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No.86796-8

SUPREME COURT OF THE STATE OF WASHINGTON

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

Appellant,

v.

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

Respondent.

**ANSWER TO APPELLANT'S STATEMENT OF GROUNDS FOR
DIRECT REVIEW**

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Skagit County Public Hospital District No. 304, dba United General Hospital (“United General”) submits this Answer to Appellant’s Statement of Grounds for Direct Review, (herein the “Statement”) pursuant to RAP 4.2(d). Appellant (hereafter “Skagit Valley Hospital”) and United General are each rural public hospital districts, established pursuant to Chapter 70.44 RCW, with separate and distinct territorial boundaries located within different parts of Skagit County, Washington. See Findings of Fact, Conclusions of Law, Judgment and Stay (Nos. 1.1 and 1.2 of Appendix A to the Statement).

I. COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW.

The real issue in this case may be stated as follows:

Is a Washington public hospital district authorized and empowered, as a matter of law, to invade and operate within the territorial boundaries of another Washington public hospital, without the latter’s agreement and consent?

II. THIS CASE DOES NOT MEET THE CRITERIA FOR DIRECT REVIEW BY THE SUPREME COURT.

RAP 4.2 lists the types of cases that the Supreme Court will accept for direct review. Skagit Valley Hospital has petitioned for direct review pursuant to RAP 4.2(a)(4) on the grounds that the case presents “. . . a fundamental and urgent issue of broad public import which requires

prompt and ultimate determination.” Skagit Valley Hospital asks the Court to determine whether public hospital districts have the statutory right to compete everywhere expedient or necessary or whether they must ask permission of a neighboring public hospital district before expanding into the neighboring public hospital district’s territory.

United General submits that the answer is “no” based upon controlling law that is well settled. The question posed by Skagit Valley Hospital should be properly addressed to the Washington State Legislature, if it wishes to have the law and public policy of this state to so empower public hospital districts.

At the outset, Skagit Valley Hospital mischaracterizes the trial court’s ruling when it states that:

“The trial court granted a writ of prohibition because it believed United General would not win an injunction. The court’s ruling transforms a writ of prohibition into an injunction of last resort against governmental entities.” (See, Statement, page 9).

United General did not seek injunctive relief but rather expressly sought the remedy of a writ of prohibition, which the trial court properly recognized is not dependent upon waiting for harm to occur or become imminent before a governmental entity should be prohibited from exceeding its authority and jurisdiction. See Opinion of the Court, September 12, 2011, pgs. 6-7 attached as Appendix B to the Statement.

As stated by the Washington State Court of Appeals, in *County of Spokane v. Local No. 1553, American Federation of State, County and Municipal Employees, AFL-CIO*, 76 Wash. App. 765, 769, 888 P.2d 735 (1995), relying on well-established law:

“The historical purpose of the Writ was to prevent and encroachment of jurisdiction. 73 C.J.S. *Prohibition* §3 (1983).”

The Court of Appeals in that case distinguished between the *writ of prohibition*, which is directed against governmental actions which are in excess of lawful power and jurisdiction and which may not issue against private parties, and *injunctions* which may be imposed against private parties.

This case is precisely the kind of case where a writ of prohibition is appropriate. Skagit Valley Hospital, as the trial court held, exceeded its lawful authority and jurisdiction by invading United General through its acquisition of Skagit Valley Medical Center and its employment and assignment of physicians and other employees to work within the territorial boundaries of United General. The trial court determined that there is no plain, speedy and adequate remedy other than the Writ of Prohibition, and that conclusion was not an abuse of discretion. See, *State ex rel. Hodde v. Thurston County Superior Court*, 40 Wn. 2d 502, 517, 244 P.2d 668 (1962) (what constitutes a plain, speedy and adequate

remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought). Skagit Valley Hospital argues that United General must wait until the harm occurs and then, and only then, may it seek relief in the form of an injunction. Were that the law, there would be no need or provision for the issuance of a writ of prohibition in any case,

Washington municipal law is clear that a municipal corporation is limited in its powers to those expressly granted and to those necessarily implied or incident to the declared objects and purposes of the corporation. *Washington Pub. Util. Dists.' Utils. Sys. v. PUD 1*, 112 Wn.2d 1, 6, 771 P.2d 701 (1989). If there is a doubt about a claimed grant of power, it must be denied. *Port of Seattle v. Washington Utils. & Transp. Comm'n*, 92 Wn.2d 789, 795, 597 P.2d 383 (1979).

