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Inside this Issue

. WHAT IS AN EMS DISTRICT?

Recently, we had occasion to explore the possibility of creating an emergency medical services (EMS) district in the State of Washington. Although there are not that many existing EMS districts in Washington, that did not stop us from researching the potential for a somewhat unusual approach to providing these necessary services.

RCW 36.32.480 allows a county legislative authority to adopt an ordinance creating such a district in all or a portion of the unincorporated area of a county. In certain described circumstances, such an EMS district may even include incorporated cities or towns, but of course the city or town governing body would have to agree to such inclusion.

Such an EMS district is a quasi-municipal corporation, an independent taxing authority, and may levy and collect property taxes. The district can only be established after a public hearing and a finding by the county legislative authority that the creation of the district is in the public interest. No vote of the people is required. Obviously, the EMS district would have legal authority to provide emergency medical services within the district's boundaries.

As provided in the statute, the governing body of the EMS district would be the members of the county governing body, except in cases where the district includes by agreement any incorporated area, in which case there would have

to be an interlocal cooperative agreement executed pursuant to chapter 39.34 RCW. We presume that in that instance, the board would be expanded to include some city or town representative(s).

The last sentence of this statute is interesting: "The voters of an emergency medical service district must be registered voters residing within the service area." We find that interesting because the statute does not make creation of the district contingent upon voter approval. Probably that was included because of the need to fund the EMS district.

So, you might ask, how is an EMS district to be funded, after it is created? RCW 84.52.069(1) specifically lists emergency medical districts as one of the types of entities that can levy a property tax of up to 50 cents per thousand dollars of assessed valuation for this purpose. Moreover, RCW 36.32.480 provides that an EMS district is deemed to be a taxing district subject to the Washington Constitution, Article VII, sections 1 and 2.

Now you might ask….what if there is another taxing district in the region that already levies an EMS levy? In that instance, can the EMS district also levy a tax? The answer is that if the EMS district service area boundary overlaps or includes any of the fire district, then the EMS district **cannot** levy an EMS tax under RCW 84.52.069(6). So they cannot overlap at all.

Also worth mentioning is the provision in RCW 84.52.069 that states if the county levies an EMS tax, no other entity in that county can levy an EMS tax under the statute. But the statute also has a proviso stating that if the county levies less than 50 cents per thousand, then other districts such as fire protection districts can levy a tax for the difference. For example, if the county EMS levy is 33 cents per thousand, a fire district could levy up to 17 cents per thousand. It does not seem, however, that this provision has any application to an EMS district.

You might ask….are there any EMS districts already in Washington? The answer is yes, apparently there are a few such districts, according to the Municipal Research Services Center.[1] Some of these districts were definitely formed under the authority of RCW 36.32.480 and some appear to be the creature of an interlocal agreement under chapter 39.34, the Interlocal Cooperation Act.

TAX INCREMENT FINANCING: WHEN TWO LAWS CLASH

We will start by saying that although we predominantly represent fire districts and regional fire authorities, the argument below could be made by any taxing district that is negatively impacted by tax increment financing (TIF):

Cities, counties and port districts enjoy the benefit of tax increment financing of public works projects under RCW 39.114.020.[2] As a result of tax increment financing, various taxing districts, including but not limited to fire districts and regional fire authorities, are limited to levying on the base value of the tax increment area (TIA) prior to any secondary improvements made by developers who benefit from the new infrastructure, pursuant to RCW 39.114.050. The

[1] The MRSC maintains a list of such agencies: https://mrsc.org/explore-topics/public-safety/fire-protection/emergency-medical-service-providers

[2] https://www.firehouselawyer.com/Newsletters/November2022FINAL.pdf

Legislature has stated that this tax re-allocation mechanism supports a "public purpose" and will "**benefit** each such taxing district." RCW 39.114.050 (5). (emphasis added).

