 appear to this court that the Pavilion is a health care
8 facility within the definition of the statute. It is even
9 more certain that the health care providers employed by
10 Skagit Valley who work at the Pavilion, either on a
11 full-time or part-time basis, are providing health care
12 services within the United General Hospital District.

02:03

02:04

13 So then it comes down to the question of can they
14 operate within that district without the permission of
15 United General? Both Skagit Valley and United are
16 hospital districts that are established pursuant to RCW
17 7.44. Each are municipal corporations. Each are
18 established as rural health care districts with defined
19 geographic boundaries. Each have the power to maintain
20 health care facilities. Each have the power to provide
21 health care services. And within their respective
22 districts as municipal corporations, they are able to levy
23 taxes, exercise power of eminent domain, they're managed
24 by a board of commissioners that are elected by the
25 residents of the respective districts.

02:04

02:05

02:06

1 Obviously they are in a different category than simply
2 private corporations. They have the power, as I've said,
3 to levy taxes, eminent domain, election by the people.
4 And as such, the law is universal that municipal
5 corporations may exercise only those powers which are 02:07
6 expressly granted or implied in the enabling statutes.

7 Now, certainly within their district, as I've said, the
8 health care provider is able to operate facilities,
9 provide health care services, et cetera. Can they operate
10 outside of their district? Well, as stated in the 02:08
11 attorney general's opinion that has been cited by all
12 parties, they may operate outside of their district. RCW
13 70.44.060 gives the authority to hospital districts to
14 operate outside its boundaries when "necessary to provide
15 hospital and other health care services for the residents 02:08
16 of that district."

17 It then goes on to say: "It may, if not to the
18 detriment of its own district residents, provide health
19 care services to other residents outside of its district."

20 I agree with that opinion, that subject to the 02:09
21 conditions set forth in the statute, RCW 70.44, does give
22 authority to hospital districts to authorize hospital
23 facilities and provide health care outside of its
24 district.

25 I agree with the argument that has been put forth by 02:09

1 counsel representing the Skagit Valley that the statute
2 does not expressly prohibit a district from operating
3 within the borders of another hospital district without
4 first obtaining the permission from that other hospital
5 district to so operate.

02:10

6 However, in stating that, that does not end the
7 analysis. As the attorneys know, the AG opinion that has
8 been cited goes on to conclude that this limitation to
9 operate in another hospital district's boundaries comes
10 not from RCW 70.44.060, but rather from the general rule
11 that there cannot be two municipal corporations exercising
12 the same functions or services in the same territory at
13 the same time.

02:10

14 The attorney general's opinion relies heavily upon the
15 *Alderwood Water District* case. Like hospital districts,
16 water districts have the authority, pursuant to the
17 applicable statute, to provide water services outside of
18 their districts. But the real question in that case came
19 as to whether the water district could invade the
20 territory of another water district to serve the residents
21 of that other water district. As is the situation with
22 hospital districts, there was no explicit or stated
23 geographic limitations on the water district's invading
24 the district of another water district.

02:11

02:12

25 Nevertheless, the Supreme Court found that a limitation

02:12

1 of providing services in another district was implicit in
2 the statute. I'll quote extensively from the Alderwood
3 case starting at Page 319. "The question presented is
4 whether a municipal water district of this state can
5 directly furnish water to the inhabitants of an area
6 located outside the boundaries of such district but within
7 the boundaries of another water district.

02:13

8 "An easy solution to that question could be formulated
9 by merely citing, out of context, some language from a
10 statute and then to proceeding to consider that language
11 as though it existed in the vacuum. For example, a
12 portion of RCW 57.08.050 could be cited and emphasized. A
13 water district may provide water services to property
14 owners outside the limits of the water district. After
15 parroting the above-quoted language, we could mechanically
16 conclude that water districts have the authority to
17 distribute water to individuals outside the boundaries or
18 the geographic limits of the district; and that, since
19 there is no geographic or other limitations expressly
20 imposed upon that authority, one water district could
21 supply water to property owners or persons within the
22 boundaries of another district. However, such a
23 conclusion would sanction the rating of one water district
24 by another, which potentially might well lead to an
25 orderly and economically well-planned development and

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1 utilization of public water service in rapidly expanding
2 residential areas."

3 The court went on at Page 323 to state: "It seems
4 obvious, after considering the RCW in its entirety, that
5 the legislative purpose in permitting water districts to
6 supply water outside of their district was meant to extend
7 water services only to those individuals who were not
8 within the boundaries of any other water district."

9 In other words, they looked to the statute as a whole
10 to determine the purpose behind it.

11 In my review of the health care statute creating the
12 hospital districts in its entirety, this court concludes
13 that one rural hospital district may not invade the
14 geographic limits of another hospital district without
15 first obtaining their permission and/or consent.

16 To allow one district to operate in another district
17 without such an agreement would vitiate the entire purpose
18 of the statute creating the districts, and it's for the
19 same reasons that are stated in the attorney general's
20 opinion, as well as in the *Alderwood Water District* case.
21 It would essentially mean that one district could openly
22 compete with another district within its boundaries. And
23 that might be very well and good if these were private
24 corporations in which competition is encouraged. But in
25 terms of public hospital districts, an entirely different

1 approach has been taken by the legislature. They've
2 established these districts with immense power, the power
3 to tax, the power to issue bonds, the power of elections.

4 In addition, if one looks at the legislative history
5 behind the RCW 7.44.250, which deals with the ability to 02:18
6 enter into interlocutory agreements without there being a
7 violation of the antitrust law, both the Senate bill and
8 the House bill had the following language in terms of
9 reports of the committees.

10 "Concerns have been expressed that public hospital 02:18
11 districts are susceptible to antitrust challenges if they
12 enter into interlocutory agreements. Competition among
13 hospitals, particularly in rural areas, is not
14 cost-effective, practical, or desirable in providing
15 quality health care to people in these areas. It has been 02:19
16 suggested that more interlocutory agreements between
17 public hospital districts would be created if there was a
18 clear statement in a statute encouraging these
19 agreements."

20 It's obvious that if one were to take the approach of 02:19
21 Skagit Valley, that as a matter of law we can operate a
22 health care facility, we can provide health care services
23 in a neighboring hospital district without getting their
24 permission, it would mean that they could in fact invade
25 that district, compete with that district, and at least 02:19

1 it's this court's conclusion that that was not the purpose
2 behind this law.

3 The purpose behind it was to create separate hospital
4 districts, and they can certainly encourage cooperation,
5 they can certainly encourage agreements, but they cannot 02:20
6 invade the other's district. And as I say, to do what
7 Skagit Valley wants to do would essentially mean that they
8 could compete with impunity against United General.

