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No. 96585-4

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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LAKEHAVEN WATER AND SEWER DISTRICT, HIGHLINE  
WATER DISTRICT, and MIDWAY SEWER DISTRICT,  
municipal corporations,

Appellants,

vs.

CITY OF FEDERAL WAY, a municipal corporation,

Respondent.

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AMICUS BRIEF OF WASHINGTON ASSOCIATION OF  
SEWER AND WATER DISTRICTS

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## I. INTRODUCTION

The oft quoted, “the power to tax involves the power to destroy”<sup>1</sup> takes on an ironic additional meaning in this matter. Affirming the Superior Court and *City of Wenatchee*<sup>2</sup> (“*Wenatchee*”) will destroy a mutually beneficial system between municipal water-sewer districts and cities that has served the public well for decades.

*Amicus curiae* Washington Association of Sewer and Water Districts (“WASWD”) is the statewide association representing Title 57, RCW water-sewer districts.

There are 182 municipal “special purpose” water-sewer, providing municipal water, sewer and/or services in the State of Washington, to areas ranging from the State’s largest population centers, to the smallest rural communities. WASWD’s general membership is composed of 106 of the generally larger and more influential of those special purpose districts, although it is a resource and advocate for all districts, whether members or not. WASWD, as the center of the water-sewer district world in the State, recognizes the likelihood that upholding the recent lower courts’ decisions will cause great harm to a system that

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<sup>1</sup> Chief Justice John Marshall in *McCulloch v. Maryland*, United States Supreme Court, 1819,

<sup>2</sup> *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1*, 181 Wn. App. 326, 325 P.3d 419 (2014)

cannot continue to exist when it allows one partner in these water and sewer service relationships to tax another.

In the nearly thirty-five years that *King County v. City of Algona*<sup>3</sup> (“*Algona*”) has been the presumed controlling authority, cities and water-sewer districts have treated it as a prohibition of any taxation by cities of districts. In reliance, interlocal agreements between cities and districts have been developed regarding division and/or sharing of costs and functions; corporate boundaries, annexations and service areas of both cities and districts have been determined; franchise agreements have been negotiated for district operations within cities which universally contain provisions to ensure that the cities’ finances are not negatively impacted by districts’ operations; the comprehensive plans of both cities and districts are carefully coordinated; cities and districts have worked out cooperative agreements wherein they serve one another’s ratepayers by contract based on efficiency; in many cases, city and district physical systems are even connected to provide each with backup and emergency water and sewer capacity. It has been a good partnership.

These arrangements are advantageous to the public of both cities and districts. Arguably, these arrangements have been more beneficial to cities than the revenue they might derive from taxation. The cities, of

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<sup>3</sup> *King County v. City of Algona*, 101 Wn.2d 789, 681 P.2d 1281 (1984)

course, now seek taxing authority relative to water-sewer districts *in addition* to those benefits, seeking to tax their fellow state municipalities, essentially as if the districts were selling bottled water at the local 7-11.

This taxation issue properly belongs before the Legislature, first, to determine whether taxing authority is appropriate, and, if so, to then determine appropriate percentage limits on a tax; determine what portion of operations could be taxed by function and/or geography; and if the Legislature does desire to adopt some sort of governmental/proprietary distinction, define with some precision the division between those two activities in the area of taxation.

WASWD respectfully urges this Court to reverse the Superior Court in this matter, and to overrule *City of Wenatchee*.

## **II. STATEMENT OF THE CASE**

Amicus adopts the Appellant's Statement of the Case.

## **III. ARGUMENT**

**A. Proprietary/governmental distinction analysis has proven to be impractical in any context, and especially so as guidance in the taxation context. Judge Fearing's Concurrence in *Wenatchee* shows the better approach.**

Years ago a former law partner told me that "the best case you ever had is the one you didn't take". I don't know if it was original to him, but I have never forgotten it. The relatively recent discovery by

cities that they can tax their fellow municipalities places the Court in an analogous situation; whether to have the court system wade into this thicket, or not.

Being a recent taxation innovation as a consequence of the *Wenatchee* decision, the mischief that will inevitably affect governance in this State has just begun to be realized. It will get worse as more cities attempt to avail themselves of this new revenue source.

