

FILED  
AT 1:45 O'CLOCK P.M.

NOV 01 2007

Circuit Courts  
For Lane County, Oregon  
BY 808

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LANE

In the matter of the Petition of RAINIER  
ECONOMIC DELVOPMENT COUNCIL,

For the Judicial Examination and Judgment  
of the Court as to the legality and of an  
Intergovernmental Agreement

Petitioner,

v.

COLUMBIA 911 COMMUNICATIONS  
DISTRICT; and SPECIAL DISTRICTS  
ASSOCIATION OF OREGON

Respondents.

①

Case No. 160711671

OPINION and ORDER

**Summary**

This case requires the court to determine the enforceability of a proposed Intergovernmental Agreement (IGA) that requires nine entities to transfer tax revenue to Petitioner, Rainer Economic Development Council (REDCO). That determination requires the court to decide two issues with respect to each party to the agreement: (1) whether that party has the authority to enter into an IGA, and (2) whether that party has the authority to transfer tax revenue to other entities for the purpose of this IGA.

All parties to the IGA are municipal corporations and hence creatures of statute.<sup>1</sup> Therefore, this court decides the case according to its interpretation of the relevant enabling statutes. Ultimately, the court holds that the enabling statutes of Columbia County 4-H and Extension Service, Columbia Drainage Vector Control District, Rainier Cemetery District, Columbia River Fire & Rescue District, and Columbia 911 Communications do not authorize those parties to participate in this IGA. Northwest Regional Educational Service District's participation depends on the amount of tax revenue transferred to REDCO each year. The remaining parties, Columbia County, City of Rainier, and Port of St. Helen's, may participate in this IGA and transfer a portion of their received tax revenue to REDCO.

<sup>1</sup> Oregon Revised Statute 33.710(b) provides, "[m]unicipal corporation' means any county, city, port, school district, union high school district, community college district and all other public or quasi-public corporations including a municipal utility or dock commission operated by a separate board or commission." ORS 33.710(b) (2005).

## Discussion

### I. Factual and Procedural Background

This matter came to this court from Columbia County Circuit Court. The judge assigned to this matter in Columbia County suggested to the parties that this case be transferred to Lane County for two reasons. First, the matter could not be heard until 2008 on Columbia County's docket. Second, Lane County has a Commercial Court specifically designed to hear the matters like those at issue in this case. The parties had no objection to the change of venue, and the case was transferred to this court.

This case arises out of a proposed IGA between petitioner, REDCO, and nine municipal corporations. Pursuant to ORS 457.035(1),<sup>2</sup> the City of Rainier formed REDCO, an urban renewal agency. In order to improve a blighted tract of land (the Property) along the banks of the Columbia River, REDCO entered into an agreement with United States Gypsum Company (USG) for REDCO to purchase the Property. After REDCO purchased the Property, USG planned to redevelop it as part of the Rainier Waterfront Urban Renewal Plan. USG loaned REDCO \$3,410,000 to purchase the property. REDCO purchased the Property, conveyed the Property to USG, and executed a promissory note to USG. REDCO was scheduled to begin annual payments of \$600,000 to USG on that note in December 2006.

Pursuant to ORS 457.435(2)(c), Petitioner adopted an ordinance that capped the amount of *ad valorem* property taxes flowing to Petitioner at \$300,000 per year.<sup>3</sup> In order to pay the remaining debt to USG, Petitioner entered into an IGA with nine municipal corporations whereby those corporations would transfer tax money received to Petitioner.

Petitioner asks this court to review the legality and enforceability of that IGA in three respects. First, petitioner asks this court to review the resolutions that REDCO took to enter into the IGA with respondents and seven other entities under ORS 33.710(f).<sup>4</sup> Second, petitioner asks this court to review the legality of the notice and proceedings taken to approve the IGA between petitioner and the other entities.<sup>5</sup> Finally, petitioner asks this court to review the legality of the transfer of public funds from some of the parties to the IGA to REDCO.<sup>6</sup>

There is a distinction between the procedures undertaken by the parties to enter into the proposed IGA and the substance of the IGA itself. Based on the record before the court, the notice and proceedings that the parties undertook to enter into this IGA are proper and lawful. Additionally, the parties to this case are within their authority to make resolutions; the process itself of making a resolution is lawful. Insofar as the specific resolutions before the court substantively allow the parties to enter into an agreement that they are statutorily prohibited from entering, the substance of the resolutions is unlawful. Having held that the procedural aspects of this case are lawful, this court will decide the dispositive issue in this case: the substance of the resolutions that the parties made to enter into the proposed IGA. Accordingly, this court will decide whether each party to the IGA can enter into an IGA and whether each party can transfer public funds received to REDCO under their respective enabling statutes.

