

**FILED**  
JUL 05 2012  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON  
*[Signature]*

No. 86796-8

IN THE SUPREME COURT FOR THE  
STATE OF WASHINGTON

CLERK

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 BRIEF OF APPELLANT**

Philip J. Buri, WSBA No. 17637  
BURI FUNSTON MUMFORD, PLLC  
1601 F. Street  
Bellingham, Washington 98225  
Tel. (360) 752-1500  
Fax (360) 752-1502  
ATTORNEY FOR APPELLANTS

ORIGINAL

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
12 JUL -5 AM 8:17  
BY RONALD R. CARPENTER

**TABLE OF CONTENTS**

**INTRODUCTION** .....1

**I. UNITED GENERAL’S ARGUMENT RESTS ON A FLAWED PREMISE** ..... 3

    A. Providing Health Care Services Is A Proprietary Not Governmental Function. ....5

    B. McQuillin’s Rule Does Not Apply to Municipal Corporations Acting In A Proprietary Capacity ..... 9

    C. No Statutory Limit Exists On Where Skagit Valley May Provide Service. .... 12

**II. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING A WRIT OF PROHIBITION** .....18

**CONCLUSION** .....20

## TABLE OF AUTHORITIES

### Washington Supreme Court

<u>Alderwood Water Dist. v. Pope &amp; Talbot, Inc.</u> , 62 Wn.2d 319, 382 P.2d 629 (1963).....	3, 16
<u>Bowles v. Washington Dept. of Retirement Systems</u> , 121 Wn.2d 52, 847 P.2d 440 (1993).....	15
<u>City of Tacoma v. City of Bonney Lake</u> , 173 Wn.2d 584, 269 P.3d 1017 (2012).....	11, 16
<u>City of Tacoma v. Taxpayers of City of Tacoma</u> , 108 Wn.2d 679, 743 P.2d 793 (1987).....	1, 10, 12
<u>Municipality of Metropolitan Seattle v. Division 587, Amalgamated Transit Union</u> , 118 Wn.2d 639, 826 P.2d 167 (1992) .....	5
<u>Okeson v. City of Seattle</u> , 150 Wn.2d 540, 78 P.3d 1279 (2003) .....	1, 8
<u>Public Utility Dist. No. 1 of Pend Oreille County v. Town of Newport</u> , 38 Wn.2d 221, 228 P.2d 766 (1951) .....	2, 4, 10
<u>State ex rel. Keeler v. Port of Peninsula</u> , 89 Wn.2d 764, 575 P.2d 713 (1978).....	13, 18, 19

### Washington State Court of Appeals

<u>County of Spokane v. Local No. 1553, AFSCME</u> , 76 Wn. App. 765, 888 P.2d 735 (1995).....	19
<u>King County Water Dist. No. 75 v. Port of Seattle</u> , 63 Wn. App. 777, 822 P.2d 331 (1992) .....	10
<u>Skagit County PHD 1 v. Dept of Revenue</u> , 158 Wn. App. 426, 242 P.3d 909 (2010) .....	2, 5, 6
<u>Washington State Major League Baseball Stadium Public Facilities Dist. v. Huber, Hunt &amp; Nichols-Kiewit Const. Co.</u> , 165 Wn.2d 679, 202 P.3d 924 (2009).....	7, 9

### Other Authorities

Attorney General's Opinion No. 15 (1988). .....	2, 3, 14, 16
2 <u>McQuillin Mun. Corp. § 7.08</u> (3 <sup>rd</sup> Ed.).....	3, 4, 11

### Codes and Regulations

RCW 43.72.300 .....	17
RCW 54.08 .....	17
RCW 57.08.007 .....	13, 17
RCW 70.44.....	13, 17
RCW 70.44.003.....	7
RCW 70.44.060.....	2, 7, 14, 18
RCW 70.44.450.....	14, 16, 17

## INTRODUCTION

Municipal corporations act in one of two distinct capacities: governmental or proprietary. The difference between the two is central to this appeal.