Proprietary/governmental distinction analysis has proven to be confusing and impractical, even outside the realm of taxation, with its own unique requirements and issues. If this Court decides to judicially allow the taxation the cities seek here, it will likely be required to regulate this aspect of the city/water-sewer district relationship for years. Even the Superior Court's decision in this case recognized that definitions and governmental/proprietary distinctions will likely require additional litigation.<sup>4</sup>

WASWD submits it would be a mistake to under-estimate the volume, complexity and amount of the future litigation and court regulation that will be required. If permitted, the authority of the cities to impose the tax will be defined by each individual city determining which activities to tax; defining the distinction between districts'

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<sup>4</sup> SJ Order, page 6, CP at 1529

governmental/proprietary functions; determining to which area of the districts the tax will apply; the percentage of the tax (with no limitations); in many cities the taxes on a district's water versus sewer functions; and the exceptions to the tax.

Many districts serve part or whole of multiple cities, as many as eight in some cases (Lakehaven Water and Sewer District), and provide one, the other, or both water and sewer service, often within areas that don't overlap. Each of those cities will have its own independent authority to tax districts creating a nightmare that will have to be sorted out by litigation. Just the billing systems necessary for those districts will be of immense complexity and expense. These are all matters that should be considered and determined by the Legislature.

Judge Fearing's concurrence in *Wenatchee* shows the better approach, describing the governmental/proprietary distinction as "specious". Judge Fearing concurred in the result there, only because he considered himself – as did the majority – bound by their interpretation of *Algona*. The Superior Court here - also considering itself bound by *Wenatchee*'s interpretation of *Algona*, concluded "there are at least six different tests for determining whether a function is proprietary or

governmental, . . .” referencing Judge Fearing’s Concurrence.<sup>5</sup> Ironically, Judge Fearing’s reference to the multiplicity of tests was in support of his contention that the proprietary/governmental distinction should be effectively abolished. He adopts as his own conclusion the following language from a New Jersey case:

In *Washington Township, Bergen County v. Village of Ridgewood*, 26 N.J.578, 141 A.2<sup>nd</sup> 308 (1958) the New Jersey Court noted that to maintain the governmental versus proprietary function as a test with regard to water delivery is specious. That court wrote, and I conclude:

The distinction is illusory; whatever local government is authorized to do constitutes a function of government, and when a municipality acts pursuant to granted authority it acts as government and not as a private entrepreneur . . . . Surely the supply of water cannot be deemed to be a second-class activity in the scheme of municipal functions.

*Wenatchee...Concurrence.*<sup>6</sup> [emphasis added] If every activity of a local government is “governmental” by virtue of it being provided by municipalities *created* by the State to perform those very functions, as are water-sewer districts, as Judge Fearing suggests, the distinction disappears. It is for the Legislature to then determine the relationship between local governments, whether regarding taxation or other issues.

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<sup>5</sup> [Order, page 6, Footnote1].

<sup>6</sup> *Wenatchee*, at 356

Even the majority in *Wenatchee* was sympathetic to Judge Fearing’s concurrence, describing him as in “good company” in recognizing the imprecision of the distinction.<sup>7</sup>

**B. *Algona* was misinterpreted by the *Wenatchee* court in concluding that *Algona* held that only “governmental” functions may not be taxed. The trial court here understandably concluded it was bound by the *stare decisis* effect of *Wenatchee*.**

The Superior Court here relied on *Wenatchee*, which in turn “discern[ed] the principles” in *Algona* is the basis of the Superior Court decision in this matter.<sup>8</sup> Properly analyzed, however, *Wenatchee* erred in its ‘discernment’ of *Algona*.

*Algona* is not so easily disposed of. Its treatment of *Bellevue v. Patterson*, 16 Wn. App 386, 556 P.2d 944, *review denied* 89 Wn.2d 1004 (1977) precludes *Algona* being considered precedent to prohibit taxation

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<sup>7</sup> “Our concurring colleague is in good company in recognizing the imprecision of the governmental/proprietary distinction.  
....  
It is nonetheless a distinction that Washington has continued to recognize.” [Note 1 to *Wenatchee* opinion], page 356,

<sup>8</sup> ... the Court relies on the decision of Division III of the Washington State Court of Appeals in *City of Wenatchee* . . . in addressing whether RCW 35A.82.020 authorizes the City of Federal Way . . . to impose the excise tax at issue on other municipal corporations. Division III . . . sought to “discern the principles” relied on by the Washington Supreme Court in . . . *Algona* . . . in determining whether one municipality may tax the revenue of another municipality based on a general rather than a specific legislative grant of taxing authority. In light of the Division III decision in *City of Wenatchee*, the Court finds that petitioners as governmental entities act in both proprietary and governmental capacities and that to the extent that income is derived from petitioners’ proprietary functions, the city of Federal Way may . . . impose the excise tax . . . . Page 3-4 SJ Order, CP 1527-8.

of *any* activities of other municipalities without express and specific authorization; at the very least, its ambiguity leaves the issue open for this Court.