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<sup>2</sup> ORS 457.035(1)(2005).

<sup>3</sup> ORS 457.435(2)(c) (2005).

<sup>4</sup> This court is authorized to review "[t]he authority of the governing body to enact any ordinance, resolution or regulation." ORS 33.710(f) (2005).

<sup>5</sup> *Id.* at (g).

<sup>6</sup> ORS 33.710(2)(e)(A) (2005).

## II. Legal Analysis

Petitioner brings this case under ORS 33.710, which provides for judicial examination of the legality of actions taken by municipal corporations.<sup>7</sup> Under ORS 33.710(2), the governing body of a municipal corporation can petition a circuit court to review the “regularity and legality” of several types of proceedings and actions by that municipal corporation. Oregon law defines a “governing body” of a municipal corporation as a “city council, board of commissioners, board of directors, county court or other *managing board of a municipal corporation* including a board managing a municipally owned public utility or dock commission.” (emphasis added).<sup>8</sup> “Municipal corporation” under the same statute encompasses all the entities involved here, including REDCO.<sup>9</sup> Petitioner can avail itself of a proceeding under ORS 33.710 since Petitioner seeks judicial review of its own actions.<sup>10</sup> Because municipal corporations are creatures of statute, statutory interpretation will govern this court’s analysis of each party’s authority to enter into the IGA and transfer tax revenue received to REDCO. The first step in statutory analysis is to discern the intent of the legislature by examining the text of the statute and the context of specific provisions.<sup>11</sup>

Though Respondents do not contest the City of Rainer or Columbia County’s participation in the IGA, this court will determine the legality of each party’s participation in the IGA. Though Petitioner makes no mention to this court of Columbia 911 Communications District, they are a Respondent in this matter. Thus, this court will also determine the legality of that party’s participation in the IGA.

To determine the legality of participation, this court will first analyze the scope of each party’s general authority to enter into an IGA. Then, this court will analyze the authority of each party under the party’s governing statutes to transfer tax revenues that it receives to REDCO.

### A. IGAs

ORS 190.010 governs the authority of units of local government to enter into IGAs. Under that statute, units of local government can enter into written agreements with other units of local government “for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have the authority to perform.”<sup>12</sup>

Petitioner interprets that provision to mean that *any* party to an IGA acquires the authority to perform any function that *any* party to the agreement may perform. To support that assertion, Petitioner contends that in *Northwest Natural Gas v. City of Portland*, 300 Or. 291 (Or. 1985) the court held that an IGA “vested each [party] with all of the others’ powers...”<sup>13</sup> Petitioner argues that under *Northwest Natural Gas*, each party to the IGA at issue here is “bestowed with the powers of an urban renewal agency.”<sup>14</sup>

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<sup>7</sup> ORS 33.710 (2005).

<sup>8</sup> ORS 33.710(1)(a) (2005).

<sup>9</sup> ORS 33.710(1)(b) (2005).

<sup>10</sup> *State ex rel Powers v. Coos County Airport Dist*, 201 Or. App. 222, 230 ( Or. Ct. App. 2005) (finding that judicial review under ORS 33.710 was not available to plaintiff since the entity was not seeking review of its own actions under the statute.)

<sup>11</sup> *Portland Gen. Elec.Co. v. Bureau of Labor Indus.*, 317 Or. 606, 610 (Or. 1993). (providing framework for statutory interpretation).

<sup>12</sup> ORS 190.010 (2005).

<sup>13</sup> Mem. In Supp. of Pet. for Approval of REDCO IGA 3.

