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Nicholas A. Tomso

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RECENT DEVELOPMENT

WASHINGTON GAS LIGHT COMPANY V. MARYLAND PUBLIC SERVICE COMMISSION: ACCELERATED RECOVERY PROGRAM FOR INFRASTRUCTURE IMPROVEMENT COSTS IS LIMITED TO PROJECTS PHYSICALLY LOCATED WITHIN THE STATE OF MARYLAND.

By: Nicholas A. Tomso

The Court of Appeals of Maryland held that the Maryland Public Service Commission appropriately interpreted the legislative intent of Public Utility Article § 4-210 of the Maryland Code as intending to only improve infrastructure physically located within the State. *Washington Gas Light Company v. Maryland Public Service Commission, et al.*, 460 Md. 667, 191 A.3d 460 (2018). The court analyzed the plain language and legislative history of the STRIDE statute and affirmed the decision of the Maryland Public Service Commission which limited the expedited benefits provided by the statute to projects exclusively within Maryland. *Id.* at 691, 191 A.3d at 474.

On June 1, 2013 the Maryland legislature enacted § 4-210 of the Public Utility Article of the Maryland Code, commonly known as the Strategic Infrastructure Development and Enhancement, or STRIDE statute (“STRIDE”). STRIDE was passed in response to increasing concerns about threats to public safety due to the deteriorating gas infrastructure throughout Maryland. Specifically, STRIDE was designed with the purpose of encouraging gas infrastructure improvements by offering expedited funding. The statute was intended to provide public service companies with a collectable surcharge for undertaking an eligible project. Prior to the enactment of STRIDE, a public utility company which undertook an infrastructure replacement project could only recover the costs of improvement investments after the work was completed. However, under STRIDE, utility companies are eligible to recover costs for their investments while the improvements were underway, easing the burden on the company by allowing more timely cost recovery.

The dispute in this case arose between a public utility company, Washington Gas Light Company (“Washington Gas”) and the Maryland Public Service Commission (“The Commission”). Washington Gas provides natural gas services to customers in Maryland, Washington D.C., and jurisdictions in Virginia. The Commission is in charge of supervising and regulating public service utility companies to ensure they operate in the best interest of the public within the state of Maryland. The Commission is also tasked with the approval or denial of STRIDE applications submitted by various public utility companies.

On November 7, 2013 Washington Gas filed a STRIDE plan with the Commission that was approved. Their initial plan consisted of four distribution system replacement programs, all located within the company's Maryland service territory. On March 10, 2015, Washington Gas applied to amend their original proposal, adding three projects outside of Maryland. The parties disputed whether Washington Gas could recover expedited costs through STRIDE for the projects located outside of Maryland. The Commission rejected the expedited recovery costs for the out-of-state projects in the amended proposal. The Commission explained that the STRIDE statute was unambiguous, and clearly expressed the legislature's intent to limit the accelerated cost recovery for projects exclusively in Maryland.

Washington Gas then petitioned for judicial review of the Commission's decision to the Circuit Court for Montgomery County. The circuit court affirmed the final order of the commission, and Washington Gas appealed to the Court of Special Appeals. After examining the text of the statute and the legislative history, the Court of Special Appeals found that the Commission's interpretation of the statute was appropriate and affirmed the decision. Washington Gas petitioned for a *writ of certiorari*, which was granted.

The ultimate issue before the Court of Appeals of Maryland was whether the STRIDE statute provided for accelerated recovery costs for infrastructure projects located outside of the State. *Washington*, 460 Md. at 678, 191 A.3d at 467. Specifically, the court looked at whether the legislative intent section of the STRIDE bill was intended to be operative in effect or merely commentary. *Id.* The court began their analysis by reviewing the arguments surrounding the interpretation of the statute made by both Washington Gas and the Commission. *Id.* at 680-82, 191 A.3d at 468-70. Washington Gas argued that the STRIDE statute lists five unambiguous criteria that must be met to be eligible for recovery, and that Washington Gas had satisfied the requisite criteria. *Id.* Additionally, Washington Gas argued that § 4-210(b), the "legislative intent" section, was merely a preamble to the statute and had no operative effect. *Id.* However, the Commission argued the wording within § 4-210(b) was an operative part of STRIDE and not a preamble. *Id.* The Commission also argued that there was no evidence that the General Assembly, in enacting the statute, had ever considered infrastructure investment outside of Maryland. *Id.*

The court explained the statutory interpretation process first begins by looking at the plain meaning of the words in the statute, and construing the statute as a whole to determine the purpose and intent of the General Assembly. *Washington*, 460 Md. at 682-83, 191 A.3d at 469-70 (citing *Brown v. State*, 454 Md. 546, 551, 165 A.3d 398 (2017)). From this plain language analysis, the court found that the General Assembly expressly and unambiguously stated that the intent of the statute in § 4-210(b) was to restrict expedited recovery to improvements exclusively within the State of Maryland. *Washington*, 460 Md. at 685-86, 191 A.3d at 471.

Continuing their analysis, the court examined whether § 4-210(b) should be considered a preamble or an operative part of the STRIDE statute.

Washington, 460 Md. at 683-84, 191 A.3d at 469-70. The court looked at the Legislative Drafting Manual which distinguished a preamble from a codified section which stated the legislature's intent. *Id.* The court explained that a preamble is always uncodified, centered above the body, with the heading "Preamble", and appears only in the Session laws. *Id.* at 684. Conversely, the codified section, which has more legal formality, will likely be located firmly within the statute, and is not drafted under the heading "Preamble." *Id.* Because § 4-210(b) was positioned firmly within the statute and not under the heading "Preamble," the Court of Appeals found that § 4-210(b) was an operative section of STRIDE. *Id.* at 684. As an operative section, the court found that the codified legislative intent would be given greater weight in determining the application of the statute. *Id.* at 685.

In addition to their plain language analysis, the court looked at the legislative history through deliberations surrounding Senate Bill 8, the session in which STRIDE was originally discussed and proposed. *Washington*, 460 Md. at 687-90, 191 A.3d at 472-74. During these deliberations, several gas companies, including Washington Gas, made arguments to the Maryland General Assembly as to why Maryland should upgrade the State's gas pipeline infrastructure. *Id.* The arguments compared Maryland's older pipe system with other states' more reliable systems. *Id.* at 687-88. Because of the focus on Maryland, the court found that the legislative history did not support the theory that STRIDE was enacted for improvements made outside of the state of Maryland. *Id.* at 689-90. The Court of Appeals of Maryland affirmed the judgment of the Commission and concluded that § 4-210 of STRIDE was unambiguous and the Commission's interpretation of the legislative intent was appropriate. *Id.* at 690-91.

In *Washington*, the Court of Appeals of Maryland ruled that the legislature, in enacting STRIDE, intended to only provide expediated relief for projects located within the state of Maryland. The court was hesitant in this case to expand the very narrow language of the legislature beyond Maryland's borders. Moreover, this decision confirms that when the General Assembly codifies a legislative intent section it is given greater weight than extrinsic sources of legislative intent. This case shows that these sections are significant because they will be considered even when interpreting other, unambiguous sections. As a result, we may expect to see an increase in legislatures use of codified statements of legislative intent in the future.