

Summary of Final Order

Service Delivery Strategy Litigation

Gwinnett County v. Cities of Gwinnett

On September 23, 2011, Superior Court Judge David Barrett entered a 58-page final order in the three-year-old Service Delivery Strategy (SDS) litigation between Gwinnett County and the fifteen cities in the county.

Gwinnett County subsequently appealed the decision to the Georgia Supreme Court. Until the Supreme Court issues its opinion or a final agreement is reached between the county and the cities of Gwinnett, sanctions will remain in effect in Gwinnett County.

SDS was designed to require that local governments take a careful look at the services they provide in order to identify overlap or gaps in service provision and develop a more rational approach to allocating delivery and funding of these services among the various local governments in each county. The essence of his ruling was that city residents do not have to pay for services that primarily benefit unincorporated Gwinnett property owners and residents.

RELEVANT FINDINGS AND LEGAL CONCLUSIONS

CONSENT OF CITIES REQUIRED FOR SDS SERVICES

The judge held that cities must provide consent, in the form of an intergovernmental agreement, in order for the county to provide and charge city residents for a SDS service. He rejected arguments by the county that “the ‘availability’ of a service or the ‘spill over benefit’ to a neighboring jurisdiction is sufficient to hold another jurisdiction financially responsible for the County’s operation costs.” The court noted that while city residents often enjoyed a “spill over benefit” from a service the county provides, county residents also enjoyed a “spill over benefit” from a service the city provides.

CREATION OF SPECIAL SERVICE DISTRICTS FOR SDS SERVICES

SDS requires the county to create special service districts to fund SDS Services when the parties cannot agree on the funding mechanism. This is a non-discretionary duty placed on the county by the SDS statute. Moreover, Judge Barrett ruled that the court has the authority to order the formation of special districts.

The court held that “SDS Services” include only:

1. certain police services
2. fire and emergency medical
3. zoning, development, licensing and permitting
4. code enforcement
5. solid waste
6. certain specified “other services” shown to be provided by the county on a county-wide basis.

The court ordered Gwinnett County to establish separate special service districts in the areas where it provides:

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| 1. police services | 5. solid waste services | 9. licensing |
| 2. fire services | 6. administrative services | 10. permitting |
| 3. EMS services | 7. planning | 11. code enforcement |
| 4. bus transit services | 8. zoning | 12. county road system |

Except for the county road system, the court ruled that the above services can only be funded either through a mechanism agreed to by the parties or by property taxes, insurance premium taxes, assessments or user fees levied to fund the delivery of that particular service in that particular area of the county.

With respect to the county road system, the court ruled that these roads equally benefit the county's incorporated and unincorporated area and that general fund revenues of the county should be used to pay for this road system. Nevertheless, the county was ordered to establish a county-wide special service district to reflect the cost of this service and the revenues used to pay for it. The effect of this portion of the ruling is to place the county road system under the "other services" category of designated SDS services, but with the general fund serving as the source of revenue.

In addition to the county road system, the court ordered the county to create a county-wide special service district for a number of services, including animal welfare; state, county and federal elections; health and human services; emergency management; 9-1-1 service; indigent defense and medical care; inmate medical care; and parks and recreation, library, tax assessment, among many more services. In funding these services, the county must apply any revenue derived from the provision of these services against the cost of the services. The balance must be paid by property taxes, insurance premium taxes, assessments or user fees levied and collect within the special district. This does not include services which are responsibilities authorized constitutionally or in general state law.

CITIES WITH UTILITIES THAT SERVE UNINCORPORATED AREAS

The court rejected the county's attempts to require cities with utility systems that serve unincorporated areas to establish special service districts since municipal electric and gas utilities are not governed by the SDS Act but by other state law. Additionally, the court held that water and sewer services were not subject to the SDS Act except with respect to the regulation of fees for extraterritorial services.

Special Note

Due to the lengthy, specific and complex nature of this ruling, city officials are encouraged to consult with their city attorney for guidance in applying findings and conclusions to local circumstances.