<sup>14</sup> *Id.*

Petitioner misconstrues the holding of *Northwest Natural Gas*.<sup>15</sup> In that case, Tri-Met, a municipal corporation charged with providing mass transit, entered into an IGA with the City of Portland.<sup>16</sup> Under that IGA, the city would require public utilities to relocate that the city *already had authority over* under its charter that were in the public right-of-way.<sup>17</sup> If the city did not have authority to force certain privately owned utilities to relocate, Tri-Met could compel relocation of those utilities.<sup>18</sup> Tri-Met was authorized under its enabling statutes to occupy the public right-of-way because it was necessary to carry out its power to provide mass transit.<sup>19</sup> The utilities argued that the city could not require them to relocate for the benefit of Tri-Met.<sup>20</sup> The court held that the City of Portland could require public utilities to relocate without compensation so that Tri-Met could implement a mass transit system in the city pursuant to the powers of its charter and an ordinance that the city passed under that charter.<sup>21</sup>

The holding of *Northwest Natural Gas* is not that a party to an IGA acquires powers that would otherwise violate its statutory duties. Tri-Met's power to force utilities to relocate was necessary to carry out its statutory function of providing mass transit.<sup>22</sup> No party in that IGA acquired a power that it did not already possess. The court in *Northwest Natural Gas* did not interpret the statute to mean what Petitioner asserts it means; namely that parties can acquire powers under intergovernmental agreements that otherwise violate their statutory duties.

The text of ORS 190.030 also contradicts Petitioner's interpretation.<sup>23</sup> That statute provides that a party designated in the IGA to perform specified functions "is vested with all powers, rights, and *duties* relating to those functions and activities that are vested by law in each separate party to the agreement."<sup>24</sup> When ORS 190.030 is read in the context of ORS 190.010, it is clear that IGAs are not intended to allow units of local governments to act in violation of the duties and restrictions in their enabling statutes.

Petitioner asserts that this court should use the analysis set forth in *Burt v. Blumenauer*, 299 Or. 55 (Or. 2005) to determine whether each party to the agreement has the authority to transfer tax revenue that they receive to REDCO under the IGA. Petitioner argues that *Burt* sets forth a framework for analyzing the expenditure of public funds for any purpose and therefore is the correct analysis. Petitioner's contention that this court should look to *Burt* for its analysis is misguided for two reasons. First, municipal corporations are creatures of statute. Therefore, this court needs only to look to the enabling statutes of each party to the proposed IGA to determine the authority of each party to use tax money that they receive. It would be inconsistent with the framework set forth in *Portland Gen. Elec. Co.* to look to case law instead of the text of the enabling statutes to determine legislative intent for the authority of each party to expend public funds.

Second, contrary to Petitioner's interpretation of the case, *Burt* does not set forth a general framework to analyze expenditures of public funds by the government. Thus, even if this court needed to look beyond the statutes to case law to determine the authority of the parties to participate in the IGA, the *Burt* analysis would be inapplicable to this case. In *Burt*, the court decided to broaden its analysis for public expenditures for government speech purposes, but not to apply that framework in a context that did

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<sup>15</sup> 300 Or. 291 (Or. 1985).

<sup>16</sup> *Id.* at 315.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 314.

<sup>20</sup> *Id.* at 293.

<sup>21</sup> *Id.* at 294, 304, 306.

<sup>22</sup> *Id.* at 313.

<sup>23</sup> ORS 190.030 (2005).

<sup>24</sup> *Id.* (emphasis added).

not involve government speech. The court merely noted that because the powers of local government have broadened over time, a restrictive analysis should not be used to determine if expenditures for *public speech* were lawful.<sup>25</sup> The court then set forth a broader analysis for expenditures of public funds for government speech purposes.<sup>26</sup>

This court will analyze each party's participation in the IGA and the authority of each party to transfer tax revenues to REDCO according to the relevant enabling statutes.

## **B. Authority of Each Party to Enter into the IGA**

### Columbia County

Columbia County may participate in this IGA and can transfer tax revenue to REDCO. ORS 203.010 authorizes Columbia County to “make all necessary contracts” and “do all other necessary acts in relation to the property and concerns of the county.”<sup>27</sup> That broad language authorizes Columbia County to enter into an IGA with other governmental units and transfer tax revenue received to REDCO under that IGA.

