NO. 54535-3-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

RABANCO LTD., Appellant

vs.

KING COUNTY, Respondent.

APPELLANT'S REPLY BRIEF

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A. The Trial Court Erred As A Matter Of Law By Not Interpreting RCW 36.58.040 As Written.

This Court should reverse the trial court because the trial court failed to give effect to a literal reading of RCW 36.58.040. Because "the first rule" of statutory interpretation is that "the court should assume that the legislature means exactly what it says," the Washington Supreme Court requires courts to accept a "literal reading" of a statute. *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 329, 815 P.2d 781 (1991) (reversing summary judgment and holding that trial court erred by rejecting statute's plain meaning as "unfair" because "the fairness of such statutes should generally be left to the Legislature to determine").

Like *Sidis*, the trial court improperly rejected a literal reading of RCW 36.58.040. The statute provides that the interlocal agreement requirement applies when a private hauler's WUTC "certificate is for collection in a geographic area lying in more than one county." RCW 36.58.040. It is undisputed that Rabanco's WUTC certificate authorizes collection in a geographic territory lying in more than one county. The heading on the first page of Rabanco's WUTC certificate states as follows:

> THIS IS TO CERTIFY that authority is granted to operate as a MOTOR CARRIER in the transportation of the commodities and in the territory described herein to RABANCO LTD.

CP 127 (emphasis added). The "territory described herein" includes part of King, Snohomish, Kitsap, Pierce, Skamania, Yakima, and Klickitat

Counties. This certificate comprises Rabanco's geographic territory in which it has authority to collect solid waste.[1] CP 127-40. Because Rabanco's WUTC certificate is for collection in a geographic area in more than one county, a plain reading of RCW 36.58.040 requires King County to comply with the statute's interlocal agreement requirement. King County has conceded that it has no such agreements with any of the counties at issue. CP 262-63, 428-38. Accordingly, this Court should reverse the trial court and direct entry of partial summary judgment for Rabanco on this claim.

B. The Court Should Reject King County's Interpretations Because It Would Require Additional Terms To Be Read Into The Statute That Do Not Exist.

Rather than applying RCW 36.58.040 as written, King County urges the Court to re-write the statute to add requirements that simply do not exist. According to the Washington Supreme Court, courts "cannot add words or clauses to an unambiguous statute when the legislature has

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[1] Without citing any authority and for the first time on appeal, King County incorrectly suggests that the Court's review is somehow confined to considering the absence of an interlocal agreement between only King County and Snohomish County. King County ignores the fact that Rabanco argued before the trial court that the absence of interlocal agreements between King County and all of the other counties included in Rabanco's WUTC certificate (Pierce, Kitsap, Yakima, Skamania, and Klickitat Counties) entitled Rabanco to summary judgment. While the Complaint (which is subject only to Washington's notice pleading rule under CR 8(a)) only mentioned by name Snohomish County, subsequent discovery revealed that King County had no interlocal agreements with any of the other counties comprising Rabanco's collection territory pursuant to its WUTC certificate. CP 262-63, 428-38. Rabanco's summary judgment briefing and oral argument before the trial court specifically refer to King County's lack of interlocal agreements with all these other counties. *See* CP 141-46, 348-60, 440-44; *see generally* Verbatim Report of Proceedings.

chosen not to include that language." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). By RCW 36.58.040's plain terms, the controlling issue is whether the WUTC certificate authorizes a collection territory in more than one county.

King County, however, confuses the issue by essentially arguing that what the Legislature really meant to say is that the controlling issue is whether a private hauler's neighborhood garbage trucks follow individual routes lying in more than one county. But that is not what the statute says. King County's suggested interpretation would require the Court to re-write RCW 36.58.040 to provide that the interlocal agreement requirement applies only when the WUTC "certificate is for collection in a geographic area lying in more than one county and the private hauler's collection routes cross those counties' borders." If the Legislature had intended the interlocal agreement requirement to apply only to multi-county routes (as opposed to multi-county collection territory), the Legislature certainly could have done so. It did not. King County's attempt to add this language to the statute contravenes Washington courts' "long history of restraint in compensating for legislative omissions." *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998).

King County also attempts to re-write the statute by arguing that what the Legislature meant to say was that the interlocal agreement requirement only applies "when the WUTC authorizes a private hauler to collect waste in a single area that encompasses territory in more than one county." Resp.'s Br. at 13 (emphasis added). But again, that is not what

the statute says. King County's suggested interpretation would require the Court to re-write RCW 36.58.040 to provide the interlocal agreement requirement applies when the WUTC "certificate is for collection only in a single geographic area consisting entirely of territory lying in more than one contiguous county." But under RCW 36.58.040, the interlocal agreement requirement applies when the WUTC "certificate is for collection in a geographic area lying in more than one county," not when the certificate authorizes a single territory that overlaps contiguous counties.[2] Again, if the Legislature intended the interlocal agreement requirement to apply to a collection territory consisting only of adjacent counties, it certainly could have written that term into the statute. It did not. Accordingly, the Court should reject King County's attempt to re-write RCW 36.58.040.

