

NO. 54535-3-I  
COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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RABANCO LTD., Appellant,

v.

KING COUNTY, Respondent.

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**BRIEF OF RESPONDENT KING COUNTY**

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## 1. INTRODUCTION

Washington Constitution Art. 11, § 11 (police power), and The Washington Solid Waste Management Act, confer extensive authority on Washington counties in the area of solid waste planning and regulation. This appeal involves the appropriate interpretation of RCW 36.58.040, which grants counties authority to designate disposal sites for solid waste collected in the their unincorporated areas. The clear and plain reading of RCW 36.58.040 establishes that a county can designate one or more disposal site(s) for all the waste collected in the unincorporated areas of that county. RCW 36.58.040 also contemplates the circumstance in which a private hauler receives authority to collect waste in a territory that crosses county boundaries. Only when a WUTC certificate authorizes collection in a geographic area lying in more than one county is there an issue as to which county may designate the disposal site for combined-county waste. RCW 36.58.040 resolves that issue by requiring the affected counties to enter an interlocal agreement. RCW 36.58.040.

Where each collection territory lies entirely within one county, each county may properly designate one or more disposal site(s) for its own waste pursuant to RCW 36.58.040 without fear of conflicting with any other county's right to similarly designate a disposal site(s).

Unless a collection territory crosses county boundaries, resulting in combined waste from two or more counties, there is no need for – or

purpose for – an interlocal agreement under RCW 36.58.040. Each county may designate a site for the disposal of waste collected in territories within that county. The trial court properly interpreted the provisions of state law. Its order granting partial summary judgment to King County must be affirmed.

The trial court correctly held that no interlocal agreement was required under RCW 36.58.040 where no Rabanco collection area in King County crosses county borders and no municipal solid waste from other counties was being designated for disposal in King County.

**2. RESTATEMENT OF ISSUE PERTAINING TO APPELLANT'S ASSIGNMENT OF ERROR**

Where Appellant Rabanco has no authority to collect in any discrete geographic area that lies in more than one county, was it error to hold that RCW 36.58.040 does not require interlocal agreements among counties before King County may legally designate a site for disposal of municipal solid waste generated exclusively within King County and collected solely within King County?

**3. STATEMENT OF THE CASE**

**3.1 Factual Background**

**3.1.1 Solid Waste is a Governmental Function.**

“The handling and disposal of solid waste is a governmental function. RCW 70.95.020 provides that while private entities may

contract with local government for solid waste handling, the primary responsibility is that of the local government.” *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 40, 873 P.2d 498 (1994). That authority has rested with government for a century. *California Reduction Company v. Sanitary Reduction Works*, 199 U.S. 306 (1905) (upholding a grant of an exclusive privilege to one company to dispose of garbage); *Smith v. Spokane*, 55 Wash. 219, 104 P. 249 (1909) (upholding the City of Spokane’s right to prevent anyone other than City employees from hauling garbage).

Chapter 36.58 RCW sets forth a county’s authority to regulate disposal of solid waste generated within its jurisdiction. A county may by ordinance provide for the establishment of a system of solid waste disposal for all unincorporated areas of the county or for portions thereof. RCW 36.58.040. This statute grants counties authority; it does not restrict authority as Appellant Rabanco argues. Following adoption of a comprehensive solid waste management plan pursuant to Chapter 70.95 RCW, a county may designate one or more disposal site(s) for all solid waste collected in the unincorporated areas.

### 3.1.2 King County’s Solid Waste Handling Law Applies Only To King “County Solid Waste”.

Pursuant to RCW 36.58.040, King County established a solid waste handling system and made a final disposal site designation in King

County for solid waste generated and collected within King County's jurisdiction. The King County Code thus provides:

**10.08.020 System of disposal.**

A. Under the authority provided by the King County Charter and RCW 36.58.040, a system is hereby established for disposal of all solid waste either generated, collected or disposed, in unincorporated King County. Additionally, this system shall include all solid waste either generated or collected, or both, in any other jurisdictions with which an interlocal agreement exists under K.C.C. 10.08.130.

B. It is unlawful for any person to dispose of **county solid waste** except at disposal facilities and in a manner authorized under this title.

C. Unless specifically authorized by a King County ordinance, it is unlawful for any commercial hauler or other person or entity to deliver any **county solid waste** to a place other than a disposal facility designated by the county to receive the particular waste.

