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No. 70633-1-I

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

PUBLIC HOSPITAL DISTRICT NO. 1
OF KING COUNTY,

Petitioner,

v.

UNIVERSITY OF WASHINGTON,
U.W. MEDICINE,

Respondents.

PETITION FOR REVIEW OF PUBLIC HOSPITAL DISTRICT NO. 1 OF KING COUNTY

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A. IDENTITY OF PETITIONER

Public Hospital District No. 1 of King County ("District") asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

The District seeks review of the published Court of Appeals decision filed on June 23, 2014. A copy of the decision is in the Appendix at pages A-1 through A-19.

C. ISSUE PRESENTED FOR REVIEW

Can the elected officials of a municipal corporation delegate their core responsibilities for the operation of that corporation, such as the power to set a budget, to levy taxes and incur debt, or to select the corporation's chief executive officers, to a group of largely unelected substitute decisionmakers pursuant to the corporation's general statutory contracting authority and the Interlocal Cooperation Act, RCW 39.34, thereby avoiding accountability to the voters who elected them?

D. STATEMENT OF THE CASE

The Court of Appeals opinion does not contain a factual recitation as such so it is important for this Court to understand the factual context to the controversy at bar.[1]

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[1] Context evidence is admissible to allow a court to understand the parties' intent in contracting. *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Berg v. Hudesman*, 115 Wn.2d 657, 667-68, 801 P.2d 222 (1990).

The District was created in 1947. CP 320. It is the oldest and largest public hospital district in Washington. *Id.* The District initially operated Renton Hospital, but in 1969 opened Valley Medical Center that now has more than 300 in-patient beds, employs more than 2,500 clinical and non-clinical staff, and serves more than 400,000 people. *Id.* In fiscal year 2012, the District had nearly $1.2 billion in gross patient revenue and net operating revenue of $427.2 million. The District is not an insignificant government, given its budget, its heavy debt load, its annual tax levy, and, most importantly, its operation of a vital south King County health care facility.

The former Commissioners and their selected executive staff have been the subject of intense public criticism for such issues as permitting bloated executive salaries, carrying a risky debt load, and violating campaign laws. *See* Br. of Appellant at 4-7. These highly questionable actions prompted reform candidates to seek and successfully secure election to the District's Board of Commissioners. CP 231, 254, 515, 633-38.

The District administration, however, determined to circumvent those reformers and the will of the District's voters who elected them. CP 255. Richard Roodman, the District's then superintendent, told Dr. Paul Joos, now the District's Board president when Joos was a Commissioner

candidate, that he intended to avoid the strictures of the reform-oriented Board, a Board he described as "toxic," by entering into an agreement with UW Medicine that placed him (Roodman) beyond the Board's reach. *Id.*

At Roodman's insistence, by a 3-2 vote of the former Board (as Dr. Joos was not yet a member), the District entered into a so-called Strategic Alliance Agreement ("Agreement") with UW Medicine on June 30, 2011; this occurred *before* the 2011 election at which Dr. Joos was elected, giving the reformers a Board majority. CP 409-96.[2] The Agreement was intended by Roodman specifically to dispossess the elected Commissioners of control of the District generally.

As a result of that Agreement, the District is now operated by a board of trustees composed of the District's five elected Commissioners, five individuals appointed by the CEO of UW Medicine from the community,[3] two further individuals from UW Medicine's various boards,

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[2] Since the election of a majority of reformers to the Board, the Commissioners repeatedly sought to address executive compensation, budgetary issues, and debt load issues. CP 498-501, 508-11. They have been frustrated in those efforts by the trustees. *Id.*

[3] In determining if a trustee is from "the community," the trustees significantly expanded the alleged boundaries of "the community" far beyond the actual boundaries of the District to encompass the "service area" of the District. CP 469. By statute, only registered district voters may be commissioners. RCW 70.44.040(2). Some of the District's Commissioners are elected by district, some at-large. Commissioners must be residents of the districts they serve. RCW 70.44.040(2). Moreover, the "community" trustees are hardly independent in their perspective. Three of the appointed trustees formerly served as elected Commissioners and were known as loyal Roodman supporters. CP 128. Appointing "community representatives" who were actually rejected at the polls by the community is an oddity.

and the CEO of UW Medicine. CP 418-19 (§§ 3.2, 3.3(b)). From a practical standpoint, the elected Commissioners can always be outvoted by the eight UW Medicine trustees. The trustees are answerable to UW Medicine, not to the District's voters who must pay District-imposed property taxes for operations and debt service the trustees, not the elected Commissioners, control.[4]

With respect to the powers of the new board of trustees, the Court of Appeals did not closely analyze the actual, practical impact of the Agreement. Instead, it asserts that "the express terms of the Strategic Alliance Agreement provide that the district retains powers it now argues have been delegated." Op. at 9.[5] In fact, the Agreement ceded the core functions of the District's elected Commissioners to the Agreement's largely unelected board of trustees. It is undisputed that:

- the trustees, not the Commissioners, set the District's annual budget -- CP 418, 421, 439 (§§ 3.1(b)(viii), 3.6(i), 6.3));

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[4] In several passages in its opinion, the Court of Appeals suggests that the District's concerns about the Agreement is a product of a change in the Board. Op. at 4-5, 17. But that is how the democratic process is supposed to work and it is *precisely* why long term agreements ceding the core functions of elected officials to unelected substitutes should be regarded suspiciously by this Court. To hold otherwise results in the thwarting of the democractic process.

[5] Not only is this assertion a highly superficial analysis of the Agreement, it violates a core principle of analyzing factual issues on summary judgment. All facts and reasonable inferences from those facts must be viewed in a light most favorable to the District as the non-moving party. *Dowler v. Clover Park School Dist. No. 400,* 172 Wn.2d 471, 484, 258 P.3d 676 (2011).

