

## RCW 57.04.030

### Petition procedure—Hearing—Boundaries.

(1) For the purpose of formation of water-sewer districts, a petition shall be presented to the county legislative authority of each county in which the proposed district is located. The petition shall set forth the reasons for the creation of the district, designate the boundaries of the district, and state that establishment of the district will be conducive to the public health, convenience, and welfare and will be of benefit to the property included in the district. The petition shall state the proposed name of the district, which may be ". . . . . Sewer-Water [Water-Sewer] District," ". . . . . Water District," ". . . . . Sewer District," or may be designated by a number such as ". . . . . County Water-Sewer District No. . . ." The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. The petition shall be signed by at least ten percent of the registered voters who voted in the last municipal general election, who shall be qualified voters on the date of filing the petition, residing within the district described in the petition.

The petition shall be filed with the county auditor of the county in which all or the largest geographic portion of the proposed district is located, who shall within ten days examine and verify the signatures on the petition. No person having signed such a petition shall be allowed to withdraw the person's name from the petition after the filing of the petition with the county auditor. If the area proposed to be included in the district is located in more than one county, the auditor of the county in which the largest geographic portion of the district is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the proposed district is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (a) The number of voters of that county residing in the proposed district who voted at the last municipal general election; and (b) the number of valid signatures on the petition of voters of that county residing in the proposed district. The lead auditor shall certify the sufficiency of the petition after receiving this information. If the petition shall be found to contain a sufficient number of signatures, the county auditor or lead county auditor shall then transmit it, together with a certificate of sufficiency attached thereto to the county legislative authority of each county in which the proposed district is located.

(2) If in the opinion of the county health officer the existing water, sewerage, or drainage facilities are inadequate in the district to be created, and creation of the district is necessary for public health and safety, then the legislative authority of the county may declare by resolution that a water-sewer district is a public health and safety necessity, and the district shall be organized under this title, without a petition being required.

(3) Following receipt of a petition certified to contain a sufficient number of signatures, or upon declaring a district to be a public health and safety necessity, at a regular or special meeting the county legislative authority shall cause to be published once a week for at least two weeks in one or more newspapers of general circulation in the proposed district, a notice that such a petition has been presented, stating the time of the meeting at which the petition shall be considered, and setting forth the boundaries of the proposed district. When a petition is presented for hearing, each county legislative authority shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all. Any person, firm, or corporation may appear before the county legislative authority and make objections to the establishment of the district or the proposed boundary lines thereof. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define the boundaries and shall find whether the proposed district will be conducive to the public health, welfare, and convenience and be of special benefit to the land included within the boundaries of the proposed district. No lands that will not, in the judgment of the county legislative authority, be benefited by inclusion therein, shall be included within the boundaries of the district. **No change shall be made by the county legislative authority in the boundary lines to**

include any territory outside of the boundaries described in the petition, except that the boundaries of any proposed district may be extended by the county legislative authority to include other lands in the county upon a petition signed by the owners of all of the land within the proposed extension.

[ 1996 c 230 § 203; 1990 c 259 § 27; 1987 c 33 § 3; 1985 c 469 § 58; 1982 1st ex.s. c 17 § 10; 1931 c 72 § 3; 1929 c 114 § 2; RRS § 11580. Cf. 1915 c 24 § 1; 1913 c 161 § 2. Formerly RCW 57.04.030 and 57.04.040.]

## **NOTES:**

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

## **RCW 36.93.040**

### **Dates upon which boards in counties with populations of less than two hundred ten thousand deemed established.**

For the purposes of this chapter, each county with a population of less than two hundred ten thousand shall be deemed to have established a boundary review board on and after the date a proposition for establishing the same has been approved at an election as provided for in RCW 36.93.030, or on and after the date of adoption of a resolution of the county legislative authority establishing the same as provided for in RCW 36.93.030.

[ 1991 c 363 § 92; 1967 c 189 § 4.]

### **NOTES:**

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

## **RCW 57.04.001**

### **Actions subject to review by boundary review board.**

Actions taken under this chapter may be subject to potential review by a boundary review board under chapter **36.93** RCW.

[ 1996 c 230 § 201; 1989 c 84 § 56.]

### **NOTES:**

**Part headings not law—Effective date—1996 c 230:** See notes following RCW **57.02.001**.

## RCW 36.93.090

### Filing notice of proposed actions with board.

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file within one hundred eighty days a notice of intention with the board: PROVIDED, That when the initiator is the legislative body of a governmental unit, the notice of intention may be filed immediately following the body's first acceptance or approval of the action. The board may review any such proposed actions pertaining to:

(1) The: (a) Creation, incorporation, or change in the boundary, other than a consolidation, of any city, town, or special purpose district; (b) consolidation of special purpose districts, but not including consolidation of cities and towns; or (c) dissolution or disincorporation of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter **36.96** RCW: PROVIDED, That the change in the boundary of a city or town arising from the annexation of contiguous city or town owned property held for a public purpose shall be exempted from the requirements of this section; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water-sewer district pursuant to RCW **57.08.065** or \*chapter **57.40** RCW; or

(4) The extension of permanent water or sewer service outside of its existing service area by a city, town, or special purpose district. The service area of a city, town, or special purpose district shall include all of the area within its corporate boundaries plus, (a) for extensions of water service, the area outside of the corporate boundaries which it is designated to serve pursuant to a coordinated water system plan approved in accordance with RCW **70.116.050**; and (b) for extensions of sewer service, the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter **36.94** RCW and RCW **90.48.110**.