D. It is unlawful for any person to deliver **county solid waste** other than unauthorized waste as determined by the manager to any facility for final disposal other than the county-owned Cedar Hills regional landfill, unless the manager has provided prior written authorization for the disposal for public health, safety, welfare or planning purposes and the disposal is consistent with the adopted King County Solid Waste Comprehensive Plan.

KCC §10.08.020 (emphases added). The term "county solid waste" is defined in the King County Code. "'County solid waste' means all solid waste generated, collected or disposed within the county jurisdiction.

KCC §10.04.020(W). "'County jurisdiction' means the geographic area for which King County government has comprehensive planning authority

for solid waste management either by law, such as unincorporated areas, or by interlocal agreement, or both.” KCC §10.04.020(V). As KCC §10.08.020(D) makes clear, King County only requires disposal of “county solid waste” at Cedar Hills. County solid waste is solid waste generated, collected, or disposed within King County’s unincorporated areas, or within the County’s cities who have interlocal agreements with King County.<sup>1</sup>

### 3.1.3 Rabanco’s Collection Authority Is Granted by The WUTC.

Private haulers that collect solid waste in the state of Washington must either have a certificate of convenience and necessity issued by the WUTC (i.e. a “G Certificate”) or they must operate under a contract with a city or county.<sup>2</sup> In the late 1990’s the WUTC undertook an effort to update its mapping and information systems because the collection of certificates had fallen into disarray.<sup>3</sup> The WUTC’s reason for consolidating and reissuing the G-Certificates was simply to update and improve its mapping and information systems. *Id.* It sought to provide improved mapping as part of a new Geographic Information System and

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<sup>1</sup> Snohomish County also forbids the removal from Snohomish County of solid waste collected within the unincorporated areas of Snohomish County. SCC §7.35.125. That section provides as follows: “7.35.125 Unlawful to remove solid waste from county. Except as permitted by state law or exempt by virtue of this chapter, it is unlawful for any collecting agent or other person to deliver or deposit any solid waste generated and collected within the unincorporated areas of the county outside the borders of Snohomish county. This section shall be effective July 1, 1984.” SCC §7.35.125.

<sup>2</sup> See CP 147-48. RCW 81.77.040.

<sup>3</sup> See CP 148.



clean-up and consolidate for technical mapping and tracking reasons, decades of transfer and purchases of territorial and commodity collection authorities. *Id.* Rabanco participated in and acknowledges the *purely administrative purpose* for the consolidation of its certificates.<sup>4</sup>

In the spring of 2003, Rabanco<sup>5</sup> requested that the WUTC consolidate three of its certificates.<sup>6</sup> Among the several certificates that it held in 1999, Rabanco and its affiliated companies held Certificate G-12 that authorized it to collect solid waste in separate geographic areas each within one of a number of counties (e.g. King, Skamania, and Klickitat County).<sup>7</sup> Also, since at least 2001, Rabanco held Certificate G-41 that authorized it to collect solid waste in territories located wholly in King County and wholly in Snohomish County.<sup>8</sup> These certificates were eventually consolidated into Rabanco's current G-12 Certificate and that Certificate was "re-issued" on August 22, 2003 by order of the WUTC.<sup>9</sup> Rabanco relies upon that consolidated and re-issued certificate in asserting its claims under RCW 36.58.040.

"The WUTC issues permits that grant private hauling companies territorial franchises for providing collection services. Rather than

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<sup>4</sup> See CP 228.

<sup>5</sup> Rabanco is a wholly-owned subsidiary of Allied Waste, Inc., the second largest solid waste company in the nation.

<sup>6</sup> See CP 149.

<sup>7</sup> See CP 208-16.

<sup>8</sup> See CP 205-06.

<sup>9</sup> See CP 154-55.

awarding franchises on a county-by-county basis, the WUTC grants franchises in **parts of counties.**<sup>10</sup> Rabanco states that the WUTC has issued it a certificate authorizing Rabanco to collect municipal solid waste (“MSW”) in a geographic area lying in more than one county.<sup>11</sup> However, this statement is inaccurate.

In fact, Rabanco admits that it operates no cross-county collection areas are part of its G-12 Certificate. King County asked:

INTERROGATORY NO. 58: Please Identify each and every truck and/or route that either (a) commences a collection route within King County that includes collection of MSW in territory outside of King County or (b) commences a collection route outside of King County that includes collection of MSW within King County.

