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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.

SNOHOMISH COUNTY'S SUPPLEMENTAL BRIEF

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A. INTRODUCTION

In this Declaratory Judgment Action Petitioner, Ronald Wastewater District (Ronald), and those parties aligned with Ronald comprising the City of Shoreline and King County (hereinafter collectively referred to as Petitioners), ask this Court to reverse the Court of Appeals and hold that the King County Superior Court had the statutory authority and thereby the jurisdiction to decree the annexation of land situated in Snohomish County into the municipal boundaries of Ronald as part of a 1985 transfer of the Richmond Beach Sewer System (RBSS) by King County to Ronald, despite the fact that such land situated in Snohomish County was never within the municipal boundaries of the former RBSS and was within the boundaries of an existing sewer district situated in Snohomish County (Olympic View Water and Sewer District).

As summarized by the Court of Appeals, Petitioners' argument rests on the statutory interpretation of RCW 36.94.410 and whether the legislature intended, as part of the grant of authority to a county to transfer a water or sewer system to a water-sewer district, the authority to annex land into such district which is outside the boundaries of the transferring county and within the boundaries of another sewer district which is not a party to the proceedings. (Slip Opinion, pg. 14). For the reasons set forth by the Court of Appeals, such an interpretation would eviscerate the

multitude of statutory provisions clearly vesting jurisdiction over such proceedings in the county legislative authority where the property to be annexed or transferred is located. Accordingly, Snohomish County respectfully asks this Court to affirm the decision of the Court of Appeals and uphold the paramount right of each county legislative body to determine when annexation or transfer of territory located within such county by or between two water-sewer districts is appropriate under the criteria established in RCW 57.02.040.

B. STATEMENT OF THE CASE

Snohomish County adopts and incorporates by reference the Statement of the Case set forth in the Supplemental Brief of Olympic View filed herein. For purposes of summary, Petitioners concede the facts set forth by the Court of Appeals in this matter.¹ Those undisputed facts establish that the subject property situated in Snohomish County (commonly known as “Point Wells”), was never within the municipal boundaries of the Richmond Beach Sewer System as formerly operated by King County Sewer District No. 3 (KCSO #3). Instead, the Point Wells area was at all times within the municipal boundaries of an existing sewer district situated in Snohomish County formed in 1937 commonly known

¹ See Ronald Wastewater District’s Petition for Review, pg. 11-12, stating: “Division I’s recitation of the events leading up to its decision is generally accurate, but its incomplete, and it omits important events that happened between 2005 and 2018, . . .”

as Olympic View Water and Sewer District (“Olympic View”). (Slip Opinion pg. 2)

In 1971 KCSD #3 entered into a private extension agreement with the adjacent property owner situated in Snohomish County (Chevron USA, formerly Standard Oil Company of California), to allow Chevron to extend a sewer line approximately 180 feet north, across the King-Snohomish County line to connect a sewer line from its marine terminal facility in Snohomish County to a lift station operated by KCSD #3 on the King County side of the line. (Slip Opinion, pg. 4). Thereafter, in 1984 KCSD #3 transferred the Richmond Beach Sewer System to King County under the authority of RCW 36.94.310 which provides as follows:

**Transfer of system from municipal corporation to county—
Authorized.**

Subject to the provisions 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, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system, and the county may acquire such property on such terms as may be mutually agreed upon by the governing body of the municipal corporation and the legislative authority of the county, and approved by the superior court for such county.

RCW 36.94.310 (emphasis added).

As summarized by the Court of Appeals, the 1984 transfer agreement between KCSD #3 and King County clearly recognized the “system boundary” of KCSD #3 as being bounded on the north by Snohomish County with no expansion of the system boundary anticipated. The Point Wells area was separately identified in the Richmond Beach Comprehensive Plan attached to the 1984 transfer agreement as follows: “[s]ervice is also provided to a Chevron Petroleum plant on Point Wells just north of the King-Snohomish County border.” (Slip Opinion, pg. 8).