### City of Rainier

The City of Rainier may participate in this IGA and can transfer tax revenue to REDCO. A statute with similarly broad language governs the powers of the City of Rainier. ORS 224.410(1) provides that “a city may take all action necessary or convenient for the government of its local affairs.”<sup>28</sup> Like counties, cities have broad authority to act and are not restricted from participating in IGAs in any capacity.

### Port of St. Helen's

The Port of St. Helen's may participate in this IGA and can transfer tax revenue to REDCO. ORS 777.112 provides that ports may enter into IGAs to provide services and facilities that any other party to the IGA is able to provide independently for the “improvement or maintenance of the bays, harbors and channels of the Columbia River...”<sup>29</sup> Furthermore, Subsection 3 of that statute provides that any revenue received in the performance of an IGA “shall be allocated among the parties as the contract or agreement shall provide.”<sup>30</sup> Therefore, the Port of St. Helen's is authorized to enter into IGAs and to transfer tax revenue to REDCO under the proposed IGA.

### Columbia River Fire & Rescue District

Columbia River Fire & Rescue District may not participate in this IGA. Columbia River Fire & Rescue District is authorized to enter into IGAs under ORS 478.300(1), which provides in part, “In addition to the authority to enter into intergovernmental agreements under ORS chapter 190...”<sup>31</sup> While rural fire districts may contract to provide services to cities,<sup>32</sup> they are not authorized to transfer tax

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<sup>25</sup> 299 Or. 55, 72 (1985).

<sup>26</sup> *Id.*

<sup>27</sup> ORS 203.010 (2005).

<sup>28</sup> ORS 224.410(1) (2005).

<sup>29</sup> ORS 777.112 (2005).

<sup>30</sup> *Id.*

<sup>31</sup> ORS 478.300(1) (2005).

<sup>32</sup> *Keicher v. Clackamas County*, 175 Or. App. 633, 636 (Or. Ct. App. 2001).

revenue to REDCO. Rural fire districts may only levy taxes for certain purposes, as provided in ORS 478.325 and ORS 478.410. ORS 478.410 (1) grants authority to rural fire districts to levy taxes “to provide funds for defraying expenses for the establishment, equipment and maintenance of the district...”<sup>33</sup> ORS 478 enumerates other purposes for which districts may levy taxes: to establish programs or provide benefits authorized by ORS 478.335 to 478.370<sup>34</sup> and to defray expenses for road-lighting.<sup>35</sup> Additionally, ORS 478.430 authorizes the district to levy an *ad valorem* tax only to fund bonds sold by the district. Because ORS Chapter 478 only allows rural fire protection districts to levy taxes for specific purposes, Columbia River Fire & Rescue District is not authorized to transfer tax revenue received to REDCO under the proposed IGA.

#### Northwest Regional Educational Service District

Northwest Regional Educational Service District may participate in this IGA and transfer funds to REDCO. Educational Service Districts have broad authority to transact business<sup>36</sup> but limited discretion to expend funds received within the district.<sup>37</sup> ORS 334.177 provides that a district must expend at least 90 percent of amounts received on services or programs that school districts have previously approved.<sup>38</sup> As long as the amount that the District transfers to REDCO is less than ten percent of the revenue the District receives per year, the transfer is authorized. Any transfer of funds to REDCO that exceeds ten percent of the District’s revenue is prohibited by the statutes that govern the District.

#### Columbia County 4-H and Extension Service

Columbia County 4-H and Extension Service may not participate in this IGA. ORS 451.580 restricts the authority of extension services to use money received.<sup>39</sup> All funds received must be used for purposes set forth in ORS 451.410 through 451.610.<sup>40</sup> Transfer of funds under IGAs is not one of the enumerated purposes in those statutes. Those statutes refer to operations of Service Districts, including the construction and operation of service facilities.<sup>41</sup>

#### Columbia Drainage Vector Control District

Columbia Drainage Vector Control District may not participate in this IGA. The District may only contract with other cities, counties, or districts for an enumerated purpose: “to perform...any abatement practice or other activity that the vector control district is authorized to perform for the eradication, control and prevention of public health vectors or predatory animals.”<sup>42</sup> Absent proof that ORS 452.110(1), (2), or (9) authorize the District to enter into this IGA, they may not participate.<sup>43</sup> The District does not have general authority to contract or conduct business. Its duties and the scope of its

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<sup>33</sup> ORS 478.410(1) (2005).

