Arkansas Regional Solid Waste Management Districts: Arkansas Court of Appeals Addresses Dispute Over Statutory Fee Allocation

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

11/12/2019

The Arkansas Court of Appeals ("Court") addressed in an October 30th opinion a dispute between the Benton County Regional Solid Waste Management District ("Benton District") and the Boston Mountain Regional Solid Waste Management District ("Boston District"). See *Boston Regional Solid Waste Management District v. Benton County Regional Solid Waste Management District*, 2019 Ark. App. 488.

The dispute concerned the appropriate allocation of statutory fees related to the movement or disposal of solid waste within and between the two Districts.

Act 870 of 1989, codified as Ark. Code Ann. 8-6-701, et seq., established the original eight regional solid waste planning districts. The Commission, through the previously referenced statutory authority, has since granted a number of additional regional solid waste management districts. The regional solid waste management districts are intended to facilitate local governments in planning and overseeing municipal solid waste management programs and services. They also administer recycling grants and waste tire management programs.

The Court notes that Act 752 of 1991 gave the Arkansas Regional Solid Waste Management District Boards ("Boards") the authority to assess service fees for solid-waste collection services. However, the statute did not address the amount of the fees and whether they could be assessed on Districts that disposed of solid waste from an adjoining District. The relevant section is stated to have been rewritten by Act 209 of 2011 and the Boards were given the authority to:

. . . fix, charge, and collect rents, fees, and charges no more than two dollars ($2.00) per ton of solid waste related to the movement or disposal of solid waste within the District. . .

Further, conditions and circumstances under which fees may be assessed included

1. Districts shall determine by interlocal agreement how the districts shall:
    1. Assess and administer the fee; and
    2. Divide the fees.
2. If districts cannot reach an interlocal agreement regarding the division of the fees, then the fees shall be divided equally between the districts.

A prior interlocal agreement between the Boston and Benton Districts is described addressing waste originating in the Benton District and brought into the Boston District. Fees were stated to have been paid to the District by the company hauling the waste load to the landfill through a contract with a municipality or county government. It also provides that both Districts have a waste-assessment fee of $1.50 per ton on all solid waste:

- Generated in their respective Districts
- Brought into their District from outside their District
- Generated in their District and transported outside their District or the state

The fee would remain at $1.50 per ton unless both agreed to an increase.

The Districts are stated to have agreed to leave in place any contract for waste-assessment fees existing at the time of the agreement. Further, the fee would be paid entirely to the generating District. The Court describes “the essence of the agreement” as the District generating the waste receives the entire fee. The agreement was to expire on May 1, 2016.

The Eco-Vista Landfill in Tontitown is the destination for solid waste generated within the Benton District. It is located in the Boston District. No landfills are located in the Benton District.

The Benton District filed a Complaint for Declaratory and Injunctive Relief in the Benton County Circuit Court. It alleged that the Boston Mountain District refused to renew the relevant agreement. Instead, it is stated to have proposed a new agreement that would pay the Boston District $1.00 per ton for waste generated in Benton County and disposed of in the Benton District. The remainder of the proposed $2.00 per ton fee would be paid to the Benton District.

The Boston District alleged that the Benton District had not agreed to the new fee. It further alleged that the Boston District did not provide any services for which the Benton District will be required to pay the fees. This is stated to have amounted to an unjust enrichment of the Boston District. As a result, the Benton District asked the Court to enjoin the Boston District from collection of the fees.

The Benton District also sought a declaration:

- of the parties’ rights and obligations;
- that the Boston District is not entitled to any fees for services provided solely by the Benton District; and
- that Arkansas Code Annotated section 8-6-714 is unconstitutional.

The Benton County Circuit Court held that the equal division of the fee was an unjust enrichment and directed that the entire fee be retained by the Benton District. The rationale for the Circuit Court’s decision was that:

- fees collected by the Benton District were collected to provide required services for the citizens of Benton County;
- if the fees were reduced so as to allow the Boston District a portion of the fees, the services provided by the Benton District would be reduced and employees would be terminated;
- the reduction in services and elimination of employees would not otherwise be provided to Benton County citizens;
- the collection of additional fees by the Boston District is not necessary to increase services to the landfill operated by Waste Management (i.e., Eco-Vista Landfill);
- any additional fees collected by the Boston District would be used to fund its operating expenses and provide raises for staff or to increase employees and services; and
- allowing the Boston District to collect any fees from waste generated in the Benton District amounted to an unjust enrichment.

The Court on appeal first rejected the Benton District argument that the Circuit Court should have found Ark. Code Ann. § 8-6-714 unconstitutional. The Benton District was stated to have failed to file an effective Notice of Appeal from the Amended Order finding the statute constitutional.

The Boston District argues on appeal that the statute should be enforced as written because unjust enrichment is inapplicable. The Benton District responds that the statute is an illegal exaction.

The Court reverses noting all statutes are presumed constitutional. As a result, all doubts are resolved in favor of constitutionality. It concludes that unjust enrichment is not applicable in this instance.

The rationale for this conclusion is the parties did not have a written contract. It notes an interlocal agreement addresses the division of fees. Section 8-6-714(c)(3) provides a default rule that the Districts equally divide the fees. It is deemed irrelevant that a statute instead of a written contract supplies the disputed term.

The Court holds that unjust enrichment does not apply and that the Circuit Court should have applied Section 8-6-714. This would likely have forced the two Districts to negotiate an interlocal agreement acceptable to both regarding the division of the fees.

A copy of the opinion can be downloaded here.