As specifically held by the Court of Appeals, and not disputed by Petitioners, the 1984 transfer of the Richmond Beach Sewer System by KCSD #3 to King County *did not transfer* any Snohomish County territory to King County. (See Slip Opinion, pg. 8, footnote 12).² This conclusion is dictated both by the fact that no Snohomish County territory was within the municipal boundaries of KCSD #3 for purposes of being capable of transfer, and the fact that RCW 36.94.310 specifically limits the authority to transfer such systems only where all of the territory of the system is located within the county to which it is to be transferred.

² See also *Orchard Grove Water Assoc. v. King County Boundary Review Board*, 24 Wn.App. 116, 119, 600 P.2d 616 (1979) (holding that a water district’s extension of service outside its boundaries does not give rise to a defacto annexation or otherwise give the district any right or control over the property outside the district’s boundaries.)

During this same timeframe the legislature amended Ch. 36.94 RCW to allow the reverse process to occur, to wit: to allow a county to transfer a water or sewer system operated by it to a municipal water or sewer district as follows:

Transfer of system from county to water-sewer district.

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 36.94.410, enacted by laws of 1984, Ch. 147, §1 (emphasis added).

As reflected above, RCW 36.94.410 merely authorized a county to transfer a water or sewer system to a water-sewer district in the *same manner* as a district could transfer such a system to a county in RCW 36.94.310. Accordingly, as with the authority of a district to transfer a water or sewer system to a county, the authority of a county to transfer such a system back out to a municipal district was expressly limited to the transfer of a system where all of the territory of the system was located within the county effecting the transfer. *See* RCW 36.94.310 *supra*. (stating; “[A] municipal corporation *may transfer to the county within which all of its territory lies, . . .*”)

In the present case it's undisputed that the territorial boundaries of King County are confined to King County and, thus, under the authority of RCW 36.94.410 King County only had the authority to transfer to Ronald a sewer system whose territory was located entirely within King County. This conclusion is also dictated by the preamble to RCW 36.94.410 which limits its application to the transfer of a water or sewer system operated by a county "*under the authority of this chapter*". In accordance with RCW 36.94.020 a county only has the authority to operate a sewer or water system "within all or a portion of the county".³

Thereafter, in 1985 King County purported to invoke the authority under RCW 36.94.410 to turn around and transfer the Richmond Beach Sewer System to Ronald which was an existing sewer district situated in King County formed in 1951 providing service in the area now comprising the cities of Shoreline and Lake Forest Park. (Slip Opinion, pg. 3-4). As with the 1984 transfer agreement between KCSD #3 and King County, the

³ See RCW 36.94.020 which provides, in pertinent part:

Purpose—Powers.

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, plans, 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*.

1985 transfer agreement between King County and Ronald recognized that the Richmond Beach Sewer System served properties directly within the boundaries of the system, as well as certain additional property outside those boundaries by private extension agreements as follows: “At the time of this agreement, the System serves approximately 1,022 customers directly and serves others by developer extension agreements.” (Slip Opinion, pg. 9, quoting Transfer Agreement, pg. 1, Paragraph 3).

Notwithstanding the above, the 1985 Transfer Agreement purported to describe the “area served” by the Richmond Beach Sewer System as encompassing both those lands within the municipal boundaries of former KCSD No.3 situated in King County, as well as those areas outside of the municipal boundaries situated in Snohomish County that were served by private agreements. (See Slip Opinion, pg. 9). The 1985 transfer agreement further provided that the “are served” by the Richmond Beach Sewer System as described in the attached legal description be annexed into the municipal boundaries of Ronald. (Slip Opinion, pg. 9). This language was based on RCW 36.94.420 adopted in 1984 concurrent with the enactment of RCW 36.94.410 which provides, in pertinent part, as follows:

**Transfer of system from county to water-sewer district—
Annexation—Hearing—Public notice—Operation of system.**

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.

RCW 36.94.420; Slip Opinion pg. 9.

Accordingly, because the legal description attached to the 1985 transfer agreement encompassed both those areas within and without the territorial boundaries of the Richmond Beach Sewer System, the transfer agreement by King County purported to transfer and annex to Ronald territory in Snohomish County which was never within the territorial boundaries of King County or KCSD #3 for purposes of having any right or authority to transfer. King County and Ronald then submitted a joint petition to the King County Superior Court to approve the proposed transfer agreement in accordance with RCW 36.94.440:

**Transfer of system from county to water-sewer district—
Decree by superior court.**

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 36.94.440.

