

BEFORE THE IOWA SUPREME COURT

NO. 20-1027

US DIST CT S.D. IOWA NO. 4:18-cv-00431

XENIA RURAL WATER DISTRICT,

Plaintiff-Appellant,

v.

CITY OF JOHNSTON, IOWA,

Defendant-Appellee.

CERTIFIED QUESTIONS FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF IOWA THE
HONORABLE JUDGE JAMES E. GRITZNER

BRIEF OF THE IOWA LEAGUE OF CITIES AS AMICUS CURIAE

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STATEMENT OF IDENTITY AND INTEREST

The Iowa League of Cities (“League”) is an association of more than nine hundred (900) cities in the State of Iowa. One of the purposes of the League is to provide a supporting role to its members in interpreting statutes and in resolving legal issues that affect Iowa cities. The League has long provided advice to cities concerning municipal water utilities, rural water and annexation. The issues in this case are important to the League in its role as advisor to Iowa cities. The decision of this Court has broad implications for cities and will directly and immediately affect development and projects now being discussed or constructed, or being contemplated for the future, by many of the cities in this State. The issues also are important as they will immediately affect the annexation decisions of each city and impact the decisions of the State’s City Development Board that has final approval over many proposed annexations. The League’s interest is in being able to advise a city on the impact of rural water on each city within Iowa.

The League did not take part in the trial or in the briefing of the case in the Federal District Court. The League reviewed Judge Gritzner’s decision in the District Court case and determined that the issues certified to the Iowa Supreme Court are of statewide interest to all Iowa cities and to the League itself. The League, given the frequency with which rural water questions are

posed to it by Iowa cities, and cases are being filed by rural water districts and associations in matters with Iowa cities, believes it should present its brief in this case.

STATEMENT OF PREPERATION AND PAYMENT

Pursuant to Iowa Rule of Appellate Procedure 6.906(4), the Iowa League of Cities states that no party or party's counsel has authored this brief in whole or in part nor has any party or any person or entity other than the Iowa League of Cities contributed money to fund the preparation or submission of the brief.

ARGUMENT

- I. CERTIFIED QUESTION 1: Whether an Iowa Code § 357A.2 rural water district, before amendments to § 357A.2(4) in 2014, had a legal right to provide water service to portions of an area described in its country (sic) board of supervisors resolution, see Iowa Code § 357A.2(1), when those portions were also within two miles of the limits of the municipality, see § 357A.2(3), and when the municipality had not waived its rights to provide water serve to the area, see § 357A.2(4)**

Despite Xenia's recent arguments to the contrary, before 2014 a rural water district did not have the legal right to provide water service to portions of the area described in the board of supervisor's resolution, when those portions of area were also within two miles of the limits of a municipality and

the municipality had not waived its rights to provide water service in the area. A brief review of the historical language of Iowa Code section 357A.2 clearly shows that a rural water district did not and does not have a limitless right to provide water within the area described in the board of supervisor's resolution.

In 1977, Iowa Code 357A.2 required the filing a petition with the auditor for the incorporation and organization of a rural water “district encompassing an area for the purpose of providing an adequate supply of water for domestic purposes to residents of the area who are not served by the water mains of any city water system and who cannot feasibly obtain adequate supplies of water from wells on their own premises.” Iowa Code § 357A.2 (1977). The petition was required to state the location designated for the water district and the reason it was needed. Id.

Following a 1987 amendment, a new paragraph was added to section 357A.2, which is what we now call the “two-mile rule”, providing:

Water services, other than water services provided as of April 1, 1987, **shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A unless the city has approved a new water service plan submitted by the district.** If the new water service plan is not approved by the city, the plan may be subject to arbitration.

Iowa Code § 357A.2 (1987) (emphasis added).

In 1992, section 357A.2 was again amended and it read, as amended:

A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in a county or in two or more adjacent counties for the purpose of providing an adequate supply of water for residents of the area who are not served by the water mains of any city water system.

....

The petition shall be signed by the owners of at least thirty percent of all real property lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area, describing such area to be served or specifying the area by an attached map.
2. The reasons a district is needed.
3. A new water service plan describing the cost feasibility and estimated construction schedules.

Water services, other than water services provided as of April 1, 1987, **shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A** except as provided in this section.

