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No. 97599-0

SUPREME COURT
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND
SEWER DISTRICT, a Washington municipal corporation; and TOWN
OF WOODWAY, a Washington municipal corporation,

Respondents,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal
corporation; KING COUNTY, a Washington municipal corporation,

Petitioners,

and

SNOHOMISH COUNTY, a Washington municipal corporation,

Defendant.

OLYMPIC VIEW'S AMENDED
SUPPLEMENTAL BRIEF

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A. INTRODUCTION

This action is essentially a dispute between the City of Shoreline (“Shoreline”), using the Ronald Wastewater District (“Ronald”) as its stalking horse, and the Olympic View Water & Sewer District (“Olympic View”), Snohomish County, and the Town of Woodway (“Woodway”), over who is responsible to plan for, and provide, sanitary sewer service in an area located in the southwest corner of Snohomish County (the “County”) adjacent to the King-Snohomish County line commonly known as “Point Wells.”

A 1985 King County Superior Court *ex parte* order (“Transfer Order”) purportedly authorized Ronald’s annexation of Point Wells, and the Briggs subdivision, areas entirely within Olympic View’s territory in Snohomish County. Ronald filed an action for declaratory relief, CP 61-123, and Olympic View/Woodway counter-claimed for declaratory relief, challenging the validity of that Order in a CR 60 proceeding. CP 147-213.

Division I unraveled the complex facts attendant upon the issues here and correctly determined that the Transfer Order was void to the extent that it purported to authorize annexation by Ronald of an area located entirely within Olympic View’s territory in Snohomish County. A King County court had no authority from the Legislature to accomplish such an annexation, particularly when interested Snohomish County

entities like Olympic View, Woodway, or Snohomish County itself were not served with original process or notice of the hearing in which the Transfer Order was entered.

B. STATEMENT OF THE CASE

Division I's opinion sets forth the complex facts and procedures here. Op. at 2-12. Only a few factual points bear emphasis.

First, by law, and for planning purposes in Snohomish County, Point Wells has been a part of Olympic View's territory. Olympic View treated Point Wells as part of its corporate boundaries/service area in Snohomish County for *decades*. Ronald never included Point Wells in its planning documents until 2007. Rather, it repeatedly stated that the boundary between Ronald's and Olympic View's service areas was the King/Snohomish County line. Reply br. at 10-13.¹ Olympic View has provided water service to the Standard Oil plant in Point Wells since the 1940s, evidencing the fact that Olympic View never "relinquished" territory to Ronald. CP 914, 3342. Snohomish County's Boundary Review Board ("BRB") *twice* rejected Shoreline's efforts to assume

¹ Just one example of this was Ronald's 1970 contract with Olympic View reciting that "Olympic View was a duly organized water district immediately north of and adjacent to the King County-Snohomish line." CP 2238. Another was Ronald's 1990 Comprehensive Plan (that post-dated the Transfer Order) in which it stated that its northern boundary was the King-Snohomish County line. CP 733-34, 748. *See also*, Ronald's 2001 Comprehensive Plan. CP 2955 n.22 (same).

Ronald's alleged "service area" in Snohomish County. Appellant Br. at 22.

Moreover, King County officially recognized that Ronald had no territory in Snohomish County. When it proposed the dissolution of King County Sewerage District No. 3 ("KCSD #3") and the transfer of its territory to Ronald, it prepared a plan describing Ronald as "bordered on the north by Snohomish County." CP 659, 661, 662, 694. It acknowledged that Point Wells was located in Olympic View's service area. CP 3406.

Second, far from being a "sewer agency" for Point Wells generally, Ronald served exactly *six customers* in Snohomish County. Op. 4-5. When Ronald asserts that it "has continuously provided sewer services to the Point Wells Service Area," Ronald pet. at 1, that is misleading. *See also*, KC pet. at 3 (same). As discussed in depth in Olympic View's opening brief at 4-24, and reply brief at 1-14, Point Wells essentially has *no sewer infrastructure*. Rather, Ronald's provision of service by contract to only six customers at Woodway's and Olympic View's sufferance, on an *interim* basis, was only as a temporary accommodation, not a permanent alteration of corporate boundaries, as noted *infra*.

Third, Olympic View's board *never* consented to a permanent intrusion within Olympic View's boundaries and service area by King County, Ronald, or anyone else. Op. at 5. The record is devoid of any resolution or formal consent by Olympic View for Ronald's permanent service rights throughout Point Wells because no consent was ever sought or given. In the one isolated instance where temporary permission was granted to another entity to serve customers in Point Wells, the Seattle Water Department, not King County or Ronald, asked Olympic View if King County could provide services to the lift station Standard Oil built to serve its plant on a contractual basis. Op. at 4-5. The Olympic View board agreed, but specifically reiterated that the lift station was "within our service area." CP 912. This is a far cry from Olympic View board "consent" to a permanent intrusion upon its territory.

Fourth, when King County filed the action in the King County Superior Court in 1985 to transfer the territory of its KCSD #3 to Ronald, it purported to transfer part of Olympic View's Snohomish County territory to Ronald, but it never served Olympic View, Woodway, or Snohomish County with original process in that action, despite their obvious interest in such a territorial transfer. Instead, King County "served" those entities by a single ad in the *Seattle Times* with the territorial transfer buried deep in a legal description. CP 1086. Nor did

those Snohomish County entities receive notice of the hearing in which the Transfer Order was entered assuming that there was actually a hearing.² Indeed, King County’s attorneys had an ethical duty to apprise the King County Superior Court of the interests of the Snohomish County entities before they took the step of securing what amounted to a default in those *ex parte* proceedings. RPC 3.3(f); Comment [14] to RPC 3.3. There is no evidence that King County’s attorneys did so.

