

# Columbia County Solid Waste Management System: Arkansas Court of Appeals Addresses City of Magnolia's Challenge to Allocation of Sales/Use Tax Revenues

09/16/2019

The Court of Appeals of Arkansas ("Court") addressed in a September 11th opinion the City of Magnolia, Arkansas's ("Magnolia") challenge to the allocation of a Columbia County sales and use tax to finance a Solid Waste Management System. See *The City of Magnolia v. Dennis Milligan in his Official Capacity as Treasurer of the State of Arkansas, et al.*, No. CV-18-516.

Magnolia argued it was entitled to a per capita share of the revenues from the sales and use tax.

The Arkansas General Assembly in the early 1990s enacted legislation intended to encourage cooperation between counties and municipalities in the same region to jointly address the various aspects of solid waste management. The rationale for the effort included concern that individual municipalities and counties might not have the ability to adequately fund landfills, transfer stations, etc., to meet heightened environmental protection standards,

A component of this effort was legislation that provided some ability to fund infrastructure and operational capabilities associated with this regional approach.

The Court notes that Magnolia in 1992 needed to close its landfill after the United States Environmental Protection Agency identified certain environmental contaminants in the groundwater. The landfill was apparently Columbia County's key source of landfill capacity. Both the County and its cities utilized the landfill. As a result, a new source of landfill capacity was needed.

The Arkansas General Assembly amended the Arkansas Tax Code in 1992 to allow local governments to levy sales and use taxes to finance:

. . . the operation, maintenance, or rental expense of a Solid Waste Management System.

Columbia County enacted an Ordinance that levied a one percent sales tax throughout the County. A special election requesting approval of the tax was held and approved by the voters. Further, Columbia County and the cities entered into a cooperative agreement to establish a County-Waste Solid Waste Management System. The system would be administered by the County and financed through the one percent tax.

The Columbia County Solid Waste Management System is stated to have “worked well until 2015.” At that point the City of Magnolia filed a Petition for Declaratory Judgment against the Arkansas Treasurer, Columbia County Judge, and County Treasurer. Magnolia argued that it was entitled to a per capita share of the revenue from the sales and use tax.

The basis for Magnolia’s argument was stated as:

. . . that in the absence of a cooperative agreement or other voter-approved means of directing all the tax proceeds to the County, Arkansas law required the Treasurer to remit Magnolia’s per capita share of the proceeds from the sales and use tax directly to the City.

The Pulaski County Circuit Court Judge disagreed and granted summary judgment in favor of the Arkansas Treasurer, Columbia County, and the County Treasurer.

The Court’s opinion undertakes a review of the passage of the relevant Arkansas legislation, enactment by the Columbia County Quorum Court of Ordinance 92-2, and the results of the Special Elections. Further, it reviews the inter-local agreement in which the various parties determined the sales and use tax was “pledged for solid waste management purposes and no other” and “the best means of financing a Solid Waste Management System for all persons residing within Columbia County.”

A 1998 amendment by the Columbia County Quorum Court is discussed that provided 25 percent of the total net collections would be used to retire bonds that the County issued to finance a new County jail. The Ordinance was approved by the voters and also repealed Section 5 of the prior Ordinance (92-2) which required the cities and the County to execute the inter-local agreement pledging their shares of the tax proceeds to the new Solid Waste Management System. It stated that:

. . . all Net Collections are paid directly to the County under the Authorizing Legislation and are not divided among the County and any municipalities therein. . . therefore Section 5 of Ordinance No. 92-2 is hereby repealed and deleted.

In 2015 Magnolia requested that the Arkansas Treasurer remit to the City its per capita share of the proceeds of Columbia County’s one percent sales and use tax. This was premised on the argument that the inter-local agreement had been repudiated and that the elections authorizing the sales and use tax were silent as to any method of distribution of the tax.

The Arkansas Treasurer disagreed and stated he was required to follow Section Ark. Code Ann. 26-74-214(b)(2)(B)(i). The Court’s analysis includes a discussion of the Arkansas Local Government Bond Act. The Arkansas Treasurer and Columbia County’s argument included a reference to Ark. Code 14-164-333 which they stated required a direction to the per capita remittance provisions in Ark. Code Ann. 26-74-214.

The Court holds that Magnolia is not entitled to a per capita share under the controlling statutes. Further, based on the basis for this conclusion, it determines there is no need to address an additional argument by Magnolia that there is an illegal exaction.

The Court affirms the Pulaski County Circuit Court’s decision.

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