- the trustees, not the Commissioners, approve the appointment of the Valley CEO, the chief executive officer, and set his/her compensation -- CP 418, 422, 424 (§§ 3.1(b)(ix), 3.1(b)(xiv), 3.8(a), 3.8(d));[6]

- the trustees, not the Commissioners, make all staffing decisions as to the professional and non-professional staff at Valley, including compensation -- CP 417, 426-27 (§§ 3.1(b)(iii-vi), 4.3, 4.4));

- by virtue of the budgetary authority, the Commissioners are obligated to follow the trustees' direction on the levying of taxes -- CP 449-50 (§ 9.1));[7]

- the trustees, not the Commissioners decide the incurrence of debt and the Commissioners are obliged to follow the trustees' direction on the issuance of bonds -- CP 418, 434-35 (§§ 3.1(b)(xii), 4.18(c));

- the trustees, not the Commissioners, may enter into real estate transactions for the District -- CP 435 (§ 4.19);

- the trustees' performance of obligations constitutes the satisfaction of District statutory obligations and responsibilities -- CP 424 (§ 3.10(a));

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[6] The Valley CEO is not accountable to the elected Commissioners; he is answerable solely to the trustees and UW Medicine. CP 422 (§ 3.8(a)).

[7] As explained in detail in the Brief of Appellants at 13-14, a *critical* fact here is that the trustees set the budget and it is this power that effectively controls the Commissioners' theoretical tax levying power. § 9.1 of the Agreement severely curtails the discretion of the elected Commissioners' power to levy taxes. The Commissioners could not cut the District's annual property tax levy, for example, if that action resulted in a budget deficit. *See* CP 449-50 (§ 9.1).

- the trustees set the District's objectives and policies -- CP 417 (§ 3.1(b)(i)), and oversee the District -- CP 421 (§ 3.6).[8]

All of these powers are fixed for at least 15 years, as the Commissioners cannot terminate or amend the Agreement for that period. CP 451-52 (§ 10.1).[9] The Agreement does not merely address a single service or project, it addresses *all* of the elected Board's powers and duties with regard to the operation of the District under RCW 70.44.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

(1) Introduction

The published Court of Appeals opinion gives its imprimatur to the fundamentally anti-democratic notion that the general power of a municipal corporation to contract authorizes that corporation to cede the core powers of its elected decisonmakers to largely unelected substitute decisionmakers. The net effect of such arrangements is to unlawfully disenfranchise the voters, and to shield government operations from oversight by the public through their elected officials.

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[8] *See generally*, Br. of Appellant at 8-14; Reply Br. at 7-9.

[9] That the elected Commissioners' core powers are effectively transferred to the trustees is evidenced by the fact that the Commissioners may not expend a single penny without trustee approval, CP 258, 610-12; the Commissioners' views on the reduction of administrative staff expenses are ignored, CP 501; the trustees have restricted the public outreach activities of the elected Commissioners, CP 257-58, 506-07; and the trustees have refused to allow the elected Commissioners to hire bond counsel to seek a reduction in the District's bloated debt. CP 258-59, 508-09.

Here, the laws authorizing hospital districts to enter into contracts permit them to do so for discreet projects or services, *not all* the core functions of their elected decisionmakers such as the power to budget, tax, incur debt, or select top executive officials. Under the Court of Appeals analysis, there is no principled limit on the ability of elected municipal decisionmakers to cede their duties to unelected substitutes. This Court should review the Court of Appeals decision.

(2) The Court of Appeals Misreads the Scope of a District's Contracting Authority

A public hospital district is created by the district's residents, and those voters elect commissioners to run the district's affairs. RCW 70.44.040. Under Washington law, and general municipal law principles, a municipal corporation's elected officials cannot delegate their "core responsibilities" as elected officials with regard to *all* of the corporate functions to unelected substitutes not answerable to the voters.

The District voters created and funded the District so that their elected Commissioners would be available to represent their interests and to be held accountable, if necessary, for any actions taken on such issues. That is impossible under the Agreement where the predominantly

unelected, board of trustees acts as the District's substitute decisionmakers. Those trustees are accountable to UW Medicine, not the District's voters.[10]

The Court of Appeals largely rests its decision on the provisions of RCW 70.44.060/70.44.240 relating to a hospital district's contracting authority. Op. at 5-7. But the Court misreads the scope of the statutory contracting authority and this Court's decisions limiting it.

First, the court *nowhere* articulates what RCW 70.44.040, providing for the election of the District's Commissioners, means to its analysis.[11] *See* AGO 2013 No. 3 ("Each public hospital district is governed by an elected board of commissioners, which is statutorily responsible for operation of its hospital affairs, including the delivery of health care services, whether the district provides services directly or by contracting with a provider."). The Court of Appeals *ignores* that the Legislature provided for the election of Commissioners to run such

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[10] The ultimate intent of the Agreement is the integration of the District Healthcare System into UW Medicine. CP 438. In effect, the District is merged into UW Medicine without any review or approval by the voters who established the District and the taxpayers who support the District each year with their property taxes. Not only do the District's voters have no vote on this transformation of the District's governance, they cannot elect Commissioners who can reverse it after the Court of Appeals decision for at least 15 years.

[11] When courts interpret a statutory provision, they must consider the *entire statute* in which the provision is found, as well as *related statutes* or other provisions in the same statute. *Anderson v. State, Dep't of Corrections*, 159 Wn.2d 849, 858, 154 P.3d 220 (2007). No statutory language should be rendered superfluous by judicial construction. *State v. Pannell*, 173 Wn.2d 222, 230, 267 P.3d 349 (2011).

districts. The former Commissioners could not enter into an agreement to cede the responsibilities of elected Commissioners, for which they are accountable to the voters, to largely unelected substitute decisionmakers.

