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[King County v. King County Water Districts Nos. 20, 45, 49, 90, 111, 119, 125](#)

Supreme Court of Washington - December 5, 2019 - P.3d - 2019 WL 6605260

County brought declaratory judgment action against water-sewer districts, seeking to validate its authority to enact ordinance requiring electric, gas, water, and sewer utilities to pay franchise compensation in exchange for the right to use the county's rights-of-way. Consumer-owned private utilities intervened.

The Superior Court, King County, Samuel Chung, J., granted summary judgment in favor of water-sewer districts and utilities. County sought direct review, which the Supreme Court granted.

The Supreme Court held that:

- Franchise compensation was not a "tax";
- State law did not bar county from charging franchise compensation;
- County did not need authorization, express or implied, from the State to charge franchise compensation; and
- Statute, granting water-sewer districts the power to acquire necessary property rights, to carry water along roads, and to lay sewer pipe along roads, did not permit water-sewer districts to use county's rights-of-way without franchise.

Franchise compensation that county charged electric, gas, water, and sewer utilities in exchange for the right to use county's rights-of-way was not a "tax," although county sought to generate revenue and deposited money into general fund, where county based the charge on the value of the franchise to be granted to the utilities, charge was for valuable property right, and price was determined through negotiations.

State law did not bar county from charging electric, gas, water, and sewer utilities franchise compensation in exchange for the right to use county's rights-of-way; legislature intentionally excluded counties from statute barring cities and towns from imposing franchise fees, statute gave counties discretion to grant franchises to utilities, and county lawfully exercised its discretion in determining that it was in the best interests of the public to require utility to provide reasonable compensation in return for its use of rights-of-way.

Home rule county did not need authorization, express or implied, from the State to charge electric, gas, water, and sewer utilities franchise compensation in exchange for the right to use county's rights-of-way; State delegated to counties the ability to grant franchises, any interest retained by the State was not such a magnitude to bar county from taking local action, and county's concern over roads within its jurisdiction outweighed any interest in those roads retained by the State.

State statute, granting water-sewer districts the power to acquire necessary property rights, to carry water along roads, and to lay sewer pipe along roads, did not permit water-sewer districts to use county's rights-of-way without franchise; statute's silence on the issue was telling, given that other

statutes were explicit, statute implied that water-sewer districts had to acquire the necessary property rights to use county's rights-of-way, and statutory franchise was not essential to water-sewer district's objects and purposes.

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