9 Now, I recognize that there may be perfectly valid
10 arguments as to why this very limited encroachment should 02:21
11 be allowed to remain in existence, and that's been a
12 strong argument at least put forth to the court that, you
13 know, we're only doing that which historically has been
14 done. We don't mean to do anything further.

15 Frankly, I hope that both sides would be able to craft 02:21
16 an agreement that would allow this to happen, that would
17 allow it to exist on this limited basis. But, as I
18 indicated at the start of this decision, this decision is
19 not based upon balancing harms, balancing equities. It is
20 based upon an interpretation of the law. And the law is 02:22
21 that one hospital district cannot invade the other
22 hospital district's geographic boundaries without first
23 obtaining permission or consent. And when Skagit Valley
24 embarked upon its plan, it knew that it was engaging in an
25 action that was going to be met with some resistance prior 02:22

1 to going into that plan.

2 Therefore, absent such an agreement, it would be the
3 ruling of the court that the court will grant the writ of
4 prohibition prohibiting Skagit Valley from operating
5 health care facilities or providing health care services
6 within the geographic limits of the United General
7 Hospital District.

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8 As to the doctors' lawsuit, again, for the most part
9 the facts in that case are not in dispute. In it was
10 either May or April, but I believe it was May, United
11 General voted to terminate the medical staff privileges of
12 approximately 36 health care providers solely because
13 those health care providers had become employees of Skagit
14 Valley Hospital pursuant to this acquisition/merger
15 transaction that has been previously described.

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16 Under that merger/acquisition agreement, Skagit Valley
17 acquired the clinics of Skagit Valley Medical Center.
18 Most of those clinics were located outside of the hospital
19 district of United General. Only one of them was within
20 the geographic boundaries of the hospital district of
21 United General, and that is the Pavilion. As I've already
22 indicated, there were approximately four full-time health
23 care providers and three part-time health care providers
24 at the Pavilion. But regardless of whether they were
25 within the district or without the district, United

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1 General terminated anyone who was an employee of Skagit
2 Valley. The only reason for the termination was the
3 employment status. In fact, the letter was sent out to
4 all of the health care providers that they could reapply
5 for privileges at United General in the event that these
6 health care providers no longer were employed by another
7 public hospital district.

02:26

8 Many of the affected health care providers have filed
9 affidavits in opposition to their privileges being
10 terminated. One in particular, Dr. Mark, had had
11 privileges at United General Hospital since 1995. At one
12 time he'd been the chief of staff of medicine at United
13 General. His unrebutted testimony is that the criteria of
14 the credentials policy committee was that the only
15 criteria that ever was used in an accreditation decision
16 was that of the competency and the professional conduct of
17 the individual under question. The employer
18 identification of the provider was never listed among the
19 criteria of relevant issues for accreditation.

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20 United General doesn't dispute any of this. Rather,
21 United General asserts that it had the unfettered right to
22 terminate the privileges on the basis of an individual's
23 employment by Skagit Valley and points to the fact that
24 these decisions of accreditation are reviewed on the basis
25 of whether or not the decision was arbitrary and

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capricious.

The doctors assert that RCW 7.71.030(1) provides a new express statutory remedy for health care providers whose privileges are terminated for reasons other than competence or professional qualification. In its argument before this court, and at Page 3 of its reply memorandum, counsel for the doctors admit that prior to this statute, those deprived of privileges had to meet the arbitrary, capricious test in order to overcome an adverse decision.

02:28

As I've said, they assert now, however, the statute changes the game and it gives the doctors a statutory right to sue for decisions that are not made on the basis of competence or professional conduct. It would be a new, independent cause of action that would almost be of strict liability. In other words, if you revoked the privileges of a doctor for anything other than competence or professional conduct, the doctor has a cause of action. I don't interpret the statute that way.

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The court concludes that the statute does not impose any new substantial liability for privileged decisions. The cases cited, *Perry v. Rado* case, 155 Wn.App. 626, and the *Morgan v. PeaceHealth, Inc.*, 101 Wn.App. 750, support the proposition that this statute is one that addresses the limits of the remedy in case of wrongful revocation of privileges. The remedies for wrongful revocation of

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1 privileges or denial of privileges are limited to
2 injunctive relief or lost wages. The statute does not
3 grant a new cause of action or create a new liability.

4 Quoting from *Perry v. Rado* at Page 636: "Dr. Perry
5 challenges the actions of the professional review body of 02:32
6 health care providers at KMC. Further, he concedes that
7 the action was based on matters not related to the
8 competence or professional conduct of a health care
9 provider. Accordingly, his remedy is limited to
10 injunctive relief or damages for lost wages. Dr. Perry 02:32
11 sought damages relating to breach of due process, breach
12 of duties of good faith and fair dealing, breach of
13 contract, breach of fiduciary duties, and declaratory
14 relief. These remedies associated with these causes of
15 action are outside the exclusive list of remedies as set 02:33
16 forth in the statute. Therefore, Dr. Perry cannot
17 establish a claim for these causes of action where relief
18 can be granted. The trial court properly concluded
19 otherwise and dismissed these claims under 12(b)(6)."

20 Under the plaintiff doctors' theory, Dr. Perry would 02:33
21 have been awarded a judgment because he asserted that he
22 was fired not for professional conduct or competency, and
23 under the plaintiff's theory, under 7.71, under strict
24 liability, he would have won. In point of fact, his case
25 was dismissed. He got zip. The statute is clearly one of 02:34

1 limiting of remedies.

2 Nothing in the statute effects the standard of
3 arbitrary and capricious that has been used to overturn an
4 adverse privilege decision. Now, having said that, that
5 doesn't necessarily conclude the case involving the
6 doctors.

02:34

7 I've reviewed carefully the cases that have been cited
8 for the arbitrary, capricious standard. Of interest is
9 the case in 1951 involving the *Group Health v. King County*
10 *Medical Society*. In that case, Group Health was just
11 getting started and they weren't very popular with the
12 King County Medical Society. As a matter of fact, King
13 County Medical Society excluded any physician or health
14 care provider who was in their view a contract type of
15 physician, and they listed a whole bunch of reasons why
16 they didn't think they were of equal merit, and they
17 denied their privileges.

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18 In fact, when it went up to the Supreme Court, the
19 Supreme Court found that the denial of the privileges of
20 the Group Health providers solely on the basis that they
21 were practicing contract medicine was unreasonable and
22 arbitrary.

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23 Again, I'll quote, this is at Page 669: "Courts will
24 not by injunction interfere with the exercise of
25 discretionary powers conferred by the state upon municipal

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1 corporations acting through their duly pointed officers
2 merely because such action may be unwise or a mistake.