Finally, Shoreline, the real party in interest in this case, did not petition this Court for review; Ronald no longer exists except as a façade to advance Shoreline’s interests.³ Although Shoreline is the actual

² This was consistent with King County’s prior practice of keeping Olympic View, Woodway, Snohomish County, and any other interested Snohomish County entities out of the loop. When King County decided to transfer KCSD #3 to the County, with the intent to later transfer KCSD #3 to Ronald, it held a June 1984 public hearing. CP 1076-77. It mailed notice of that hearing to Ronald and KCSD #3 ratepayers, CP 828-30, 1009-13, but not to Olympic View or the other Snohomish County entities. It held a September 1985 public hearing on the ordinance transferring KCSD #3 to Ronald. CP 1023-24. It mailed notice to KCSD #3 ratepayers, and provided “notice” by a single Seattle *Times* ad. CP 680-81, 1058-59. Again, no Snohomish County entity received notice.

³ Shoreline’s website states that it “operates” Ronald. <http://www.shorelinewa.gov/govenment/departments/publicworks/wastewater-utility>. In 2002, Ronald and Shoreline entered into a contract for the assumption of Ronald pursuant to RCW 35.13A. CP 3348-59. Assumption is the formal statutory procedure by which a city, like Shoreline, may take over or assume all of the statutory functions of a water-sewer district like Ronald. *King County Water Dist. No. 54 v. King Cty. Boundary Review Bd.*, 87 Wn.2d 536, 554 P.2d 1060 (1976). After assumption, the district is dissolved and no longer exists. RCW 35.13A.020, RCW 35.13A.080. Under the assumption agreement, Shoreline was to take over Ronald on October 23, 2017; Ronald would cease doing business, and it would be dissolved. CP 736-38. Ronald gave Shoreline a power of attorney to dissolve Ronald. CP 3355. However, recognizing that the façade of Ronald seeking annexation of Point Wells was necessary to a claim arising

“aggrieved party” because its municipal utility will provide any future service to Point Wells, RAP 3.1, it chose not to seek review of Division I’s opinion in this Court, tacitly acknowledging that Division I’s analysis of this dispute was correct.⁴ Arguably, this case is moot. RAP 18.9(c)(2).

C. ARGUMENT

(1) CR 60(b)(5) Mandates Vacation of a Void Judgment or Order

This case is essentially a CR 60(b)(5) challenge by Olympic View and Woodway to the Transfer Order. Unfortunately, Division I did not devote any part of its opinion to the standard for a void order or judgment subject to CR 60(b)(5). More troubling is the fact that neither Ronald, nor King County, address that rule and, to the extent that they do, they mislead this Court as to what constitutes a void judgment under CR 60(b)(5), focusing *solely* on subject matter jurisdiction. Ronald pet. at 15-17; KC pet. at 10-13. It is critical in this case to start with the cardinal principles relating to CR 60(b)(5).

This Court has long held that a void judgment is a nullity and may be collaterally attacked. *Dike v. Dike*, 75 Wn.2d 1, 7-8, 448 P.2d 490

under RCW 36.94.410-.440, as noted *supra*, Ronald/Shoreline agreed twice to extend the formal assumption date.

⁴ Under applicable agreements, upon annexation of the area by Woodway, King County will treat the sewage from Point Wells whether that area is served by Olympic View or Shoreline. CP 376-77, 402-03, 467. It is unaffected, practically, by any decision here.

(1968).⁵ That is true even where there has been a lapse of time. *In re Marriage of Leslie*, 112 Wn.2d 612, 619, 772 P.2d 1013 (1989). There is *no time limit* for a challenge to a judgment under CR 60(b)(5) and laches does not apply because a void judgment can be challenged at any time. *Id.* at 620. Void judgments lack any legal effect, 112 Wn.2d at 618-20, and a court has a non-discretionary duty to set aside such a judgment. *In re Marriage of Markowski*, 50 Wn. App. 633, 635, 749 P.2d 754 (1988); *Allstate Ins. Co. v. Khani*, 75 Wn. App. 317, 323, 877 P.2d 724 (1994); *Servatron, Inc. v. Intelligent Wireless Products, Inc.*, 186 Wn. App. 666, 679, 346 P.3d 831 (2015).

Washington law has long understood that the analysis of a judgment's validity is not confined merely to analyzing personal and subject matter jurisdiction. *John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P.2d 221 (1938) (recognizing that there are *three* jurisdictional elements to any valid judgment – “jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment.”). *Id.*; *Dike*, 75 Wn.2d at 7. *Accord*, *Long v. Harrold*, 76 Wn. App. 317, 319, 884 P.2d 934 (1994) (judgment based on settlement was void where plaintiff failed to sign CR 2A agreement; court

⁵ And where the judgment at issue was rendered by default, as here, this Court has made clear that such judgments are *disfavored* because Washington law favors resolution of cases on their merits. *Morin v. Burris*, 160 Wn.2d 745, 754, 161 P.3d 956 (2007); *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979).

lacked authority to act).⁶ A judgment is void if the court lacked any of those three jurisdictional elements. In other words, if the court lacked *authority* to enter an order, the order is *void* even if the court had personal or subject matter jurisdiction in the controversy.⁷

Applying the foregoing principles, the Transfer Order was void, whether for a lack of trial court subject matter jurisdiction or authority from the Legislature, or a lack of personal jurisdiction over Olympic View, Woodway, and Snohomish County.