Upon stipulation of King County and Ronald, and without any notice to Snohomish County or Olympic View, the King County Superior

Court proceeded to enter an “Order Approving Sewer System Transfer” on November 20, 1985, which provided in pertinent part: “As provided in the transfer agreement, the area served by the System shall be annexed to and become a part of the District [Ronald] on the effective date of the transfer.” (Slip Opinion, pg. 10).

It is this 1985 Transfer Order, entered by the King County Superior Court, which Petitioners ask this Court to enforce as it relates to the purported annexation of land situated in Snohomish County into the municipal boundaries of Ronald. This argument is made despite Petitioners’ acknowledgment that the Snohomish County territory was never within the territorial boundaries of the Richmond Beach Sewer System as operated by former KCSD #3 and, thus, was never transferred (nor could have been transferred) by KCSD #3 to King County for purposes of King County having any right or authority under RCW 36.94.410 to transfer and otherwise assign to Ronald any right or interest to annex land situated in Snohomish County.

In short, the 1985 Transfer Agreement, to the extent King County purported to transfer and otherwise annex land situated in Snohomish County to Ronald, was not authorized by RCW 36.94.410. Accordingly, for the reasons set forth by the Court of Appeals the lack of any statutory authority authorizing such annexation rendered the King County Superior

Court without jurisdiction to sanction that which was not authorized in the first place and beyond the power or authority of the court to decree.

C. ARGUMENT

The fundamental issue in this matter is whether the King County Superior Court had “jurisdiction” for purposes of decreeing the annexation of land situated in Snohomish County into the territorial boundaries of Ronald as part of the transfer of the Richmond Beach Sewer System by King County to Ronald under the statutory authority in RCW 36.94.410 et.seq. If not, then the 1985 Transfer Order is void to the extent it lacked jurisdiction over such element of the proceedings.

In this regard, Snohomish County incorporates by reference the arguments set forth in the Supplemental Brief of Olympic View. As set forth therein, jurisdiction of a court to enter a valid judgment requires: (1) jurisdiction over the subject matter; (2) personal jurisdiction over the party; and (3) the power or authority to render the particular judgment. (*See* Supplemental Brief of Olympic View, pg. 7-8; *See also* *Marley v. Dept. of Labor & Indust.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994) (holding: “[A] void judgment exists whenever the issuing court lacks personal jurisdiction of the party or subject matter jurisdiction over the claim.”); *Wesley v. Schneckloth*, 55 Wn.2d 90, 93-94, 346 P.2d 658 (1959) (holding: “Jurisdiction does not relate to the right of the parties as between

each other, but to the power of the court. [citation omitted] A constitutional court cannot acquire jurisdiction by agreement or stipulation. Either it has or has no jurisdiction. If it does not have jurisdiction, any judgment entered is void ab initio and is, in legal effect, no judgment at all. Jurisdiction should not be sustained upon the doctrine of estoppel.”)

As it relates to the interests of Snohomish County in this matter the County is primarily concerned with preserving the paramount authority and jurisdiction of the county legislative body to review and approve annexations and transfers of territory by or between water and sewer districts as provided under former Title 56 RCW and now consolidated under Title 57 RCW.⁴ Accordingly, the remainder of this brief will focus on those interests.

1. Land Within an Existing Sewer District is Not Subject to Annexation by Another District

The Court of Appeals ultimately rested its decision upon a statutory interpretation of the phrase “area served” in RCW 36.94.420 to conclude that the King County Superior Court lacked jurisdiction to

⁴ Prior to 1996 sewer districts were separately regulated under Title 56 RCW, and water districts regulated under Title 57 RCW. In 1996 Title 56 RCW was repealed and consolidated with Title 57 RCW which now governs both water and sewer districts. See Laws of 1996, Ch. 230, § 1702. Provisions existing under former Title 56 RCW were generally consolidated with their counterparts under Title 57 and effectively recodified. Accordingly, reference herein will be to the recodified version in Title 57 RCW.

decree the annexation of land located outside the jurisdictional boundaries of King County as the transferring entity. This issue is addressed in depth in the Supplemental Brief of Olympic View and will not be repeated here. However, there is a preliminary issue which is equally dispositive of Petitioners' argument in this matter.