Second, the Court of Appeals does not carefully construe the specific language of RCW 70.44.240. The language of that statute is key because it is a more specific statute on joint operations and the more recent and specific statute controls over an older, more general statute. *Anderson*, 159 Wn.2d at 861.

RCW 70.44.240 *nowhere* states that the general authority of elected Commissioners to run the District may be ceded to a group like the trustees. By its very language, the Legislature intended that *specific projects or services* could be the subject of such joint operations. A public hospital district can join with other entities to "acquire, own, operate, manage, or provide" a limited scope of projects or services. Among those projects or services are a hospital or other health care facilities, and hospital or other health care services. All of such facilities or services had to be used by individuals, districts, or hospitals or others. That description is *facility or project-driven*. Consistent with such a construction, a district can create a governing body to operate the project or facility. But the statute did not contemplate that a public hospital district's elected

commissioners could cede all of their core responsibilities as elected officials to unelected substitute decisionmakers in such a contract.

The Court of Appeals cites a New Jersey case, *Terminal Enterprises, Inc. v. Jersey City*, 258 A.2d 361 (N.J. 1969) as its principal authority for its construction of RCW 70.44.240. Op. at 7-9. The case is readily distinguishable. That case involved a single transportation project. The New Jersey court upheld the delegation of authority by Jersey City and Hudson County to the Port Authority Trans-Hudson Corporation. Unlike the situation here, the city and the county did not relinquish their core powers for all of the statutory areas of endeavor of the respective city council and board freeholders (commissioners) to unelected substitute decisionmakers.

Finally, the court failed to grasp the clear limitations, both in statute and in case law, on the contractual power of a district. First, the power to contract under RCW 70.44 or RCW 39.34 is circumscribed.[12]

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[12] *Concerned Citizens of Hospital District No. 304 v. Board of Commissioners of Public Hospital District No. 304*, 78 Wn. App. 333, 897 P.2d 1267, *review denied,* 127 Wn.2d 1024 (1995) (new board created under RCW 70.44.240, but Commissioners of the two contracting districts made up the joint board and there is no evidence that in delegating their authority over a single facility, they relinquished their overall authority as elected officials). RCW 39.34.030 permits agreements for the delivery of public services, but RCW 39.34 nowhere evidences an intent to permit a municipal corporation to cede the core responsibilities of its elected decisionmakers to unelected persons who are unaccountable to the voters. *State v. Plaggemeier*, 93 Wn. App. 472, 969 P.2d 519, *review denied,* 137 Wn.2d 1036 (1999) (court invalidated part of the agreement that created a Bremerton-Kitsap DWI task force for lack of legislative approval of all

Second, and more critically, this Court itself has made clear that municipalities may not cede their core functions to others. In *Roehl v. Public Utility District No. 1 of Chelan County*, 43 Wn.2d 214, 261 P.2d 92 (1953), this Court stated: "Where the enabling legislation under which a municipal or quasi-municipal corporation derives its power confides legislative or discretionary functions in particular officials or boards, such functions may not be delegated to others." *Id.* at 240 (citations omitted). *See also, Noe v. Edmonds Sch. Dist. No. 15 of Snohomish County*, 83 Wn.2d 97, 103, 515 P.2d 977 (1974) (power to discipline teachers vested exclusively by statute with school boards and could not be delegated to superintendents); *Federal Way Sch. Dist. No. 210 v. Vinson*, 172 Wn.2d 756, 765-66, 261 P.3d 145 (2011) (when statute confers specific functions of a municipal or quasi-municipal corporation upon a particular person or entity, those functions may not be delegated to others). Here, *nothing* in RCW 70.44.240 speaks to the ability of a public hospital district to delegate the general powers of its elected commissioners to tax, incur debt, or select top executive officials to substitute decisionmakers.

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contracting municipalities). Public agencies may not circumvent their obligations by entering into a contract. RCW 39.34.030(5).

Further, in *Chemical Bank v. Wash. Pub. Power Supply System*, 99 Wn.2d 772, 662 P.2d 329 (1983), this Court held that the member utilities of the Washington Public Power Supply System were not required to make good on the bonds for nuclear power plants that were not completed because the member utilities had no power to enter into the agreements to guarantee bond payments where the members did not acquire an ownership interest in the plants or otherwise control them. Acknowledging its earlier decision in *Roehl*, this Court specifically determined that the member utilities, in effect, illegally abdicated their statutory responsibilities where all management and policy decisions were conferred upon the WPPSS board, describing the participant committee of the members as "a rubber stamp for WPPSS' decisions." *Id.* at 788. This Court further noted that "although this court recognizes the need for delegating duties in the context of joint development agreements, we are not prepared to sanction a virtual abdication of all management functions and policy decision to an operating agency such as WPPSS." (citations omitted). *Id.* The thrust of this Court's opinion was that the municipal corporations delegating responsibility to construct nuclear plants to WPPSS had to retain the core responsibilities of their elected boards intact and those elected boards had to independently exercise the decisionmaking for which they were elected.

Our Attorney General similarly stated that elected officials may not delegate their core duties. AGO 2012 No. 4. In addressing the legal constraints on the power of a board of county commissioners to enter into long-term contracts that are binding beyond the end of the terms of current board members, the Attorney General properly drew the distinction, missed by the Court of Appeals here, op. at 11-12, between core legislative responsibilities of a legislative body and administrative or proprietary functions. As for the former, the county commissioners could not take actions "that impair the core legislative powers of their successors in office." The Attorney General noted:

> The hallmark of the first category [core legislative responsibilities] is the authority of a legislative body to exercise continuing discretion in the setting of legal standards to govern behavior within the jurisdiction. If a contract impairs this "core" legislative discretion, eliminating or substantially reducing the discretion future bodies might exercise, the courts are likely to find that the contract has improperly impaired the legislative authority of future commissioners.