(2) The Transfer Order Was Void Because the King County Superior Court Lacked Authority or Subject Matter Jurisdiction to Enter It

(a) Statutory Interpretation Principles Confirm Division I's Interpretation of RCW 36.94.410-.440

As an initial matter, Ronald contended in its petition at 17-25, 27 that Division I misapplied the traditional principles of statutory interpretation that eschew absurd results although Division I generally applied this Court's well-established statutory interpretation precedents. It spends inordinate time on a passing reference by Division I to that

⁶ Although not precisely articulated as the rationale for its decision, this principle is also illustrated by *Trinity Univ. Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 312 P.3d 976 (2013), *review denied*, 179 Wn.2d 1010 (2014). There, the court held that a default judgment in favor of a subrogated insurer must be vacated because the court lacked authority to award *an insurer* IFCA or CPA damages or attorney fees.

⁷ As the *Dike* court was careful to note, the *authority* to enter the order is distinct from error, even facial errors, in an order. The former is *void*, while the latter is voidable. 75 Wn.2d at 8.

principle. Op. at 15-16; Ronald pet. at 17-24.⁸ Ronald only seeks to divert this Court’s attention from the fact that merely disagrees with Division I’s statutory analysis and it cannot point to *any* actual language in RCW 36.94.410-.440 supporting its argument that those statutes overcome years of precedent on the authority of special purpose districts.

This case is classically one of statutory interpretation, and in analyzing statutory provisions, this Court employs well-developed construction principles and tools. The central goal of statutory interpretation is to carry out legislative intent. *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). *See also, State v. Brown*, ___ Wn.2d ___, 454 P.3d 870, 871-72 (2019) (setting out this Court’s traditional statutory interpretation protocol). In Washington, this analysis begins by looking at the words of the statute. This Court in *Federal Home Loan Bank of Seattle v. Credit Suisse Sec. (USA) LLC*, 194 Wn.2d 253, 258, 449 P.3d 1019 (2019) reaffirmed that the “bedrock principle of statutory interpretation” is the statute’s “plain language.”

⁸ The essence of the numerous cases that Ronald cites regarding this Court’s caution about over-emphasis of the absurdity principle in interpreting a statute is that it should not be over-utilized to supersede legislative decision-making. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 310-11, 268 P.3d 892 (2011). Notwithstanding that caution with regard to that canon of statutory interpretation, this Court still avoids interpretations that lead to absurd results, unintended by the Legislature. *State v. Engel*, 166 Wn.2d 572, 579, 210 P.3d 1007 (2009); *State v. Ervin*, 169 Wn.2d 815, 823-24, 239 P.3d 354 (2010). The Court has cited this principle in *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 443, 395 P.3d 1031 (2017) and recently in *State v. Schwartz*, 194 Wn.2d 432, 443, 450 P.3d 141 (2019).

Rather than focusing so intently on the absurd outcome of its statutory interpretation noted by Division I, Ronald should have instead addressed the well-recognized common law principles governing municipal law that will be addressed *infra*. Washington law is governed by common law principles. RCW 4.04.010. When it comes to changing the common law, the Legislature is presumed to be aware of the common law and any statute purporting to abrogate a common law principle requires the Legislature to do so *expressly*. *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 76, 196 P.3d 691 (2008); *State v. Farnworth*, 192 Wn.2d 468, 474, 430 P.3d 1127 (2018). Any statute overriding the common law must be *strictly construed*. *Id.*; *Carson v. Fine*, 123 Wn.2d 206, 214, 867 P.2d 610 (1994).

Moreover, Ronald/King County should have been aware of this Court's longstanding interpretive principle that in legislating, the Legislature is presumed to be aware of its own enactments in similar areas *ATU Legislative Council of Wash. St. v. State*, 145 Wn.2d 544, 552, 40 P.3d 656 (2002). Here, the Legislature must be deemed to be aware of its statutory bans on special districts invading the territory of other such districts. RCW 57.08.007. *See Appendix*.

With these interpretive principles in focus, it is plain that Division I's interpretation of the King County court's authority to enter the Transfer Order, based on RCW 36.94.410-.440, was correct.

(b) The King County Superior Court Lacked Authority to Enter the Transfer Order as to Olympic View Territory in Snohomish County, Rendering the Order Void to the Extent It Affected Olympic View's Snohomish County Territory

As noted *supra*, under numerous cases discussing CR 60(b)(5), an order or judgment is *void*, not voidable, if the court lacked the inherent power or authority to render the relief.⁹

It is important here to initially address two key constitutional/common law principles that are essential to the resolution of the issues in this case.

First, courts do not have subject matter jurisdiction under article IV, § 6 to order annexation of territory by governments. Neither Ronald nor King County disputes that courts do not have article IV, § 6, constitutional subject matter jurisdiction over annexation. *Op.* at 29. This is a matter of *plenary legislative prerogative*. *Grant County Fire*

⁹ An example of such a situation is found in the numerous Washington decisions have overturned default judgments that purported to allow relief beyond that which was pleaded by the plaintiff – the court lacked *authority* to grant such relief. *See, e.g., Leslie*, 112 Wn.2d at 617-18 (“a court has no jurisdiction to grant relief beyond that sought in the complaint” and to “the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void.”); *In re Marriage of Hughes*, 128 Wn. App. 650, 658, 116 P.3d 1042 (2005), *review denied*, 156 Wn.2d 1031 (2006). *See also, Bagby v. Davis*, 2020 WL 401632 (Cal. App. 2020) (default judgment in legal malpractice action that exceeded prayer of complaint by \$22 million was void).

