

Summary of SC92072, *American Eagle Waste Industries, LLC, et al. v. St. Louis County, Missouri*

Proceeding originating in St. Louis County, Judge Barbara Wallace
Argued and submitted May 10, 2012; opinion issued July 31, 2012

Attorneys: St. Louis County was represented during arguments by Patricia Reddington and Cynthia L. Hoemann of the county counselor's office in Clayton, (314) 615-7042; and American Eagle was represented by Jane E. Dueker, Nicole S. Zellweger and Crystal K. Hall of Stinson Morrison Hecker LLP in St. Louis, (314) 863-0800. The Missouri Municipal League, The Missouri Municipal Attorneys Association and St. Louis County Municipal League, which filed a brief as a friend of the Court, were represented by Kevin M. O'Keefe and Edward J. Sluys of Curtis, Heinz, Garrett & O'Keefe PC in St. Louis, (314) 725-8788, and Daniel R. Wichmer of Springfield, (417) 864-1645.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A county that chose to take over waste-collection services was sued by certain waste haulers who believed they had a contract implied in law to provide such services. The county appeals the trial court judgment in the haulers' favor and awarding the haulers damages. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri reverses the trial court's incorrect calculation of damages but affirms the trial court's judgment as to the remaining claims. The county violated section 260.247, RSMo, regarding the proper procedure for trash collection in cities and political subdivisions, and the haulers are entitled to damages for the violation of the statute.

Facts: A group of private waste-haulers historically provided trash collection services in unincorporated parts of St. Louis County. In December 2006, the county council enacted an ordinance giving the county control of trash collection in unincorporated areas. The haulers received notice of and attended meetings regarding the ordinance. Meanwhile, the legislature passed Senate Bill No. 54, expanding section 260.247, RSMo – which had provided procedural rules for trash collection by a city following the annexation or expansion into an area being serviced by a private entity – to govern political subdivisions as well as cities. The amended statute, which became law, requires cities and political subdivisions to notify private entities of their intent to provide trash collection in a specified area. It also requires the political subdivisions to wait two years before commencing new trash collection services unless they contract with the private entity to continue services, paying the private entities an amount equal to what they would have received had they continued to provide the collection services. Here, the waste haulers did not receive contracts for the unincorporated areas. They petitioned for a writ (order) mandating that St. Louis County follow the notice and waiting-period requirements of section 260.247. They also sought a declaratory judgment that the county was violating section 260.247. The trial court found county was a charter county entitled to regulate municipal functions, including trash collection. The court also found the notice requirement was intended to allow private entities to make business adjustments before services were terminated. The haulers also filed claims for breach of implied contract, state antitrust violation, and violations of the Fifth and Fourteenth amendments to the federal constitution. The county filed a motion to dismiss, which the trial court granted as to the antitrust claim but overruled as to the other

claims. During the trial, an accountant testified about the amount the haulers would have billed had they been allowed to continue providing the services. The court found the county benefited from not having to pay the existing haulers when it implemented its program and assessed damages based on the amount the haulers would have received for services over the two-year period. The damages award was based on 5 percent applied to the total amount of the haulers would have received based on an accountant's projections. The county appeals, and the haulers cross-appeal.

REVERSED IN PART; AFFIRMED IN PART; REMANDED.

Court en banc holds: (1) This Court declines to consider the county's argument that it is not required to comply with the notice and two-year waiting-period requirements of section 260.247. The issue was litigated fully in an earlier proceeding, and the law of the case provides that later proceedings involving the same issues and facts are subject to earlier appellate rulings in the proceeding.

(2) SB 54 does not violate the clear title requirement of article III, section 23 of the state constitution. A title is clear when it indicates in a general way the kind of legislation being enacted but must identify a single subject. Environmental regulation is a sufficiently clear title for the purpose of this bill. The amendments to the statute are not being applied retroactively because the county entered into the contract with the new haulers after the statute was enacted. The haulers are entitled to file a claim requiring the county to comply with section 260.247, and the county has failed to show haulers should be estopped from doing so.

(3) The county's trash collection program does not violate Missouri antitrust law. The county falls under the state action exemption to the antitrust law because it is a regulatory body acting under state statutory authority. Missouri cities and counties expressly are authorized to provide trash collection and may contract with any person, city, county, sewer district, political subdivision, state agency or authority to provide such services.

(4) The trial court correctly found that the haulers do not have a claim for breach of an implied-in-law contract. The haulers did not confer a benefit on the county that unjustly enriched it. The trial court incorrectly found that county was liable under an implied-in-law contract but correctly found that the county was liable to the haulers. It is proper to treat the haulers' claims as asserting a private right of action for violation of a statute. The legislature's intent to protect the hauler's contracts for two years following the notice requirement is clear, and the county cannot bypass this requirement.

(5) The circuit court incorrectly calculated the damages to which the haulers were entitled for the county's violation of section 260.247. The haulers were entitled to continue providing trash collection services for two years. The county must pay the haulers what they would have received under their contract during the two-year period, which would be calculated as their net profit during that period. The case is remanded to allow the parties the opportunity to conduct discovery, to present evidence and to cross-examine about the measure of damages. The circuit court correctly found the two-year period for calculation of damages began on the date county awarded each new contract for trash collection to a new company. The circuit court correctly found the haulers are not entitled to prejudgment interest because the amount of damages was disputed and uncertain.