
Important New Court Decision on a City's Utility Tax Authority

Posted on May 20, 2014 by Bob Meinig

In a decision issued today (5/20/2014), Division III of the state court of appeals decided that a code city has the legal authority to impose its utility tax on the revenues of a public utility district's provision of water service to customers within the city limits, except to the extent that the district's revenues "were derived from governmental activities." The court's decision in *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1* will have significance for all classes of cities and for other municipal entities, such as water-sewer districts, that provide utility service within cities.

In reaching its decision, the court first had to determine the scope of a prior state supreme court decision, *King County v. Algona*, 101 Wn.2d 789 (1984), which held that the City of Algona did not have the authority to impose its business and occupation tax on revenues generated by a King County solid waste plant located in the city. The court in *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1* determined that the supreme court's decision in *King County v. Algona* meant that a governmental entity's immunity from taxation applied only to the sovereign, or governmental, activities of that entity, and not to its proprietary activities. When a municipal entity, such as a public utility district or a water-sewer district, provides utility services, it is, for the most part, acting in its proprietary capacity.

When is a governmental entity acting in its "proprietary capacity"? Quoting the state supreme court, the court of appeals noted that a municipal corporation acting in that capacity "acts as the proprietor of a business," as it does when it operates a utility. Putting it another way, the court of appeals stated that, "If it operates to serve customers, a utility is serving a proprietary function."




However, some aspects of a municipal utility's operation may be governmental, and, as such, its revenues from those aspects of its operation may not be taxed. For example, in providing fire hydrants for fire protection purposes, a municipal corporation is acting in its sovereign or governmental capacity. So, if a municipal utility's revenues include recovering the costs of fire suppression water facilities and services, those revenues may not be taxed.

Although the court's decision concerned the taxing authority of code cities, other classes of cities have similar authority to tax all kinds of businesses within their boundaries, including municipal utilities. See RCW [35.22.195](#) (first class cities); RCW [35.23.440\(8\)](#) (second class cities); and RCW [35.27.370\(9\)](#) (towns).

Also, although the court's decision addressed the city's taxing of the water utility revenues of a public utility district, the decision will affect other municipal corporations, such as water-sewer districts, that provide utility services – and not just water – within cities.

The court's decision here may, of course, be appealed. But its reasoning appears solid to me. Stay tuned!

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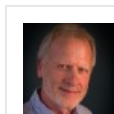
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About Bob Meinig

Bob has written extensively on the state Open Public Meetings Act and on municipal incorporation and annexation. At MRSC, he has also advised local governments for over 24 years on diverse legal issues.

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2 Responses to *Important New Court Decision on a City's Utility Tax Authority*



Rob Orton says:

May 22, 2014 at 9:35 am

Nice article on utility taxes and curious, too because I am sure the City of Port Angeles was able to levy the tax on Clallam PUD facilities (power and water) during the time I worked for the City. This was miniscule, however.

MSRC continues to be such a wonderful resource for us!

[Reply](#)



Bob Meinig says:

May 22, 2014 at 11:42 am

Rob – It's not that the city didn't, prior to this court decision, have that authority; it just wasn't clear whether the city did. Now, unless this decision is overruled, it is clear that the city has that authority. Also, as to a PUD's provision of electricity, RCW 54.28.070 has long provided cities with the express authority to tax those revenues.

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