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

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

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

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

As with water districts, at issue in the *Alderwood Water District*, *supra*, public hospital districts are given the power to provide services extra-territorially for their residents, but not within the territorial boundaries of another public hospital district.

The Attorney General's opinion, relying on the holding in *Alderwood Water District, supra*, concluded that a public hospital district may not operate health care facilities or provide health care services, within the boundaries of another public hospital district, without the latter's consent. Said AGO set forth its rationale, as follows, at pages 6-7:

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

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

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

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

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

Chapter 70.44 RCW, has been amended from time to time since the Attorney's General opinion was rendered¹ and at no time has the legislature elected to change the law to authorize and empower public hospital district's to operate co-extensively within the territorial boundaries of another public hospital district without the latter's consent. As noted above, the legislature has addressed the statutory powers of public hospital districts six times since the above referenced Attorney General's Opinion was issued and has chosen not to extend their powers to include operating within another public hospital district's territory, without the latter's consent. The Court has consistently held that:

Although attorney general opinions are not controlling on us, they are persuasive authority.

Associated General Contractors of Washington v. King County, 124 Wn.2d 855, 860-861, 881 P.2d 996, 999 (1994), citing *Bowles v. Washington Dept. of Retirement Systems*, 121 Wn.2d 52, 847 P.2d 440 (1993) which stated at 121 Wn.2d 63-64.

Additionally, the Attorney General issued an opinion agreeing that the Department's interpretation of this issue was correct. AGO 1 (1976). Although not controlling, Attorney General opinions are given "considerable weight". *Everett Concrete Prods., Inc. v. Department of Labor & Indus.*, 109 Wash.2d 819, 828, 748 P.2d 1112 (1988). Moreover, the Attorney General opinion constitutes notice to

¹ RCW 77.44.060 has been amended six (6) times since the Attorney General's Opinion was issued in 1988 by the following Laws of Washington: 1990, c. 234 § 2; 1997, c.3 § 206; 2001, c.76 § 1; 2003, c. 125 § 1; 2010, c.95 § 1; 2011, c. 37 § 1.

the Legislature of the Department's interpretation of the law, and the Legislature has not acted since 1976 to overturn the Department's interpretation. Greater weight attaches to an agency interpretation when the Legislature acquiesces in that interpretation. See *Newschwander v. Board of Trustees*, 94 Wash.2d 701, 711, 620 P.2d 88 (1980). [Underlining added]

The legislative purpose behind RCW 70.44.060(3), the statute authorizing limited extra-territorial activities by a public hospital district, must be read in the context of Chapter 70.44 RCW in its entirety. Chapter 70.44 sets forth a statutory framework through which a public hospital district may *choose* to enter a consensual contractual arrangement with another hospital district for the provision of healthcare services. See, generally, RCW 70.44.240 and, for rural public hospital districts, RCW 70.44.450.

The legislature need not have enacted RCW 70.44.450 if it had otherwise intended rural public hospital districts to have the power to unilaterally decide to provide hospital and other healthcare services inside the boundary of another district without the second district's consent. By authorizing "cooperative agreements and contracts" between rural public hospital districts, the Legislature, provided a specific process to permit such operations when the Board of Commissioners of the public hospital district so approve and did, thereby, indicate legislative disapproval of the

type of unilateral, competitive action that Skagit Valley Hospital has attempted when it enacted RCW 70.44.450 which provides:

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

(1) Allocation of health care services among the different facilities owned and operated by the districts;

(2) Combined purchases and allocations of medical equipment and technologies;

(3) Joint agreements and contracts for health care service delivery and payment with public and private entities; and

(4) Other cooperative arrangements consistent with the intent of chapter 161, Laws of 1992. The provisions of chapter 39.34 RCW shall apply to the development and implementation of the cooperative contracts and agreements.

