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Construction Demolition Debris/Industrial Solid Waste: Federal Court Addresses Private Hauler's Challenge to Solid Waste Ordinance

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The Sixth Circuit Federal Court of Appeals addressed in a November 18th opinion a challenge by Burkhead & Scott, Inc. ("BSI") to the City of Hopkinsville, Kentucky Solid Waste Ordinance ("Ordinance"). See *Burkett & Scott, Inc. vs. City of Hopkinsville, Kentucky and Hopkinsville Solid Waste Authority*, 2016 WL 6818857.

BSI is described as a firm that collected and hauled construction demolition debris and industrial solid waste within the City of Hopkinsville ("City").

Since BSI's origination in 1998, both the Company and its customers were informed by the City that its operations were illegal. Nevertheless, BSI continued to operate apparently believing it was exempt from the Ordinance because of the nature of its operation.

In 2011, BSI received a letter from the Hopkinsville Solid Waste Authority ("HSWA") stating that the Company had five (5) days to remove its equipment from the City. The letter included a copy of the City's Solid Waste Ordinance. A relevant portion of the Ordinance stated:

It shall be unlawful for any person or firm, except pursuant to temporary collection service permits, to engage in or conduct any collection of trash or building material within the City's corporate limits. Any individual or firm providing the service without proper consent shall be in violation of this chapter and subject to a civil penalty as established herein. Collection at each premises shall constitute a separate offense.

BSI argued that the ordinance did not apply to the material it was handling. Specifically, it stated that hauling construction demolition debris and construction solid waste was not encompassed by the Ordinance. The company took the position that the Ordinance encompassed commercial refuse and garbage. BSI stated it did not haul these types of wastes.

BSI sold its land and equipment in 2012 after two of its customers switched their accounts to HSWA.

BSI subsequently filed a Federal District Court action against both the City and HSWA asserting two causes of action:

1. The flow control provisions of the City's Solid Waste Ordinance violated the Commerce Clause by discriminating against the interstate market for solid waste disposal services;

2. The Defendants tortuously interfered with business relationships between BSI and its current prospective clients.

The Federal District Court granted the Defendants' Summary Judgment Motion and dismissed the tortious interference claim. BSI had previously dropped the argument related to flow control.

One of the issues addressed by the 6th Circuit Court of Appeals was whether BSI could sustain each of the required elements of a tortious interference claim.

The Defendants argued that one of the elements to recover under Kentucky law for tortious interference involved the existence of a valid business relationship or expectancy. They argued that BSI had no valid business relationship or expectancy because its operations violated the City's Solid Waste Ordinance.

BSI responded that despite the fact that it never obtained a permit, its collection and disposal of industrial waste and construction demolition debris fell outside the scope of the Ordinance.

The Court upheld the lower Court's analysis of its argument noting:

...as the District Court pointed out, construction demolition debris plainly constitutes "building material" under the Ordinance's definition: "Solid Waste which results from the collection, remodeling, repair and demolition of structures. Hopkinsville Code of Ordinances §93.01. Because BSI collected building materials out of permit in violation of the Ordinance, BSI cannot show that it had a valid business relationship or expectancy or that the Defendant's acted with malice in advising its customers that its activities were legal.

As a result, the 6th Circuit Court of Appeals upheld the Federal District Court's granting of summary judgment.

[A copy of the opinion can be downloaded here.](#)