Rather than address the AGO directly, the Court of Appeals instead focused on *State ex rel. Schlarb v. Smith*, 19 Wn.2d 109, 141 P.2d 651 (1943), a case like *Terminal Enterprises* that related to a single project. The elected officials of a municipality may bind future elected officials in a long-term contract involving a single project or a service, but may not bind future elected officials on the exercise of all core functions

of the municipality. That lesson from AGO 2012 No. 4 was lost on the Court of Appeals.

Ultimately, the Court of Appeals opinion offers only a superficial analysis of the authority of municipalities to contract. Plainly, municipalities generally, and public hospital districts specifically, have such authority. In cases like *Roehl* and *Chemical Bank*, this Court, like the Attorney General in AGO 2012 No. 4, has distinguished between project or service-specific contracts in which the power to operate the service or project is conferred, and contracts purporting to delegate the "legislative" or "discretionary" functions of the municipality more generally. Long term agreements involving the latter powers are, and should be, suspect. They intrude too significantly upon the voters' election of decisionmakers, insulating such fundamental decisionmaking from voter scrutiny. That is precisely what the Agreement here does, contrary to *Roehl* and *Chemical Bank*. This is not a contract involving a project or a service; the District's elected Commissioners were dispossessed by the Agreement of their legislative/discretionary role for *all* of the District's activities for which they are accountable to the voters.

In sum, the Court of Appeals opinion is contrary to decisions of this Court. Review is merited. RAP 13.4(b)(1).

(3) The Controversy Here Involves an Issue of Public Interest that This Court Should Review

RAP 13.4(b)(4) indicates that this Court should grant review in cases involving issues of substantial public interest. This case qualifies for such review on a number of grounds.

First, this case involves a controversy between two public entities, the District and UW Medicine, an arm of the University of Washington over an issue of the governance of the District. Such an issue has public significance where, as noted *supra*, the District serves 400,000 people and has a budget of $1.2 billion.

Second, the case involves an issue of first impression on the interpretation of RCW 70.44.240. Such issues have often resulted in review by this Court.[13]

Third, the case presents an important issue of public policy -- the definition of the core powers of the elected leadership of local governments, a pivotal issue for those local governments.[14]

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[13] Issues of first impression involving statutory interpretation are often reviewed by this Court. *E.g., Anfinson v. Fed Ex Ground Package System, Inc.*, 174 Wn.2d 851, 281 P.3d 289 (2012) (test for employee/independent contractor status under Minimum Wage Act); *Lowy v. PeaceHealth,* 174 Wn.2d 769, 280 P.3d 1078 (2012) (scope of privilege as to hospital quality review committee records); *In re Guardianship of Lamb*, 173 Wn.2d 173, 265 P.3d 876 (2011) (right of guardians to recover fees for advocacy); *Glass v. Stahl Speciality Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982) (right of contribution under RCW 4.22).

[14] Washington has general purpose units of local government like counties and cities and a variety of special purpose municipal corporations like water/sewer, first,

Finally, the decision here has profound public policy implications. The Court of Appeals decision affects not only public hospital districts, but all municipalities in Washington. As the District has argued throughout this case, br. of appellant at 27, 31; reply br. at 23-24, UW Medicine has offered no limiting principle on the power of elected officials to cede their core powers to unelected substitutes.[15] The Court of Appeals does not do so either anywhere in its opinion.

The Agreement is a template by which the elected officials of other governmental bodies may relinquish and cede their core statutory powers to substitute decisionmakers. Here, it so happens that two public entities are involved. But the Court of Appeals opinion does not confine the scope of the ability of elected decisionmakers to abdicate their core functions to substitutes. An agreement could involve a municipality and a private

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school, hospital, public utility, and port districts, all with elected leadership, as required by statute. All possess the power to contract. Br. of Appellant at 29-30. If merely possessing the power to contract results in authorization for the elected decisionmakers of such municipal corporations to cede all of their core functions to substitute decisionmakers, the public implications of the Court of Appeals' decision are manifest.

[15] Indeed, under UW Medicine's anti-democratic analysis, local governments are *entirely free* to substitute a group of unaccountable private persons for elected officers. UW Medicine has declined to explain what core powers of elected public hospital commissioners, or other elected officials of special purpose districts like port districts, public utility districts, school districts, etc., actually are. Br. of Resp'ts at 38-40. UW Medicine unabashedly asserts that *any* power of the District, apparently including all of the statutory powers of the elected Commissioners, may be contracted away. Br. of Resp'ts at 35.

organization.[16] Nothing in the Court of Appeals analysis would prevent a school district from ceding all of its responsibilities to the WSU School of Education, a city council from giving its powers to the UW School of Public Administration, or a public utility district from relinquishing its board's duties to a private utility or nuclear power corporation. Such actions would obviously frustrate any concept of democratic government. The Court of Appeals chose not to contemplate the ramifications of its decision.

In sum, review is appropriate under RAP 13.4(b)(4).

F. CONCLUSION

This Court should grant review and declare that the Agreement was ultra vires to the extent that the elected Commissioner's core legislative or discretionary responsibilities to manage the District were transferred on a long term basis to a largely unelected board of substitute

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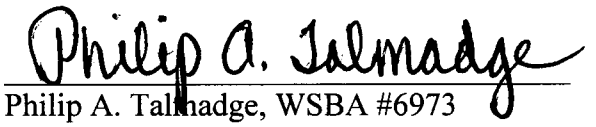
[16] In San Juan County, Peace Health, a Roman Catholic-affiliated health care organization, contracted with the public hospital district there to build a hospital. Given Catholic policy, the hospital refuses to perform abortions, provide birth control, or participate in physician-assisted suicides. http://seattletimes.com/html/localnews /2020875885catholichealthxml.html. Agreements between UW Medicine and Peace Health have also provoked concerns by medical trainees and graduate students at the University about how religious principles will restrict healthcare decisions. http://seattletimes.com/htm/localnews/2024009601_uwpeacehealthconcernsxml.html. If an entity like the board of trustees here is created for a religious-affiliated organization or an organization run by it to effectively run a public hospital district, is it subject to the Open Meetings Act, RCW 42.30, or the Public Disclosure Act, RCW 42.17, or the Public Records Act, RCW 42.56? As an entity now enjoying rights under the First Amendment, *Burwell v. Hobby Lobby Stores, Inc.*, __ U.S. ___, ___ S. Ct. ___, ___ L.Ed.2d ___, 2014 WL 2921709 at *14 (2014) can it claim exemption from all sorts of public obligations?

decisionmakers. The District's elected Commissioners must retain the ultimate authority to run the District. The Court should reverse the trial court's summary judgment order and remand the case to the trial court with direction to grant the District cross-motion for summary judgment. Costs on appeal should be awarded to the District.