Like other state supreme courts, we have historically taken different approaches to construing municipal powers according to whether the power exercised is governmental or proprietary in nature. See, e.g., PUD 1 v. Newport, 38 Wn.2d 221, 227, 228 P.2d 766 (1951); 2 E. McQuillin, [Municipal Corporations] at § 10.22. When a governmental function is involved, less opportunity exists for invoking the doctrines of liberal construction and of implied powers. Newport, at 227, 228 P.2d 766. But when the Legislature authorizes a municipality to engage in a business, “ [it] may exercise its business powers very much in the same way as a private individual ...’ ” Newport, at 227, 228 P.2d 766.

City of Tacoma v. Taxpayers of City of Tacoma, 108 Wn.2d 679, 693-695, 743 P.2d 793 (1987).

Skagit County Public Hospital Districts No. 1 (Skagit Valley) and No. 304 (United General) are municipal corporations acting in proprietary not governmental capacities. “The principal test in distinguishing governmental functions from proprietary functions is whether the act performed is for the common good of all, or whether it is for the special benefit or profit of the corporate entity.” Okeson v. City of Seattle, 150 Wn.2d 540, 550, 78 P.3d 1279

(2003). Because public hospital districts provide health care services primarily for the benefit of their residents, they exercise proprietary, not sovereign powers. Skagit County PHD 1 v. Dept of Revenue, 158 Wn. App. 426, 445-446, 242 P.3d 909 (2010) (“sovereign immunity does not apply because Skagit Valley acted within its statutory authority, acted for its own benefit, and engaged in administrative duties”).

Appellant Skagit Valley respectfully requests the Court to retain review of this appeal and vacate the trial court’s writ of prohibition. The centerpiece of respondent United General’s defense of the writ -- drawn from Attorney General’s Opinion No. 15 (1988) – is that only one municipal corporation may operate in a given territory. (Response Brief at 3). Yet this rule does not apply to municipal corporations operating in a proprietary capacity. Public Utility Dist. No. 1 of Pend Oreille County v. Town of Newport, 38 Wn.2d 221, 227, 228 P.2d 766 (1951) (“this rule is applicable only where the two corporations are exercising governmental functions in contrast with proprietary functions”).

As the Legislature decreed in RCW 70.44.060, public hospital districts like appellant Skagit Valley and respondent United General may provide health care services wherever the

“commissioners may deem expedient or necessary under the existing conditions.” There is no requirement that they first obtain a competing district’s permission.

**I. United General’s Argument Rests On A Flawed Premise**

At the core of its case, United General asserts that two similar municipal corporations cannot compete in the same district at the same time.

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

(Response Brief at 3). United General offers three authorities to support this rule: 2 McQuillin Mun. Corp. § 7.08 (3<sup>rd</sup> Ed.); Alderwood Water District v. Pope & Talbot, Inc., 62 Wn.2d 319, 382 P.2d 629 (1963); and AGO No. 15 (1988).

United General quotes only the rule and not the exception that requires a different conclusion in this case. As McQuillin notes in the same section,

occasionally, the general rule has been said to apply only to the simultaneous exercise by separate public corporations of governmental, as distinguished from proprietary, functions or powers. Under this view, two public corporations may engage contemporaneously in the same proprietary activities in the same area.

2 McQuillin Mun. Corp., § 7.08. The treatise cites a Washington opinion for the exception.

We think that this rule is applicable only where the two corporations are exercising governmental functions in contrast with proprietary functions. Here, the district is in the business of selling electricity to its customers. The town proposes to engage in the same business. Since the legislature has authorized each to so engage in such business, each may do so until the legislature forbids such competition.

Public Utility Dist. No. 1 of Pend Oreille County v. Town of Newport, 38 Wn.2d 221, 227, 228 P.2d 766 (1951).

