

Ohio County's Solid Waste Export Fee Withstands Commerce Clause Challenge

The United States Court of Appeals for the Sixth Circuit held that an Ohio county's regulatory scheme restricting the disposal of county waste to landfills that agreed to pay the county disposal tax did not violate the Commerce Clause of the United States Constitution. The Commerce Clause generally prohibits state and local governments from discriminating against, or unreasonably burdening, commerce among the states or foreign countries. The United States Supreme Court has held that solid waste disposal services and solid waste, itself, are articles of commerce protected by the Commerce Clause.

The challenged regulatory scheme was adopted by the Van Wert Solid Waste Management District (the "District"), a public entity created under Ohio law to plan for the management of solid waste generated within Van Wert County, Ohio. Maharg, Inc., a solid waste hauling company doing business within the county, challenged the scheme as unconstitutional.

Ohio's solid waste laws authorized the District to designate in the county's solid waste management plan specific disposal facilities to accept the county's solid waste. Facilities that are not designated in the plan are not authorized to receive the county's waste and a person delivering waste to an undesignated facility could be fined up to \$5,000 per day.

In August of 1998, the District adopted a resolution stating that the District would begin the disposal facility designation process and requesting that operators of solid

waste disposal facilities submit proposals to provide disposal services to the county. The resolution explained that “each successful designee would be required to execute a ‘designation agreement’ obligating the designee to collect a ‘contract fee’ of \$5.30 for each ton of solid waste generated within the District and delivered to the designated facility.” The District sent copies of the request for proposals to thirteen disposal facilities located in Ohio and Indiana, including Jay County Landfill, Inc., a landfill located in Indiana that Maharg regularly did business with.

Although the District initially included the Jay County landfill in Van Wert’s list of designated facilities, the District later rescinded that designation because the landfill’s owner refused to enter into the designation agreement. Ultimately, the District designated eight disposal facilities in the county’s plan. Seven of those facilities were located in Ohio and the eighth was located in Indiana; however, the Jay County landfill was not included in the plan.

Maharg sued the District in federal court, arguing that, by including only one out-of-state disposal facility in the county plan, the District had imposed an impermissible restriction on interstate commerce in violation of the Commerce Clause. Maharg first argued that the plan’s effect on interstate commerce was “direct” rather than merely “incidental”, and that the Commerce Clause prohibited such direct regulation regardless of any beneficent purpose that may underlie the regulation. Maharg argued that “Van Wert County’s scheme constitutes a ‘direct regulation’ of interstate commerce . . . because it expressly bans interstate trade with *any* of the thousands of undesignated landfills nationwide.” The court, however, rejected Maharg’s formal distinction between direct and indirect regulation of interstate commerce, stating that “what is important is the

‘practical effect’ of the challenged tax.” Looking at the practicalities of the case, the court found that “there is no reason to suppose that Maharg has the slightest interest in disposing of Van Wert County waste at any undesignated landfill other than the one it formerly patronized in nearby Jay County.” The practical effect of the District’s plan, the court held, was that “the Jay County landfill has been put off limits for Van Wert County waste because of the refusal of the operator of the Jay County landfill to enter into a designation agreement obligating it to collect a \$5.30 per ton contract fee (a tax, in economic effect) on behalf of Van Wert County.” The federal constitutionality of that tax, the court held, hinged on whether it discriminated against interstate commerce or otherwise imposed a burden on interstate commerce that was “clearly excessive in relation to the putative local benefits” and not whether the tax directly or indirectly effected interstate commerce.

Maharg next argued that the District’s scheme discriminated on its face against interstate commerce because it “restrict[s] solid waste exports to but one out-of-state landfill.” The court, however, found that Maharg was not being prohibited from disposing of Van Wert County waste at the Jay County landfill because of its out-of-state location. To the contrary, the court found that the District ignored state lines when it initially requested bids from nearby landfills. The court held that the sole reason the Jay County landfill was excluded from the final list of designated facilities was its refusal to enter into the designation agreement and pay the \$5.30 per ton tax on Van Wert County waste. Thus, the court concluded that the District’s scheme treated Ohio and out-of-state landfills evenhandedly.

Maharg also argued that, even if the District's scheme did not overtly discriminate against interstate commerce, it nonetheless had the "practical effect" of such discrimination because (1) interstate commerce would be effectively strangled if other states or counties adopted a similar scheme; and (2) the District's scheme "deprived Maharg of the competitive advantage it had gained by utilizing the interstate market." The court rejected this argument as well. The court found that, even if "every county in both Indiana and Ohio were to adopt a regulatory scheme identical to Van Wert County's," there was "no reason to suppose that the movement of waste between the two states would be eliminated or severely impaired." The court also found that the Commerce Clause did not prohibit the District from impacting any competitive advantage that Maharg may have formerly enjoyed. The court stated that "Maharg's investment in the trucks and people that have allegedly enabled it to enjoy economies of scale in hauling waste to Jay County would not appear to have been jeopardized by the surcharge as such. The surcharge may be an annoyance, but it is an equal-opportunity annoyance. It is not a protectionist measure burdening only the operators of foreign facilities." Accordingly, the court held that the District's regulatory scheme did not have the practical effect of discriminating against interstate commerce.

Maharg next argued that, even if the District's scheme was not discriminatory at all, the scheme was unconstitutional because it imposed a burden on interstate commerce that was clearly excessive in relation to the putative benefits. Although the court acknowledged that the District's scheme placed *some* burden on interstate commerce, the court held that this burden was not "excessive" and, thus, rejected this argument as well.

Thus, the court held that the Commerce Clause did not prohibit the District's regulatory scheme, which restricted the disposal of Van Wert County waste to certain designated landfills that had agreed to pay the District's disposal tax.

Maharg, Inc. v. Van Wert Solid Waste Management District, No. 99-4035 (6th Cir. Ohio, May 7, 2001)

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