ANSWER: Subject to and without waiving its objections, no current routes include areas both within and outside King County.<sup>12</sup>

None of Rabanco’s individual authorized collection areas lie in more than one county. Instead, Rabanco’s G-12 Certificate authorizes it to collect municipal solid waste in distinct geographic areas that lie wholly within different counties.<sup>13</sup> That is, Rabanco’s Certificate contains an amalgam of individual geographic areas that each lie wholly in individual counties and do not cross county borders. As Rabanco states, its collection territory includes only individual “parts” of several different counties.<sup>14</sup>

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<sup>10</sup> Rabanco’s Brief p. 3 (emphasis added).

<sup>11</sup> Rabanco’s Brief pp. 1, 3, 7 and 9.

<sup>12</sup> See CP 219.

<sup>13</sup> See CP 126-140( Rabanco’s G-12 Certificate)

<sup>14</sup> Rabanco’s Brief p. 7.

3.1.4 The Issue on Appeal is Properly Limited to an Interlocal Agreement between King and Snohomish County.

In its opening Brief to this Court, Rabanco contends that it has authority to collect in geographic areas of a number of counties including King, Snohomish and Klickitat Counties. Appellant's Brief at ¶¶ 9, 14, 15. Indeed, Rabanco goes so far as to argue that: "If King County opposes the disposal of solid waste at a less expensive landfill such as the one in Klickitat County (where Rabanco also has collection authority pursuant to its WUTC certificate), King County must reach an [interlocal] agreement with Klickitat County" *Id.* at 14.

However, in its First Amended Complaint, Rabanco limits its claim to the absence of an interlocal agreement between King County and Snohomish County. Rabanco pled as follows:

81. There is no interlocal agreement between King County and Snohomish County governing the disposal of solid waste.

82. The WUTC has issued a permit to collect solid waste in a geographic area lying in both King County and Snohomish County.

...

84. King County has made these threats [to enforce compliance with KCC 10.08.020] despite no legal authority to require the final

disposal of solid waste collection pursuant to Rabanco's WUTC permit at the county-owned Cedar Hills Landfill.<sup>15</sup>

Thus, while Rabanco seeks to broaden the issue on appeal, the only proper issue before this Court is whether an interlocal agreement is required between King County and Snohomish County. None of the multiple geographic areas in which Rabanco is authorized to collect solid waste include both King County and Snohomish County territory.

#### 4. SUMMARY OF ARGUMENT

RCW 36.58.040 grants counties the authority to designate disposal sites for solid waste generated in and collected in that county. King County has designated its Cedar Hills Landfill as the disposal site for King County solid waste. RCW 36.58.040 further provides that if a private hauler has collection authority for an area that lies in more than one county, then the affected counties must have an interlocal agreement as to where the "mixed-county" combined waste will be disposed.

The legislative history and policy considerations support the plain meaning of RCW 36.58.040. The purpose of the statute is to prevent inter-county conflicts over the final disposal of combined solid waste collected in more than one county, and not impose unnecessary restrictions on counties that regulate their own solid waste. Also, RCW 36.58.040 exists to protect an individual county's investment in its

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<sup>15</sup> See CP 466.

own solid waste management system. Before a county commits to investing in its own solid waste management system, it is assured that it will be able to designate that the county's own waste will be disposed of using the county's system.

Appellant Rabanco's collection authority is for the collection of waste in separate, distinct geographic areas, none of which cross King County borders. Because Rabanco does not have collection authority for "a geographic area lying in more than one county," as the statute requires to trigger the interlocal agreement provision, King County can designate the disposal site of the waste collected wholly in unincorporated King County – just as it has done in King County Code §10.08.020.

Because Rabanco does not have collection authority for any territory or area that lies in both King County and another County, the interlocal agreement provision of RCW 36.58.040 does not apply to this matter.

Logic and the legislative history of RCW 36.58.040 both point to the statute addressing a potential problem or conflict when a collection area actually crosses county borders. RCW 36.58.040 need not, and does not, concern itself with the happenstance of a private hauling company having collection operations in parts of, for example, King County and Spokane County.

## 5. ARGUMENT

### 5.1 Standard For Review

The trial court resolved Appellant Rabanco's motion for partial summary judgment on RCW 36.58.040 by granting summary judgment in favor of King County. Rabanco asks this Court to reverse the trial court's ruling and direct it to enter partial summary judgment in favor of Rabanco.