*Algona* can more logically be read to bar any taxation of one municipality by another. It should be considered ‘entity immunity’, not ‘subject matter immunity’. It is at the very least ambiguous authority.

If the purpose of the doctrine (immunity), is truly to protect municipal corporations from taxation which will “limit their ability to carry out governmental functions”, then it must necessarily apply to taxation of proprietary functions. The City ignores a fundamental fact of life regarding the functioning of utility districts.

In the case of water-sewer districts, their primary statutory purpose is providing water and sewer service, which provides their major source of revenue. The most significant *governmental* water function of water-sewer districts is fire protection - fire hydrants and water systems properly sized and located to provide fire protection.<sup>9</sup>; and public health, fluoridation, sanitation, and conservation. For districts providing sewer service, their *governmental* functions are public sanitation; health and welfare, environmental protection of public bodies and wetlands; and disease control. There are no other adequate sources of funding for those

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<sup>9</sup> *Lane v. City of Seattle*, 164 Wn.2d 875; 194 P.3d 977 (2008)

governmental functions, other than from the sale of services. Whether proprietary or governmental, the taxation of those functions has precisely the same adverse consequence to the governmental activity. The policy at the heart of the tax immunity of utility districts cannot be met unless the immunity is of both proprietary and governmental functions.

The argument that because only the state enjoys sovereign immunity, immunity will only apply to activities of a municipal corporation when the municipal corporation is engaged in governmental activities as an agent of the state is nonsensical.<sup>10</sup> Every activity of water-sewer districts is as agents of the State. If one takes this argument to its logical conclusion, cities would then be able to tax the State itself. The State also performs some proprietary functions (e.g., it sells goods and services, sometimes even including water). It would be preposterous to contend that a city could tax the State on those proprietary functions without its express consent, yet that is precisely where the proprietary/governmental distinction necessarily leads.

*Algona* was improperly interpreted by *Wenatchee*. At the very least, Division III read too much into *Algona*. *Algona* did not deal with proprietary functions at all, although there is some dicta about the distinction. In the end, however, it avoided the issue by finding the

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<sup>10</sup> City's Reply Brief

activity there (solid waste) to be governmental. Once it did that, there really was no more controversy about the inability of the City of Algona to tax the County – it could not. As part of its decision, however, it reversed *Bellevue v. Patterson*, 16 Wn. App.386, 556 P.2d 944, review denied 89 Wn.2d 1004 (1977) to the extent “inconsistent”.<sup>11</sup> It is submitted that *Patterson* was only inconsistent as to taxation of so-called “proprietary functions”, and would not have required reversal but for that inconsistency. *Algona* did not compel the decision in *Wenatchee*, nor the Summary Judgment here. The *Wenatchee* court having based its decision on that assumption decided on an improper basis.

The requirement that a tax by one municipality upon another must be provided by a clear and direct legislative authority is based upon the need for clear rules with regard to the imposition of tax burdens. Each municipal corporation is an extension of the State. When a city imposes a tax, it is acting in its sovereign capacity and must have clear and specific authority from the State to tax another municipal entity.<sup>12</sup>

Division III in *Wenatchee* reversed the Superior Court there, to distinguish *Algona* as prohibiting taxation only of “governmental functions”, and *for the first time* to permit taxation of such proprietary

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<sup>11</sup> “*Bellevue v. Patterson*, supra is overruled as to its provisions that are inconsistent with this opinion.” *Algona*, 795.

<sup>12</sup> *Algona*, 101 Wn.2d at 794. of Law, CP 61-68.

functions without express legislative authority.<sup>13</sup> Although the courts have tip-toed around the issue, no court before *Wenatchee* came out and said proprietary functions could be taxed.

Division III there found a distinction in *Algona* that had apparently gone unnoticed for 30 years – a distinction that essentially allows an implied ‘super tax’ - a tax that would not require express authorization; that is without regulation; and that is without limitation on amount, so long as the tax is limited to the proprietary activities of other municipalities. As hungry as cities are for tax revenues, this source hadn’t crossed their minds, due no doubt in large part to the cities’ and districts’ understanding of the very plain principles expounded in *Algona*.