The statute upon which Petitioners rely is RCW 36.94.420 which authorizes the concurrent annexation of the area served as part of a county's transfer of a water or sewer system. However, this presumes that the area in question is capable of being annexed. In this regard, it is undisputed that the Point Wells area had long ago been incorporated within the municipal boundaries of an existing sewer district in Snohomish County (Olympic View). (Slip Opinion, pg. 2). It is further undisputed that the law in existence since 1941 has forbade the creation of overlapping sewer district boundaries. (Slip Opinion, pg. 17, citing former RCW 56.04.070).

Consistent therewith, this Court has previously held that one water district may not be created within the limits in whole or in part of another water district. *Alderwood Water District v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 321-22, 382 P.2d 639 (1963). Accordingly, as concluded by the Court of Appeals, territory within an existing water or sewer district is not

subject to annexation by another district as such annexation would have the effect of creating overlapping boundaries. (Slip Opinion, pg. 24)

Rather, as stated by the Court of Appeals, the only way the Point Wells area could have been available for annexation by Ronald in 1985 would have been if such territory was first withdrawn from the boundaries of Olympic View. (Slip Opinion, pg. 13, footnote 16). This, in turn, would have required the review and approval of Snohomish County under the then existing laws. *Id.* It is undisputed that such withdrawal of the Point Wells area from the municipal boundaries of Olympic View has never occurred. Accordingly, even if RCW 36.94.420 were construed as Petitioners argue to allow annexation of territory located outside of the territorial boundaries of the transferring county, the Point Wells area would not have been capable of annexation by Ronald or any other sewer district as such territory was already incorporated within the municipal boundaries of Olympic View.

2. RCW 36.94.420 Does Not Grant Authority to a Court to Transfer Territory from One Sewer District to Another.

For the reasons set forth above, the action of the King County Superior Court decreeing the annexation of the Point Wells area into the municipal boundaries of Ronald had the effect of creating a statutorily prohibited overlapping of sewer district boundaries and essentially

“transferred” the territory from Olympic View to Ronald. Nothing in the language of RCW 36.94.420 purports to grant such authority.

On the contrary, the legislature has clearly expressed its intent that such an action requires the consent of the district whose territory is being taken and vests jurisdiction over approval of the transfer of territory between two districts in the county legislative body as follows:

Transfer of part of district—Procedure.

A part of one district may be transferred into an adjacent district if the area can be better served thereby. Such transfer can be accomplished by a petition, directed to both districts, signed by the owners according to the records of the county auditor of not less than sixty percent of the area of land to be transferred. *If a majority of the commissioners of each district approves the petition, copies of the approving resolutions shall be filed with the county legislative authority which shall act upon the petition as a proposed action in accordance with RCW57.02.040.*

RCW 57.32.160 (Laws of 1987, Ch. 449 § 9)⁵

While the foregoing statute was enacted in 1987 approximately two years after the issuance of the 1985 Transfer Order in this matter, it

⁵ The original 1987 amendment to former Ch. 56.32 RCW provided as follows:

A part of one sewer or water district may be transferred into an adjacent sewer district if the area can be better served thereby. Such transfer can be accomplished by a petition, directed to both districts, signed by the owners according to the records of the county auditor of not less than sixty percent of the area of land to be transferred. If a majority of the commissioners of each district approves the petition, copies of the approving resolutions shall be filed with the county legislative authority which shall act upon the petition as a proposed action in accordance with RCW 56.02.060.

reflects a clear legislative distinction between the transfer of territory within an existing sewer district, and annexation of territory which is limited to unincorporated territory not within an existing district. Nothing in RCW 36.94.420 purports to authorize a court to “transfer” territory from one sewer district to another.