3 "However, where the act of public officials are
4 arbitrary, tyrannical, or predicted upon a fundamentally
5 wrong basis, then courts may interfere to protect the
6 rights of individuals. 02:36

7 "Having regard to the findings previously made, and to
8 the fact that we are concerned with a public hospital, it
9 is our conclusion that the exclusion of appellant
10 physicians from the staff of Renton Hospital upon the sole 02:37
11 grounds that they are practicing contract medicine in
12 substantially the manner now followed by appellants, is
13 unreasonable, arbitrary, capricious, and discriminatory."

14 It seems to this court that as to the practitioners who
15 are employed or work at the clinics outside of United 02:37
16 General's Hospital District, there is no good reason to
17 deny them their credentials or to deny them employment at
18 United General Hospital. It serves no purpose.

19 Now, and as to those individuals, the court would grant
20 a preliminary injunction. However, as to the individuals 02:38
21 who work at the Pavilion, the court will deny the request
22 for a preliminary injunction obviously for the reason that
23 it does make a logical difference, the court having
24 previously concluded that one district cannot work with
25 within the district of another without that district's 02:38

1 consent. The only way you can provide the health care
2 services is obviously through these individuals. To allow
3 these individuals to continue to work at the Pavilion
4 would vitiate the writ of prohibition. Therefore, it is
5 not arbitrary and capricious to make the decision that
6 those employed at the Pavilion will not. I'll deny the
7 injunction.

02:39

8 However, as to those individuals, if they were to
9 relocate their practice outside of the United General
10 Hospital District, or if they were to terminate their
11 relationship with Skagit Valley, there would be no reason
12 to revoke or to deny them their privileges.

02:39

13 So as to the request for preliminary injunction by the
14 doctors, it will be granted as to those doctors who
15 definitely work outside of the district of United General.
16 It will be denied as to those who work within.

02:40

17 That's the summary of the court's oral decision. I
18 expect counsel will write up an appropriate order, and
19 that will be up to you, Mr. Knapp.

20 MR. KNAPP: Yes, Your Honor, I appreciate that. I'll
21 go ahead and order the written transcript because it's
22 obviously a very detailed oral ruling.

02:40

23 THE COURT: I'm sure my court reporter will be happy.
24 Mr. Hillman.

25 MR. HILLMAN: Yes. Can I then assume that the

02:40

1 effective date of your decision with the regard to the
2 writ of prohibition will not be until an order is signed?

3 THE COURT: That's correct. Now, I'm also operating
4 under the premise that at least until I sign that writ of
5 prohibition, nobody's going to do anything. Now, it's
6 been my impression at least that everyone was operating
7 under some sort of, lack of a better term, "gentlemen's
8 agreement" that we were going to maintain the status quo.
9 And if so, if necessary, I would require the status quo to
10 remain in effect by all parties until such time as the
11 writ of prohibition is actually signed and entered by the
12 court.

13 MR. HILLMAN: Would Your Honor anticipate that the
14 effective date of the prohibition would then be the date
15 it was signed? The reason I'm asking is we have an in
16 excess of 10,000 patients whose care is going to be
17 disrupted, and some of whom get care at the Pavilion in
18 specialties not readily available within District 304, and
19 obviously our primary concern is continuity of care for
20 these people to not either have to go to a different
21 doctor midstream, particularly if they've been cared for
22 for years, or not to have go to Mount Vernon or outside --

23 THE COURT: Let me hear from United General in that
24 regard.

25 MR. FERGUSON: I'm Doug Ferguson, counsel for United

1 General.

2 The United General decision, at least with regard to
3 the practitioners, was contingent on the court's ruling.
4 So it wouldn't become effective until that date.
5 Certainly we can talk to the client about working it out.
6 I don't think we want to see --

02:42

7 THE COURT: Let me suggest this. In all fairness to
8 everybody, what I would like to see from you is, number
9 one, can we work out an agreement as to how this can be
10 done in an orderly fashion?

02:43

11 Number two, if there is not an agreement, I would like
12 to see from Skagit Valley some sort of proposal, specific
13 proposal in terms of when can this go into effect and be
14 implemented in an orderly fashion. And so I don't want to
15 just off the top of my head say, well, yeah, I'll grant
16 it, but the devil's in the details.

02:43

17 I'm certainly amenable to some orderly transition. But
18 having said that, I don't want to go any further. I mean,
19 if you came back and said, well, you know, it's going to
20 take us a year to go through these patients, I might say
21 that's unreasonable. If you were to say, well, it's going
22 to be 60 days, I don't know.

02:44

23 So I don't want to get into that game at least at this
24 point in time without hearing specifics, but I'm amenable
25 to some sort of plan that would be set forth in the order.

02:44

1 MR. HILLMAN: Would it be anticipated then that when
2 Mr. Knapp and Mr. Ferguson prepare their order, it be
3 noted for presentation, and that prior to that time we
4 would honor Your Honor's request for a plan, and also if
5 we were to make any motions directed towards a stay, we
6 would do so at that time as well?

02:44

7 THE COURT: That's correct. It's a two-part thing.
8 Number one, can you work out an agreement as to the
9 implementation? If you can and it can be incorporated
10 into the writ, that's fine.

02:45

11 Number two, if you can't work out an implementation
12 agreement, I certainly want one presented, be able to hear
13 a response from them, et cetera. Then the other issue is
14 of course any request for a stay if in the event you want
15 to take an appeal. I'll take that up at that time as
16 well.

02:45

17 MR. HILLMAN: Thank you, Your Honor.

18 MR. SUBIT: I think you just addressed the concern
19 about the seven people, and so it sounds like rather than
20 trouble the court any further, we can work that detail out
21 as part of the larger discussions. So I don't think I
22 have anything further.

02:45

23 THE COURT: Anything else? Thank you all very much.
24 Court will be in recess.

25 (Proceedings concluded.)

02:45

EXHIBIT B

Exhibit B
Pavilion Providers

Dr. Mary Ann Hink, Internal Medicine

Dr. Peggy Bissell, Internal Medicine

Dr. Teackle Martin, Internal Medicine

Dr. Rico Roman, Internal Medicine

Sarah Evans, ARNP, Internal Medicine

Dr. Linda Bertram, Optometry

Chris Schaffner, PharmD, Pharmacy

Dr. Jeffrey Feld, Cardiology/Rotating

Dr. Oscar Briseno, Cardiology/Rotating

Dr. Brad Berg, Pediatrics/ Rotating

Dr. Rowena Pusateri, Pediatrics/Rotating

Dr. David Bruce, Podiatry/Rotating

Kevin Bingham, RpH, Pharmacy/Rotating

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APPENDIX A (2)

**Portion of Exhibit "B" to Affidavit of Greg Reed in Support of
Motion for Order to Show Cause**

**SKAGIT VALLEY HOSPITAL
PROVIDER EMPLOYMENT AGREEMENT**

THIS PROVIDER EMPLOYMENT AGREEMENT (the "Agreement") is made between Public Hospital District No. 1, Skagit County, Washington d/b/a Skagit Valley Hospital ("Employer"), a Washington public hospital district, and Teackle W. Martin, M.D. ("Provider").