Protection Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 813, 83 P.3d 419 (2004) (“...the legislature enjoys plenary power to adjust the boundaries of municipal corporations...”) (Court’s emphasis). This is an aspect of the state’s *sovereign power* to create and organize local units of government. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 679-80, 409 P.2d 458 (1965). While the Legislature may choose to confer authority on the courts to address annexation by political subdivisions of the State, such authority is *narrow* in the face of the Legislature’s *plenary* authority and must be *expressly* conferred by the Legislature.¹⁰

Second, under Washington’s municipal common law, the invasion of a special purpose district’s territory by another district is generally forbidden. In *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 382 P.2d 639 (1963), this Court held that a water district could not infringe on the territory of another, providing services to customers within that district’s service area, cogently observing that it is a “touchstone” of

¹⁰ For example, in rejecting the authority of the citizens of Richland to annex territory by their charter -authorized right of referendum, the *Bowen* court noted that to authorize such action based on the local charter “would constitute a trespass on the sovereign power of the state,” 67 Wn.2d at 678, and stated: “No power of annexation existing in the cities except that delegated to it by the state, any annexation undertaken by the city must be in the manner prescribed and pursuant to the conditions imposed by the legislature.” *Id.* at 680. Likewise, no authority to annex exists in the courts, apart from what is specifically granted to them by the Legislature and nothing in RCW 36.94.410-.440 evidences an express legislative intent to confer authority on courts to annex water-sewer district territory in other counties. As this Court recently noted in *King County v. Water Dists. Nos. 20*, __ Wn.2d __, 453 P.3d 681, 694 (2019), the absence of such authority must “mean something.”

Washington municipal law that two municipal corporations cannot exercise the same function in the same territory at the same time “unless it is provided for in some manner by statute.” *Id.* at 641. The Court also stated that this principle also bars a water district from infringing “upon the territorial jurisdiction of another water district by extending services to individuals therein.” *Id.* at 322.¹¹

Not only was this a key common law policy, it was expressly enshrined by the Legislature in statute. Former RCW 56.02.060¹² (and now RCW 57.08.007) *specifically* bar intrusion by one water-sewer district upon another’s service area without its board’s approval. RCW 57.08.007 states: “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

¹¹ See also, *Skagit County Public Hosp. Dist. No. 304 v. Skagit County Public Hosp. Dist. No. 1*, 177 Wn.2d 718, 305 P.3d 1079 (2013) (one rural hospital district could not operate a clinic within another district’s boundaries, without permission); AGO 2015 No. 5 (reaffirming the principle that Washington law rejects overlapping service areas for special districts). By contrast, in *King County Water Dist. No. 75 v. Port of Seattle*, 63 Wn. App. 777, 822 P.2d 331, *review denied*, 119 Wn.2d 1002 (1992), the court authorized the port to provide water services for its own property although the property was located within the water district. The port had *express statutory authority* to provide water services, unlike the situation here where express authority to annex territory of another water sewer district in another county is *nowhere* found in RCW 36.94.410-.440.

¹² That statute has been on the books since 1941. *Op.* at 17 n.18.

planned to be made available under an effective comprehensive plan of another district.”¹³ Ronald fails to even cite this statute in its petition.

Finally, where there is any doubt about whether a municipality has authority from the Legislature to act, this Court has held that such authority must be denied. *Port of Seattle v. Wash. Util. & Transp. Comm’n*, 92 Wn.2d 789, 795, 597 P.2d 383 (1979); *Pacific First Fed. Sav. & Loan Ass’n v. Pierce Cy.*, 27 Wn.2d 347, 353, 178 P.2d 351 (1947).

Nothing in RCW 36.94.410-.440 purports to overcome Washington’s common law principle respecting special purpose district boundaries by forbidding overlapping service areas for water-sewer districts, or authorizing annexation by a water-sewer district of territory in another county so as to allow Ronald to annex Olympic View’s territory in Snohomish County. This is clearly so given the Legislature’s narrow grant of authority to the courts in RCW 36.94.410-.440 to address annexation, and given the common law and statutory principles relating to service areas of special purpose districts that are the backdrop for any

¹³ This restriction is also consistent with constitutional directive. Art. XI, § 11 “Police and Sanitary Regulations” states:

Any county, city, town or township may make and enforce *within its limits* all such local police, sanitary, and other regulations as are not in conflict with general laws.

(emphasis added). *Brown v. City of Cle Elum*, 145 Wash. 588, 589, 261 P. 112 (1927) (this Court invalidated a municipal ordinance prohibiting swimming, fishing, or boating in Lake Cle Elum, outside the city boundaries).

decision here. Ronald could not invade the territory of another water-sewer district, located in another county all together, and judicially annex territory of that other district without the consent of its elected commissioners.

Further, the nature of KCSD #3 and the services it provided that were transferred to King County and subsequently to Ronald only confirm this analysis. KCSD #3,¹⁴ Ronald's putative predecessor, was a sewerage improvement district under RCW 85.08. See AGO 1989 No. 18 (discussion of powers of special districts like sewerage improvement districts). Such a district lacked *any* authority to operate outside of King County. Sewerage improvement districts are governed by the procedures for drainage/diking districts in RCW 85.38; RCW 85.08.015; RCW 85.38.010(4) and such districts are confined to service *in a particular county* unless the county legislative authorities of both counties in which the district exists authorize the creation of a multi-county district. RCW 85.38.030-.060. Neither Ronald nor King County denies this fact. King County, in taking over KCSD #3, was subject to the *same restrictions* as a sewage improvement district. RCW 36.94.020. See Appendix.