DATED this 21st day of July, 2014.

Respectfully submitted,



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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PUBLIC HOSPITAL DISTRICT NO. 1 OF KING COUNTY, Appellant, v. UNIVERSITY OF WASHINGTON and U.W. MEDICINE, Respondents.	)	No. 70633-1-I DIVISION ONE PUBLISHED FILED: June 23, 2014

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Cox, J. — Public Hospital District No. 1 of King County seeks to invalidate as ultra vires the Strategic Alliance Agreement between it and the University of Washington. Because there are no genuine issues of material fact and the university is entitled to judgment as a matter of law, we affirm the summary dismissal of this action.

The district is a public agency, as defined by RCW 39.34.020. It both owns and operates Valley Medical Center in Renton, Washington.

The university is also a public agency under RCW 39.34.020. For purposes of this matter, the university operates through U.W. Medicine, one of its component organizations.

The district, through its commissioners, and the university entered into the Strategic Alliance Agreement dated June 30, 2011. The initial term of the agreement runs through December 31, 2026, subject to the occurrence of certain early termination conditions. The initial term of the agreement may be extended for each of two 15-year additional periods.

The stated purpose of the agreement is to establish "joint or cooperative action pursuant to RCW 39.34.030," the statute that provides for agreements for joint or cooperative action by public agencies.[1] Among other things, the agreement establishes the governance structure for overseeing the operation of the district's health care system as an integral component of U.W. Medicine. The agreement also sets forth, in detail, a number of terms and conditions, some of which we discuss more fully later in this decision.

After the district and university executed this agreement and following the 2011 election of new commissioners of the district, three of the five commissioners of the new board approved a resolution that authorized the president of the board of commissioners to "initiate litigation, if necessary, to determine the validity of the Strategic Alliance Agreement with the University of Washington."[2] This litigation followed.

The district and the university both moved for summary judgment. The trial court granted the university's motion and denied the district's motion. It dismissed the district's action with prejudice.

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[1] Clerk's Papers at 416.

[2] Id. at 512-14.

The district appeals.

VALIDITY OF STRATEGIC ALLIANCE AGREEMENT

The district contends that the agreement is ultra vires. Specifically, it contends that the former district commissioners "effectively divested the Board of Commissioners of core responsibilities as elected officials."[3] The district identifies these responsibilities as "crucial fiscal decisions, like establishing the District budget, levying taxes, and incurring debt, and selecting the District's chief executive officer."[4] We hold that this agreement is not ultra vires.

Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law.[5] We review de novo summary judgment orders.[6]

Generally, "independent of statute or charter provisions, the hands of [successor officers of a municipal entity] cannot be tied by contracts relating to governmental matters."[7] But predecessor officers "may limit by contract their

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[3] Brief of Appellant at 19.

[4] Id.

[5] CR 56(c).

[6] Cornish Coll. of the Arts v. 1000 Va. Ltd. P'ship, 158 Wn. App. 203, 215-16, 242 P.3d 1 (2010).

[7] 10A EUGENE MCQUILLIN, MUNICIPAL CORPORATIONS § 29.102 at 70 (3d ed. rev. 2009).

own police powers as well as those of their successors where the agreement is authorized by statute."[8]

Statutory construction is a question of law.[9] This court's objective is to determine the legislature's intent.[10] "Where the language of a statute is clear, legislative intent is derived from the language of the statute alone."[11]

Here, no one argues that any genuine issue of material fact exists. The arguments of the parties are primarily focused on the provisions of the agreement that they signed in 2011. Thus, the issue is whether the university is entitled to judgment as a matter of law based on the provisions of the agreement and controlling law.

The fundamental legal question for this issue is whether relevant legislation authorizes this agreement. If so, a mere change in the view of the

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[8] Id. at 70-71 n.4 (citing Terminal Enters., Inc. v. Jersey City, 54 N.J. 568, 258 A.2d 361 (1969)); see also City of Seattle v. Auto Sheet Metal Workers Local 387, 27 Wn. App. 669, 685, 620 P.2d 119 (1980), overruled on other grounds by City of Pasco v. Pub. Emp't Relations Comm'n, 119 Wn.2d 504, 511-12, 833 P.2d 381 (1992) (citing Lutz v. City of Longview, 83 Wn.2d 566, 570, 520 P.2d 1374 (1974); Noe v. Edmonds Sch. Dist. 15, 83 Wn.2d 97, 515 P.2d 977 (1973); In re Puget Sound Pilots Ass'n, 63 Wn.2d 142, 145-46 n.3, 385 P.2d 711 (1963); Roehl v. Public Util. Dist. No. 1 of Chelan County, 43 Wn.2d 214, 240, 261 P.2d 92 (1953); Neils v. City of Seattle, 185 Wash. 269, 53 P.2d 848 (1936); Benton v. Seattle Elec. Co., 50 Wash. 156, 96 P. 1033 (1908)) ("The rule in this state and others is that where the legislature by enabling legislation indicates the legislative body authorized to perform a legislative function, that body may not delegate its power absent specific legislative authorization.").

