

Recyclable Materials Franchise Agreement/Reno, Nevada: Federal Appellate Court Addresses Antitrust Challenge



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The United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”) in a May 18th unpublished opinion addressed a challenge to a Franchise Agreement between the City of Reno, Nevada, and a private company on antitrust grounds. See *Green Solutions Recycling, LLC v, Reno Disposal Company, Inc., et al.*, No. 19-15201.

The Franchise Agreement granted the Reno Disposal Company, Inc. (“Reno Disposal”) the exclusive right to collect both solid waste and many recyclable materials from businesses in the City of Reno.

Green Solutions Recycling, LLC (“GSR”) competes with Reno Disposal for recyclables in the City of Reno.

The City of Reno and Reno Disposal argued that GSR was violating the Franchise Agreement because of its collection of recyclable materials for a fee. Reno Disposal is stated to have sent correspondence to GSR’s customers informing them that they could be in violation of the City Code because of the violation of the Franchise Agreement.

GSR filed an action in the United States District Court alleging that the City of Reno and Reno Disposal violated Section 1 of the Sherman Act because they restrained trade in the market for recyclable materials.

The United States District Court entered summary judgment in favor of the City of Reno and Reno Disposal. The basis for the ruling was its holding that the doctrine of state-action immunity is applicable to the activities of local government if undertaken pursuant to a clearly articulated and affirmatively expressed state policy to displace competition.

In *Parker v. Brown*, 317 U.S. 341(1943), the United States Supreme Court determined that the Sherman Act does not limit the sovereign states’ autonomous authority over their own officers, agents and policies. It found no intent in the language or legislative history of the Sherman Act to do so. Consequently, the Supreme Court held that when a state, in adopting and enforcing a program, made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as a sovereign, imposed the restraint as an act of government the Sherman Act did not undertake to prohibit the restraint. Therefore, the states are generally free to adopt and implement policies that depart from the policies of the Sherman Act.

Subordinant political subdivisions such as municipalities are, however, not beyond the reach of the antitrust laws because of their status. They are not sovereign. Nevertheless, states can choose to

implement their policies through municipalities. Therefore, municipal conduct undertaken pursuant to state policy to displace competition with regulation or monopoly public service has been held to, in appropriate circumstances, qualify as state action exempt from the federal antitrust laws.

The Ninth Circuit noted that there are two elements to determine whether a local government's activities satisfy this requirement, which include:

1. whether the state legislature authorized the challenged actions of the local government; and
2. whether the legislature intended to displace competition with regulation.

The Ninth Circuit held that the market restraint in this situation was imposed by the City of Reno pursuant to a clearly articulated and affirmatively expressed State of Nevada policy. Nevada law provides municipalities the authority to displace or limit competition by granting an exclusive franchise to a private party for the collection and disposal of garbage and other waste. See Nev. Rev. Stat. §§ 268.081, 268.083.

As a result, the Ninth Circuit held that the City of Reno had the authority to undertake this requirement. It noted that the Nevada statutory term "other waste" is broad enough to encompass the recyclable materials covered by the Franchise Agreement (i.e., those recyclables collected and transported as a service). Note, however, that the provision did not include those sold by the generator thereof directly to a buyer of recyclable materials at market price.

Second, the Nevada legislature was held to have:

. . . plainly intended to displace competition with regulation when it authorized municipalities to "displace or limit competition," Nev. Rev. Stat. § 268.081, by granting an exclusive franchise for the collection and disposal of waste.

Finally, the Ninth Circuit held that this doctrine was applicable to the Franchise Agreement in this instance regardless of whether a private party (i.e., Reno Disposal) was involved.

The Ninth Circuit upholds the summary judgment granted to the City of Reno and Reno Disposal.

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