Similarly, in 1984, when King County abolished KCSD #3 and began to provide sewer services directly, King County itself lacked the

¹⁴ That district was also called the Rainier Beach Sewer System ("RBSS").

authority to operate a sewer system in Snohomish County under the general powers given by the Legislature to counties. Its authority to operate a sewer system was limited by RCW 36.94.020 to King County *only*. That statute confined a county's authority to operate a sewage system "and facilities and services necessary for sewerage treatment and disposal ...*within all or a portion of the county.*" (emphasis added). Like sewerage districts, King County itself was limited to sewer operations *within King County*.

RCW 36.94.410-.440 that provided counties a special authority for judicial annexation, only provided *limited* authority to King County; King County could not transfer, and Ronald could not annex, territory in another county that was within the territory of another Title 57 RCW water-sewer district because of the common law and statutory principles articulated *supra*, but also by the terms of those statutes themselves. Op. at 21-24.

Because the Legislature is presumed to be aware of common principles and its own statutory enactments, as noted *supra*, when it enacted RCW 36.94.410-.440, the Legislature was charged with understanding the policy this Court adopted in *Alderwood* in 1963 and the policy it adopted in RCW 56.02.060 as early as 1941. *Nothing* in RCW 36.94.410-.440 conferred express authority upon courts to allow for

annexation outside of county borders, or purported to alter the policy established in RCW 56.02.060/RCW 57.08.007.¹⁵ In fact, RCW 36.94.410 expressly *limits* the scope of a county's transfer authority:

A system or sewerage, system of water or combined water and sewerage system, *operated by a county under the authority of this chapter* may be transferred from that county to a water-sewer district *in the same manner as is provided for the transfer of those function from a water-sewer district to a county in RCW 36.94.310 through 36.94.340.*

(emphasis added). The authority of King County to transfer KCSD #3 was limited to the same criteria as if KCSD #3 was being transferred by a sewer district to King County; such a transfer is allowed under the law *only* if the sewer system to be transferred is entirely *within the county* to which it is being transferred.

Subject to the provision of RCW 36.94.310 through 36.94.350 a municipal corporation may transfer to the county *within which all of its territory lies* all or part of the property constituting its system of sewerage, system of water or combined water and sewerage system...

RCW 36.94.310 (emphasis added).¹⁶

¹⁵ Laws of 1984, ch. 147, § 5 exempts this judicial annexation from the BRB process of RCW 36.93. That exemption only reinforces the concept that the transfers authorized by RCW 36.94.410-440 were to be within the same county. The BRB process was instituted by the Legislature to provide a quasi-judicial public process to protect the interests of affected governments and parties. Annexations to special purpose districts were required then, as now, to go before a BRB in a particular county. It made sense to exclude county-to-special purpose district transfers if they were within the same county because the legislative authority of the county that has planning authority is making the transfer and appropriately decides if it makes sense to increase the size of a special purpose district.

Since KCSD #3's system was not entirely within King County, King County had no authority to transfer Olympic View's service area in Snohomish County to Ronald. King County could not convey what it did not have or was legally precluded from doing. Op. at 30 ("A county could not transfer what it did not have. King County did not have a statutory right to provide sewer service in Snohomish County. Thus, pursuant to the transfer agreement, Ronald could annex only King County territory from King County, not Snohomish County territory from Olympic.>").

Ronald tries to argue that RCW 57.04.070/RCW 36.94.420 conferred the requisite authority on the King County Superior Court to transfer Olympic View's Snohomish County territory to Ronald. Ronald pet. at 10, 24-26. It claims those statutes render this Court's decision in *Alderwood* inoperable. But Ronald's fixation on RCW 57.04.070/RCW 36.94.420 *ignores* the *many* additional key interpretive points referenced above.

Ultimately, Ronald's statutory interpretation would require this Court to conclude that despite Washington's strong public policy derived from common law, statutory, and even constitutional principles barring

¹⁶ When King County secured the introduction of HB 1127 in the 1984 Legislature, the County's lobbyists specifically represented to both the House and Senate that the transfer from the County to the sewer districts was going to be *exactly the same as existing law provided* for transfers from municipal corporations providing sewer or water to counties. CP 1866. So did Ronald. CP 2389. RCW 36.94.310 then, and now, requires any system transfer to be entirely within one county.

special purpose governments from intruding upon the service territory of other special purpose governments, courts should *imply* an authorization for one water/sewer district to invade the territory of another. That is an unreasonable reading of the applicable judicial annexation statutes. Op. at 24-25.¹⁷

To the extent that the Transfer Order purported to authorize King County's transfer of Olympic View's Snohomish County service area to Ronald and the annexation of that territory by Ronald, it was void.

- (c) The King County Superior Court Lacked Subject Matter Jurisdiction to Enter the Transfer Order that Purported to Authorize Ronald to Serve Customers in Olympic View's Snohomish County Service Area, Rendering that Order Void¹⁸

¹⁷ Similarly, King County tries to imply such authority to transfer territory from Olympic View's temporary authorization to Ronald to serve a few customers in Point Wells by contract. King County pet. at 13-14. That argument, too, is baseless. Nothing in RCW 36.94.410-.440 purports to authorize a county to exercise extraterritorial authority or to transfer such authority to a water/sewer district merely because some contractual service had occurred. Ronald did not secure the right to serve the *entirety* of Point Wells merely because it served six customers in Point Wells by contract. Division I made short shrift of that factual argument. Again, the Olympic View board *never authorized* the divesting of its territory in Point Wells. Op. at 5 ("There is no indication from the record that Olympic View consented to KCSD #3 extending sewer services into Point Wells."). In fact, the Olympic View board made clear that the area being served was *Olympic View's*. CP 912 ("...within our service area.").