[9] City of Spokane v. Rothwell, 166 Wn.2d 872, 876, 215 P.3d 162 (2009).

[10] Id.

[11] Id.

majority of the commissioners as to the validity of the agreement does not render the agreement ultra vires.

We conclude that the agreement was authorized by the statutes governing public hospital districts and the Interlocal Corporation Act.[12]

The legislature first enacted the statutes governing public hospital districts in 1945.[13] It authorized local communities to establish municipal corporations, known as "public hospital districts."[14] These districts are established "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."[15]

Chapter 70.44 RCW sets forth the powers of public hospital districts. Among others, these powers include: (1) the power to "contract indebtedness";[16] (2) the power to "raise revenue by the levy of an annual tax on all taxable property";[17] (3) the power to "adopt the budget";[18] and (4) the power to appoint and compensate the chief administrative officer for the district.[19]

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[12] See Clerk's Papers at 414-15.

[13] RCW 70.44.010.

[14] Id.

[15] RCW 70.44.003.

[16] RCW 70.44.060(5).

[17] RCW 70.44.060(6).

[18] Id.

[19] RCW 70.44.070, .080.

Importantly, RCW 70.44.060(7) provides the district with the power "[t]o 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.***"[20] The plain language of this provision authorizes the district to contract with the university, a state entity, to carry out any of the district's powers.

Additionally, RCW 70.44.240 specifically authorizes public hospital districts to contract with or join with certain other entities to provide health care services:

> Any public hospital district may contract or join with any other public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services.

The agreement that is before us establishes a means for joint or cooperative action between the district and the university for the operation of the district's health care system. Reading together RCW 70.44.060(7) and RCW 70.44.240, the legislature expressly authorized this type of agreement. Thus, the agreement falls within the express scope of authority specified in these statutes.

The Interlocal Corporation Act, enacted in 1967, provides further support that the Strategic Alliance Agreement is expressly authorized.[21] The purpose of this act is:

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[20] (Emphasis added.)

[21] Chapter 39.34 RCW.

> to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.[22]

Specifically, RCW 39.34.030 authorizes public agencies to enter into agreements to act jointly and cooperatively. This provision explains that "[a]ny power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers . . . ."[23] Thus, this act provides additional support that the agreement is expressly authorized.

The district argues that the Strategic Alliance Agreement is ultra vires because it delegates to others the district's core legislative powers: the power to establish a budget, the power to levy taxes, the power to issue public debt, and the power to appoint and compensate the district's chief administrative officer. We conclude that this statutorily authorized agreement is not an unlawful delegation of the district's powers.

A New Jersey case is illustrative of the principles at issue when public agencies enter into statutorily authorized agreements.[24] In Terminal Enterprises,

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[22] RCW 39.34.010.

[23] RCW 39.34.030(1).

[24] Terminal Enters., Inc., 54 N.J. at 575.

Inc. v. Jersey City, the supreme court considered a claim that the agreements between public agencies was an unlawful delegation of power.[25]

There, the city of Jersey City (city) and Hudson County Board of Chosen Freeholders (county) entered into agreements with the Port Authority Trans-Hudson Corporation (PATH) regarding the construction and operation of a transportation center in the Journal Square area.[26] Plaintiffs, David Rodnon and Journal Square Board of Trade, filed a complaint against the city and county alleging, among other claims, that the city and county had "unlawfully delegated power to PATH" by entering into these agreements.[27]

The court rejected this claim because it concluded that the legislature had authorized the "municipalities to cooperate with PATH" and enter into such agreements.[28] It explained:

> The . . . allegation is that the [city and county] have by the agreements illegally delegated their powers to PATH. It must be remembered however, that PATH is a public agency performing an essential governmental function in the construction and operation of the Center and that the Legislature has found this project to be in the "public interest." The Legislature can reallocate the powers of a municipality to a public agency. There is no difference between the Legislature reallocating powers from a municipality to a public agency and authorizing a municipality to partially cede those powers to such an agency.[29]

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[25] Id. at 576-77.

[26] Id. at 571.

[27] Id. at 574-75.

[28] Id. at 576-77.

[29] Id. (citations omitted).

Here, like Terminal Enterprises, the legislature has statutorily authorized the district and the university, two public agencies, to enter into the Strategic Alliance Agreement. While this agreement provides for the district to partially delegate some of its powers to the university, as the Terminal Enterprises court stated, "There is no difference between the Legislature reallocating powers from a municipality to a public agency and authorizing a municipality to partially cede those powers to such an agency."[30] Thus, Terminal Enterprises supports our conclusion that this statutorily authorized agreement is not an unlawful delegation of the district's powers.

Additionally, despite the district's arguments to the contrary, we note that the express terms of the Strategic Alliance Agreement provide that the district retains powers that it now argues have been delegated. Article VII, Reserved Powers, sets forth the "District-Reserved Powers," which include the following:

> (a) Notwithstanding anything in this Agreement to the contrary, none of the following actions may be taken by or on behalf of the District Healthcare System by either the Board or the UW Medicine CEO, ***unless first approved by the District's Board of Commissioners***:
>
> . . .
>
> (iii) the exercise of ***the District's statutory power to raise revenues by the levy of Regular Property Taxes*** on taxable property within the District's boundaries; provided, however, the District is subject to the requirements of Section 9.1;
>
> . . .
>
> (vii) ***the incurrence of Indebtedness*** except as otherwise permitted by Section 4.18(a) and as long as such Indebtedness does not exceed the amounts permitted under Section 7.1(a)(ii);

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[30] Id. at 577.