3. County Legislative Body Has Exclusive Jurisdiction to Approve Transfer of Territory Between Sewer Districts.

As a corollary to the above, RCW 57.32.160 clearly vests the county legislative body with the exclusive jurisdiction to approve a transfer of territory located within the county from one sewer district to another. Specifically, RCW 57.32.160 directs that the county legislative body is to act on such a petition to transfer territory in accordance with RCW 57.02.040 which provides:

Water-sewer district activities to be approved—Criteria for approval by county legislative authority.

(1) Notwithstanding any provision of law to the contrary, the following proposed actions ***shall be approved as provided for in RCW 57.02.045:***

- (a) Formation or reorganization under chapter 57.04 RCW;
- (b) Annexation of territory under chapter 57.24 RCW;
- (c) Withdrawal of territory under chapter 57.28 RCW;
- (d) Transfer of territory under RCW 57.32.160;
- (e) Consolidation under chapter 57.32 RCW; and
- (f) Merger under chapter 57.36 RCW.

(2) ***At least one of the districts involved shall give notice of the proposed action to the county legislative authority, state department of ecology, and state***

department of health. The county legislative authority shall within thirty days of receiving notice of the proposed action approve the action or hold a hearing on the action.

(3) The county legislative authority shall decide within sixty days of a hearing whether to approve or not approve the proposed action. In approving or not approving the proposed action, **the county legislative authority shall consider the following criteria:**

(a) Whether the proposed action in the area under consideration is in compliance with the development program that is outlined in the county comprehensive plan, or city or town comprehensive plan where appropriate, and its supporting documents;

(b) Whether the proposed action in the area under consideration is in compliance with the basin-wide water and/or sewage plan as approved by the state department of ecology and the state department of social and health services; and

(c) Whether the proposed action is in compliance with the policies expressed in the county plan for water and/or sewage facilities.

(4) **If the proposed action is inconsistent with subsection (3)(a), (b), or (c) of this section, the county legislative authority shall not approve it.** If the proposed action is consistent with subsection (3)(a), (b), and (c) of this section, the county legislative authority shall approve it **unless it finds that water or sewer service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, or by another district, city, town, or municipality.**

RCW 57.02.040 (emphasis added).

RCW 57.02.045, in turn, vests exclusive jurisdiction in the county legislative body and its established Boundary Review Board to approve or disapprove such actions as follows:

**Approval by county legislative authority final, when—
Boundary review board approval.**

In any county where a boundary review board, as provided in chapter 36.93 RCW, is not established, the approval of the proposed action shall be by the county legislative authority pursuant to RCW 57.02.040 and shall be final, and the procedures required to adopt such proposed action shall be followed as provided by law.

In any county where a boundary review board, as provided in chapter 36.93 RCW, is established, a notice of intention of the proposed action shall be filed with the boundary review board as required by RCW 36.03.090 and with the county legislative authority. *The county legislative authority shall transmit to the boundary review board a report of its approval or disapproval of the proposed action together with its findings and recommendations under RCW 57.02.040.* Approval by the county legislative authority of the proposed action shall be final and the procedures required to adopt the proposal shall be followed as provided by law, unless the boundary review board reviews the action under RCW 36.93.100 through 36.93.180. . . .

RCW 57.02.045.

As set forth above, the role of the county legislative authority in reviewing proposed annexations or transfers of territory by or between water and sewer districts is not merely perfunctory. The county must consider whether such action is consistent with the development program

outlined in the County's adopted GMA Comprehensive Plan. RCW 57.02.040(3)(a). This would involve evaluating the sewer treatment capacity of the district seeking to annex or receive a transfer of territory to determine whether it has sufficient capacity to provide service at a level commensurate with the contemplated growth/development assigned to the area under the county's comprehensive plan.

Independent of the capacity to provide service, the County must also evaluate who is the most *appropriate* provider of water or sewer service to a particular area as between other special purpose districts, cities, towns or municipalities. RCW 57.02.040(4). This involves consideration of what is in the best interest of the public being served, maintaining economies of scale for water and sewer service providers to ensure financial viability to support necessary infrastructure, and logical relations to growth patterns within the county and selecting those providers most capable of serving the long-term growth and development pattern within the area.