The argument for ignoring *Algona* is that since the issue there was somehow conveniently agreed to be a governmental activity (solid waste), its very clear and explicit language only applies to matters that are defined as governmental by the morass of tests leading to the “razor thin distinctions” pointed out by Judge Fearing in *Wenatchee*.

However, *Algona* states clearly and without equivocation:

The general grant of taxation power on which *Algona* relies in RCW 35A.11.020 contains no express authority

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<sup>13</sup> Until *Wenatchee* no other city has imposed a tax on a district’s proprietary functions, except in the single instance of Renton taxing a district, where the tax, although temporary, was still *explicitly* authorized by the Legislature. RCW 35.13B.010

to levy a tax on the state or another municipality. To allow the City to impose the tax in this case would violate the established rule that municipalities must have specific legislative authority to levy a particular tax. *Citizens for Financially Responsible Gov't v. Spokane, supra*; *Hillis Homes, Inc. v. Snohomish Cy., supra*.

[Underlining added]<sup>14</sup>.

When the tax contemplated is by one municipality against another, however, there is a second prerequisite.

The governmental immunity doctrine provides that one municipality may not impose a tax on another without express statutory authorization. [citations omitted]. The majority of jurisdictions adhere to this rule on the theory that a local tax imposed on a political subdivision such as a county is tantamount to a tax imposed on the state. [Citations omitted].

[Underlining and emphasis added]<sup>15</sup>. Obviously, the language in *Algona* – without a lot of explaining away - is an impediment to any tax on another municipality. There are no “excepts”; no “but fors”; no limitations on the statement of the *Algona* doctrine.

The City, however, relies on *Burns v. City of Seattle*, 161 Wn.2d 129, 164 P.3d 475 (2007), where the Court said the following in dicta:

It should be noted that the Cities' ability to impose a utility tax . . . is not . . . a settled issue of law. In [*Algona*], this court held that the city of Algona could not impose a business and occupation tax on a King County solid waste facility...., the operation of which is a governmental, not a proprietary, activity. . . . In *Algona*,

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<sup>14</sup> *Algona*, 793

<sup>15</sup> *Algona*, 793-794.

we concluded that the doctrine of governmental immunity from taxation barred the city of Algona from levying a tax on King County's solid waste facility. Given the factual and legal distinctions between *Algona* and the situation presented here, it is by no means certain, as the ratepayers suggest, that the doctrine of governmental immunity from taxation would prevent the Cities from imposing a utility tax...

....

We do not, of course, decide the issue here. We merely observe that the Cities' ability to impose a utility tax on SCL is an unresolved question of law.

Burns.<sup>16</sup>

The *Burns* Court was very careful, and properly so, to say it was NOT deciding the governmental/proprietary issue. Ironically, however, it confirmed that Algona had not decided the issue of taxation of proprietary functions, as Division III seems to have assumed in considering itself bound by *stare decisis* to impose a tax on proprietary functions, despite its expressed distaste for the mess the distinction has created. Amicus respectfully submits, however, that the state of the law is a bit further along than the *Burns* dicta indicates and its off-hand dicta should be given only limited weight in reinterpreting the plain language of *Algona*.

In *Algona*, the Court did more than just bar a tax on what has previously been characterized a governmental function. It also overruled

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<sup>16</sup> *Burns*, 159-160.

– to the extent inconsistent<sup>17</sup> – *Bellevue v. Patterson*.<sup>18</sup> Which begs the question: which parts of *Bellevue* were “inconsistent” with *Algona*? *Algona*’s plain language is to bar *any* tax on another municipality.

In *Bellevue*, Bellevue imposed a business and occupation tax on two water-sewer – each providing water and/or sewer within the city’s corporate boundaries. The taxes were unquestionably on services *Wenatchee* would call “proprietary”. “[T]he court analyzed the issue presented only in terms of *exemptions* from taxation. The issue of municipal corporation immunity from such a tax was never raised”. *Algona*, 793-794 [emphasis the Court’s]. That part of *Bellevue* was not inconsistent with *Algona*, and did not require reversal. There is still no *exemption* from taxation of water-sewer districts proprietary functions; no exemption is necessary. So, that cannot be what the Court overruled. The Court then explicitly explained where the *Bellevue* court had gone astray, and its basis for reversing.

