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RECYCLABLES:
TRASH OR TREASURE?

It finally happened. A federal court judge in Oregon has issued a ruling that invalidates a Washington County ordinance regarding, among other things, the transportation of recyclables in drop boxes. Now, most of you are not directly affected by this ruling. Yet it has huge potential effects and has not been reported in the media, except apparently for a small blurb in the Metro section of *The Oregonian* for Washington County.

By way of background, most of you know that as of January 1, 1995, the various states (excluding Hawaii) in our federal union have been prevented from economically regulating the transportation of "property", courtesy of Congress via the FAAAA (Federal Aviation Administration Authorization Act of 1994). Congress did not bless us with a definition of property, leaving a void for interpretation. Meanwhile, state and local governments have historically regulated the transportation of solid waste. Generally, solid waste has not been considered to be property, and thus outside the regulatory jurisdiction of the ICC. (However, the state cannot discriminate in regard to "flow control", mentioned below).

As all of us non-cave dwellers know, there has been a movement at the state and federal levels to reduce the amount of solid waste dumped in our landfills by recycling as much as possible. The question arises as to whether recyclable debris is "property" and thus outside the scope of local regulation, or if it is not property within the meaning of the FAAAA. The answer to this question is important to many local governments, since the regulated activity can be taxed and is thus a source of revenue. Washington County, like many others, has insisted that it still has the authority to regulate the transportation of drop boxes containing recyclable material. The county cited a company that transported a drop box without having the required franchise authority. The state court found the company in violation of the law. However, the federal court, which for these purposes is a higher court, ruled that the recyclable material was "property" and thus the FAAAA ***preempted*** the county's ability to regulate this activity.

A federal court judge has quietly invalidated a county ordinance, with large potential ramifications.

But the court did not stop there. It also ruled that the ordinance was ***unconstitutional*** as it operates as a barrier to out-of-state interests, since an applicant can obtain a certificate only if it has the majority of the service accounts in the area for which it applied. Remarkably, the county has not issued a certifcate since it enacted the ordinance in ***1969.***

The court did not reach the ***equal protection argument*** raised by the cited company, stating that it was not necessary to do so. The county's enforcement procedures are complaint-driven, meaning that it does not investigate and cite without receipt of a complaint. I guess that you may not feel that you are receiving equal protection of the laws if your operations are subject to the whims of someone who may pick up the phone and tattle on you but not on the tattler's buddy.

An issue that was left on the side concerns the transportation of garbage, as the parties agreed that garbage is not property and thus not preempted. The U.S. Supreme Court recently stated that "the article of commerce is not so much the solid waste itself, but rather the service of processing and disposing of it". The high court has also held, in an Ore-gon case, that a flow control ordi-nance, which regulates solid waste, cannot be discriminatory. Despite the parties' stipulation, the subject of garbage will continue to surface.

Where does that leave Washington County, now that the federal court has invalidated its ordinance? Its attorney declined comment, which is completely understandable. (After all, what are you going to say?) We can all speculate as to what will happen in the immediate and distant future.

To make it more confusing, the court issued a subsequent judgment dismissing the case. So did he undo what he had just finished doing?

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

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SPECIAL EDITION

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