None of the considerations set forth above were contemplated by the King County Superior Court in 1985 when approving the transfer agreement between King County and Ronald. Accordingly, if the Court adopts Petitioners argument that the legislature intended RCW 36.94.420 to authorize King County to transfer territory from a sewer district situated

in Snohomish County to a sewer district situated in King County as part of the transfer of a sewer system supposedly operated by King County, without notice or consent of the sewer district in Snohomish County whose territory is being taken or review by Snohomish County to determine whether such transfer is consistent with the County's comprehensive plan and best serves the area in question, it will eviscerate the entirety of the statutory framework in Title 57 RCW vesting the county legislative body of the county where such land is located with jurisdiction over such actions.

As stated by the Court of Appeals, if the legislature had intended such an upheaval in the statutory process through the enactment of RCW 36.94.410-.440 it would have clearly stated such intent:

Had the legislature been aware of the conflict between RCW 36.94.410-.440 and former Title 56 RCW, and had it intended the result Ronald seeks, it would surely have written an explicit exemption from the conflicting provisions in former Title 56 RCW. No such exemption or even cross-reference appears in RCW 36.94.410-.440. Former Title 56 RCW does not allow a hostile annexation by one sewer district against another. It prohibits a sewer district from providing sewer service within another district authorized to exercise sewer district powers, unless that district consents. Former RCW 56.08.060. The reasonable inference from the language in the statutes is that the legislature did not anticipate that RCW 36.94.410-.440 conflicted with former Title 56 RCW, did not intend to exempt the transaction from former Title 56 RCW, and did not intend the result Ronald seeks.

(Slip Opinion, pg. 24).

4. Court Lacked Personal Jurisdiction Over Olympic View and Snohomish County Who were Necessary Parties to Any Order Purporting to Transfer Territory from Olympic View to Ronald.

The foregoing statutes also reflect that both Olympic View and Snohomish County have a statutorily protected interest in any action purporting to transfer territory in Snohomish County from Olympic View to another district which required notice in addition to consent and approval. It is undisputed that no notice of the 1985 transfer proceedings was given to either Olympic View or Snohomish County and, thus, neither was joined as a party to the proceedings. Accordingly, in the absence of personal jurisdiction of the King County Superior Court over the Snohomish County parties, the court lacked any authority to decree the transfer of territory from a Snohomish County sewer district to a King County sewer district in a manner that clearly prejudiced the rights of both Olympic View and Snohomish County.

5. Court of Appeals Correctly Construed RCW 36.94.420 as Only Authorizing the Court to Decree the Annexation of Territory Which is Situated Within the Boundaries of the County Effecting the Transfer of the Water or Sewer System

As stated in RCW 36.94.410 the intent of the legislature was to allow a county to transfer to a district a water or sewer system operated by

the county in the same manner as a district could transfer such a system to the county under RCW 36.94.310 as follows:

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 36.94.410. It is undisputed that the authority of a district to transfer a water or sewer system to a county under RCW 36.94.310 is limited to those systems whose territory is located entirely within the county to which it is to be transferred:

Subject to the provisions 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. This is because a county is only authorized to operate a water or sewer system within all or a portion of the boundaries of the county. *See* RCW 36.94.020.

Petitioners argument that the 1971 line extension agreement between KCSD #3 and Chevron whereby a sewer line was privately extended 180 feet across the King-Snohomish County line to serve Chevron's marine terminal facility at Point Wells somehow brought the entirety of the 200 acre Point Wells site into the service area boundaries of

the Richmond Beach Sewer System is a complete fallacy. As set forth above, the contractual extension of service outside the boundaries of a water or sewer district gives rise to no right to serve or annex the extra-territorial area. See *Orchard Grove Water Assoc.*, 24 Wn.App. at 119 (holding that a water district's extension of service outside its boundaries does not give rise to a defacto annexation or otherwise give the district any right or control over the property outside the district's boundaries.) Accordingly, despite the legal description attached by King County to its 1985 Transfer Agreement with Ronald, the Point Wells area was never within the service area boundaries of the Richmond Beach Sewer System for purposes of transfer to anyone.