1. Employment. Employer hereby employs Provider and Provider hereby accepts employment, upon the terms and conditions hereinafter set forth. At all times, Provider must (a) maintain an unrestricted license to practice medicine (or, as to mid-level providers, an unrestricted license to practice within the appropriate mid-level classification) in Washington State, unless otherwise approved by Employer in writing; (b) if a physician, be board-certified or board-eligible in Provider's specialty/subspecialty; as to mid-level providers, obtain and maintain the appropriate credential or certification related to Provider's profession (c) maintain those narcotics and controlled substances numbers and licenses customary for Provider's practice; (d) be approved by the Employer's insurance carrier and covered under the Employer's insurance policies; and (e) be credentialed by all health plans with which Employer currently does business.

2. Term. Provider's employment shall commence on July 1, 2010 (the "Commencement Date"). Provider's employment is subject to the provisions concerning termination set forth in Section 11 below.

3. Work Requirement.

a. FTE and Day Worked. Provider is required to work in accordance with Employer's "Provider Work Expectation" policy as set forth in the SVH Provider Policy Manual (see Section 3.C below). Provider's FTE status is deemed part-time (0.67 FTE) as of the Effective Date of this Agreement.

b. Work Change Request. Provider may, with the concurring recommendation of the PGC defined in Section 3.c. below, request to change Provider's FTE status in accordance with applicable Employer policies and procedures. A changed FTE status, if approved, would be accompanied by a change in salary and employee benefits in accordance with applicable Employer policies and procedures.

c. SVH Provider Policy Manual. Employer policies and procedures, as established and amended from time to time, are maintained in the SVH Provider Policy Manual, (the "Policy Manual"), a copy of which is given to Provider upon employment. The

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parties understand and acknowledge that said Policy Manual may be amended from time to time by action of the Physician Governance Committee (the "PGC") which oversees SVH's informal physician practice division on behalf of SVH and subject to Employer's approval. A current copy of said Policy Manual is available electronically and also in Employer's human resources office, and the above referenced "Work Expectation Policy" is included within the Policy Manual. Provider shall be responsible for routinely reviewing said Policy Manual in order to be current with employee policies as established by Employer.

4. Billing and Collection.

a. Professional Fees. Except as otherwise required by law or previously approved in writing, it is expressly understood and agreed that all revenues, fees, and accounts receivable arising from Provider's practice, at any location whatsoever; including, without limit, all charges for services performed by Provider as part of the customary practice in the diagnosis or treatment of patients, all charges for Provider's services related to Provider's medical expertise (such as honorariums, teaching stipends and committee service stipends), all charges for ancillary services, and all receipts by Provider of remuneration for all of the above services (collectively "Provider's Professional Services") are assigned to and are the property of Employer, except as otherwise described in the Policy Manual.

b. Billing and Collection. Employer will be exclusively entitled to and responsible for billing and collecting from patients and third party payors for Provider's Professional Services, and will be entitled to retain for its account all such revenues collected. Employer shall also bill and collect from patients and third party payors, charges for ancillary services which may include radiology services, injections, laboratory services, physiotherapy, dressings, and supplies, services of support staff, and all other charges. Provider agrees to take all reasonable actions requested by Employer to assist in the collection of accounts receivable for services provided by Provider, and Provider grants full right and authority to Employer to collect such revenues and to enforce payment by all legal means.

c. Assignment of Right to Bill. In the event third party payment programs require any services performed by Provider to be billed in the name or on behalf of Provider, Provider hereby appoints Employer or its designee as his or her agent, and grants to Employer or its designee the right to bill on behalf of Provider for all services performed by Provider and to obtain a provider number on behalf of Provider to facilitate such billing.

d. Fee Schedule. The schedule of fees and charges for all services will be determined by Employer. The schedule of fees and charges will be maintained at Employer's practice offices, and may be amended by Employer from time to time.

5. Compensation.

a. Base and Production-Based Compensation. For services rendered by Provider under this Agreement, Employer agrees to pay Provider, and Provider agrees to accept compensation pursuant to the full-production formula as set forth in the Policy Manual now or as hereafter amended; provided, however, that if an Exhibit A is attached to this Agreement and signed by the parties hereto, then the compensation provisions, and/or work

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APPENDIX B-1

**Verbatim Report of Proceedings Reporter's Transcript of Oral
Opinion of the Court (October 24, 2011)**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

SKAGIT COUNTY PUBLIC)
HOSPITAL DISTRICT 304,)

Plaintiff,)

vs.)

SKAGIT COUNTY PUBLIC)
HOSPITAL DISTRICT 1, et al.,)

Defendants.)

Cause No. 11-2-00816-1

REPORTER'S TRANSCRIPT

ORAL OPINION OF THE COURT

THE HONORABLE RONALD L. CASTLEBERRY
Department No. 9
Snohomish County Courthouse
October 24, 2011

A P P E A R A N C E S

For the Plaintiff: CHRISTOPHER KNAPP
DOUGLAS FERGUSON
Attorneys at Law

For the Defendants: ROGER HILLMAN
BRAD FURLONG
Attorneys at Law

For the Doctors: MICHAEL SUBIT
Attorney at Law

For the Intervenor SVMC: GEOFFREY BRIDGMAN
Attorney at Law

1 EVERETT, WASHINGTON, MONDAY, OCTOBER 24, 2011

2 AFTERNOON SESSION

3 --oo0oo--

4
5 THE COURT: I'm ready to rule. I'm going to grant a 01:42
6 stay, but I want to emphasize that in granting the stay I
7 don't mean to suggest at all that the court has somehow
8 either reconsidered its original decision or that it
9 doubts the validity of that decision. I don't want this
10 to be taken by either counsel or a reviewing court that, 01:43
11 well, the court wasn't sure that a writ should lie here
12 and, therefore, it stayed its decision, maybe with some
13 self-doubt in mind. I don't have those self-doubts. I
14 considered the decision at the time. I was convinced at
15 the time that a writ of prohibition was appropriate, and 01:44
16 I'm still convinced that a writ of prohibition is
17 appropriate.

