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STATE OF WASHINGTON
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No. 86796-8

IN THE SUPREME COURT FOR THE
STATE OF WASHINGTON

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

Respondent,

v.

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

Appellant.

REPLY TO REBUTTAL BRIEF OF RESPONDENT

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ORIGINAL

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INTRODUCTION

In RCW 70.44.060(3), the Legislature expressly authorized public hospital districts to own and operate health care facilities outside their tax boundaries. It did not exclude owning facilities within another district's borders. Respondent Skagit County Public Hospital District No. 304 (United General) asks this Court to adopt an *implied limit*, based on the reasoning in Alderwood Water District v. Pope & Talbot, Inc., 62 Wn.2d 319, 323, 382 P.2d 629 (1963) ("extend water services only to those individuals who were not within the boundaries of any other water district"). United General argues Alderwood renders the distinction between a district's governmental and proprietary functions "not material". (Respondent's Rebuttal Brief at 3).

The distinction between governmental and proprietary functions matters in this case. Appellant Skagit County Public Hospital District No. 1 (Skagit Valley) acts in a proprietary capacity when it operates health care facilities for compensation. Under established Supreme Court precedent, when "this court classifies a statutorily granted municipal power as proprietary, then the extent of that municipal power can be liberally construed." Branson v. Port of Seattle, 152 Wn.2d 862, 870, 101 P.3d 67 (2004). Furthermore,

“a municipality may exercise its proprietary powers very much in the same way as a private individual.” Burns v. City of Seattle, 161 Wn.2d 129, 154, 164 P.3d 475 (2007). The Court has consistently interpreted proprietary powers – including the right to compete – broadly.

In contrast, since deciding Alderwood in 1963, this Court has not applied its rationale to another special purpose district. Both precedent and common sense weigh against making this case the first.

I. This Court Has Not Extended Alderwood Beyond Its Facts

In its rebuttal brief, United General argues that Alderwood controls this appeal, rendering the distinction between governmental and proprietary functions irrelevant. (Rebuttal Brief at 3) (“the distinction between governmental and proprietary functions was not material, in any way, to the decision by the Court in the Alderwood Water District case”). United General implies that Alderwood trumps this Court’s subsequent decisions on proprietary powers.

United General’s argument has two flaws. First, Alderwood did not overrule or create an exception to the distinction. Justice

Finley's special concurrence in Public Utility Dist. No. 1 of Pend Oreille County v. Town of Newport, 38 Wn.2d 221, 235, 228 P.2d 766 (1951) and majority opinion in Alderwood, 62 Wn.2d at 321 represent antipathy to sovereign immunity for governmental torts, not to the distinction between governmental and proprietary powers. Traditionally, municipal corporations were immune to tort liability for governmental functions. When the Legislature adopted RCW 4.92.090, waiving the State's sovereign immunity from tort suits, Justice Finley in a special concurrence applauded.

Despite the fears of other years, the time seems propitious for reconsideration of the doctrine of governmental immunity and the theoretical bases therefor, not only by the legislative branch (as witnessed in the recent legislation cited above), but also by the judicial branch (as witnessed by the dissent in Macy and the majority in the instant case).

Kelso v. City of Tacoma, 63 Wn.2d 913, 920-921, 390 P.2d 2 (1964).

Once the distinction between governmental and proprietary functions became irrelevant to tort liability, this Court has used the distinction repeatedly to construe the rights and obligations of municipal corporations. See e.g., Hite v. Public Util. Dist. No. 2, 112 Wn.2d 456, 459, 772 P.2d 481 (1989) ("a municipal

corporation's powers are construed differently depending on whether they are governmental or proprietary").

Second, PUD No.1, not Alderwood, provides the appropriate legal rule for this case. United General attempts to distinguish PUD No. 1, arguing that it involved different municipal corporations with overlapping boundaries. But this factual difference does not affect the legal rule: more than one municipal corporation, acting in a proprietary capacity, may compete in the same territory. Here, if the Court extends Alderwood to public hospital districts, any non-public competitor may own and operate the Pavilion II medical office. That penalizes Skagit Valley and provides no meaningful protection to United General.

II. Owning And Operating A Medical Clinic Is A Proprietary Function.

Before Skagit Valley purchased it, Skagit Valley Medical Center was a for-profit business, operating six offices throughout Skagit County. (Bond Dec. ¶ 7; CP 619). There should be no dispute that after the purchase, Skagit Valley owns and operates the Medical Center as a business, in a proprietary capacity.

United General argues that safeguarding the public health, exercising the power of taxation, increasing capacity, and entering

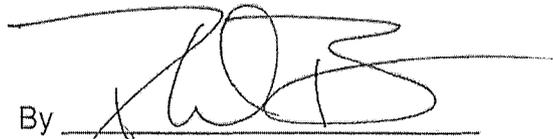
interlocal agreements are all government functions. (Rebuttal Brief at 4-5). Even if this were correct for public hospital districts, which it is not, those are not the functions involved here. Skagit Valley owns and operates the Medical Center for compensation – to benefit its residents and patients. As the Court of Appeals ruled, “one of the duties a public hospital district must undertake is to provide hospital and other health care services for residents of the public hospital district. Skagit County Public Hosp. Dist. No. 1 v. State, Dept. of Revenue, 158 Wn. App. 426, 446, 242 P.3d 909 (2010). When it receives compensation for these services, Skagit Valley acts in a proprietary, not governmental, capacity.

In its rebuttal brief, United General fails to address, let alone distinguish, this Court’s analysis in the baseball stadium case, Washington State Major League Baseball Stadium Public Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Const. Co., 165 Wn.2d 679, 202 P.3d 924 (2009) (“the distribution of benefits is irrelevant”). Public hospital districts act for the benefit of their residents, not the public at large. They therefore exercise proprietary functions.

Skagit County Public Hospital District No. 1 respectfully requests the Court to vacate the trial court’s writ of prohibition and enter judgment in favor of Skagit Valley.

DATED this 22nd day of August, 2012.

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DECLARATION OF SERVICE

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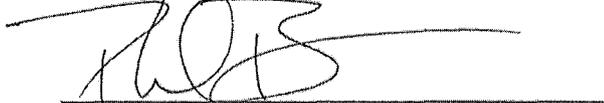
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