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[2] King County also suggests that the statute's use of the singular term "a geographic area" supports its strained interpretation that the interlocal agreement requirement only applies when a private hauler's WUTC collection authority consists entirely of a single territory overlapping adjoining counties. Such a construction violates Washington's statutory rule of construction that use of the singular necessarily includes the plural. RCW 1.12.050 ("Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular . . . ."); *Hinton v. Johnson*, 87 Wn. App. 670, 942 P.2d 1061 (1997) ("we construe 'a' as applying to the plural as well as the singular"), *review denied*, 134 Wn.2d 1022, 958 P.2d 316 (1998). According to the Washington Supreme Court, "a court may construe singular words in the plural and vice versa, unless such a construction would be repugnant to the context of the statute or inconsistent with the manifest intention of the Legislature. *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wn.2d 503, 508, 760 P.2d 350 (1988) (emphasis added). King County fails to identify how construing the interlocal agreement requirement to apply when the certificate grants collection authority in multiple geographic areas in more than one county is repugnant to the context of the statute or is inconsistent with legislative intent to limit a county's unilateral authority to control a solid waste franchise operating in more than one county. As discussed in the following sections of the brief, see §§ I.C, II, *infra*, a literal reading of RCW 36.58.040 provides an interpretation consistent with the context of the statute and legislative intent.

C. A Literal Reading of RCW 36.58.040 Does Not Lead To An Absurd Result.

Contrary to King County's suggestion, a literal reading of RCW 36.58.040 would not create an absurd result. A court may disregard a statute's plain language and ordinary meaning only if such "a reading results in absurd results." *J.P.*, 149 Wn.2d at 450.

Under RCW 36.58.040's plain language, when a WUTC certificate grants a private hauler a collection territory in more than one county, one county cannot limit the hauler's disposal sites unless the other counties agree pursuant to an interlocal agreement. A private hauler operating in more than one county such as Rabanco has multiple disposal options, so it can select the disposal option with the lowest cost and ultimately the lowest rate for ratepayers such as businesses and households. Because the cost of disposal is one of the factors that the WUTC must consider in setting the collection rate that private haulers may charge their customers residing in unincorporated parts of counties, RCW 81.77.040, a lower cost of disposal permits Rabanco, through the WUTC, to set a lower collection rate for those customers.

In this case, King County currently charges a basic disposal rate of $82.50 per ton at the Cedar Hills landfill, yet in Klickitat County (which is part of Rabanco's WUTC collection territory), the landfill disposal rate is only $19.75 per ton. CP 253. Thus, if Rabanco could dispose of solid waste from unincorporated King County for a significantly lower cost at the Klickitat landfill, Rabanco could seek a significantly lower collection

rate for its customers in unincorporated King County from the WUTC. *Id.* Allowing private haulers operating in a multi-county territory to select the most cost-effective disposal site for their customers does not create an absurd result. In fact, it makes good sense.

II. THE LEGISLATIVE HISTORY SUPPORTS RABANCO'S PLAIN READING OF THE STATUTE.

Because the statute is unambiguous on its face, the Court should only look to the wording of the statute, not to outside sources such as legislative history. *See, e.g., Wascisin v. Olsen*, 90 Wn. App. 440, 443, 953 P.2d 467 (1997) (holding that an unambiguous statute's plain meaning controls and "resort to legislative history is not necessary or appropriate"), *review denied*, 136 Wn.2d 1003 (1998). In particular, a bill digest is a summary and is not controlling over the plain language of the statute. *See, e.g., Seattle Times v. Benton County*, 99 Wn.2d 251, 255 n.1, 633 P.2d 113 (1983) (noting not all legislative history documents are "authoritative"). But even the legislative history – when presented in full context – supports Rabanco's interpretation.

King County cites a statement by Senator North acknowledging that prior to the passage of RCW 81.77.040, "a private collection franchise" could pick up garbage in unincorporated King County and "truck it down to Senator Talley's Cowlitz County and dump it there." CP 225. As written, RCW 81.77.040 permits those counties to designate a specific disposal, but "such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties." King County

has not fulfilled this statutory requirement by entering into the requisite interlocal agreements.

Moreover, as demonstrated more fully in Rabanco's opening brief, the legislature expressly rejected an attempt to grant counties full authority over solid waste collection and disposal, including giving counties the power to cancel WUTC collection franchise certificates. CP 267-69, 272-73. Instead, authority over collection remained at the state-level WUTC.[3] Thus, by requiring interlocal agreements before counties could limit the disposal sites for private haulers operating in a collection territory lying in more than one county, RCW 81.77.040 furthers the legislative intent to prevent a county from unilaterally interfering with collection companies who operate in a multi-county territory.