*Bellevue* buttressed its holding in authorizing Bellevue to tax municipal sewer and water districts on *Seattle v. State*, 59 Wash.2d 150, 367 P.2d 123 (1961). This analysis is erroneous because in *Seattle* the Legislature gave *express* authorization to tax municipal corporations in RCW 82.04.030, which defined “person”:...<sup>19</sup>

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<sup>17</sup> *Algona*, 795

<sup>18</sup> *Bellevue v. Patterson*, 16 Wash.App. 386, 556 P.2d 944, review denied 89 Wn.2d 1004 (1977).

<sup>19</sup> *Algona*, 793

[emphasis added]. The Court based its decision to prohibit Bellevue's taxation of *water and sewer service* by distinguishing *Seattle v. State* by noting that Seattle could tax the functions because the "Legislature gave *express* authorization to tax municipal corporations in RCW 82.04.030, which defined "person"; and without that legislative authority, the City of Bellevue could not tax the districts. And note that the authority relied on was an identity criterion; an *entity criterion* – the definition of 'person'.

*Bellevue* was dealing with taxes by a city on water and sewer proprietary functions, just as here, and it denied them based on a case where an express entity authorization to a municipality (Seattle) was the basis for allowing a tax, and being the distinction to deny *Bellevue*, that authority. Clearly, the *Algona* Court considered the immunity to be entity immunity, not activity immunity. The result in *Algona* reversing *Bellevue*, wherein the only revenue at issue was from water-sewer districts, was that that it could not tax those municipalities, lacking the "*express* legislative authority to tax functions of other municipal corporations." The unavailability of an "exemption" there was not relevant. The city of Bellevue didn't have the authority to begin with, and by overruling made any discussion of an exemption moot.

Crystal clear? No, but clear enough that *Algona's* plain language

of the basic principles, and the effect it had on the *Bellevue* case would require reversal for it to be a proper basis for *Wenatchee*. At the very least, it creates an ambiguity between the cases that should properly be resolved by this Court without being hamstrung by any particular deference to *Wenatchee*.

**C. The taxing authority is to be orderly, and carefully defined and limited. A decision affirming the Superior Court here would throw into disarray a system between and among cities and utility districts that has served the public well for decades.**

As described in this Introduction, in the thirty-five years that *Algona* has been the presumed controlling authority, cities and water-sewer districts have treated it as a prohibition of any taxation by cities or districts. Witness the many unsuccessful attempts by cities to obtain authority from the Legislature to tax water-sewer districts.

The taxation power that the City seeks here is without limitation [as admitted by the City of Federal Way<sup>20</sup>]; it is without any statutory or regulatory guidance; it would in essence be a ‘super tax’ authority created merely by general implication in a tax context which otherwise requires specific and express legislative authority. This is contrary to the State’s policy goal of coordination of services, e.g., comprehensive planning, and the Growth Management Act.

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<sup>20</sup> CP 389

Taxes established by state legislative authorization tend to be well defined, limited, provide definitions, and supported by appropriate regulation. City taxation of electric power revenues provides an example of the proper and orderly approach to taxation. Cities have the specific and express statutory authority required to tax electric power revenues, but the authority is defined and limited to 6%. RCW 35.21.870. In cases in which the Legislature has authorized taxation of other utilities, it has defined and limited the use of that taxing authority. That it has uniformly done so, and has not done so here, is evidence of a legislative intent not to have specifically and expressly authorized the unlimited tax authority the City seeks here.

If the Court affirms *Wenatchee*, and allows city taxation, water-sewer districts statewide will face an inefficient, expensive, disjointed nightmare. As noted, many districts operate within multiple cities, some in as many as portions of eight cities, plus areas of unincorporated counties; the Courts will find themselves functioning as the regulatory agency unless and until the Legislature chooses to act unless *Wenatchee* is reversed.

An example for illustrative purposes is Soos Creek Water and Sewer District (“Soos Creek”), for which this writer serves as general counsel. Its situation is not atypical. Soos Creek provides water and/or

sewer services within all or portions of six cities (Renton, Kent, Auburn, Covington, Maple Valley, and Black Diamond), and portions of unincorporated King County. It provides regional sewer service in some areas, water service in others, and both in yet others. Each of the cities within which Soos Creek operates would have its own unregulated, uncoordinated, unlimited taxing authority for which Federal Way argues in this matter.

