

Flow Control/Solid Waste: Federal Appellate Court Addresses Constitutional Challenge



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author: Matthew Fiorillo

The Tenth Circuit Court of Appeals (“Court”) addressed in a May 14th opinion a constitutional challenge to a Wyoming City’s flow control ordinance. See *Dirty Boyz Sanitation Serv. Inc., v. City of Rawlins, Wyoming*, No. 16-8123, 2018 WL 2188901 (10th Cir. May 14, 2018).

The Court affirmed the United States District Court for the District of Wyoming’s ruling in favor of the City of Rawlins, Wyoming (“Rawlins”) against Dirty Boyz Sanitation services (“Dirty Boyz”).

At issue was an agreement between Rawlins and Dirty Boyz for local garbage collection and disposal beginning in 2008. In 2010, Rawlins’s operating permit for its landfill expired, and the Wyoming Department of Environmental Quality (“WDEQ”)—and Rawlins—decided to close the landfill.

Rawlins began transporting garbage in 2011 to nearby Casper, Wyoming’s landfill. In an effort to facilitate transportation of garbage to Casper, Rawlins opened a transfer station. The facility allowed consolidation of garbage collected within city limits for the journey to Casper. In 2012, Rawlins considered enacting a flow-control ordinance requiring haulers to convey local garbage to Rawlins’s transfer station. However, that ordinance failed.

Dirty Boyz—as a direct result of the issues following the closure of Rawlins’s landfill—began hauling garbage to landfills in Rock Springs, Wyoming and Larimer County, Colorado. Based on cost factors, rather than utilizing the Rawlins transfer station for trash delivery to Casper, Dirty Boyz decided to construct its own transfer station. It applied for a construction permit, which was denied by Rawlins because the City’s population could not support more than one transfer station. However, a year after Rawlins’s denial, Carbon County and WDEQ approved the permit. Construction of Dirty Boyz’s transfer station began soon after.

As a part of the construction process, Dirty Boyz sought a business grant from the State Small Business Credit Initiative. In order to proceed, Dirty Boyz needed a statement from Rawlins that the transfer station would provide an economic benefit to the city. Rawlins’s City Council voted against producing the statement.

Shortly after the vote, on November 10, 2015, Rawlins discussed amending its previous agreement with Dirty Boyz. Rawlins addressed a desire to withdraw any flow-control requirement following its payments to close the landfill. Five years after Rawlins’s original flow-control ordinance failed to pass, it was enacted in January of 2016. The ordinance required all garbage “generated and/or accumulated and/or collected” in the city to be taken to Rawlins’s transfer station.

Three months later Dirty Boyz completed construction on its own transfer station. As a result of the ordinance, Dirty Boyz used its station for garbage collected outside of the city for transportation to two landfills in Colorado. Based on the ordinance requiring Rawlins's transfer station to be used for garbage collected in the city, Dirty Boyz filed suit in federal court challenging the ordinance's authority.

Dirty Boyz argued:

1. the ordinance was a violation of the Contracts Clause of the United States Constitution; and
2. Rawlins's ordinance was preempted by the Federal Aviation Administration and Authorization Act ("FAAAA").

The Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties. To determine whether a state law has impaired a contractual obligation in violation of the Contract Clause, courts ask whether the change in state law has operated as a substantial impairment of a contractual relationship. This analysis has three components:

1. whether there is a contractual relationship;
2. whether a change in law impairs that contractual relationship; and
3. whether the impairment is substantial.

In analyzing Dirty Boyz's argument the Court found that, "[d]espite Dirty Boyz's claim that a right to choose disposal sites is implicit in the agreement's language, the agreement's reference to garbage disposal doesn't give rise to a right to choose any disposal site." Further, because there was no ambiguity in the contract between Rawlins and Dirty Boyz, Dirty Boyz did not possess the unfettered right to dispose of the garbage where it wished.

Dirty Boyz also claimed that the absence of a specific provision prohibiting use of other landfills allowed Dirty Boyz to use whichever landfill it wanted. It argued that because the agreement did not restrict landfill use, Rawlins acquiesced to Dirty Boyz's choice of landfill.

The Court found this contention unpersuasive, specifically based on the City's choice to enact its ordinance with knowledge of its contract with Dirty Boyz. Further, by reading the ordinance, Dirty Boyz argued that the flow-control ordinance was unnecessary, because the agreement granted Dirty Boyz the right to choose its disposal site. The Court agreed with Rawlins, concluding that the ordinance did not have an impact on the agreement itself, because it did not give Dirty Boyz the contractual right to take its collected trash to any location.

Dirty Boyz's preemption argument was also rejected. Federal laws "preempt" contrary state enactments based on the Supremacy Clause of the United States Constitution. It provides that the federal laws of the United States are the most supreme laws of the land—and where there is a conflict, federal law applies.

Express preemption—as is relevant in Dirty Boyz's argument—restricts the use of state laws that fall within the scope of the federal provision precluding the state action. The FAAAA specifically restricts states from enforcing laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." In several cases, the Supreme Court has cautioned that the FAAAA "does not preempt state laws affecting carrier prices, routes, and services 'in only a tenuous, remote, or peripheral . . . manner.'" See *Dan's City Used Cars*, 569 U.S. 251, 261 (2013); *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008). Further, "it is not sufficient that a state law relates to the 'price, route, or service' of a motor carrier in any capacity: the law must also concern a motor carrier's transportation of property." *Id.* (emphasis added).

The Court's examination of the FAAAA provided no explanation as to what the word "property" means. If anything, the legislative history made a case against preemption, based on explicit language: "The

conferees further clarify that the motor carrier preemption provision does not preempt State regulation of garbage and refuse collectors. . . . [G]arbage and refuse are not considered property . . .”

Even if garbage collection fell within the preemptive scope of the FAAAA, the Court found that the ordinance’s effect on prices, routes, and services would be too insignificant to warrant preemption.

Imposing flow control was deemed too “far removed from Congress’s deregulatory purpose to warrant preemption.”

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