¹⁸ King County and Ronald argued below that the Legislature enacted RCW 57.02.001, broadly forgiving any illegal acts in which they might have engaged in Ronald's putative annexation of Point Wells and the court's entry of the Transfer Order. That was *far* too broad a reading of that statute, as Division I readily determined. Op. at 32-33. Neither Ronald, nor King County now claim in their petitions that Division I erred in rejecting their argument that this statute could make legal what was illegal. They have abandoned it. RAP 13.7(b).

Ronald/King County spin the proposition that if the King County Superior Court lacked the “authority” under RCW 36.94.410-440 to judicially authorize Ronald’s annexation of Olympic View’s Snohomish County service area in the Transfer Order that had nothing to do with subject matter jurisdiction so that the Order was voidable and not void. Ronald pet. at 15-17; KC pet. at 10-13.¹⁹ However, Division I’s statutory analysis was entirely correct. Op. at 27-31. But even if the Court were to approach the analysis of the King County court’s Transfer Order from the standpoint of subject matter jurisdiction, Division I was correct in its ruling.

Subject matter jurisdiction relates to whether a court has the authority to address *a type of controversy*. *Dougherty v. Dep’t of Labor & Indus.*, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003); *Marley v. Dep’t of Labor & Indus.*, 125 Wn.2d 533, 539-41, 886 P.2d 189 (1994). This Court recently reaffirmed in *Banowsky v. Backstrom*, 193 Wn.2d 724, 445 P.3d 543 (2019), a case King County/Ronald did not cite to this Court, that subject matter jurisdiction relates to a court’s ability to entertain *a type of case*. A court lacks subject matter jurisdiction when it attempts to decide a

¹⁹ The weakness of this contention is further illustrated by the facts in this case. The County’s basic contention is that the remedy available to Olympic View was an appeal of the 1985 Transfer Order. KC pet. at 2-3. But Olympic View had no actual notice of that order, as noted *supra*. Thus, its remedy was an appeal from an order entered by a court in another county of which it had no notice? Such an argument borders on the absurd.

type of controversy that it lacks authority to adjudicate. *Id.* at 731. There, a plaintiff attempted to litigate in district court a medical malpractice claim in which the plaintiff sought damages in excess of \$100,000 when the legislatively-mandated limit to district court civil jurisdiction was \$100,000. The Court indicated that was beyond the subject matter jurisdiction of the district court. *Id.* at 732.

And there is no question that an order entered by a court lacking subject matter jurisdiction is void under CR 60(b)(5). *Marley*, 125 Wn.2d at 540; *Op.* at 28. Neither Ronald nor King County contends otherwise. Merely because a court has general subject matter jurisdiction, that does not mean a court's order entered when it lacked *authority* from the Legislature to adjudicate that type of case is any less *void*.

But unlike superior court subject matter jurisdiction over *types of cases* like torts, contract disputes, or dissolutions as provided in article IV, § 6, *ZDI Gaming, Inc. v. State ex rel. Wash. St. Gambling Commission*, 173 Wn.2d 608, 616-19, 268 P.3d 929 (2012), annexation is a matter of *plenary legislative prerogative*. Courts do not have authority over this *type of case*, absent legislative delegation. Annexation must be authorized by the Legislature and is ordinarily conducted by an executive process often with a vote of the people; it is not a constitutional power of the judiciary. The *only* way a superior court could have authority to approve

the transfer and effectuate any annexation would be *if the Legislature provided it*. And, as noted *supra*, the Legislature in RCW 36.94.410–.440 neither authorized such annexations of territory located in another county, nor of territory served by another water/sewer district. The King County Superior Court lacked the ability to adjudicate this very narrow type of special annexation authorized to it by the Legislature. It lacked subject matter jurisdiction for the entry of the Transfer Order.

Ronald contends that, notwithstanding such lack of *statutory authority*, the King County Superior Court, nevertheless, had general subject matter jurisdiction empowering it to approve by judicial fiat an act (annexation of territory in another county from one sewer district to another) which the Legislature had directed in RCW 56.02.070²⁰ could only be approved by the county legislative authority or a boundary review board where applicable. *Op.* at 20-21. Thus, Ronald’s argument ignores the fundamental fact that the power to approve annexations derives from legislative grant and, in the absence of such statutory authority, a superior court lacks general subject matter jurisdiction. *Op.* at 29.

Here, the Legislature specifically confined the special authority of superior courts to order judicial annexation of territory *within a county*. When the King County court in its Transfer Order purported to authorize

²⁰ Now found in RCW 57.02.040; RCW 57.02.045.

Ronald's annexation of Olympic View's territory in *Snohomish County*, it lacked authority to render such relief in this special type of case. The Transfer Order was void.

(3) Olympic View Did Not Receive Notice of the Hearing on the Transfer Order, Depriving It of Due Process and Rendering that Order Void

Under CR 60, an order entered by a court lacking personal jurisdiction over parties is void. A defect in service of the original process deprives the court of personal jurisdiction and renders any judgment issued void.²¹ Moreover, a default judgment entered against a party that was not given notice of the *motion* for an order of default or default judgment is void as well. *Servatron*, 186 Wn. App. 666 at 679.²²

²¹ *John Hancock Mut. Life*, 196 Wash. at 370 (where service of original process is invalid, judgement rendered is void); *Markowski*, 50 Wn. App. at 635-36 ("Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void."). *Brenner v. Port of Bellingham*, 53 Wn. App. 182, 765 P.2d 1333 (1989) (vacating judgment rendered in 1969 based on defective service by publication in case involving port's condemnation of real property interests); *Khani*, 75 Wn. App. at 324.