> (viii) ***the issuance of Bonds by the District***, which actions may be taken only be resolutions duly adopted by the District's Board of Commissioners; provided, however, the District has committed itself to incure Indebtedness and issue, or cause to be issued, Bonds as and to the extent required to fund the expenses referenced in Section 4.18(c); . . . .[31]

Moreover, Exhibit 3.10(c) of the agreement provides a detailed chart titled "Allocation of Statutory Obligations of District."[32] The chart identifies specific actions that may be taken, identifies relevant statutes, and specifies whether the power to take such actions is retained by the district, delegated to the Board of the District Healthcare System, or jointly shared. Items numbered 22, 23, 25, 27, 28, and 30 on this chart show that the powers relevant to this challenge are retained by the district, not delegated.[33] In short, the argument that there was an abdication of governmental powers by the previous majority of commissioners by entering into this agreement is not supported by a fair reading of this agreement.

The district also asserts that the Strategic Alliance Agreement is ultra vires because the agreement purports to bind successor commissioners in the performance of governing functions. It cites McQuillin and two attorney general opinions to support this assertion.

First, the district cites Eugene McQuillin's treatise in support of this argument. Specifically, the district states in its opening brief:

> "Respecting the binding effect of contracts extending beyond the terms of officers acting for the municipality, there exists a clear

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[31] Clerk's Papers at 444-45 (emphasis added).

[32] Id. at 470-76.

[33] Id. at 472-73.

> distinction in the judicial decisions between the governmental and business or proprietary powers. With respect to the former, their exercise is so limited that no action taken by the governmental body is binding upon its successors, whereas the latter is not subject to such limitations, and may be exercised in a way that will be binding upon the municipality after the board exercising the power shall have ceased to exist."[34]

While that is the general rule on the binding effect of contracts that extend beyond the terms of officers acting for a municipality, that rule is inapplicable here. That is because this case falls into the well-recognized exception that such contracts are binding where legislation authorizes them.[35] As we discussed previously in this opinion, the Strategic Alliance Agreement is expressly authorized by RCW 70.44.060(7), RCW 70.44.240, and the Interlocal Corporation Act.

Second, the district cites a 2012 attorney general opinion, which is persuasive but not binding authority, to support this argument.[36] In Attorney General Opinion No. 4, the attorney general explains that Washington law "establishes that boards of county commissioners may not take actions that impair the core legislative powers of their successors in office."[37] The attorney

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[34] Brief of Appellant at 19-20 (quoting McQUILLIN, supra, § 29.102 at 67-68).

[35] See McQUILLIN, supra, § 29.102 at 70-71.

[36] Brief of Appellant at 24; Reply Brief of Appellant at 11-12 (citing 2012 Op. Att'y Gen. No. 4); see Thurston County ex rel. Bd. of County Comm'rs v. City of Olympia, 151 Wn.2d 171, 177, 86 P.3d 151 (2004) ("Although not controlling, attorney general opinions are entitled to great weight.").

[37] 2012 Op. Att'y Gen. No. 4 at 1.

general cites State ex rel. Schlarb v. Smith for this principle.[38]

In Schlarb, King County and Pierce County entered into an agreement to improve, confine, and protect the White River.[39] The counties agreed to pay a certain percentage for the project, but King County declined to levy a tax pursuant to the agreement.[40] King County argued that the agreement was against public policy because "one board of county commissioners cannot enter into contracts binding upon future boards of commissioners."[41] But the supreme court explained that the principle did not apply "to a contract entered into under specific statutory authority."[42]

Here, a similar conclusion is appropriate. The principle on which the district relies does not apply because, as previously discussed, the Strategic Alliance Agreement was entered into under specific statutory authority.[43] Consequently, the attorney general opinion and Schlarb do not support the district's argument.

Third, by statement of additional authorities, the district points to another attorney general opinion for the assertion that the "Attorney General also

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[38] Id. at 2-3 (citing State ex rel. Schlarb v. Smith, 19 Wn.2d 109, 141 P.2d 651 (1943)).

[39] Schlarb, 19 Wn.2d at 111.

[40] Id. at 111-12.

[41] Id. at 112.

[42] Id. at 112-13.

[43] See RCW 70.44.060(7); RCW 70.44.240; RCW 39.34.030.

acknowledges that public hospital districts may not avoid statutory requirements by delegating management responsibilities to an administrator under RCW 70.44.060 because the elected commissioners of a district remain 'legally responsible for operations and policy.'"[44] Here, the district did not try to avoid statutory requirements by entering into the Strategic Alliance Agreement. Rather, as previously discussed, the district was acting within its statutory authority when it contracted with the university. Thus, this additional authority is also not helpful.

The district next contends that RCW 70.44.240 prohibits the district from "relinquish[ing] the core responsibilities of its elected commissioners to unelected trustees."[45] But the plain language of RCW 70.44.240 does not support the district's argument. Rather, this provision explains who must be a part of the governing body when a public hospital districts chooses to contract or join with another entity:

> The governing body of such legal entity ***shall*** include representatives of the public hospital district, which representatives ***may*** include members of the public hospital district's board of commissioners.[46]

This provision requires representatives from the district, but the representatives do not have to include the district's commissioners. Thus, RCW 70.44.240 contemplates a situation where the governing body does not include the elected

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[44] Statement of Additional Authorities at 1 (quoting 2013 Op. Att'y Gen. No. 3 at 8).

[45] Brief of Appellant at 28-35.

[46] RCW 70.44.240 (emphasis added).

commissioners. In any event, the board of trustees created by the Strategic Alliance Agreement includes the five commissioners ***and*** five individuals residing within the district's service area. Thus, there is no violation here of this statutory provision.

The district also relies on Chemical Bank v. Washington Public Power Supply System to support its position.[47] It argues that this case supports the principle that municipalities cannot "abdicate[] their statutory responsibilities."[48] While that principle of law is correct, that case does not control here.