McQuillin's rule applies only to municipal corporations acting in a governmental capacity. United General's argument – that only one district can exist and operate in a given area – presumes that providing medical care is a governmental rather than proprietary function. This is a flawed assumption.

In Washington, public utilities, special purpose districts, and transit systems are all municipal corporations acting in a proprietary capacity.

When a municipal corporation acts as a business in a proprietary capacity, its powers are construed even more broadly. Hite v. PUD 2, 112 Wn.2d 456, 459, 772 P.2d 481 (1989); Tacoma v. Taxpayers, 108 Wn.2d 679, 694, 743 P.2d 793 (1987). The operation of utilities has been classified as a proprietary function. Tacoma at 694 n. 9, 743 P.2d 793. The

operation of a transit system is similar. Indeed, Metro was formed to provide “essential services” to the population it serves, including garbage disposal, water supply, and transportation. RCW 35.58.010. These types of functions are more proprietary than governmental in nature.

Municipality of Metropolitan Seattle v. Division 587, Amalgamated Transit Union, 118 Wn.2d 639, 645, 826 P.2d 167 (1992). Public hospital districts are also on the list.

A. Providing Health Care Services Is A Proprietary Not Governmental Function

This Court has not yet decided whether public hospital districts operate in a governmental or proprietary capacity. But Division II of the Court of Appeals ruled that Skagit Valley Hospital (the same district here) exercised proprietary rather than sovereign powers when it received payment for providing health care services. Skagit County Public Hosp. Dist. No. 1 v. State, Dept. of Revenue, 158 Wn. App. 426, 242 P.3d 909 (2010). In Skagit County, the Department of Revenue sought to collect business and occupation taxes on Medicare and Medigap reimbursements for copayments and deductibles. Skagit County, 158 Wn. App. at 433.

Skagit Valley argued that because it was a municipal corporation, sovereign immunity protected it from interest on the

unpaid taxes. For reasons that have direct relevance here, the Court of Appeals disagreed.

Public hospital districts are municipal corporations. RCW 70.44.010. 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. RCW 70.44.060(3). Skagit Valley received the amounts at issue in exchange for providing hospital and other health services. Skagit Valley was operating a public hospital district under statutory authority and should be assessed interest on its failure to pay taxes. In addition, *Skagit Valley acted for its own benefit*. Skagit Valley deposited the money from Medicare beneficiaries and Medigap insurers into its bank account. Finally, Skagit Valley was not representing the State when billing Medicare beneficiaries and Medigap insurers. There is no evidence in the record that the State undertook efforts to collect bad debts. Instead, that duty fell to Skagit Valley. Sovereign immunity does not apply and the Department had authority to impose interest on Skagit Valley's assessments.

Skagit County, 158 Wn. App. at 446 (emphasis added).

Providing health care services for compensation is a proprietary act for at least three reasons. First, as emphasized in Skagit County above, public hospital districts act for the benefit of their residents, not the public at large. “The principal test for determining whether a municipal act involves a sovereign or proprietary function is whether the act is for the common good or whether it is for the specific benefit or profit of the corporate entity.”

Washington State Major League Baseball Stadium Public Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Const. Co., 165 Wn.2d 679, 687, 202 P.3d 924 (2009) (citing Okeson v. City of Seattle, 150 Wn.2d 540, 550, 78 P.3d 1279 (2003)).

Public hospital districts are in the business of providing health care. Although they serve a public purpose, “public health and safety are not the basis for distinguishing between governmental and proprietary functions of a municipality.” Baseball Stadium, 165 Wn.2d at 688. Instead, the Court looks at the intended beneficiary of the municipal corporation’s actions. Here, as the Legislature made clear, public hospital districts exist to benefit their residents, not the public at large.

The purpose of chapter 70.44 RCW is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services *for the residents of such districts* and other persons.

RCW 70.44.003 (emphasis added); RCW 70.44.060(3) (“the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district”).