III. POLICY REASONS SUPPORT RABANCO'S PLAIN READING OF THE STATUTE.

Finally, King County relies on impermissible policy reasons to support its tortured reading of RCW 36.58.040. Washington law is clear that when a county does not have statutory authority to act, policy justifications for such actions are wholly irrelevant. *Washington Indep. Telephone Ass'n (WITA) v. Telecomm. Ratepayers Ass'n*, 75 Wn. App. 356, 363-64, 368-69, 880 P.2d 50 (1994) (holding that government's actions beyond its statutory authority are invalid regardless of whether

[3] In fact, this Court may take judicial notice pursuant to ER 201 that King County recently has petitioned the WUTC to break up Rabanco's WUTC certificate into several separate certificates granting a territory exclusively lying in one county. *See* Reply Appendix.

such actions are "useful" or "beneficial" to the public); *Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 808, 810-11, 650 P.2d 193 (1982) ("If the legislature has not authorized the action in question, it is invalid no matter how necessary it might be" or "how desperate the needs of the counties [are]."), *superseded in part on other grounds by* RCW 82.02.020. Rabanco cited these authorities in its opening brief, but King County has made no attempt to distinguish them.

Even if policy reasons were proper considerations (which they are not), they support a literal reading of the statute. As noted above, the cost of disposal at the Klickitat landfill, $19.50 per ton, is considerably lower than King County's disposal charge of $82.50 per ton at the Cedar Hills landfill. CP 253. If Rabanco could reduce the cost of disposal by taking solid waste to the Klickitat landfill, it could seek a lower collection rate from the WUTC[4] for its customers residing in unincorporated King County. *Id.* King County, however, justifies its interpretation on grounds that a county monopoly over solid waste disposal preserves a significant stream of revenue into King County's coffers to fund its solid waste

[4] Respondent's Brief impermissibly relies upon on statements from the declaration of a WUTC official, Eugene Eckhardt, that the trial court struck from the record. *See* Appellant's Appendix at 4 (striking the declaration from the record). The declaration was inadmissible because it was irrelevant, based on hearsay rather than personal knowledge, and included improper legal opinions. CP 232-43, 419-23. King County did not appeal the trial court's ruling striking this declaration. Therefore, it remains law of the case, and the Court should not consider those paragraphs of King County's brief based on the stricken declaration (specifically, the text accompanying footnotes 2, 3, 6, and 9 on pages 5 to 6).

facilities. But the U.S. Supreme Court has determined that such financial protectionism by local governments is an improper justification for a flow control ordinance. *See C.A. Carbone & Sons, Inc. v. Clarkstown*, 511 U.S. 383 (1994); *id.* (O'Connor, J., concurring); *see also National Solid Waste Management Ass'n v. Pine Belt Solid Waste Management Authority*, 261 F. Supp. 2d 644 (S.D. Miss. 2003). Thus, the Court should reject King County's policy reasons and interpret the statute as written.

In short, any change to RCW 36.58.040 for policy reasons should come from the Legislature, not the courts. If King County is unhappy with the results of applying the statute as written, King County has several options. First, King County may seek an amendment to RCW 36.58.040 from the Legislature. Second, King County may comply with the statute's requirements by negotiating interlocal agreements with the other counties in Rabanco's WUTC permit. In fact, King County has already negotiated proposed agreements with Snohomish and Pierce Counties. *See* CP 428-38. Third, as King County has already done, it can petition the WUTC to modify Rabanco's collection certificate. *See* Reply Appendix; *supra* note 2. Accordingly, there is no reason for this Court to alter RCW 36.58.040's plain meaning as a vehicle to change public policy.

IV. CONCLUSION

For the foregoing reasons, Plaintiff-Appellant respectfully requests that this Court reverse the trial court's order granting partial summary

judgment to King County and remand this case with instructions for the trial court to enter partial summary judgment for Rabanco.

RESPECTFULLY SUBMITTED,

DATED this 14th day of October, 2004.

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APPENDIX

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Joint Applications GA-79141, GA-79142, and GA-79159 of Rabanco, Ltd.	ORDER TG-030433 ORDER TG-030434 ORDER TG-030590 **PETITION TO AMEND ORDERS TG-030433, TG-030434, AND TG-030590**

I. IDENTITY AND ADDRESS OF MOVING PARTY

King County, a political subdivision of the State of Washington, is the petitioning party. The mailing address for King County's Department of Natural Resources and Parks, the responsible county department, is 201 South Jackson Street, Seattle, Washington, 98104.

II. RELEVANT STATUTES AND RULES

This petition is based on the authority set forth in RCW 80.01.040 and WAC 480-07-875.

III. REQUEST FOR RELIEF

King County petitions for an order amending Orders TG-030433, TG-030434, and TG-030590 such that all certificates of necessity and convenience transferred to Rabanco, Ltd. by these orders and consolidated as Certificate G-12 instead are transferred to Rabanco, Ltd. as

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separate certificates of necessity and convenience for each county in which Rabanco, Ltd. is authorized to collect waste under Certificate G-12 (August 22, 2003).

This amendment would create six certificates of convenience and necessity for Rabanco, Ltd. in the currently authorized territory in each of King, Snohomish, Klickitat, Skamania, Yakima, and Kitsap Counties (as well as Pierce County, if Rabanco has operating authority in Pierce County) included in Certificate G-12 (August 22, 2003). This petition is based upon the attached declaration of Justin D. Haag and the attached memorandum of law.

DATED this 29th day of September, 2004.

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