A rural water district incorporated under this chapter or chapter 504A may **give notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city. ... In responding to the plan, the city may waive its right to provide water service within the areas designated for service by the rural water district, or the city may reserve the right to provide water service in some or all of the areas which the rural water district intends to serve.** If the city reserves the right to provide water service within some or all of the areas which the rural water district intends to serve, the city shall provide service within four years of receipt of the plan. **This section does not preclude a city from providing water service in an area which is annexed by the city.**

Iowa Code § 357A.2 (1992)(emphasis added)¹. There were minor changes to add reference to Iowa Code Chapter 504 and to provide numbered paragraphs in 2004 and 2010.

The language of the 1987 amendment clearly prohibited rural water districts from providing water services where lines were not already constructed and water was not already being provided to customers as of April 1, 1987 (i.e., new water services) within two miles of a city's limits, unless there is a water service plan submitted by the district and approved by the city. Iowa Code § 357A.2 (1987). With the 1992 amendment, providing water services where lines were not already constructed and water was not already being provided to customers as of 1987 (i.e., new water services), was still prohibited within two miles of a cities' limits unless the rural water district had provided notice of intent to provide water services to a new area within two miles of a city by submitting a water plan to the city. The city also had to waive its right to provide services within the two miles and approve the plan.

From 1992 and after, rural water districts were required to provide a plan for construction and provision of water services within the area included in the district. Rural water districts did not and do not start off with pipes

¹Portions redacted for brevity.

already in the ground and water service ready to be hooked up to every customer within its district immediately upon petition. Rather, they gradually construct and provide services to customers over time with new service areas within the district being constructed and serviced over that time. While Xenia became a rural water district prior to this requirement, the documents evidence that Xenia was only serving four (4) units when it became a rural water district [October 30, 1990 Petition, Pl. MSJ App. pp. 8-12; App. 93-97]. In fact, Xenia's documents show requests for water services were not made in the disputed areas until 1995 and 1997, making those services new water services at that time and subject to the two-mile rule. [Exhibit 250, Pl MSJ App. p. 48; App. 112]

Since 1987, both Iowa cities and rural water districts, including Xenia as referenced in the record of this litigation and acknowledged in the Interim Agreement between Johnston and Xenia, have interpreted Iowa Code section 357A.2 to apply the two-mile rule to rural water districts. [October 30, 1990 Petition, Pl. MSJ App. pp. 8-12, November 27, 1990 Resolution and Order, Pl. MSJ App. p. 13, Interim Agreement Navy Project, Def. Comb. Res. and MSJ App. p. 21; App. 93-97, 98, 123] Iowa cities have relied on section 357A.2 to require rural water districts to provide the applicable plan or notice when wanting to provide services within two miles of a city and to follow the

process for approval and/or waiver. Since 1987, cities have been expending funds to provide water services within annexed areas and the two-miles outside their boundaries absent such notice and waiver or an approved plan. If rural water districts are able to provide services within the two mile of a city simply because the area falls within the rural water district, there exists no need for approval or waiver by cities. This interpretation would render large portions of the pre-2014 language of section 357A.2 irrelevant and superfluous.

Xenia and Association of Regional Water Associations, Iowa Regional Utilities Association, and Iowa Lakes Regional Water, as Amici, refer to Rural Water System No. 1 v. City of Sioux Center, 202 F.3d 1035, 1038 (8th Cir. 2000) in support of the argument that a rural water district has the unlimited right to provide services within two miles of a cities' limits. However, the Rural Water System No. 1 case held that a rural water **association** (organized as a nonprofit under Chapter 504A) was not subject to the prohibitions of Iowa Code section 357A.2 because section 357A.2 only provided such prohibition for districts. Id. Notably, this was before the amendment and, at least in part, the cause of the 2014 amendment to include rural water associations in the two-mile rule under 357A.2. The Rural Water System No. 1, case does not expressly discuss the two-mile rule effect on rural

water districts, but rather the case focuses on why the Plaintiff was not a rural water district under Chapter 357A, as written in 1992, and therefore why the restrictions in 357A.2 did not apply to a non-district. Id. However, in doing so, the Court in dicta and impliedly recognizes there is a two-mile prohibition for districts. Id.