Second, this proprietary action exists regardless of *where* the hospital provides medical services. In Okeson v. City of Seattle, this Court rejected the City of Seattle's argument that providing street lighting is a governmental function only in certain contexts.

We find Seattle's attempt to differentiate the context unpersuasive. Providing streetlights cannot be a proprietary function for some purposes, but a governmental function for others.

Okeson, 150 Wn.2d at 551. The same logic applies here. Providing health care services is a proprietary function, regardless of whether the context is sovereign immunity or the district's statutory power to provide services in another district.

Third, providing medical care is not a traditional governmental or sovereign function. The Court's recent baseball stadium case explains why. To decide whether constructing a baseball stadium was "for the benefit of the state" and therefore a governmental function, this Court examined the character or nature of the municipal act, not its effect.

The "for the benefit of the state" language in RCW 4.16.160 is properly understood to refer to the *character or nature* of municipal conduct rather than its effect. The only inquiry is whether the municipal action arises from an exercise of powers traceable to delegated sovereign state powers or whether such

action is proprietary and thus subject to the statute of limitation. Each case is determined in light of the particular facts involved.

In determining whether an action is sovereign or proprietary, we may look to constitutional or statutory provisions indicating the sovereign nature of the power and may also consider traditional notions of powers that are inherent in the sovereign. Relevant to this analysis are the general powers and duties under which the municipality acted, the purpose of those powers, and whether the activity or its purpose is normally associated with private or sovereign acts. The distribution of benefits is irrelevant.

Baseball Stadium, 165 Wn.2d at 686-687. Providing medical care has never been a power “inherent in the sovereign” but rather part of a market economy. Although public providers exist, the market for health care remains dominated by private practitioners.

In sum, Skagit Valley and United General provide medical services as a proprietary rather than governmental function. They exist to benefit their respective residents, not the public at large. Although they may aid the public, the character or nature of their acts is proprietary. They are businesses.

B. McQuillin’s Rule Does Not Apply To Municipal Corporations Acting In A Proprietary Capacity

Washington courts have repeatedly held that municipal corporations acting in a proprietary capacity may compete as do their private counterparts.

If municipal utility actions come within the purpose and object of the enabling statute and no express limitations apply, this court leaves the choice of means used in operating the utility to the discretion of municipal authorities. We limit judicial review of municipal utility choices to whether the particular contract or action was arbitrary or capricious, or unreasonable.

City of Tacoma v. Taxpayers of City of Tacoma, 108 Wn.2d 679, 695, 743 P.2d 793 (1987).

This includes the power to compete in another public corporation's district. Public Utility Dist. No. 1 of Pend Oreille County v. Town of Newport, 38 Wn.2d 221, 228-229, 228 P.2d 766 (1951) ("the rule does not prevent the district and the town from each simultaneously owning and operating its own electric distribution system within the corporate limits of the town of Newport"); King County Water Dist. No. 75 v. Port of Seattle, 63 Wn. App. 777, 787, 822 P.2d 331 (1992) ("neither the port district statute nor the water district statute contains any express or implied statutory prohibition against overlapping authority to provide water services for the benefit of port-owned property located within a water district").

McQuillin's rule against overlapping municipal corporations does not apply to proprietary functions. As the treatise states in a later section,

unless a municipality has granted an exclusive franchise, or has otherwise entered into a valid contract not to compete with a public service company, where it has the authority, it may construct a competing water, electric generating plant, cable television system or passenger railway, even though the competition may be ruinous. Provided, however, that there is no statute requiring it to purchase the plant of the existing company engaged in furnishing a supply or service, or otherwise restricting competition.

2 McQuillin Mun. Corp., § 35.13 (3<sup>rd</sup> Ed.); City of Tacoma v. City of Bonney Lake, 173 Wn.2d 584, 590, 269 P.3d 1017 (2012) ("when a city takes proprietary action, its business powers are viewed almost the same as a private individual's").