18 Frankly, as to the entities themselves, I'm not very
19 terribly sympathetic either as to SVH, the hospital, or
20 quite frankly, the doctors. I mean, when it comes down to 01:44
21 it, this was a business decision on their part. All of
22 them. They made a calculated business decision as to what
23 was going to be in their best self-interest. The doctors
24 found that it was a good deal to sell the entity that they
25 managed. It was a good deal to sell their interest in the 01:45

1 Pavilions, and they made calculated decisions. They knew
2 there was going to be opposition. They hoped for the
3 best, but they made that and they loss. And part of doing
4 business is you make the calculations and sometimes you're
5 right, sometimes you're wrong.

01:45

6 So I'm not terribly sympathetic to this argument of,
7 well, oh, woe is us, if you do this to us, we're going to
8 suffer all of these consequences. I mean, this was not
9 done in a vacuum where they were unaware of all of the
10 parade of horrors that they now want to put before the
11 court, oh, don't do that to us, don't throw us into the
12 briar patch, gees, we need five years to be able to build
13 a building and all this other stuff. They're big people,
14 they knew what they were doing. So and, quite frankly, if
15 it were just that, I'd say, folks, go to the court of
16 appeals and try to persuade them to stay it.

01:46

01:46

17 I am sympathetic, however, to the people that didn't
18 have a voice in this whole thing, the patients of these
19 doctors and of United General, and I don't want them to be
20 harmed any more than necessary. But at the same time, as
21 I was indicating to Mr. Hillman, when and if the court of
22 appeals affirms my decision, the ax is going to fall, and
23 I would hope that it would not be one of these things at
24 that point in time everybody is going to say, well, what
25 do we do now with these 16,000 people? Are we going to be

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01:47

1 faced with that same thing a year from now? Everybody is
2 saying, oh, gees, I thought we were all going to be able
3 to work this out. Well, it's pretty apparent you're not
4 going to be able to work it out.

5 So long way of saying that I am going to stay it. I do
6 think it should probably be stayed until the court of
7 appeals has had an opportunity to review my decision and
8 to rule on it. It shouldn't be stayed beyond that for the
9 reasons I've already stated.

10 This idea of, well, you know, we're going to have to
11 buy a new piece of land, we're going to have to build our
12 own building, we're going to have to do all that, the
13 impact's terrible, it's in a bad position, et cetera, I've
14 taken that into consideration and, quite frankly, I'm just
15 not buying it.

16 As I said, those were decisions you folks made at the
17 time you made the decision to make the merger. So to keep
18 putting it off I don't think is appropriate. But it does
19 seem to me it should be stayed until the court of appeals
20 has made its determination. So I will stay this decision,
21 the implementation of the writ of prohibition, until such
22 time as the court of appeals has had an opportunity to
23 review this matter and has had an opportunity to rule on
24 the matter.

25 As part of the stay, it will be the court's order that

1 there would be no further expansion of the services other
2 than that which has already been identified, either in
3 terms of number of personnel, the type of treatment that's
4 being done, the equipment, the square footage, all of
5 that. No expansion either in terms of quality, quantity 01:49
6 or type.

7 Furthermore, it seems to me if in fact there is a
8 reduction for reasons unrelated to the court's ruling, for
9 instance, a doctor decides to leave, goes away, whatever,
10 that doctor is not replaced. That staff person is not 01:50
11 replaced. And the reason for that is I don't want this to
12 be perpetuated. It is an illegal activity. And the only
13 reason I'm doing it is because these doctors say, well,
14 you know, we have patients who are our patients and they
15 can't be going to other doctors, et cetera. Well, if 01:50
16 they're going to go to another doctor, then they should be
17 going to another doctor of United General employment or
18 someone not affiliated with Skagit Valley employment, and
19 to allow this replacement type of thing would in my
20 opinion be perpetuating an illegal activity for no 01:51
21 particular good reason. I'm not talking about obviously
22 staff individuals in terms of support staff and things of
23 that nature. I'm talking about the physicians and the,
24 what's the terminology, licensed --

25 MR. HILLMAN: Health care providers. 01:51

1 THE COURT: Yes, health care providers. Anyway, that
2 would be the ruling in that regard.

3 MR. HILLMAN: If Your Honor please, then, we will
4 prepare a new proposed order and submit it to Mr. Knapp
5 which includes the conditions that you set. I would also
6 submit our stipulated order dismissing the counterclaim.

01:51

7 THE COURT: I'll sign that order.

8 MR. KNAPP: Then there were a couple of housekeeping
9 issues --

10 THE COURT: In terms of the proposed findings of facts
11 and conclusions of law. Let me get those.

01:52

12 MR. KNAPP: Your Honor, for what it's worth, United
13 General really only has objection to a couple of the
14 findings that were proposed in Mr. Hillman's version. He
15 essentially I think took most of our language and then
16 added some.

01:54

17 THE COURT: I know. There was the one in terms of the
18 court making a finding about the 16,000 --

19 MR. KNAPP: Correct. That was Paragraph 1.7 in
20 Mr. Hillman's materials. I don't believe that was an
21 actual finding of the court. It wasn't referenced in the
22 court's oral decision. And while materials have been
23 submitted on the motion for stay related to that number of
24 patients, that was not something that was part of the
25 record, at least from my recollection, for purposes of the

01:54

01:54

1 writ hearing. So we would ask that Paragraph 1.7 in
2 Mr. Hillman's proposed findings be stricken.

3 And also 1.9, which talked about the relocation costing
4 \$8-million and could not be completed, again, that was not
5 part of the record for the writ hearing and isn't material
6 to the issuance of the writ. So we would ask that that
7 not be included.

8 Then apart from those --

9 THE COURT: Just a moment. Here's my feeling about
10 1.7, 1.8, 1.9. My feeling is essentially they shouldn't
11 be included in the findings of facts and conclusions of
12 law. My oral decision I think adequately describes the
13 fact that for purposes of the writ of prohibition, the
14 court was not addressing the harm to the plaintiff. I
15 think 1.7, 1.8, 1.9, they all go to that issue. And I
16 understand why you wanted them in there, but I'm not going
17 to put them in there. I'll give you an A for effort.

18 MR. KNAPP: And then the only other matter would be
19 incorporating today's ruling from the court in the
20 conclusions of law and I think that we can attempt to work
21 together --

22 THE COURT: Well, they also eliminate Paragraph 2.1 of
23 the conclusions of law.

24 MR. KNAPP: Oh, correct.

25 THE COURT: It matters not to me in terms of the

1 inclusion of that. I think it's kind of redundant as to
2 what my oral decision was. So I don't have a problem
3 eliminating 2.1.