[ **1996 c 230 § 1608**; **1995 c 131 § 1**; **1987 c 477 § 2**; **1985 c 281 § 28**; **1982 c 10 § 7**. Prior: **1981 c 332 § 9**; **1981 c 45 § 2**; **1979 ex.s. c 5 § 12**; **1971 ex.s. c 127 § 1**; **1969 ex.s. c 111 § 5**; **1967 c 189 § 9**.]

### NOTES:

**\*Reviser's note:** Chapter **57.40** RCW was repealed and/or decodified in its entirety.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW **57.02.001**.

**Effective date—1995 c 131:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 24, 1995]." [ **1995 c 131 § 2**.]

**Severability—1982 c 10:** See note following RCW **6.13.080**.

**Severability—1981 c 332:** See note following RCW [35.13.165](#).

**Legislative declaration—"District" defined—1981 c 45:** "It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title [57](#) RCW or a sewer district organized under Title [56](#) RCW or a merged water and sewer district organized pursuant to chapter [57.40](#) or [56.36](#) RCW." [ [1981 c 45 § 1](#).]

**Severability—1981 c 45:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ [1981 c 45 § 14](#).]

*Consolidation of cities and towns—Role of boundary review board: RCW [35.10.450](#).*

**62 Wn.2d 319, ALDERWOOD WATER DISTRICT, Appellant, v. POPE & TALBOT, INC. et al., Respondents**

**[No. 36272. Department Two. Supreme Court June 13, 1963.]**

**ALDERWOOD WATER DISTRICT, Appellant, v. POPE & TALBOT, INC. et al., Respondents.«\*»**

[1] Municipal Corporations - Duplication of Functions. Statutory provisions conferring authority upon potentially competing municipal corporations should be closely examined by the courts, in view of the general public policy that there be no duplication of public functions except where expressly provided for by statute.

[2] Statutes - Construction. The rule of statutory construction that the spirit or intent of legislation should prevail over express but inept language, requires a statute to be construed as a whole in ascertaining the legislative purpose and effect of a single section thereof.

[3] Water Districts - Powers and Limitations - Service Outside Boundaries. After considering RCW Title 57 in its entirety, held that the provisions of RCW [57.08.010](#) and 045 to the effect that water districts may supply water to individuals outside of their district, was intended to authorize water districts to extend water services to persons outside the boundaries of any water district, but not to individuals within the boundaries of another water district.

Appeal from a judgment of the Superior Court for Snohomish County, No. 71972, Edward M. Nollmeyer, J., entered September 26, 1961. Reversed and remanded.

Action for injunctive relief. Plaintiff appeals from a judgment of dismissal.

Cooper & Cooper, for appellant.

Howe, Davis, Riese & Jones, for respondent Pope & Talbot, Inc.

Jordan & Britt, for respondent Silver Lake Water District.

FINLEY, J. -

Alderwood Water District and Silver Lake Water District are adjoining municipal corporations, created in compliance with RCW Title 57, and possessing the powers therein conferred by the legislature. Pope & Talbot, Inc., is the entrepreneur of a residential real estate development known as Silver Acres No. 7, which is completely within the geographical boundaries of the Alderwood Water

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\* Reported in 382 P. (2d) 639.

[3] See Ann. 48 A.L.R. (2d) 1230; Am. Jur.. Waterworks and Water Companies (1st ed. §§ 27, 28).

District. Water mains were installed in the Silver Acres development by Pope & Talbot. Subsequently, these water mains were connected with the facilities of the Silver Lake Water District.

The Alderwood Water District initiated this action to enjoin the Silver Lake Water District from supplying water to Silver Acres and to enjoin Silver Acres from receiving such water. Both defendants moved to dismiss the complaint on the ground that it failed to state a claim upon which relief could be granted. The trial court granted the motion, and a judgment of dismissal was entered. This appeal followed.

The question presented is whether a municipal water district of this state can directly furnish water to the inhabitants of an area located outside the boundaries of such district but within the boundaries of another water district.«1»

An easy solution to that question could be formulated by merely citing, out of context, some language from a statute and then proceeding to consider that language as though it existed in a vacuum. For example, a portion of RCW [57.08.045](#) could be cited and emphasized: ". . . a water district may provide water services to property owners outside the limits of the water district."«2» After parroting the above quoted language, we could mechanically conclude that water districts have the authority to distribute water to individuals outside the boundaries or geographical limits of the district; and that, since there is no geographical or other limitation explicitly imposed upon that authority, one water district can supply water to property owners or persons within the boundaries of another district. However, such a conclusion would sanction the "raiding" of one water district by another, which potentially might well be inimical to an orderly and economically well-planned development and utilization of public water service in rapidly expanding suburban residential areas.