²² While there is little question, given this Court's off-expressed preference for resolving issues on their merits rather than by default, that a default judgment must be set aside when a party entitled to a notice of a motion for a default judgment does not receive notice of the motion, *Tiffin v. Hendricks*, 44 Wn.2d 837, 271 P.2d 683 (1954); *Morin, supra*, there is some controversy as to the rule expressed in *Servatron*. See, e.g., *Rabbage v. Lorella*, 5 Wn. App. 2d 289, 426 P.3d 768 (2018); *In re Marriage of Orate*, ___ Wn. App. 2d ___, ___ P.3d ___, 2020 WL 284501 (2020). It is difficult to see how a default judgment entered against a party entitled to notice of such a consequential motion is anything other than *void*.

Here, however, the Transfer Order was void, in any event, where Ronald and King County deliberately failed to properly serve the interested Snohomish County entities.

Because Olympic View was not properly served with original process *or* what was tantamount to a motion for an order of default/default judgment, the Transfer Order was void because Olympic View was entitled to notice of that annexation of its service area and it did not receive adequate constitutional notice. Division I did not reach this issue in its opinion. Op. at 31 n.25

King County/Ronald *knew* that Olympic View and Woodway were interested in any annexation proceeding that purported to transfer territory in Snohomish County to Ronald. In order to seek the Transfer Order by statute, the King County Council had to make a finding that the transfer was in the public interest. CP 677. But it lacked the authority to exercise its police powers *in Snohomish County* to decide what constitutes the public interest not only of that county, but a city, Woodway, and another special purpose district, Olympic View, both of which were located entirely outside of King County. As noted *supra*, those Snohomish County-based entities had no fair opportunity to address the Council's determination of "public interest."²³ Nor did they have a fair opportunity to appear and be heard in the King County court proceedings.

²³ Ironically, as noted in n.3 *supra*, King County mailed notice to *Ronald* and KCSD #3 ratepayers of the Council hearing.

Due process requires that the notice be “reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 94 L. Ed. 2d 865 (1950). The *Mullane* court rejected a bright line test that said personal notice was unnecessary in *in rem* proceedings. *Id.* at 312-13. Here, there was only service by publication of the King County Superior Court proceedings leading to the entry of the Transfer Order. CP 2403-04. That service was constitutionally defective.²⁴

It is well-established that where a government proposes to take adverse action with respect to a legally protected property interest, the affected party is entitled to personal notice of such proceedings under constitutional due process principles, particularly where the identity of that party is known. *Wenatchee Reclamation Dist. v. Mustell*, 102 Wn.2d 721, 684 P.2d 1275 (1984) (invalidating statute providing only for notice by

²⁴ Service by publication can sometimes be used regarding *in rem* proceedings, but not here where Olympic View, Woodway, and Snohomish County were known to King County. Actual notice to the defendant must be given for *in rem* proceedings or rigorous compliance with service by publication must be met. Karl B. Tegland, 14 *Washington Practice, In Rem Jurisdiction* § 5.9. Obviously, the requirements for service by publication required under RCW 4.28.100 were also not met here. That statute only allows service by publication if the defendant is not in the state or with diligent search cannot be located. It also requires the complaint to be mailed to the defendant. The petition in the underlying lawsuit did not even make clear that Olympic View’s territorial rights or the interests of Woodway or Snohomish County were involved in the lawsuit. Publishing one classified ad once in a Seattle newspaper regarding the hearing date relating to KCSD #3’s transfer hardly constitutes the legally required notice “reasonably calculated, under all the circumstance” to reach Olympic View or Woodway.

publication or posting of delinquent irrigation assessment payers); *Sheep Mountain Cattle Co. v. State, Dep't of Ecology*, 45 Wn. App. 427, 726 P.2d 55 (1986), *review denied*, 107 Wn.2d 1036 (1987) (water rights); *Brower v. Wells*, 103 Wn.2d 96, 690 P.2d 1144 (1984) (local improvement assessments); *Hasit LLC v. City of Edgewood*, 179 Wn. App. 917, 952-58, 320 P.3d 163 (2014) (local improvement assessment). The touchstone for proper, constitutional notice is whether the chosen notice apprises interested parties of the action and affords them an opportunity to address the proposed action, as this Court explained in *Mustell*. The actual notice procedure may be flexible. For example, notice could have been by mail where the Snohomish County entities were well-known to King County. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 100 (1983).

Olympic View and Woodway had legally protected interests in their territory. They are municipalities with elected governing bodies. The Legislature has provided for their creation and powers in Title 57 and Title 35 respectively. They have reasonable expectations they would be allowed to exclusively provide water/sewer services within their territory and that no other district could invade that territory. They could expect to receive the valuable revenue from charges to their constituents (and, in the case of Woodway, tax revenues) from the provision of such services.

Each had a property interest in being able to operate without competition within their territory and obtain future customers and revenue. That interest was well known to King County and Ronald.

Property interests that are protected by procedural due process extend well beyond specific ownership of property or money, *Board of Regents of State College v. Roth*, 408 U.S. 564, 571, 92 S. Ct. 2701, 33 L. Ed. 548 (1972), and such interests are protected by procedural due process. *Id.* at 576. A constitutionally-protected property interest arises from reasonable expectations of entitlement derived from independent sources such as state law. *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 962, 954 P.2d 250 (1998). Such a right may also arise from a legitimate claim of entitlement to a specific benefit. *Nieshe v. Concrete Sch. Dist.*, 129 Wn. App. 632, 641-42, 127 P.3d 713 (2005), *review denied*, 156 Wn.2d 1036 (2006). Here, the Legislature created a constitutionally-protected property right for Olympic View and Woodway.