An appellate court reviews a ruling on summary judgment *de novo*. *Jones v. Allstate Insurance Company*, 146 Wash.2d 291, 300, 45 P.3d 1068 (2002). The appellate court is in the same position of reviewing the materials submitted on summary judgment as the trial court. *Id.* The appellate court does not consider findings of fact or conclusions of law as they are superfluous to the appellate court's decision making process. *Id.*

### 5.2 The Plain Reading of the Statute

The plain and ordinary meaning of the statute can be the starting point and ending point of this Court's analysis.<sup>16</sup> RCW 36.58.040 provides in relevant part:

A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to Chapter 70.95 RCW. However, for any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of Chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

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<sup>16</sup> Rabanco's Brief p. 7.

RCW 36.58.040. (emphasis added.)

5.2.1 The Authority Granted by RCW 36.58.040.

The first part of the statute sets forth the authority granted by RCW 36.58.040:

A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to Chapter 70.95 RCW.

RCW 36.58.040. Pursuant to RCW 36.58.040, King County established a final disposal site designation in King County for solid waste collected in King County. KCC §10.08.020.

5.2.2 A Single Collection Area Lying in More than One County.

Each county's authority to designate disposal sites for that county's own waste could lead to inter-county conflicts if a private hauler's waste collection authority encompasses a geographic area lying in more than one county. In this particular instance, RCW 36.58.040 imposes the obligation for an interlocal agreement among affected counties:

However, for any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of Chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

RCW 36.58.040.

This provision of RCW 36.58.040 applies only when the WUTC authorizes a private hauler to collect waste in a single area that encompasses territory in more than one county, i.e. when a private hauler has authorization for “collection in a geographic area lying in more than one county.” In that situation, a private hauler would collect waste partially from County A and partially from County B.

This presents a problem for the two involved counties – which county decides where the “mixed-county” combined waste goes? In that circumstance, and in that circumstance only, an interlocal agreement between County A and County B is appropriate for the two “involved counties” to agree upon the destination of the “mixed-county” waste. This is the only circumstance in which RCW 36.58.040 mandates an interlocal agreement between the affected counties.

### 5.2.3 Rabanco Does Not Collect in Any Territories That Cross County Boundaries.

When a private hauler only has authority to collect and dispose of waste collected wholly within County A, an interlocal agreement with County B is not necessary because County B’s waste is not involved. This is the case even if a private hauler has the authority to collect waste wholly within County A, and wholly within County B (if that authority is limited to a collection area that does not lie in both counties).

Therefore, a private hauler can have authority to collect in a geographic area that lies wholly within County A and have authority to



collect in a geographic area that lies wholly within County B. This authority does not invoke the interlocal agreement provision of RCW 36.58.040 because an interlocal agreement between the two counties is not necessary where there would be no “mixed-county” waste. In this situation, a county may designate a disposal site or sites for all solid waste collected in the unincorporated areas of the county – just as King County has done in King County Code § 10.08.020.

The King County ordinance at issue (KCC §10.08.020) only applies to solid waste collected and disposed within King County, not solid waste collected in other counties. The interlocal rule in RCW 36.58.040, the sole authority upon which Rabanco relies, does not apply here because there is no cross-county collection of MSW and consequently no opportunity for confusion of appropriate disposal sites.<sup>17</sup> Rabanco’s G-12 Certificate does not authorize it to collect waste in a geographic area that lies in part of one county and in part of another county. Rather, Rabanco’s certificate contains an amalgam of individual geographic areas that each lie wholly in individual counties and do not cross county borders.

### **5.3 The Trial Court Properly Followed the Statute’s Plain Meaning.**

Under the plain language of RCW 36.58.040, a county cannot designate a location for disposal of solid waste collected pursuant to a

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<sup>17</sup> See CP 219 (Rabanco admitting that it has not cross-county collection routes).

WUTC permit covering a geographic area lying in more than one county unless those counties have an interlocal agreement addressing such disposal. King County could not direct waste collected partially in Snohomish County and partially in King County to be disposed of in King County – without an interlocal agreement with Snohomish County. Just as Snohomish County could not direct waste collected partially collected in Snohomish County and partially collected in King County to be disposed of in Snohomish County – without an interlocal agreement with King County.