<sup>34</sup> ORS 478.325 (2005).

<sup>35</sup> ORS 478.450 (2005).

<sup>36</sup> ORS 334.125(2) (2005).

<sup>37</sup> ORS 334.177 (2005).

<sup>38</sup> *Id.*

<sup>39</sup> ORS 451.580 (2005).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> ORS 452.110(9) (2005).

<sup>43</sup> ORS 425.110(1) provides in part that the board of a district may “take all necessary and proper steps and measures for the eradication of public health vectors within the district and for the control of predatory animals within the district.” (2005). ORS 425.110(2) provides that the board may “take all necessary and proper steps and measures for the eradication of rats within the district when the board determines that rats exist in such numbers as to be detrimental to human health and well-being. (2005).

authority are specified in ORS Chapter 452.<sup>44</sup> Even if the District had the authority to enter into the IGA, it could not transfer any received funds to REDCO. The District's taxing authority is set forth in ORS 452.153(1).<sup>45</sup> Under that statute, the District may only levy a tax to fund actions required under ORS 452.020 through 452.170.<sup>46</sup>

#### Rainier Cemetery District

Rainier Cemetery District may not participate in this IGA. The District has the power to enter into contracts that are necessary to carry out the purposes of Chapter 265.<sup>47</sup> Cemetery maintenance districts have very few purposes. None of the purposes enumerated in Chapter 265 include contracting with other cities, counties, or parties to provide funds or services. Even if the District's power to contract is liberally construed, the District is not authorized to transfer funds to REDCO under an IGA. ORS 265.140(9) only authorizes the District to levy a tax "for the purpose of defraying the expenses of operation of the district and purchase of necessary property therefor [sic]."<sup>48</sup>

#### Columbia 911 Communications District

Petitioner does not mention this party in its memoranda to this court, even though Columbia 911 Communications District is a Respondent in this case. Because Columbia 911 Communications District appeared before this court and contested its authority to transfer money to REDCO under the proposed IGA, this court will analyze the District's authority to participate.

Columbia 911 Communications District may not participate in the proposed IGA. The District has the authority to contract, but only for purposes that are set forth in its governing statutes.<sup>49</sup> The purposes and powers of districts governed by ORS Chapter 401 do not include entering into IGAs. Further, the District may not levy taxes for any reason except the purposes set forth by the District's governing statutes.<sup>50</sup>

### **Conclusion**

Columbia County, the City of Rainier, and the Port of St. Helen's may participate in the proposed IGA. Northwest Educational Service District may participate in the proposed IGA if its contribution is less than ten percent of the annually received revenue. Columbia River Fire & Rescue District, Columbia County 4-H and Extension Service, Columbia Drainage Vector Control District, Rainier Cemetery District, and Columbia 911 Communications may not participate in the proposed IGA.

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<sup>44</sup> See generally ORS 452.010 *et. seq.*

<sup>45</sup> ORS 452.153(1) (2005).

<sup>46</sup> *Id.*

<sup>47</sup> ORS 265.140(5) (2005).

<sup>48</sup> ORS 265.140(9) (2005).

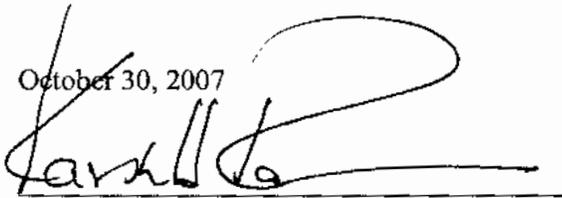
<sup>49</sup> ORS 401.842(3) authorizes the district to "make and accept any and all contracts...of any kind, which, in the judgment of the board, are necessary or proper to the exercise of any power of the district, and to direct the payment of all lawful claims or demands." (2005).

<sup>50</sup> ORS 401.847(2) (2005).

Mr. Jordan shall prepare the judgment which shall incorporate this opinion by reference.

IT IS SO ORDERED.

October 30, 2007

A handwritten signature in black ink, appearing to read "Karsten H. Rasmussen", written over a horizontal line. The signature is stylized with a large loop at the end.

Karsten H. Rasmussen, Circuit Judge