

Fort Smith Residential-Recycling Program: Arkansas Supreme Court Addresses Illegal Exaction/Unjust Enrichment Claims



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The Supreme Court of Arkansas (“SCT”) addressed in a March 16th Opinion issues associated with the City of Fort Smith, Arkansas’s (“Fort Smith”) residential recycling program. *See City of Fort Smith, Arkansas, v. Jennifer Merriott, Individually and on Behalf of Those Similarly Situated, 2023 Ark. 51.*

The issues considered were whether Fort Smith’s continued collection of monthly sanitation charges (which purportedly included fees for recycling) was an illegal exaction and that Fort Smith had been unjustly enriched.

Fort Smith set the residential fee for the collection and disposal of solid waste by ordinance. This included curbside pickup of:

- Trash
- Recyclables
- Yard waste

A unified sanitation fee of \$13.28 per month was collected. A separate charge was not collected for curbside recycling. The fees were deposited into the Fort Smith Sanitation Enterprise Fund which supported the Sanitation Department’s operating expenses.

In 2014 a vendor proposed a \$35 per ton processing fee to continue a contract for recycling waste. The SCT notes that at that point:

... Fort Smith did not renew the contract and thus began a multiyear process in which Fort Smith admittedly dumped most of its recycling. It continued to run a separate curbside-recycling route, advertise its recycling program, and give warning stickers to residents that failed to properly separate their trash and their recyclables. This occurred despite Fort Smith’s practice of dumping the recyclables.

The public learned in 2017 that Fort Smith was sending all the residents’ recyclables to a landfill. Fort Smith subsequently contracted with a new recycling-process vendor in July 2017.

Plaintiff Merriott filed a class-action lawsuit against Fort Smith for misuse of sanitation fees. She raised two causes of action:

- Illegal exaction – alleging the sanitation fees constituted an illegal exaction because they included recycling services but the citizens did not receive this benefit

- Unjust enrichment – alleging Fort Smith received the benefits of the fees for recycling and those paying the fees expected to have their waste recycled but those activities did not take place

The Circuit Court held that the sanitation fees constituted both an illegal exaction and that Fort Smith was unjustly enriched. It awarded the class \$745,057.85 in damages.

The SCT notes that government levy of any charge is subject to an illegal-exaction claim unless it meets both elements of the following two-prong test:

1. It is fair and reasonable; and
2. It bears a reasonable relationship to the benefits conferred on those receiving its services

The SCT held that Fort Smith used the fee for its intended purpose. This was due to its setting a single fee for the cost of residential collection and disposal of solid waste, recycling, and yard waste. Further, it stated that no evidence indicated the fee did not bear a reasonable relationship to the benefits conferred.

The SCT also noted an absence of evidence of unauthorized use of the fees. They were maintained in the Sanitation Enterprise Fund and used to operate the Sanitation Department. In other words, they were not spent for non-sanitation purposes.

The illegal-exaction claim was dismissed.

In addressing the unjust enrichment claim, the SCT notes that a party must have received something of value to which it is not entitled and which it must restore.

Plaintiff Merriott's restitution evidence was held to be merely speculative. She was stated to have failed to meet the burden of showing what unjust benefit Fort Smith gained and it must return.

Cited was an absence of any evidence of the unjust value of the benefit Fort Smith received from the class. No evidence was indicated to have been offered that Fort Smith gained anything from its deception (i.e., an absence of profit or other benefits).

As a result, the SCT found no evidence that Fort Smith retained financial benefits from its actions that could be returned to the class and dismissed the unjust enrichment claim.

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