4 MR. HILLMAN: By going to our 2.1, which is their 2.2,
5 you kind of cut to the chase. 01:57

6 THE COURT: Certainly we always want to cut to the
7 chase, don't we, Mr. Hillman? So we'll eliminate the 2.1
8 as suggested in the United General's version. But I agree
9 with Mr. Knapp in terms of adding the language reference
10 the stay. So with those modifications -- 01:57

11 MR. HILLMAN: I guess the question then would be do you
12 want a separate order granting the motion for a stay that
13 would kind of duplicate what's said --

14 THE COURT: I don't see a need for a separate order for
15 a stay, as long as -- 01:57

16 MR. HILLMAN: As long as Your Honor's granting of the
17 stay and the conditions you put on it are included in
18 there.

19 THE COURT: You can say it is further ordered that this
20 matter be stayed pending resolution at the court of
21 appeals. 01:57

22 MR. KNAPP: Yeah.

23 THE COURT: As long as it's included in that I don't
24 see the need for a separate order.

25 MR. HILLMAN: We'll be able to resolve this. A point 01:58

1 Mr. Furlong raised pending a decision by the court of
2 appeals. Let's assume the court of appeals rules on
3 May 1st of next year, does it mean we're out May 2nd?

4 THE COURT: That will be up to the court of appeals
5 then. They can address that. Mr. Knapp, you may want to
6 put in the order when I say pending resolution by the
7 court of appeals, I do want it clear that it's up to the
8 court of appeals as to when that order becomes effective.

9 I mean, I can't tell the court of appeals that, but I
10 can say this stay terminates as of the decision of the
11 court of appeals, unless further extended by order of the
12 court or by order of the court of appeals.

13 MR. FERGUSON: May I make a suggestion? What about
14 tying it to the issuance of the mandate of the court of
15 appeals?

16 THE COURT: It should be the mandate, that's clear. I
17 think what Mr. Hillman is saying, you know, as of that day
18 then is everybody out? And I think it depends on what the
19 court of appeals says.

20 MR. HILLMAN: The parties have talked about this enough
21 that I don't think they're going to show up the next day
22 and say why are you still here, but you never know. If we
23 put in language pending a ruling by the court of appeals,
24 and should they rule --

25 THE COURT: Yeah.

01:58

01:59

01:59

01:59

01:59

1 MR. HILLMAN: I'm sure we can work that out.

2 MR. FERGUSON: Just to clean everything up, as to the
3 matter of findings of fact on the preliminary injunction,
4 we didn't have any objections on that. We're just going
5 to make some small rescissions based today to incorporate,
6 as I said to the court, hold the privilege of the seven as
7 long as the stay is in effect.

02:00

8 THE COURT: Okay.

9 MR. FERGUSON: Thank you, Your Honor.

10 THE COURT: Thank you all very much. I appreciate it.

02:00

11 (Proceedings concluded.)

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APPENDIX C-1



Inside the Legislature

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[RCWs](#) > [Title 70](#) > [Chapter 70.44](#) > [Section 70.44.060](#)

[70.44.059](#) << [70.44.060](#) >> [70.44.062](#)

RCW 70.44.060

Powers and duties.

All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the municipal revenue bond act, chapter [35.41](#) RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in [RCW 70.44.110](#) and [70.44.130](#), as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to

be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. In connection with the issuance of bonds, a public hospital district is, in addition to its other powers, authorized to grant a lien on any or all of its property, whether then owned or thereafter acquired, including the revenues and receipts from the property, pursuant to a mortgage, deed of trust, security agreement, or any other security instrument now or hereafter authorized by applicable law: PROVIDED, That such bonds are issued in connection with a federal program providing mortgage insurance, including but not limited to the mortgage insurance programs administered by the United States department of housing and urban development pursuant to sections 232, 241, and 242 of Title II of the national housing act, as amended.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions

of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter.

(11) To solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and to sell, lease, exchange, invest, or expend gifts or the proceeds, rents, profits, and income therefrom, and to enter into contracts with for-profit or nonprofit organizations to support the purposes of this subsection, including, but not limited to, contracts providing for the use of district facilities, property, personnel, or services.

[2011 c 37 § 1; 2010 c 95 § 1; 2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Notes:

Intent -- 1997 c 3 §§ 201-207: See note following RCW [84.55.010](#).

Application -- Severability -- Part headings not law -- Referral to electorate -- 1997 c 3: See notes following RCW [84.40.030](#).

Purpose -- 1984 c 186: See note following RCW [39.46.110](#).

Liberal construction -- Severability -- 1983 c 167: See RCW [39.46.010](#) and note following.

Severability -- 1979 ex.s. c 155: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 155 § 3.]

Severability -- 1979 ex.s. c 143: See note following RCW [70.44.200](#).

Severability -- Effective dates and termination dates -- Construction -- 1973 1st ex.s. c 195: See notes following RCW [84.52.043](#).

Purpose -- 1970 ex.s. c 56: See note following RCW [39.52.020](#).

Purpose -- Severability -- 1967 c 164: See notes following RCW [4.96.010](#).

Eminent domain

by cities: Chapter [8.12](#) RCW.

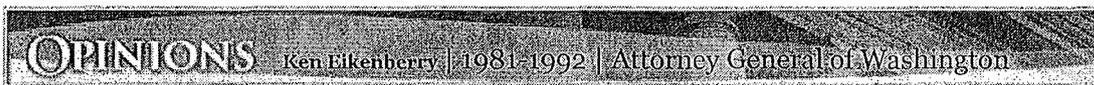
generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; RCW [84.52.050](#).

Port districts, collection of taxes: RCW [53.36.020](#).

Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages: Chapter [4.96](#) RCW.

APPENDIX C-2



PUBLIC HOSPITAL DISTRICTS -- MUNICIPAL CORPORATIONS --
EXTRATERRITORIAL OPERATIONS

1. A public hospital district organized under chapter 70.44 RCW has the authority to construct and operate a drug and alcohol treatment center located outside the boundaries of the district, where the primary purpose is to provide services for the residents of the district, but a district may not operate inside the boundaries of another public hospital district without the second district's agreement.

July 1, 1988

Shai
|

Honorable Clyde Ballard
House Minority Leader
418 Legislative Building
Olympia, Washington 98504

Cite as: AGO 1988 No. 15

Dear Representative Ballard:

By letter previously acknowledged, you have requested our opinion on the following question:

Does a public hospital district organized under chapter 70.44 RCW have the authority to construct and operate a drug and alcohol treatment center located outside the boundaries of that district?

We answer your question in the qualified affirmative.