United General assumes incorrectly that McQuillin's rule provides an independent ground for prohibiting competition in its district. To bar Skagit Valley from continuing to employ physicians at the Pavilion, United General must show that the statute creating public hospital districts prohibits extra-territorial competition. It does not.

C. No Statutory Limit Exists On Where Skagit Valley May Provide Service

When it creates special purpose districts, the Legislature may also place geographic limits on their service areas.

Since 1910, we have broadly construed the means a municipality may use to conduct a statutorily authorized business. We have viewed the Legislature as implicitly authorizing a municipality to make all contracts, and to engage in any undertaking necessary to make its municipal electric utility system efficient and beneficial to the public.

In addition, we have traditionally viewed an express grant of proprietary authority as implying those “powers ... necessarily or fairly implied in or incident to [express powers] and also those essential to the declared objects and purposes of the [municipal] corporation.” Port of Seattle v. State Utils. & Transp. Comm'n, 92 Wn.2d 789, 794-95, 597 P.2d 383 (1979).

Of course, Tacoma's municipal utility authority has limits. In exercising its proprietary power, Tacoma may not act beyond the purposes of the statutory grant of power or contrary to express statutory or constitutional limitations.

City of Tacoma, 108 Wn.2d at 694-695 (footnotes and citations omitted).

An *express* statutory limit on a district's service area limits where the public corporation may compete. For example, a port district may not compete outside its boundaries if the enabling statute requires all activities to take place within the district.

The purposes for which a port district may be formed are set forth in RCW 53.04.010. That statute limits activities for which port commissions are organized to those carried on "within the district." The powers of a port district are set out in RCW 53.08. Because the powers are in turn related only to the authorized purpose of the district, these powers may only be exercised as provided by statute "within the district." The Port has cited nothing which would allow it to expand the operation outside the physical boundaries of the Port.

State ex rel. Keeler v. Port of Peninsula, 89 Wn.2d 764, 768, 575

P.2d 713 (1978).

With water districts, the Legislature has adopted an express limit on competition. Under RCW 57.08.007,

except upon approval of both districts by resolution, a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district.

RCW 57.08.007. Nothing even resembling this exists in RCW Ch. 70.44.

Here, the trial court acknowledged that RCW Ch. 70.44 does not expressly limit the geographic scope of competition.

I agree with the argument that has been put forth by counsel representing the Skagit Valley that the statute does not expressly prohibit a district from operating within the borders of another hospital district without first obtaining permission from that other hospital district to so operate.

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

(9/12/12 VRP 9-10). As noted above, RCW 70.44.060(3) authorizes public hospital districts to own facilities and provide services outside its boundaries. No express limit exists on this authority.

In effect, United General proposes an *implied* limit that public hospitals may compete outside their boundaries but not in another district. This would exist purely as a matter of judicial construction, not legislative mandate. It also would contradict Washington caselaw that interprets proprietary powers – both express and implied -- broadly.

To bolster the trial court's decision, United General makes two arguments that the statute limits hospital districts' ability to compete. First, it contends that the Legislature's failure to amend RCW 70.44.060 after publication of AGO No. 15 (1988) is evidence that the Legislature concurs. (Response Brief at 7). Second, it argues "the legislature would not have enacted RCW 70.44.450 if it

intended rural public hospital districts to have the power to unilaterally decide to provide hospital and other healthcare services inside the boundary of another district without the second district's consent." (Response Brief at 8). Neither argument is persuasive.

First, given that Attorney General's opinions are not binding on the Court, they could hardly be binding interpretations that the Legislature must correct. United General cites Bowles v. Washington Dept. of Retirement Systems, 121 Wn.2d 52, 63-64, 847 P.2d 440 (1993), as support. But in Bowles, the Court recognized that the Department of Retirement System's interpretation, not the Attorney General's, was significant. The Attorney General's opinion merely served as notice to the Legislature of the Department's interpretation.