In summary, RCW 36.94.410 merely authorized King County to transfer to Ronald a water or sewer system operated by the county whose territory is located entirely within the county. As such, RCW 36.94.410 does not authorize, nor did the legislature contemplate, that such a transfer would involve territory located outside of the territorial boundaries of the county effecting the transfer.

Accordingly, RCW 36.94.420 which authorizes the concurrent annexation by a district of the area served by a county's water or sewer system to be transferred under RCW 36.94.410 must be construed in the context of the authorizing language in RCW 36.94.410 when it states:

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.

RCW 36.94.020. If the area served by a county's water or sewer system subject to transfer under RCW 36.94.410 is statutorily limited to being entirely within the county, then the area capable of being annexed under such a transfer must similarly be construed as limited to that area as concluded by the Court of Appeals in this matter. (Slip Opinion, pg. 30).⁶

D. CONCLUSION

The Petitions for Review in this matter all but concede the invalidity of the 1985 Transfer Order as it relates to the purported annexation of territory situated in Snohomish County into the municipal boundaries of a sewer district situated in King County. Nevertheless, Petitioners ask that this Court enforce that error, one perpetrated by stipulation of the parties now seeking to benefit from it, by arguing that while the 1985 Transfer Order was voidable had it been timely appealed, it was not void *ab initio* for lack of jurisdiction and therefore should be enforced.

⁶ Holding: "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."

The sole basis for the argument supporting the authority and subject matter jurisdiction of the King County Superior Court to decree the annexation of territory situated in Snohomish County is the legislature's enactment of RCW 36.94.410 et.seq., and yet Petitioners have not cited any examples of where the Superior Court of one county has jurisdiction to decree the annexation of territory situated in another county, much less an annexation which effects the transfer of territory from one municipal corporation to another. In rejecting that argument the Court of Appeals in this matter cited multiple rules of statutory construction for why such an interpretation of RCW 36.94.410 was not consistent with the overall statutory scheme stating as follows:

The basis of its claim is that the transfer agreement with King County provided for the annexation. But, the area to be annexed was not within King County's boundaries. It would be unreasonable to read the statute as authorizing King County to transfer territory, within another special purpose district, within another county, as part of its divestment of its own sewer system.

...

It is clear from the context of the 1986 statutory scheme as a whole that the plain meaning of "area served" for purposes of annexation means only the area of the sewer system within the boundaries of the county making the transfer. It does not include the area outside its borders, served by contract, and within the corporate boundaries of another municipal corporation with sewer district powers.

(Slip Opinion, pg. 24, 26-27).

In the absence of any statutory authority, the Court of Appeals correctly concluded there could be no subject matter jurisdiction in a controversy involving annexation. (Slip Opinion, pg. 27-29). Accordingly, Snohomish County respectfully asks this Court to affirm the Court of Appeals decision concluding that: “[T]o the extent that the Transfer order purports to authorize Ronald’s annexation of area within Snohomish County and within Olympic, the order is void.” (Slip Opinion, pg. 31). Snohomish County further asks that costs on appeal be awarded.

DATED this 3 day of February, 2020.

Respectfully submitted,

ADAM CORNELL
Snohomish County Prosecuting Attorney



Brian J. Dorsey, WSBA #18639
Deputy Prosecuting Attorney
Attorney for Respondent
Snohomish County

DECLARATION OF SERVICE

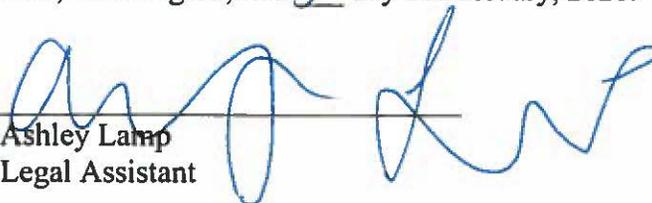
I, Ashley Lamp, hereby certify that on the 3rd day of February, 2020, I caused to be delivered and served a true and correct copy of Snohomish County's Supplemental Brief and this Declaration of Service upon the entity and persons listed herein by the following means:

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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 3rd day of February, 2020.


Ashley Lamp
Legal Assistant

SNOHOMISH COUNTY PROSECUTORS-LAND USE DIVISION

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