In Chemical Bank, a large number of "participants," including cities, public utility districts, and other districts, entered into agreements regarding the construction of two nuclear generating plants.[49] Statutes authorized cities and public utility districts to build or buy their own plants.[50] But to have authority for these types of joint projects, cities and districts needed an ownership interest or control in the projects.[51]

The supreme court looked to the participants' agreements to determine their level of management and control in the projects.[52] The agreement created

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[47] Brief of Appellant at 22-24 (citing Chem. Bank v. Wash. Pub. Power Supply Sys., 99 Wn.2d 772, 666 P.2d 329 (1983), aff'd, 102 Wn.2d 874 (1984)).

[48] Id. at 23.

[49] Chemical Bank, 99 Wn.2d at 777.

[50] Id. at 784-85.

[51] Id. at 785, 787.

[52] Id. at 787.

a "part-time committee of representative participants," but the court concluded that these representatives could not provide "significant input to the management of the projects" given rigid procedural requirements.[53]

The court recognized the "necessity and propriety of establishing representative committees to manage and oversee joint development projects."[54] But the court was concerned that the committee "served as a rubber stamp" for project decisions, and the participants did not actually have management or control in the projects.[55] The court went on to conclude that the participants' agreements were ultra vires based on this concern and a number of other concerns.[56]

Here, there is a similar project as the one in Chemical Bank, where the supreme court expressly acknowledged the "necessity and propriety of establishing representative committees to manage and oversee joint development projects."[57] The Strategic Alliance Agreement that the district attacks provides for a management structure composed of representatives of the district and the university.

But Chemical Bank is distinguishable because the new board of trustees is not a "rubber stamp." The five elected commissioners of the district are part of

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[53] Id.

[54] Id.

[55] Id. at 788.

[56] Id. at 798.

[57] Id. at 787.

the board of trustees. In that capacity, they help to manage and oversee the delivery of health care services to the public. Nothing in this record substantiates the claim that they rubber stamp anything. Even though the commissioners do not represent a majority of the board, they are able to provide "significant input."[58] For these reasons, this case is distinguishable from Chemical Bank.

The district next argues that the delegation of legislative powers under the Strategic Alliance Agreement is "anti-democratic and impermissible under our constitutional system."[59] It contends that the university's "argument, far from honoring democratic principles, represents a dangerous invitation to elected officials to abdicate their responsibility for the operation of a local government to an unelected group of 'trustees' who are not accountable to the voters served by the local government."[60]

The simple answer to this argument is that the elected representatives of the people—the legislature—expressly authorized the type of agreement in this case. This is consistent with both representative democracy and our constitution. The remedy for disagreement with these statutes is to seek redress from the legislature, not the courts.

Finally, the district, in its reply brief, asserts that to the extent the statutes condone the "cession of the elected Commissioners' core legislative

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[58] Id.

[59] Reply Brief of Appellant at 24.

[60] Id.

responsibilities to the unaccountable trustees," the statutes are unconstitutional.[61] It cites article I, section 9 of the state constitution.[62] But the district provides no further argument.[63] "'[N]aked castings into the constitutional seas are not sufficient to command judicial consideration and discussion.'"[64] Because statutes are presumed to be constitutional and the district's constitutional claim is not supported by sufficient argument, the district has failed to meet its burden to overturn the statutes.[65] Accordingly, we do not address this claim further.[66]

In sum, all that has changed since the signing of the Strategic Alliance Agreement is the view of the majority of the members of the board of commissioners about its validity. Under the circumstances of this case, that does not constitute a basis for declaring the agreement ultra vires. The trial court properly granted the university's motion for summary judgment dismissing the district's claims with prejudice.

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[61] Id. at 17.

[62] Id. (citing CONST. art. I, § 19) ("All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.").

[63] See id. at 17-18.

[64] State v. Johnson, 179 Wn.2d 534, 558, 315 P.3d 1090 (2014) (alteration in original) (internal quotation marks omitted) (quoting State v. Blilie, 132 Wn.2d 484, 493 n.2, 939 P.2d 691 (1997)).

[65] See Haley v. Med. Disciplinary Bd., 117 Wn.2d 720, 739, 818 P.2d 1062 (1991) ("A statute is presumed to be constitutional.").

[66] See State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

MOTION TO EXPAND APPELLATE RECORD

The district moves, pursuant to RAP 9.11(a), to expand the appellate record to consider an e-mail from Valley Medical Center's general counsel to the secretary of the district commissioners.[67] We deny this motion.

First, this e-mail was sent after the trial court granted the university's motion for summary judgment. Thus, it was not before the court when it granted summary judgment. For this reason alone, we could deny the motion.

Second, even if we reach the substance of the motion, it has no merit. RAP 9.11(a) provides that an "appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review" if the following six requirements are all met:

> (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

Here, the e-mail from Valley Medical Center's general counsel raises concerns about several agenda items for a particular board of commissioners meeting. The e-mail explains general counsel's view of how the commissioners' powers and activities have allegedly changed since the Strategic Alliance Agreement with respect to the hiring of bond counsel and community outreach

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[67] District's Motion to Expand Appellate Record Pursuant to RAP 9.11 at 1-2.

expenditures. The district argues that this e-mail "represent[s] the position of the trustees [and] demonstrates unequivocally the severity of the curtailment of the fiscal authority of the elected [c]ommissioners."[68]

This e-mail is not "needed to fairly resolve the issues on review" and it does not "probably change the decision being reviewed."[69] Because these requirements of RAP 9.11(a) are not met and this e-mail was not before the trial court when it rendered its decision on summary judgment, we deny the motion.

We affirm the summary judgment order of dismissal.

COX, J.

WE CONCUR:

Leach, J.

Dwyer, J.

[68] Id. at 2.

[69] See RAP 9.11(a)(1), (2).

DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Petition for Review in Court of Appeals Cause No. 70633-1-I to the following parties:

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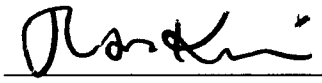
I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated: July 21, 2014, at Seattle, Washington.



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