The Attorney General opinion constitutes notice to the Legislature of the *Department's interpretation* of the law, and the Legislature has not acted since 1976 to overturn the *Department's interpretation*. Greater weight attaches to an *agency interpretation* when the Legislature acquiesces in that interpretation.

Bowles, 121 Wn.2d at 63-64 (emphasis added). The opinion does not imply that an Attorney General's opinion, on its own, creates legislative acquiescence.

Furthermore, AGO No. 15 (1988) is flawed. The opinion fails to mention or discuss Washington cases that distinguish between governmental and proprietary functions. It relies solely on Alderwood Water Dist. v. Pope & Talbott, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963), which is neither the definitive nor last word on extra-territorial competition. In fact, this January the Court affirmed that municipal water districts exercise proprietary not governmental functions. "A city's decision to operate a utility is a proprietary decision, as is its right to contract for any lawful condition." City of Tacoma v. City of Bonney Lake, 173 Wn.2d 584, 589, 269 P.3d 1017 (2012).

Because it neither binds the Court nor decides this appeal, AGO No. 15 cannot create a statutory limit where none existed.

Second, the availability of interlocal agreements does not bar competition. The Legislature adopted RCW 70.44.450 to avoid antitrust liability for public hospitals, not to forbid competition between them. As the House Bill report states, "concerns have been expressed that public hospital districts are susceptible to antitrust challenges if they enter into interlocal agreements." (SHB 2495 House Bill Report at 2; Exhibit A to 5/25/11 Knapp Dec.; CP 294-313) (9/12/11 VRP 13) ("ability to enter into interlocutory

agreements without there being a violation of the antitrust law”). Agreements between competitors raise antitrust concerns. Under RCW 70.44.450, public hospitals have a safe harbor.

United General transforms this safe harbor into a bar on competition. But neither the statute nor its statement of intent *prohibits* a public hospital district from competing in a neighboring district. If the market justifies such a move, both RCW Ch. 70.44 and the Legislature’s express endorsement of competition support it. RCW 43.72.300(1) (“competition among health care providers”).

Finally, the hospital district statute “read as a whole” does not imply a limit on competition. United General emphasizes that hospital districts cannot have overlapping boundaries and each has elected representatives. (Response Brief at 10). To levy taxes, these provisions are essential. But other special purpose districts, which can compete anywhere, have similar provisions. See e.g. RCW Ch. 54.08 (public utility districts). District boundaries limit a public hospital’s taxing authority, not its potential market.

When the Legislature limits a special purpose district’s powers, it does so clearly. RCW 57.08.007 (water districts). But the Legislature placed no geographic limits on where public hospital districts may provide services, as long as they serve their residents.

RCW 70.44.060. Because the trial court failed both to recognize the proprietary function of public hospital districts and to interpret the districts' powers broadly, it erred by forbidding Skagit Valley from providing services within United General's boundaries.

**II. The Trial Court Abused Its Discretion In Granting A Writ of Prohibition.**

In its response brief, United General provides no example of a court issuing a writ of prohibition where a party could also seek an injunction. Instead, it argues that Skagit Valley's argument is circular.

Skagit Valley Hospital then argues that United General could not qualify for an injunction because, in essence, it could not show that Skagit Valley Hospital was acting in excess of its jurisdiction, which circles back to the first prong of the two (2) prong test for issuance of the writ of prohibition.

(Response Brief at 22). This is neither persuasive nor accurate.

Washington courts have issued injunctions where a district oversteps its statutory powers. In Keeler v. Port of Peninsula, 89 Wn.2d 764, 575 P.2d 713 (1978), the Supreme Court upheld a permanent injunction, prohibiting the Port from developing property outside its borders.