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«1» There is no question about the authority of one water district to purchase or take water from another district. RCW [57.08.010](#) provides: "A water district may purchase and take water from any municipal corporation."

«2» RCW [57.08.010](#) contains similar language.

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[1] In some Washington cases reference is made to a general rule that there cannot be two municipal corporations exercising the same functions in the same territory at the same time. Although this so-called general rule has been virtually emasculated by the case law of this state, it continues to serve as a touchstone in the sense that it expresses a public policy against duplication of public functions, and that such duplication is normally not permissible unless it is provided for in some manner by statute.«3» In a sense, the "general rule" should alert courts, in situations akin to that of the instant case, to the necessity of closely examining in toto statutory provisions conferring authority upon the potentially competing municipal corporations.

[2] On numerous occasions this court has indicated that a statute should be construed as a whole in order to ascertain legislative purpose, and thus avoid unlikely, strained or absurd consequences which could result from a literal reading. That the spirit or the purpose of legislation should prevail over the express but inept language is an ancient adage of the law. *Eyston v. Studd* (England, 1574), 2 Plowden 460, 464:

". . . intent of statutes is more to be regarded and pursued than the precise letter of them, for oftentimes things, which are within the words of statutes, are out of the purview of them, which purview extends no further than the intent of the makers of the act, and the best way to construe an act of Parliament is according to the intent rather than according to the words. . . ."

The statutory provisions governing the formation, dissolution, procedures and powers of water districts are codified in RCW Title 57. RCW [57.04.070](#) provides:

"Whenever two or more petitions for the formation of a water district shall be filed as herein provided, the petition

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«3» In *P.U.D. No. 1 of Pend Oreille Cy. v. Town of Newport* (1951), [38 Wn. \(2d\) 221](#), 228 P. (2d) 766, the court found statutory authority permitting the town of Newport to create its own electrical distribution system. This authority was not abrogated by the fact that Newport was within the area of an existing P.U.D., and thus the creation of the town system would result in competition with the P.U.D. inside the town.

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describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district."

This statutory prohibition against the geographical overlapping of water districts obviously carries with it an implication that one water district should not infringe upon the territorial jurisdiction of another water district by extending services to individuals therein. This implication is reinforced by the requirement that commissioners of a water district must formulate a comprehensive plan sufficient to fulfill the foreseeable needs of the district before making improvements or incurring any indebtedness. (RCW [57.16.010](#)). In formulating such a plan it is necessary, among other things, to project into the future the probable changes in water consumption per inhabitant, population fluctuations, and the availability of water to the district. The careful consideration of these factors in creating a comprehensive plan could be rendered meaningless if another district is permitted to purloin potential customers from a water district by invading its territory.

Water districts are financed by: the imposition of property tax levies (RCW [57.04.050](#), [57.16.020](#), ch. [57.20](#)); revenue bonds (RCW [57.16.010](#), [57.16.035](#), [57.16.040](#), ch. [57.20](#)); creation of local improvement districts (RCW [57.16.050](#), ch. [57.20](#)); connection charges and the sale of water (RCW [57.08.010](#), [57.08.080](#), ch. [57.20](#)). With reference to the property tax, it makes no difference who supplies water to the individual property owner because the tax is levied upon all property within the water district. However, the other methods of financing are dependent upon the district's supplying of water; e.g., revenue is derived from the performance of services by the district, and, in order to create a local improvement district within a water district, it is necessary to show some benefit to the property. Permitting one water district to "raid" another could result in a serious impairment of the "raided" district's financial position. The seriousness of this impairment would of course depend upon the district's ratio between its fixed and

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marginal costs for the supplying of water. In other words, the higher the fixed costs the greater the burden that will be cast upon those inhabitants of the "raided" district who continue to receive their water from that district.

[3] There are a number of water districts at the present time in the state of Washington, but there remains a substantial portion of the state that is not within the boundaries of any organized water district. It seems obvious, after considering RCW Title 57 in its entirety, that the legislative purpose in permitting water districts to supply water to individuals outside of their districts (RCW [57.08.010](#), [57.08.045](#)) was meant to extend water services only to those individuals who were not within the boundaries of any other water district.

If a water district refuses to serve a property owner whose premises are located within the district, or if the cost of such service is not reasonable, an opportunity for relief is available to the property owner, pursuant to RCW [57.28](#), through a procedure for the withdrawal of territory from the district.

For the reasons indicated hereinbefore, it is hereby ordered that the judgment of the trial court is reversed, and the cause is remanded for further proceedings.

OTT, C. J., DONWORTH, HUNTER, and HAMILTON, JJ., concur.