We disagree. Let's assume that a city establishes a TIA in 2023. Assume further that the value of all of the secondary improvements (development facilitated by the infrastructure financed by the local government) in the TIA is set to be $50,000,000 in 2026, and this value is projected to grow by 5% each year ending in 2047, when the TIA terminates by operation of law. Further assume that the fire department has not adopted a benefit charge and therefore it may levy up to $1.50/$1,000 of assessed valuation in property taxes, and an additional $.50/$1,000 in an EMS levy, for a total of $2.00/$1,000. We will spare you the mathematical calculation and simply tell you that if the fire department maintains its levy rate, for the duration of the TIA, at $2.00/$1,000, this would result in a revenue loss of **$3,850,820** over the next 25 years as a result of the TIA.

The **$3,850,820** is tax money that the fire department otherwise would have placed in its Expense Fund to directly fund its statutory mission: to provide fire protection and EMS. But it cannot do that as a result of the tax-allocation mechanism set forth under RCW 39.114.050. It can only collect on the base value of the TIA without improvements. We would therefore argue that RCW 39.114.050 results in an unlawful subsidy in violation of RCW 43.09.210. Here is the language from RCW 43.09.210 (3):

> "All **service** rendered by, or **property transferred from**, one department, public improvement, undertaking, institution, or public service industry to another, **shall be paid for** at its **true and full value** by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit **in any financial manner** whatever by an **appropriation or fund** made for the support **of another** (taxing district)."

The text of RCW 43.09.210(3) expressly requires that if one department, taxing district, public improvement, etc., provides a service or transfers property to another, it must be compensated at its "true and full value". The statute further emphasizes that no entity should financially benefit from the appropriation or fund meant for another.

The intent of RCW 43.09.210 seems to be the prevention of one governmental body or function benefiting at the expense of another without compensation. The principle is clear: to ensure fairness and equitable treatment in the transfer of services or property between governmental entities, so that one group of taxpayers does not fund the benefits afforded to a different group of taxpayers.

The statute establishes a general mechanism for inter-departmental or inter-agency transactions, ensuring that there is proper accounting and no unjust enrichment at the cost of another department or entity. The statute ensures that governmental entities remain accountable to their taxpayers. By ensuring that entities pay for

the services or property they receive, the legislature seems to be guarding against potential conflicts of interest or misuse (gifts) of public funds.

Potential Arguments for Unlawfulness of RCW 39.114.020 and RCW 39.114.050 based on RCW 43.09.210:

RCW 43.09.210 is based on Constitutional Principles (Article 8 Section 7), and RCW 39.114.050 is not. The TIF law permits financial benefit to one public agency at the expense of another agency. If the fire department was projected to receive the **$3,850,820** in tax revenue from areas within the TIA over the 25 years, and the city's designation causes this revenue to be redirected to the city, then the city is benefiting from a fund (tax revenue) that was meant for the fire department's support. That is in direct violation of RCW 43.09.210, which requires that no taxing district "shall benefit **in any financial manner** whatever by an **appropriation or fund** made for the support **of another**" taxing district.

There is also an argument to be made for the lack of compensation for service rendered as contemplated by RCW 43.09.210. The fire department provides essential services to the areas it covers. If the department continues to provide these services to the TIA but is not receiving the projected revenue due to the city's designation of TIF revenues, an argument could be made that the fire department is not being compensated at its "true and full value" for the services rendered.

For example, if the fire department is responding to emergencies in the TIA but is facing reduced revenues due to the TIA, it's essentially serving the area without the expected financial support, potentially violating RCW 43.09.210.

The city, by redirecting funds that would otherwise go to the fire department, could be seen as unjustly enriching itself at the fire department's expense. This may be seen as a violation of the principle laid out in RCW 43.09.210. For example, if the city undertakes public improvements using the redirected tax revenues, while the fire department struggles with budget shortfalls, the city's gains can be seen as coming directly from the fire department's losses.

In conclusion, although the two statutes (RCW 43.09.210 and RCW 39.114.020/050) govern different areas, an argument could be framed around the concept of fair compensation and unjust enrichment. If the fire department can demonstrate a substantial financial detriment due to the city's actions under the TIF statutes, while still bearing the responsibilities of service provision, they might make a case based on the principles of RCW 43.09.210. Legal counsel would be essential to explore these angles and their viability in a legal challenge. The case would present fascinating issues with respect to how courts deal with a situation when two state statutes conflict with one another.