



Texas Disposal Systems Wins Round One in Legal Battle Over San Angelo Trash Contract

By Joe Hyde | Sep. 23, 2015 9:14 am

Texas Disposal Systems defeated Republic Services in round one of the legal battle over the City of San Angelo's exclusivity contract with Republic Services. A federal district judge threw out a lawsuit filed by Republic against TDS yesterday, freeing TDS to compete openly within the city limits of San Angelo for temporary roll-off solid waste pickup and disposal.

The TDS victory yesterday is for one of two lawsuits filed in the aftermath of the City of San Angelo awarding an exclusive trash collection and landfill management contract to Republic Services of Texas in July 2014.

Yesterday's case, *Republic Waste Services of Texas v. Texas Disposal Systems, Inc.* involved Republic's move to protect its exclusivity arrangement within the city limits pertaining to the collection of temporary roll-off solid waste from construction sites. The other, *Acme Iron & Metal Company and Mayfield Paper Company, Inc. v. Republic Waste Services of Texas* is over

Republic's alleged charging of unauthorized amounts to San Angelo businesses for "Fuel Charges/Environmental Recovery Fees". The former was fought in federal district court; the latter was remanded from federal court back to Texas district court where the plaintiffs, Acme and Mayfield, are attempting to form a class action on behalf of all allegedly harmed San Angelo businesses.



Republic Services Roll-off Trash container at one of the new hotel construction sites at Houston-Harte and Sunset Dr. (LIVE! Photo/Joe Hyde)

Court: State Law Forbids Exclusivity for Temporary Trash Pickup

When the Republic Services of Texas, the Texas arm of the Arizona-headquartered Republic Services was awarded the new, 10-year trash contract with the city on April 1, 2014, Austin-based Texas Disposal Systems inaugurated service for San Angelo building contractors to pickup temporary solid waste at construction job sites within the city limits.

Many San Angelo contractors welcomed the competition; it lowered costs, they argued. TDS-branded roll-off trash bins appeared at many construction job sites. Temporary roll-off bins are

long 20-40 cubic yard containers where contractors place solid waste from job site clean up. The bins aren't permanent fixtures like a dumpster you see behind commercial businesses or at apartment complexes. They are temporary, and are hauled away at the end of the clean-up process.

TDS claimed that an open market is allowed by Texas law for temporary trash pickup using roll-off bins, and Texas law trumps any municipal ordinance, such as the one the city implemented to protect Republic's monopoly under the 2014 trash contract. Specifically, section 364 of the Texas code does not apply to temporary trash collection from construction sites, TDS argued.

Republic's argument was that Section 363 of the Texas code gives the City of San Angelo the authority to create an exclusivity contract, and that TDS is violating the exclusivity. The trash contract of 2014 placed the responsibility to enforce the exclusivity of the trash contract on the shoulders of Republic. The City of San Angelo was not a party to the lawsuit.

Senior District Judge Sam R. Cummings of the United States District Court of the Northern District of Texas based in Lubbock held a hearing on the dispute in San Angelo on Sept. 14.

At the hearing, TDS lawyers headed by Austin attorney James A. Hemphil and San Angelo attorney Paul Stipanovic faced Republic's iconic attorney Charles "Chip" Babcock, a Jackson Walker lawyer who gained national fame representing Oprah Winfrey. Babcock successfully defended Oprah Winfrey who was sued by Amarillo cattlemen for broadcasting a news story about Mad Cow Disease.

Hemphil and Stipanovic argued that the case should be thrown out. Yesterday, the judge agreed.

TDS CEO Bob Gregory was reached via telephone early this morning. He said he was pleased with the judge's ruling and added that he isn't finished yet. Gregory expects Republic to appeal the ruling, which will send the case to the 5th Circuit of Appeals in New Orleans. There, Gregory explained, the court may assign the case back to the Texas Supreme Court since the contents of the arguments revolve around Texas law, not federal statute.

Gregory said that yesterday's ruling has statewide ramifications. For example, in markets where Republic is not the incumbent exclusive trash hauler, Republic is free to offer temporary trash roll-off pickup.

A small San Angelo company, J-Bar solutions was not a party to the lawsuit but will benefit. J-Bar also offers temporary trash pickup at construction sites.

Michael Biggerstaff, President of The Home Builders Association of San Angelo refused to take sides in the lawsuit, explaining that both Republic and TDS are members in good standing. However, members of the local HBA will be elated that free enterprise will reign in the San Angelo construction trash collection market. Last year, local homebuilder Kevin Bond complained that the city's exclusivity arrangement limited his options and increased costs of construction unnecessarily. Laren Craig CEO of Greenstreet Construction out of Lubbock explained that an exclusivity contract can drive up costs of construction as much as 20 percent at his hotel construction site for the new Courtyard by Marriott built near Sunset Blvd. and the Houston Harte Expressway.

In Austin, HBA of Texas' Executive Director Scott Norman said that free enterprise and competition are a good. But Norman explained that the law was somewhat ambiguous. "That's what the courts are for," he said.

Next Up: Depositions of City of San Angelo Officials

Besides the anticipated appeal of yesterday's ruling, the second lawsuit, Acme Iron & Metal Company and Mayfield Paper Company, Inc. v. Republic Waste Services of Texas was sent back to state district court from federal court last month. Babcock and Republic argued that since Republic Services is a Delaware corporation, Texas courts had no jurisdiction. But the lawsuit is primarily against a Republic subsidiary based in Texas. A federal case would also move slower and run up costs for both parties, explained attorney Gary Newton who is on the TDS legal team. Acme Metal is owned by Bob Gregory, the CEO of TDS. Stanley Mayfield, CEO of Mayfield Paper had his company join Acme in the lawsuit.

The federal court ruled that the appropriate venue for the case was a Texas court, and remanded it back to the 119th Texas District Court in San Angelo.

The next hearing is set for February 10, 2016.

In the meantime, Newton said that his legal team would start gathering evidence for trial. Part of that process he said was to obtain depositions of the parties involved in the decisions concerning the alleged overcharges. When asked if that will involve deposing City of San Angelo officials, Newton said "yes."

City Attorney Theresa James said, "If our employees are to be deposed, they would have to be lawfully served notice of deposition. We would comply with any lawful notice and represent our employees in any such deposition."