In chronological order, the trial court (1) granted the State's motion to intervene; (2) dismissed Keeler's complaint; and (3) granted the State's request for

injunctive relief on the ground that the Port's operation of a facility outside its own district exceeded its authority. That injunction permanently restrained and enjoined the Port from "acquiring, constructing, improving, maintaining or using any facilities located outside the boundaries of the said Port of Peninsula, as the said boundaries are or may hereafter be established according to law, or from levying taxes or expending any public monies for the purposes of acquiring, constructing, improving, maintaining or using facilities located outside the boundaries of the said Port of Peninsula . . ."

Keeler, 89 Wn.2d 764, 766, 575 P.2d 713 (1978). The State in Keeler made a similar argument to the one United General makes here.

Furthermore, United General does not acknowledge that Washington law permits injunctive relief even without proof of actual damage. Spokane v. Local 1553, 76 Wn. App. 765, 771, 888 P.3d 735 (1995) ("the harm need not be irreparable, nor must the injury already have occurred to get an injunction"). Rather than address the legal principle, United General attempts to distinguish Local 1553 on its facts. (Response Brief at 23-24). But both Keeler and Local 1553 demonstrate that injunctive relief is available to a plaintiff who can prove that a municipal corporation has exceeded its authority. The trial court erred by substituting a writ of prohibition for a failed case for injunctive relief.

A writ of prohibition is an extraordinary remedy for unusual circumstances. Because Washington courts have granted injunctions in cases remarkably similar to United General's, a plain, adequate and speedy remedy existed.

### **CONCLUSION**

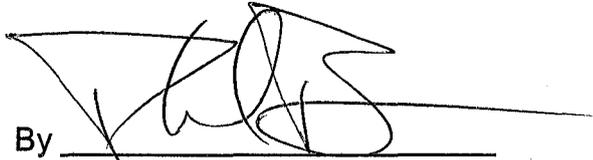
Skagit Valley respectfully requests the Supreme Court to enforce the statutory right to provide medical services wherever it makes sense. In some respects, this case is remarkably local, involving physicians who would like to treat their patients in Sedro Woolley without having to move out of United General's district. But this case also involves a global distinction between proprietary and governmental action that decides questions of sovereign immunity, tax liability, statutes of limitations and tort liability. Because the trial court's writ of prohibition does not account for this distinction, appellant Skagit County Public Hospital District No. 1 respectfully requests the Court to retain review of this appeal, vacate the trial court's writ, and allow Skagit Valley's doctors to continue serving their patients in Sedro Woolley.

//

//

DATED this 3<sup>rd</sup> day of July, 2012.

BURI FUNSTON MUMFORD, PLLC

A handwritten signature in black ink, appearing to read 'P. Buri', written over a horizontal line.

By  
Philip J. Buri, WSBA #17637  
1601 F. Street  
Bellingham, WA 98225  
360/752-1500

## DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Reply Brief of Appellant to:

G. Douglas Ferguson  
Christopher Knapp  
Anderson Hunter Law Firm, P.S.  
2707 Colby Ave., Ste. 1101  
PO Box 5397  
Everett, WA 98206

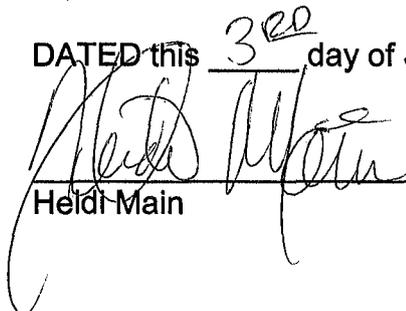
Geoff Bridgman  
Ogden Murphy Wallace  
1601 5<sup>th</sup> Ave., Ste. 2100  
Seattle, WA 98101

Roger Hillman  
Garvey Schubert Barer  
1191 2<sup>nd</sup> Ave. 18<sup>th</sup> Floor  
Seattle, WA 98101

Brad Furlong  
Furlong Butler  
825 Cleveland Avenue  
Mount Vernon, Washington 98273

Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

DATED this 3<sup>rd</sup> day of July, 2012.

  
\_\_\_\_\_  
Heidi Main