

Summary of SC91454, *Mike Weber, Paul Marquis, and Cathy Armbruster v. St. Louis County, IESI MO Corporation, Veolia ES Solid Waste Midwest, LLC, and Allied Services, LLC*

Appeal from the St. Louis County circuit court, Judge Robert S. Cohen
Argued and submitted May 11, 2011; opinion issued July 19, 2011

Attorneys: Weber, Marquis and Armbruster were represented by E. Robert Schultz III and Ronald J. Eisenberg of Schultz & Associates LLP in Chesterfield, (636) 537-4645; the county was represented by County Counselor Patricia Redington of Clayton, (314) 615-7042; IESI MO was represented by Edward Dowd Jr., Robert F. Epperson and James E. Crowe III of Dowd Bennett LLP in Clayton, (314) 889-7300; Veolia was represented by Brian E. McGovern and James A. Hajek of McCarthy Leonard & Kaemmerer LC in Chesterfield, (314) 392-5200; and Allied Services was represented by Scott J. Dickenson, John D. Ryan and Clayton E. Gillette of Lathrop & Gage LLP in St. Louis, (314) 613-2500.

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: Three taxpayers appeal the trial court's dismissal of their suit challenging the validity of county ordinances establishing a new trash collection program in unincorporated areas of the county in which they live. In a 5-2 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirms the trial court's judgment. The county did not violate its charter by establishing the trash collection areas, the taxpayers lack standing (a legally recognized right to sue) to allege a violation of a state statute requiring notice to existing trash haulers, and they fail to establish a violation of the state's merchandising practices act. As such, the trial court properly dismissed their suit.

Judge Michael A. Wolff dissents. The county charter requires voter approval of trash districts for which a service charge will be collected; it does not say the charge must be collected by the county. He would reverse the circuit court's judgment and let the voters decide whether to approve the new trash collection arrangements.

Facts: In December 2006, St. Louis County enacted an ordinance establishing collection "areas" in unincorporated parts of the county "for the collection of waste and recovered materials" and authorizing the county to advertise for bids and proposals for the collection and transfer of such waste in those collection areas. Under the ordinance, the selected trash haulers would provide exclusive services in the designated areas. In 2008, the county executed contracts with three trash haulers to collect waste in eight collection areas. No payments were made to the county; its residents had independent contracts with the selected haulers. In November 2008, the county enacted another ordinance prohibiting trash haulers that had not been selected in the bidding process from providing waste collection services in the eight designated collection areas. Three taxpayers who live in designated collection areas subsequently filed a class action petition against the county and the three haulers challenging the waste collection program. They alleged the ordinances violate the county charter as well as a state statute. The trial court granted the

defendants' motion to dismiss, with prejudice (preventing the suit from being refilled), for failure to state a claim on which relief could be granted. The taxpayers appeal.

AFFIRMED.

Court en banc holds: (1) The county did not violate its charter by establishing the trash collection areas. Article VI, section 18(c) of the state constitution and article II, section 2.180.11 of the county charter authorize the county to engage in the business of trash collection. Article II, section 2.180.24 of the county charter requires voter approval of trash districts to be paid for from funds raised by special assessment, general taxation or service charge within the districts. The division of the county into geographic regions for trash collection purposes does not by itself require voter approval. Rather, voter approval is triggered when those regions pay for services using funds the county has raised through special assessment, general taxation or service charge on the regions' residents. Here, the county never collects any monies from its residents for trash services. Instead, the citizens have independent contracts with the trash collectors, which they pay directly.

(2) The taxpayers lack individual and taxpayer standing to challenge the county's alleged failure to comply with section 260.247, RSMo. They allege this statute required the county to provide two years' notice by certified mail to the previous trash haulers before replacing them. To have standing, a plaintiff must have a legally protectable interest in the litigation so as to be affected directly and adversely by its outcome – a personal stake in the outcome in the controversy. Such an interest exists if the plaintiff is affected directly and adversely by the action in question or if the plaintiff's interest is conferred by a state statute. Here, the taxpayers are not engaged in the business of trash collection. They fail to show how the lack of notice adversely affected them. They do not have a legally protectable interest in the outcome of their claim and, therefore, do not have standing. They also do not have taxpayer standing, as they have not pleaded any facts showing that taxpayer funds were expended due to the lack of notice to the trash haulers.

(3) The taxpayers' claim that the county and trash haulers violated the state's merchandising practices act by making false statements about the legality of the trash ordinances and by coercing citizens to transact business with the selected trash haulers is derivative of their earlier claim that the county ordinances are invalid. The ordinances are not invalid, and it is not unlawful to enforce valid laws.

(4) Because the ordinances were not improper under the county's charter, the taxpayers did not have standing to bring a claim under section 260.247 and their claim under the merchandising practices act failed, dismissal of their suit was appropriate. It is unnecessary, therefore, for this Court to consider their additional claims relating to dismissal of their suit.

Dissenting opinion by Judge Wolff: The author would reverse the circuit court's judgment and let the county's voters decide whether to approve the new trash collection arrangements. The county charter requires voter approval of trash districts for which a service charge will be collected; it does not say the charge must be collected by the county. Here, the charge will be collected by the selected exclusive haulers.