As have most districts, Soos Creek and its cities have enjoyed a respectful and beneficial relationship, much of it being defined by mutually negotiated interlocal agreements. While those cities are facing the same economic challenges as are all others, there has been little pressure by any of them to tax Soos Creek. Certainly, however, a decision favoring the Federal Way will precipitate such taxation. The temptation - perhaps even the obligation - to avail themselves of this new funding source will be irresistible. The consequence will be the destruction of a well-developed and mutually beneficial municipal relationship, and replacement with an unregulated and uncoordinated hodgepodge of multiple taxing of Soos Creek, and utility districts similarly situated.

It may seem that a single district providing water-sewer service within several cities must be inefficient. After all, most cities can also

provide those services within their corporate limits. The current system works well, though, because corporate and political boundaries are generally irrelevant to water-sewer service.

Water and sewer service systems are defined by gravity, topography, and geology, without regard for lines on a map. While it was once thought that water-sewer districts would be only a temporary governments, the efficiencies of having entities that can bridge multiple jurisdictional boundaries in a regional manner providing cost-effective and physically efficient utility service has resulted in robust and permanent water-sewer service and governance. It is now characterized by often large, sophisticated, efficient and permanent districts performing their special purpose. It is undeniable that an unregulated, unlimited taxing power will result in a morass of tax rates, definitions, and conflicts which will disrupt and endanger a well-functioning system that has developed over decades between districts and cities.

A grant of power of taxation to municipalities is not without limitation or restriction. Grants are usually so construed. And since the authority to levy taxes is an extraordinary one, it should never be left to implication unless it be a necessary implication. A municipality's powers of taxation are lawful only when exercised in strict conformity to the terms by which they are given. . . .

E. McQuillin, *Municipal Corporations* § 44.05; cited in *Whatcom County v. Taxpayers of Whatcom County Solid Waste Disposal Dist.*, 66

Wash.App. 284, 831 P.2d 1140 (1992). Backing into a taxing structure of water and sewer districts based upon the conflicting, ambiguous, complicated, and confusing governmental/proprietary distinction, is the polar opposite of what McQuillin describes.

Perhaps a tax on water-sewer districts could be determined appropriate, but that determination should be by the Legislature, and not by decades of court proceedings, necessarily pulling the courts into the utility regulation business as it makes the “razor thin” distinctions that Judge Fearing described. The available precedents will only be confusing.

Specific to water-sewer districts, a proper legislative scheme, as in the taxing of electric service, could determine an appropriate percentage limit on a tax; determine what portion of operations could be taxed by function and/or geography, and avoid all of the consequences described by the districts, and perhaps unintended consequences not even yet envisioned [e.g., whether each city would be able to base its tax on all the revenues of a district, or only on those generated within that city; not far-fetched<sup>21</sup>]; and, if the Legislature desires to adopt some sort of

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<sup>21</sup> See, e.g. *Seattle v. Paschen Contractors, Inc.*, 111 Wn.2d 54, 758 P.2d 975 (1988).

In *Paschen* both the cities of Seattle and Mercer Island were permitted to tax (business and occupation tax) the entire amount of a contract Paschen Contractors had with the Washington State D.O.T. Paschen argued, unsuccessfully, that the

governmental/proprietary distinction, define with precision the division between those two. The Legislative deliberative process could involve both districts and cities, and would be far better than making water-sewer districts subject to the caprice of cities seeking ever-more revenue.

## V. CONCLUSION

With respect, the appellate courts should reverse established precedent only with great care, and *Algona* has guided the city and waters-sewer district governance well for nearly over 30 years. *Amicus curiae* Washington Association of Sewer and Water Districts respectfully urges the Court to reverse the Superior Court; and to leave it to the Legislature to *specifically* and *expressly* determine municipal taxing authority.

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relative taxes should apply to only the relative portion of the contract completed within each municipality. The Court ruled, however, that there was no limitation in the authorization for the tax, so no prohibition of what was essentially a double tax by two different entities on the same revenues.

Now, consider the *Paschen* holding as to districts that operate within multiple cities and counties. Without a legislative structure and limitation on the taxing authority of cities over utility districts, each of the multiple cities within these districts operate would arguably have a sufficient nexus with the districts' operations to impose a tax on their entire revenue, and not just the portion earned within that city, even if that determination could somehow be made.

Finally, let's assume that tax rate is Bellingham's 34% . . . well, the point is obvious. There is nothing in the tax authority the City seeks here which would preclude this.

DATED this 2<sup>nd</sup> day of December, 2019.

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## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96585-4  
**Appellate Court Case Title:** Lakehaven Water and Sewer District, et al v. City of Federal Way

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