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

Intent -- 1992 c 161: "The legislature finds that maintaining the viability of health care service delivery in rural areas of Washington is a primary goal of state health policy. The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and

geographic isolation. *It is the intent of this act to foster the development of cooperative and collaborative arrangements among rural public hospital districts by specifically authorizing cooperative agreements and contracts for these entities under the interlocal cooperation act.*" [1992 c 161 § 1.] [Underlining and other emphasis added.]

Thus, the Legislature has determined that rural public hospital districts such as Skagit Valley Hospital and United General should not compete with each other for the provision of health and hospital care services, within the defined territorial boundaries of each other. Those are exactly the concerns expressed by the United General Board of Commissioners in the Resolution denying Skagit Valley Hospital's request such agreement and why United General declined to enter into the proposed Memorandum of Understanding. (See Appendix E to the Statement).

The legislature clearly recognized the basic rule of law (that two like kind municipal corporations may not operate and provide the same services within the same territorial boundaries, absence agreement) in adopting the statutes governing Washington public hospital districts (Chapter 70.44 RCW). Public hospital districts are created, pursuant to specified legal processes, with specified non-overlapping district boundaries (RCW 70.44.020, 70.44.030, and 70.44.035), and

representative governance elected from therein (RCW 70.44.040). As the Court has held, a public hospital district:

“[I]s a municipal corporation created by state statute. Its powers are vested in its duly elected officials....”

Williamson v. Grant County Public Hospital District, 65 Wn.2d 245, 251, 396 P.2d 879 (1964). It is not for the officials of Skagit Valley Hospital to decide what is best for the provision of health care services within United General, particularly after the governing board of United General expressly denied their request for an interlocal agreement. See United General Resolution No. 2010-23 (Appendix E to the Statement).

The Washington legislature has further provided distinct and formal legal processes for changing boundaries through division of public hospital districts (RCW 70.44.350-380); or consolidation of districts (RCW 70.44.190); or changing the lines between contiguous hospital districts (RCW 70.44.185); or annexing territory (RCW 70.44.200); or withdrawing territory (RCW 70.44.400).

The legislature, consistent with the basic rule of law, has then provided that one public hospital district may contract with another public hospital district for services or joint activity (RCW 70.44.240), but absent such agreement, there is no statutory provision permitting one public hospital district to invade another. The legislature has acquiesced in to the

opinion of the State's attorney general over the past twenty-three (23) years when amending the statutory powers of public hospital districts (set out in RCW 70.44.060) on six (6) different occasions.

Skagit Valley Hospital argues that because the statutes governing public hospital districts in Washington (Chapter 70.44 RCW) does not expressly prohibit public hospital districts from invading the territorial boundaries of another, freely and at will, and without the latter's consent, such competition is authorized. Such a position is totally inconsistent with basic municipal law that municipal corporations have only those powers expressly granted to them by the legislature and those necessarily implied or incident to the declared objects and purposes of the municipal corporation. (See, *Washington Pub. Util. Dists.' Utils. Sys. v. PUD 1*, *supra*.)

Skagit Valley makes the argument that times have changed and that:

“No public policy is served by limiting public hospital districts solely to facilities within their taxing border. When an opportunity arises for a public hospital district to expand or consolidate, both healthcare economics and Washington public policies support more efficient, rational operations. The days of “exclusive” territories are gone.” (See, Statement at page 14).

As previously stated, a change in public policy is for the legislature to determine when it comes to empowering municipal corporations and, as

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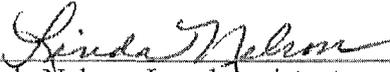
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Dated this 22 day of December, 2011.


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Thank you.

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