Under constitutional due process principles, Olympic View and Woodway were entitled to personalized notice of any proposed annexation of their territory in Snohomish County. King County/Ronald, nevertheless, deprived them of such notice causing them to lose their territorial rights to Ronald where the intended annexation was buried in a lengthy legal description in the Transfer Agreement and a collusive

lawsuit with an *ex parte* Transfer Order essentially confirmed the Agreement. No final judgment was even entered in that King County action as the action was dismissed for want of prosecution. CP 1079, 2424. Such proceedings hardly comport with due process.

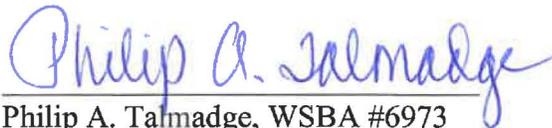
In sum, the Transfer Order was void as to Woodway or Olympic View where the King County Superior Court lacked personal jurisdiction over them. As such, the trial court should have set aside the order. CR 60(b)(5).

D. CONCLUSION

The King County court's Transfer Order was void. This Court should affirm Division I's opinion. Costs on appeal should be awarded to Olympic View.

DATED this 6th day of March, 2020.

Respectfully submitted,



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APPENDIX

RCW 36.94.020:

The construction, operation, and maintenance of a system of sewerage and/or water is a county purpose. Subject to the provisions of this chapter, every county has the power, individually or in conjunction with another county or counties to adopt, provide for, accept, establish, condemn, purchase, construct, add to, operate, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plants, and facilities and services necessary for sewerage treatment and disposal, and/or system or systems of water supply within all or a portion of the county. However, counties shall not have power to condemn sewerage and/or water systems of any municipal corporation or private utility.

...

A county may, as part of a system of sewerage established under this chapter, provide for, finance, and operate any of the facilities and services and may exercise the powers expressly authorized for county stormwater, flood control, pollution prevention, and drainage services and activities under chapters 36.89, 86.12, 86.13, and 86.15 RCW. A county also may provide for, finance, and operate the facilities and services and may exercise any of the powers authorized for aquifer protection areas under chapter 36.36 RCW; for lake or beach management districts under chapter 36.61 RCW; for diking districts, and diking, drainage, and sewerage improvement districts under chapters 85.05, 85.08, 85.15, 85.16, and 85.18 RCW; and for shellfish protection districts under chapter 90.72 RCW. However, if a county by reference to any of those statutes assumes as part of its system of sewerage any powers granted to such areas or districts and not otherwise available to a county under this chapter, then (1) the procedures and restrictions applicable to those areas or districts apply to the county's exercise of those powers, and (2) the county may not simultaneously impose rates and charges under this chapter and under the statutes authorizing such areas or districts for substantially the same facilities and services, but must instead impose uniform rates and charges consistent with RCW 36.94.140. By agreement with such an area or district that is not part of a county's system of sewerage, a county may operate that area's or district's services or facilities, but a county may not dissolve any existing area or district except in accordance with any applicable provisions of the statute under which that area or district was created.

RCW 36.94.410:

A system of sewerage, system of water or combined water and sewerage systems operated by a county under the authority of this chapter may be transferred from that county to a water-sewer district in the same manner as is provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340

RCW 36.94.420:

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage, a system of water, or combined water and sewer systems from a county to a water-sewer district, the water-sewer district shall operate the system or systems under the provisions of Title 57 RCW.

RCW 36.94.430:

The provisions of RCW 36.94.410 and 36.94.420 provide an alternative method of accomplishing the transfer permitted by those sections and do not impose additional conditions upon the exercise of powers vested in water-sewer districts and counties.

RCW 36.94.440:

If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement.

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.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Transfer of the
Richmond Beach Sewer System

NO. 85-2-17332-5

ORDER APPROVING SEWER
SYSTEM TRANSFER

This matter came on for hearing upon joint petition of King County and the Ronald Sewer District (hereinafter the "District") to approve transfer of the Richmond Beach Sewer System (the "System") from King County to the District.

Based upon the record herein and the evidence received, the Court finds that petitioners have entered into an agreement which would transfer all ownership and maintenance authority regarding the System from King County to the District and that the governing body of the District and the legislative body of the County have approved this transfer agreement. The Court further finds that said transfer agreement is legally correct and that there are no owners of related indebtedness to be protected, now, therefore.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 1. The transfer agreement between the parties is approved.

Order Approving Sewer
System Transfer - 1

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NORM MALENG
Prosecuting Attorney
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Seattle, Washington 98104
Phone 520-4457

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2. The transfer of the System is to be accomplished in accordance with the transfer agreement effective as of January 1, 1986.

3. As provided in the transfer agreement, the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer.

DATED this 20th day of November, 1985.



JUDGE/COMMISSIONER

Presented by:
NORM MALENG
King County Prosecuting Attorney

By 

JACK S. JOHNSON
Deputy Prosecuting Attorney
Attorneys for King County

Order Approving Sewer
System Transfer - 2

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DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Olympic View's Amended Supplemental Brief* in Supreme Court Cause No. 97599-0 to the following parties:

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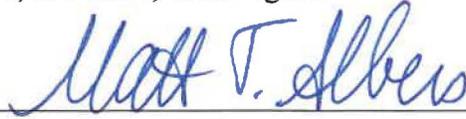
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 6, 2020, at Seattle, Washington.



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