ANALYSIS

Public hospital districts are creatures of statute. See chapter 70.44 RCW. As such, they enjoy only those powers expressly granted or necessarily implied in the statutes that authorize their creation. Pacific First Fed. Sav. & Loan Ass'n v. Pierce Cy., 27 Wn.2d 347, 353, 178 P.2d 351 (1947).

Additionally, municipal corporations generally are not authorized, in the absence of a legislative grant of authority, to operate beyond their own boundaries.

[[Orig. Op. Page 2]]

In accordance with the principle applicable to countries and states, it is the general rule that, while it has jurisdiction over the territory embraced within its corporate limits, a municipal corporation cannot, without legal authorization exercise its powers beyond its own corporate limits

2 E. McQuillin, Municipal Corporations § 7.02 (3d ed. rev. 1979) (footnotes omitted).¹

With the foregoing rules and limitations in mind, we turn now to an analysis of chapter 70.44 RCW to determine whether the Legislature has expressly granted a public hospital district the authority to construct and operate a health care facility beyond its boundaries or whether such authority can be necessarily implied.

The purpose of chapter 70.44 RCW is to "authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons." RCW 70.44.003. To accomplish their stated purposes, public hospital districts are expressly authorized

to provide hospital or other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem [[Orig. Op. Page 3]]

expedient or necessary under the existing conditions

RCW 70.44.060(3) (emphasis added). Hospital districts are further authorized

to take, condemn and purchase, lease, or acquire, any and all property, and property rights, ... and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities

RCW 70.44.060(4) (emphasis added).

We believe these statutes, particularly RCW 70.44.060(3), authorize a public hospital district to construct and operate health care facilities located outside the boundaries of the district, when necessary to provide hospital and other health care services for residents of the district.

The wording of RCW 70.44.060 suggests that the principal way in which a hospital district would utilize out-of-district hospitals and other health facilities would be by contracting with presently existing facilities. But the statute is very clear that services from out-of-district facilities may be obtained "in any other manner" the district deems expedient or necessary. If the district deems it expedient or necessary to obtain such services by constructing and operating its own facility, then it appears to us that the district is authorized to do so. Any other result would, in our opinion, be contrary to the plain meaning of RCW 70.44.060(3). See, e.g., Davis v. Department of Empl. Sec., 108 Wn.2d 272, 277-78, 737 P.2d 1262 (1987) (words of statute should be accorded their ordinary meaning); State v. Malone, 106 Wn.2d 607, 610, 724 P.2d 364 (1986) (same).

Having concluded that a hospital district is authorized to provide hospital and other health care services by constructing and operating facilities located outside the boundaries of the district, we must point out that such authority is subject to at least two significant limitations.

First, a public hospital district can operate beyond its boundaries only for the purpose of providing hospital and health care services "for residents of said district." RCW 70.44.060(3). This limit on the purposes for which a district can operate extraterritorially is also implied in the proviso at the end of RCW 70.44.060(3) that a district "must at all times make adequate provision for the needs of the district and

residents of said district shall have prior rights to the [[Orig. Op. Page 4]] available hospital and other health care facilities of said district"

Thus, although a district clearly is permitted to provide hospital services and other health care services for nonresidents, e.g., RCW 70.44.003, a district's primary focus and emphasis must be on adequately providing for the needs of its residents.

The second limitation on a hospital district's extraterritorial authority follows from the general rule that there cannot be two municipal corporations exercising the same functions in the same territory at the same time. McQuillin states the purpose for this general rule:

This rule does not rest on any theory of constitutional limitation, but instead on the practical consideration that intolerable confusion instead of good government would obtain in a territory in which two municipal corporations of like kind and powers attempted to function coincidentally.

2 E. McQuillin, at § 7.08 (footnote omitted).

Although this second general rule has been significantly weakened by the case law of this state,

it continues to serve as a touchstone in the sense that it expresses a public policy against duplication of public functions, and that such duplication is normally not permissible unless it is provided for in some manner by statute.

Alderwood Water Dist. v. Pope & Talbott, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963). In a sense, this general rule should alert courts, in situations where a literal reading of a statute would appear to authorize duplication of public functions, "to the necessity of closely examining in toto statutory provisions conferring authority upon the potentially competing municipal corporations." Id.

In Alderwood Water District, the entrepreneur of a residential real estate development located within the Alderwood Water District arranged for connection of the water lines in the development to water mains operated by the neighboring Silver Lake Water District. The Alderwood Water District sued to enjoin the Silver Lake Water District from supplying water to the development in question. Silver Lake Water District offered a defense that there was actual statutory authorization, RCW 57.08.045, for water districts to "provide water services to property owners outside the limits of the water district." [[Orig. Op. Page 5]] Despite that language, the court held that the statute, taken in context, permitted water districts to serve property owners outside the district only when they were not within the boundaries of another water district. 62 Wn.2d at 323.

The Alderwood court concluded that the statutory prohibition against geographical overlapping of water districts, RCW 57.04.070, "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." 62 Wn.2d at 322.

This implication was reinforced by the statutory requirement that commissioners of a water district formulate a comprehensive plan sufficient to fulfill the foreseeable needs of the district for making improvements or incurring any indebtedness. RCW 57.16.010. In formulating such a plan, the commissioners were required to, among other things, project into the future the probable changes in water

consumption per inhabitant, population fluctuations, and the availability of water to the district. According to the court,

[t]he careful consideration of these factors in creating a comprehensive plan could be rendered meaningless if another district is permitted to purloin potential customers from a water district by invading its territory.

62 Wn.2d at 322.

The court also focused on the financing of water districts. Water districts are financed by property tax levies, revenue bonds, creation of local improvement districts, connection charges, and the sale of water. Referring to the property tax, the court said:

[I]t makes no difference who supplies water to the individual property owner because the tax is levied upon all property within the water district. However, the other methods of financing are dependent upon the district's supplying of water Permitting one water district to "raid" another could result in a serious impairment of the "raided" district's financial position.

62 Wn.2d at 322-23.

After considering Title 57 RCW in its entirety, it was obvious to the court

[[Orig. Op. Page 6]]

[t]hat the legislative purpose in permitting water districts to supply water to individuals outside of their districts ... was meant to extend water services only to those individuals who were not within the boundaries of any other water district.

62 Wn.2d at 323.

We have reviewed the Alderwood Water District case in some detail because we believe the prohibition on one water district operating inside the boundaries of another water district applies equally to public hospital districts. As with water districts, the development and operation of health care facilities by one district within the boundaries of another district would be contrary to the statutory scheme as a whole.

