
IN THE
INDIANA SUPREME COURT

Case No. _____

DELAWARE COUNTY REGIONAL WASTEWATER DISTRICT,	)	Indiana Court of Appeals
	)	Case No. 19A-EX-02964
)	
Appellant/Intervenor Below,	)	Appeal from the Indiana Utility
	)	Regulatory Commission
v.)	
	)	Cause No. 45055
MUNCIE SANITARY DISTRICT, ET AL.,)	
	)	The Hon. James F. Huston, Chairman
Appellees/Petitioners Below.)	
	)	The Hons. David E. Ziegner, Sarah E.
	)	Freeman, Stefanie Krevda and David
	)	Ober, Commissioners
)	
	)	The Hon. David E. Veleta, Senior
)	Administrative Law Judge

REPLY BRIEF IN SUPPORT OF PETITION TO TRANSFER

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ARGUMENT

This case of public importance will resolve the competing territorial rights of Delaware County Regional Wastewater District (“DCRWD”), a regional wastewater district under Ind. Code Art. 13-26 and its predecessor statutes (collectively, the “IDEM Statutes”), and Muncie Sanitary District (“MSD”), a municipal wastewater utility, and of similarly situated entities statewide. *See* Ind. Appellate Rule 57(H)(4). Further, this case will permit the Court to address a critical, purposeful omission in Ind. Code §§ 8-1.5-6-1 *et seq.* (the “Regulated Territory Statutes”) that prevents the Indiana Utility Regulatory Commission (the “Commission”) from determining the territorial rights of a regional wastewater district and will allow the Court to limit the Commission’s authority in this respect to that intended by the General Assembly. *See id.* Finally, this case will resolve a conflict created by the Court of Appeals when it ignored judicial precedent regarding statutory construction. *See* Ind. Appellate Rule 57(H)(1), (2).

I. Rules of statutory construction require that competing territorial rights of a regional wastewater district and a municipality are resolved under the IDEM Statutes.

DCRWD does not dispute that the Regulated Territory Statutes generally apply to territorial disputes between “utilities” and that DCRWD is a “utility” under those statutes. Ind. Code §§ 8-1.5-6-4, 6 (2020). The Court of Appeals apparently considered this to satisfy its inquiry, ignoring its own precedent establishing rules of statutory construction requiring it to apply the more specific IDEM Statutes here. The Commission relied on the assertion that the Regulated Territory Statutes contain no express exemption for regional wastewater districts from the Commission’s jurisdiction. Commission Response to Pet. to Transfer, p. 14. However, the Commission and Court of Appeals wholly ignored the fact that the Regulated Territory Statutes’ failure to address regional wastewater districts *at all* leaves them subject to the more specific

IDEM Statutes, which specifically provide a procedure for resolving competing territorial rights of a regional wastewater district and a municipality with extraterritorial jurisdiction and, critically, grant regional wastewater districts the power to operate without obtaining the consent of other eligible entities. *See* Ind. Code §§ 13-26-2-6(b)(2)(B); 13-26-2-7; 13-26-5-2(22).

Judicial precedent is clear that the more specific IDEM Statutes should govern over the Regulated Territory Statutes in this matter. A general statute does not supersede a more specific statute unless the intent to do so is clear, and when faced with a general statute and specific statute on the same subject, the more specific statute should be applied. *Ross v. State*, 729 N.E.2d 113, 116 (Ind. 2000); *Darlage v. Drummond*, 576 N.E.2d 1303, 1307 (Ind. Ct. App. 1991). In drafting the Regulated Territory Statutes, the General Assembly had every opportunity to overrule the rights granted to regional wastewater districts under the IDEM Statutes and affirmed by this Court in *City of North Vernon v. Jennings Northwest Regional Utilities*, 829 N.E.2d 1 (Ind. 2005) (“*Jennings*”), but it unequivocally chose not to do so when it granted the Commission jurisdiction under the Regulated Territory Statutes “[n]otwithstanding any other provision in this title or IC 36.” I.C. § 8-1.5-6-6. Critically, the foregoing provision makes no mention of the Commission’s jurisdiction superseding that granted to IDEM in the IDEM Statutes. *Id.* It is just as important to recognize what a statute does *not* say as it is to recognize what it does say. *Ashlin Transp. Servs. v. Indiana Unemployment Ins. Bd.*, 637 N.E.2d 162, 168 (Ind. Ct. App. 1994).

The Court of Appeals opinion in this case conflicts with judicial precedent regarding statutory interpretation and this Court’s holding in *Jennings*, under which the Court of Appeals clearly would have favored DCRWD. *Jennings*, 829 N.E.2d at 10-11 (holding that, in a situation where there is an overlap between the service area of a regional wastewater district and that of a

municipality, the regional wastewater district would prevail unless the municipality was already serving the area when the regional wastewater district was created). Although the Commission, MSD and Court of Appeals argue that *Jennings* has been abrogated by the Regulated Territory Statutes, they all point to a *different* case – *Town of Newburgh v. Town of Chandler* (“*Chandler*”) – as the impetus behind the Regulated Territory Statutes. 999 N.E.2d 1015 (Ind. Ct. App. 2013). Critically, *Chandler* concerned the competing territorial rights of two municipalities and did not at all implicate the IDEM Statutes. *Id.* As the Regulated Territory Statutes were passed in response to *Chandler*, they were not intended to – and do not, by their plain language – address the relative rights of a municipality and a regional wastewater district and do not supersede this Court’s holding in *Jennings*. The Court should address the conflict created between its holding in *Jennings* and the Court of Appeals opinion in this case.

II. The competing territorial rights of a regional wastewater district and a municipality is a question of great public importance with statewide ramifications.

While the Regulated Territory Statutes do not apply to regional wastewater districts due to the controlling IDEM Statutes, they do presumably apply to other utilities, including municipally owned and privately owned service providers. I.C. §§ 8-1.5-6-4, 6. The appellees’ argument that removing regional wastewater districts from this regulatory scheme would leave the Regulated Territory Statutes moot is simply untrue. In fact, the appellees’ own argument that the Regulated Territory Statutes were a direct response to *Chandler* belies this theory and demonstrates that, at the very least, the statutes would still apply to disputes between municipalities. *See* MSD Response to Pet. to Transfer, p. 9; Commission Response to Pet. to Transfer, p. 11. Further, the potential overlap between regional wastewater districts and municipalities with extraterritorial jurisdiction is an important matter that could arise in any

county in the state. Whether the General Assembly, in enacting the Regulated Territory Statutes, intended to strip regional wastewater districts of their previous statutorily granted territorial rights is an undecided question of law and a matter of the utmost public importance that should be determined by this Court.

CONCLUSION

For the foregoing reasons, transfer should be granted and the Commission's order approving MSD's Ordinance 16-2015 should be reversed.

Respectfully submitted,

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WORD COUNT CERTIFICATE

Pursuant to IND. APPELLATE RULES 44(E) and (F), I verify that the foregoing Reply Brief in Support of Petition to Transfer (exclusive of APP. RULE. 44(C) items) contains no more than 1,000 words, as determined by the word processing system used to prepare the document.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief in Support of Petition to Transfer will be served contemporaneously with the filing of the same upon the following via the Court's e-filing system, in accordance with Indiana Appellate Rule 24, this 8th day of October, 2020:

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