In making its argument, Rabanco completely ignores the fact that the WUTC did not give Rabanco authority to collect waste partially in one county and partially in another county. Each territory designated in Rabanco's Certificate lies wholly in a particular county. Each of those counties can designate the disposal site that it chooses for its own waste. To construe the statute as Rabanco argues could require an interlocal agreement between and among *all* counties in the State if a private hauler were to obtain authority to collect in even the smallest areas of each county. If one of those several counties refuses to participate, all the other counties would be barred from designating disposal sites for waste collected within their borders. This consequence of Rabanco's stilted reading of RCW 36.58.040 was not the purpose for the statute and was not the intent of the legislature.

Rabanco mistakenly claims that “[b]ecause the WUTC permit grants Rabanco “a collection area” lying in more than one county, King County only has authority to regulate the disposal of solid waste pursuant to interlocal agreements with those other counties.”<sup>18</sup> Again, Rabanco misses the point that its Certificate does not grant Rabanco collection authority in a geographic area lying in more than one county as required by the statute. Rabanco’s collection areas lie wholly within the counties in which they operate. An accurate statement of the state of affairs would be that Rabanco’s G-12 Certificate grants it authority to collect waste in multiple, separate geographic areas that each lie wholly within separate counties.

5.3.1 The Trial Court Properly Ruled That The Statute Should Not Be Read To Include The Plural.

After arguing that the “starting point, and ending point, of the court’s analysis”<sup>19</sup> is the plain language of the statute, Rabanco changes course and argues that the statute must be interpreted by resorting to inapplicable statutory construction rules. Rabanco attempts to support its mistaken interpretation by claiming that the “the use of the singular necessarily includes the plural.”<sup>20</sup> Rabanco argues that because “the use of the singular necessarily includes the plural” that RCW 36.58.040 should be read to apply when:

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<sup>18</sup> Rabanco’s Brief pp. 7-8.

<sup>19</sup> Rabanco’s Brief p. 7.

<sup>20</sup> Rabanco’s Brief p. 8.

[A] certificate is for collection in a geographic area or geographic areas in more than one county.<sup>21</sup>

Rabanco argues that because its certificate authorizes it to collect waste in multiple counties (i.e. geographic areas in more than one county) that the local rule requirement in RCW 36.58.040 applies.<sup>22</sup> However, the trial court in a letter ruling from Judge Douglass North<sup>23</sup> properly dismissed Rabanco's argument because RCW 1.12.050 provides:

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. . .

RCW 1.12.050 (emphasis added). Because RCW 1.12.050 uses the term "may", the trial court properly refused to adopt Rabanco's argument. The trial court reasoned that logic and legislative history dictate that the legislature was addressing a potential problem when a collection area crossed county borders.<sup>24</sup> Therefore, Rabanco's skewed "the use of the singular necessarily includes the plural" and such an interpretation is inapplicable.

Here, adding a plural would change the meaning of the statute. For example, if Rabanco had authority to collect in part of Pend Oreille County and part of Island County, under its erroneous interpretation, Rabanco would force Island and Pend Oreille Counties to enter an interlocal agreement before Island County could designate a site for

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<sup>21</sup> Rabanco's Brief p. 8.

<sup>22</sup> Rabanco Brief p. 8.

<sup>23</sup> See Letter Ruling dated June 7, 2004 at Rabanco's Brief Appendix at pp. 9-10.

<sup>24</sup> See Appendix to Rabanco's Brief p. 9 (Judge North's June 7, 2004 letter ruling).

disposal of Island County waste or Pend Oreille County could designate a site for Pend Oreille County waste. If the private hauler later added new territory in Whahkiakum County, Island and Pend Oreille each would have to negotiate and agree on an interlocal agreement with Whahkiakum as well (and, so on and so on). Under Rabanco's reading of the statute, if any *one* county did not enter into an interlocal agreement, *none* of the counties could designate a waste disposal site. And, while the counties negotiated, none of their preexisting disposal site designations could be enforced. Rabanco's strained reading would undercut the very premise of, and basic purpose for, the authority granted by RCW 36.58.040: that each county be allowed to designate a site or sites for the disposal of that county's solid waste.