First, the construction and operation of health care facilities by one district within the boundaries of another district would be inconsistent with the statutory emphasis on district planning. For example, the hospital district superintendent is required to prepare yearly estimates of district expenses and yearly recommendations to the hospital commission regarding what development work should be undertaken. RCW 70.44.090. Also, whenever a district acquires, constructs, or improves a hospital or other health care facility, the hospital district commission must adopt a plan dealing with the work proposed, declare the estimated costs thereof, and provide for the method of financing. RCW 70.44.110.

In engaging in these planning functions, a hospital district must necessarily project into the future the probable health care needs of the residents of the district, population changes and demographics, and the availability of resources to the district. To paraphrase the court in Alderwood Water District, "the careful consideration of these factors in creating a comprehensive plan could be rendered

meaningless if another district is permitted to purloin potential customers from a [hospital] district by invading its territory." 62 Wn.2d at 322.

Second, the ability of a district to finance its facilities and programs would likely be compromised by permitting hospital districts to develop and operate facilities within the boundaries of another district. Hospital districts are financed by property tax levies, revenue bonds, general obligation bonds, interest-bearing warrants, assignment or sale of accounts receivable, and borrowing money on the credit of the district or the revenues of the district's hospitals. RCW 70.44.060(5), (6). Except for the property tax, these methods of financing are dependent in one degree or another upon the district's operation of hospital and other health care facilities and by the revenue derived from those facilities. Permitting one hospital district to "invade" [[Orig. Op. Page 7]] another could result in a serious impairment of the invaded district's financial position. See Alderwood Water District, 62 Wn.2d at 322-23.

Third, there are sound policy reasons why one district should not be allowed to construct and operate a health care facility within the boundaries of another district, absent express statutory authorization. The ability of residents of a hospital district to identify and respond to the health care needs of their district could be significantly undermined if another district could, without the first district's approval, develop and operate a health care facility within the first district's boundaries. Furthermore, local control is closely related to local accountability. As long as the health care facilities in a district are operated by the elected representatives of the residents of that district, those representatives are accountable to the residents. The representatives of the "invading" district would not be similarly accountable to the residents of the invaded district.

One option a local district would have to retain local control in the face of a potential "invasion" by another district would be to try to fend off the invasion by constructing, purchasing, leasing, or otherwise acquiring its own facility. This could easily result in premature district action and unnecessary or unwise public investment in facilities and programs. We do not see that the public good would be served by any rule promoting this result.

After considering chapter 70.44 RCW in its entirety, it is our opinion that the extraterritorial authority granted hospital districts by RCW 70.44.060(3) does not extend to the development or operation of facilities that are within the boundaries of any other hospital district.^{2/}

[[Orig. Op. Page 8]]

To summarize our answer to your question, we conclude that a public hospital district has the authority to construct and operate a hospital or other health care facility outside the boundaries of its district but that such authority is limited at least in two ways. First, a district cannot operate beyond its boundaries unless its primary purpose is to provide services for the residents of its own district. Second, a district cannot operate inside the boundaries of another district, without the other district's approval.

We trust that the foregoing will be of assistance to you.

Very truly yours,
KENNETH O. EIKENBERRY
Attorney General

MARK S. GREEN
Assistant Attorney General

*** FOOTNOTES ***

1/McQuillin suggests there may be a distinction between the general exercise of sovereignty or authority outside municipal boundaries and the specific act of acquiring or owning property outside corporate limits when incident to the exercise of authority inside the boundaries. He says that, in the absence of express statutory authority, a municipal corporation may have greater authority to acquire property outside its limits when such acquisition is directly related to the fulfillment of an in-district purpose than it has to generally exercise its sovereignty beyond its borders. 10 E. McQuillin, at § 28.05 (3d ed. rev. 1981). We do not believe this distinction applies here, however, because in constructing and operating a health care facility outside its boundaries, a hospital district will almost certainly service the health care needs of both residents and nonresidents of its district. RCW 70.44.060(3). Thus, a hospital district's extraterritorial activity would be both incident to an in-district purpose and an extraterritorial exercise of authority.

2/The limit on the authority of a district to operate a hospital or other health care facility within the boundaries of another district applies only to situations in which the district is operating without the consent of the other district. The Legislature has granted hospital districts broad authority to operate joint facilities or to contract with another district for services. RCW 70.44.240; see also RCW 39.34 [chapter 39.34 RCW] (Interlocal Cooperation Act). Where one district operates a joint facility with another district, one of those districts will necessarily be operating "outside" the boundaries of the district. This particular type of extraterritorial operation has clearly been permitted by the Legislature.

FINAL BILL REPORT

ESHB 2264

C 274 L 97

Synopsis as Enacted

Brief Description: Eliminating the health care policy board.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Koster, Huff, D. Sommers, Sterk, Sherstad, Boldt, Mulliken, Thompson and McMorris).

House Committee on Appropriations

Background: The Health Care Policy Board (HCPB) was created in 1995 as a successor to the Health Services Commission. The creation of the HCPB and elimination of the commission reflected the changes in direction of health care reform made by the 1995 legislation. The HCPB is composed of five full-time members appointed by the Governor and four part-time members, appointed by the four caucuses of the House and Senate.

The HCPB is responsible for making policy recommendations to the Governor and Legislature on a variety of health care issues. In particular, state law lists about two dozen specific topics that the HCPB is to report on, including individual and group insurance, long-term care, rural health care, medical education, community rating of health insurance, model billing and claims forms, quality improvement efforts, and other topics.

The HCPB also has authority to grant and administer immunities from antitrust laws for health care service organizations. The HCPB receives, analyzes, and grants petitions for immunity from antitrust laws and supervises those organizations receiving immunity to ensure that the immune conduct continues to further the state's health care goals.

Since 1993, the HCPB received nine petitions for antitrust immunity, and granted four. The HCPB currently monitors the four organizations granted immunity.

The health services account provides funding for the HCPB. There will be a deficit of about \$180 million in the health services account in the 1997-99 biennium, if no changes are made to expenditures from that account.

Summary: The Health Care Policy Board is eliminated. The responsibility for granting antitrust immunity and monitoring the grants of immunity already granted is

transferred to the Department of Health (DOH). The DOH is authorized to enforce and administer rules previously adopted by the Health Care Policy Board. The DOH must establish fees to cover the costs of the DOH's antitrust immunity responsibilities, subject to fee ceilings. The fees charged by the DOH to finance the anti-trust immunity activities must also be sufficient to fund attorney general costs, but within the same fee ceiling.

Proprietary information provided to the DOH in the course of reviewing petitions for antitrust immunity are exempt from public inspection and copying under the Public Disclosure Law.

Votes on Final Passage:

House 58 39
Senate 47 0 (Senate amended)
House 61 36 (House concurred)

Effective: July 1, 1997