Rabanco's argument that the statute should be read in the plural renders the interlocal requirement a superfluous burden on counties that seek only to designate disposal sites for their own waste. Accordingly, the trial court properly rejected Rabanco's reliance on *Hinton v. Johnson*, 87 Wn. App. 670, 942 P.2d 1061 (1997). In that case the court stated "Generally we construct 'a' as applying to the plural as well as the singular, *unless a contrary intention appears on the face of the statute.*" *Id.* at 675 (emphasis added). Because there is a contrary intention on the face of the statute as set forth above, RCW 1.12.050 does not apply. As

even Rabanco puts it, “[t]he Court should interpret the statute as written”<sup>25</sup> and not read the plural into the statute in order to change its meaning.

#### **5.4 The Legislative History Supports King County’s Plain Reading of the Statute.**

The court may resort to statutory construction in this matter, where RCW 36.58.040 is subject to varying interpretations. Here, the legislative history of this statute supports King County’s interpretation. The Bill Digest for SSHB 721 supports King County’s plain reading of the statute:

Authorizes each county to provide for the establishment of a system of solid waste disposal for all the unincorporated areas of the county or portions thereof, to designate disposal sites, and provide for processing and conversion of solid waste into other valuable products. Requires designation of sites **for collections** by state licensed private haulers **from multicounty areas** to be made under an interlocal agreement between the involved counties.<sup>26</sup>

This digest for the then-new law clearly demonstrates that the legislature intended that only when a county designated sites “for collections...from multi-county areas” was an interlocal agreement required. The legislature did not intend to require an interlocal agreement among counties in every instance where a private hauler has collection authority in different counties.

Washington courts regularly rely upon such digests and bill reports to determine the intent of the legislature. *See, e.g. State v. Dana*, 84 Wn.

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<sup>25</sup> Rabanco’s Brief p. 8.

<sup>26</sup> *See* CP 219 (Bill Digest for SSHB 721 prepared by Local Government Committee) (emphases added).

App.. 166, 178, 926 P.2d 344 (1996). See also *Pumilite Tualatin, Inc. v. Cromb Leasing Inc.*, 82 Wn. App.. 767, 770, 919 P.2d 1256 (1996) (citing bill report to demonstrate that legislative history shows the problem at which the legislation was aimed); accord, *Seattle Times v Benton County*, 99 Wn.2d 251, 255 n.1, 633 P.2d 113 (1983).

In addition to the Bill Digest, the Senate floor debate on SSHB 721 confirms King County's interpretation. The Journal of the Senate reports Senator North's response to an inquiry from Senator Rasmussen, who asked "[W]hat are the difficulties that King County is having that they are sponsoring this bill. That might clear up the matter." Senator's North response confirms King County's argument above:

At present when you have a private collection franchise if you want to pick up the garbage in the unincorporated part of the county and you want to truck it down to Senator Talley's Cowlitz County and dump it there, you can do so. This bill would prohibit that. If a private collection group wants to take its garbage to another county then it would be up to an inter-local cooperation agreement between the two counties to work this out so that it is very clear as to who is receiving the ultimate garbage disposal. This also assures King County or any county that it is going to continue to have in the future quite a garbage disposal business to justify that huge capital investment [in establishing and improving its solid waste management system].<sup>27</sup>

The Senate adopted the bill two days later on a 42-2 vote.<sup>28</sup> The legislature strengthened county control over a county's solid waste. Only

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<sup>27</sup> See CP 223 (Journal of the Senate, Comments by Senator North, Forty-Second Day, February 16, 1976).

<sup>28</sup> See CP 225 (Journal of the Senate, Comments by Senator North, Forty-Fourth Day, February 18, 1976).

in the event of cross-county hauling, where disputes between counties are possible, were interlocal agreements required.

Rabanco claims that this comment by Senator North supports its argument, rather than King County's plain reading of the statute.<sup>29</sup> Rabanco asserts that this legislative history shows that the interlocal agreement requirement in the statute limits county authority.<sup>30</sup> However, Senator North's comments actually support King County's reading of the statute, not Rabanco's mistaken interpretation.

Senator North's comment can be broken down into three parts. First, she gives an example that mirrors the example set forth by King County above. If a private hauler collects waste in one county and wants to take it to another county (just as Rabanco purports to do here) – this statute prohibits that – because it allows counties to designate disposal sites for the waste collected in their own county.

Second, if a private hauler wants to take the garbage collected in one county to another county – then *it would be up to the two counties* (not up to the private hauler) to work this out (via interlocal agreement) – so it would be clear who is receiving the waste. Because the counties get to decide where their own waste goes, if a private hauler wants to take county waste out of the county – it is up to the county to decide if it will allow the private hauler to do this. In that situation, if County A decides

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<sup>29</sup> Rabanco's Brief p. 12.

<sup>30</sup> Rabanco's Brief p. 12.



to allow its waste to go to County B, then County A must have an interlocal agreement with the County B.

Finally, Senator North's comments show the policy behind RCW 36.58.040. If a county invests substantial resources in establishing and improving its solid waste management system, it should be able to designate the disposal site for the waste collected in the county to protect its investment. If a private hauler could freely take County A's waste to County B, then County A's investment in its own solid waste management system would be undermined. RCW 36.58.040 was aimed at eliminating the county's investment risk and encouraging a county to invest in itself.

**5.5 Policy Considerations Support King County's Plain Reading of the Statute.**

Rabanco claims that the trial court erred because it relied on King County's arguments relating to policy considerations.<sup>31</sup> Rabanco also sets forth its own policy argument by stating that it could dispose of waste more cheaply than the County.<sup>32</sup> Rabanco's "policy" argument is fundamentally flawed. First, it assumes that King County – as opposed to a private nation-wide hauling conglomerate – charges its own citizens an artificially high rate. Second, Rabanco ignores the fact that funds received by King County from its waste disposal operation directly benefit the solid waste recycling and other programs for the citizens of King County. On

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<sup>31</sup> Rabanco's Brief p. 10.

<sup>32</sup> Rabanco's Brief pp. 9-10.

the other hand, funds received by Rabanco presumably go to their shareholders and provide no benefit the citizens of King County.

The true policy considerations and purpose for adopting RCW 36.58.040 are twofold: (1) halting the historic practice of collecting and exporting solid waste in and from one county to landfills in another county, despite objections by the receiving county<sup>33</sup> and (2) ensuring that Counties' investments in the "system of solid waste disposal" that the new law authorized would not be undermined by a private hauler's disposal of solid waste in other counties.<sup>34</sup>

## 6. CONCLUSION

Despite straining to do so, Rabanco cannot change the plain meaning and clear intent of RCW 36.58.040. The statute authorizes a county to designate a disposal site for the waste collected in the unincorporated parts of that county – just as King County has done here. Only where a private hauler has collection authority in a single geographic area lying in more than one county (i.e. an area that lies in part of one county and in part of another a county) is an interlocal agreement required to designate the disposal site of the combined, "mixed-county" waste. Because Rabanco's G-12 Certificate contains no territory that crosses county borders, no interlocal agreement may be necessary under RCW 36.58.040.

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<sup>33</sup> See, e.g. CP 225 (Senator Rasmussen's floor comments).

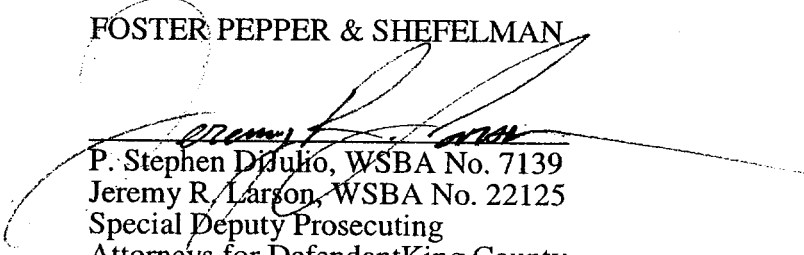
<sup>34</sup> See §IV.B.4.c, supra for the legislative history of RCW 36.58.040.

For the foregoing reasons, King County respectfully requests that this Court deny Appellant Rabanco's appeal and affirm the proper ruling of the trial court.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of September, 2004.

NORM MALENG  
PROSECUTING ATTORNEY

FOSTER PEPPER & SHEFELMAN



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Attorneys for Defendant King County

DECLARATION OF SERVICE

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Susan G. Bannier, being first duly sworn upon oath, deposes and states as follows: I am over the age of twenty-one years, a citizen of the United States, am not a party to the above-entitled action, and am competent to be a witness therein.

On the 30th day of September, 2004, I contracted with Washington Legal Messenger Service to file and serve Brief of Respondent King County, on the following:

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

  
SUSAN G. BANNIER