As reasoned by Judge Gritzner:

From 1987 until a statutory amendment in 2014, § 357A.2 applied to “a rural water district incorporated under this chapter or chapter 504A.” 2014 Iowa Legis. Serv. Ch. 1086 (H.F. 2192) (West).... The two-mile rule, then, only began to apply to Xenia in 1990, when Xenia reorganized as a rural water district under § 357A.

....

When Xenia's protected service area expanded at the time it assumed a qualifying loan in 1992 or thereafter, that expansion could only cover areas to which it had a legal right to serve in accordance with Iowa law, including § 357A.2(3)'s two-mile rule. Section 1926(b) shields rural water providers from having their protected service area *curtailed* or *limited* during the lifetime of a qualifying loan, but it does not provide a sword for providers to expand their legal service area outside the bounds provided by state law. See Pub. Water Supply Dist. No. 3 of Laclede Cty., 605 F.3d at 519 (“Section 1926(b) provides a shield, not a sword.”).

Xenia Rural Water Dist. v. City of Johnston, Iowa, No. 418CV00431JEGCFB, 2020 WL 3399911, at *7–9 (S.D. Iowa Mar. 19, 2020)

The League and the Iowa cities supported by it agree with Judge Gritzner's interpretation. A rural water district's expansion can only cover

areas that the district has a legal right to serve in accordance with Iowa law, which includes the two-mile rule. This Court's ruling will greatly affect all cities in Iowa. Iowa cities historically have relied upon and continue to rely upon the certainty afforded it by Iowa Code Section 357A.2. The Iowa Code allows for the establishment of an "area to be served" but then lays out a process for determining the legal right to serve that area. The federal protection under section 1926(b) is determined on the law and the services provided by a rural water district at the time it took out a federal loan. It is a shield but not a sword for providers to expand their legal service area outside the bounds provided by state law.

This Court's interpretation will affect each city's ability (1) to negotiate with rural water districts and associations and to ensure those within and around the city limits are provided quality water services; (2) to provide higher level of water and fire protection services than required of rural water districts and associations; and (3) to further development and projects now being discussed or constructed, or being contemplated for the future; and (4) to seek compensation from customers who are using city provided water and fire protection services. As Xenia is taking the position that a rural water district never has to provide notice, obtain plan approval, or obtain a waiver from a city when providing new services within the districts designated district area,

even when a city annexes land, Xenia’s argued interpretation eliminates the two-mile rule for existing districts and associations and prohibits cities from providing water services to annexed areas and citizens within two miles of the city limits regardless of whether those services are necessary to meet heightened municipal duties and obligations.

Xenia’s interpretation of section 357A.2 completely eliminates any requirements for cities and rural water districts and associations to confer and negotiate for quality water services and ensure those within and around the city limits are provided quality water services. Xenia’s position eliminates whole sections of section 357A.2 and Iowa Code Chapter 357A which deal with the notice provisions, plan approval, waiver, negotiations and compensation. Xenia’s argument effectively eliminate 357A.2 for existing rural water districts and associations that already have designated districts.

This interpretation certainly is not a proper interpretation. As far back as the 1987 and 1992 versions of section 357A.2, the Iowa Code recognized a city’s right to waive or reserve the provision of water services by a city within the two-mile area—this language inherently evidences that the right to serve the two-mile area is the city’s and not a district or association’s right. This interpretation also is inconsistent with section 357A.14(2) which provides that “[a]ll or any part of an incorporated city may be included in the

boundaries of any existing water district or water district being newly organized, **provided the governing body of such city by resolution or ordinance gives, or has given, its consent.**” Iowa Code § 357A.14(2) (emphasis added).

Iowa cities rely on these provision, including sections 357A.2, 357A.14, and 357A.21, to work with rural water districts and associations in the midst of the continued municipal growth and improvement and to understand their obligation to provide fair compensation to the rural water districts and associations. Effectively eliminating these Iowa Code sections will act to impede such growth and to keep citizens from receiving the benefits and services offered by municipalities including utility services, fire prevention services and police services. Elimination of the requirements of 357A.2 and the other Iowa Code sections will prevent cities from carrying out their municipal duties for those citizens within their city limits if those citizens are within the designated area of a rural water district or association. It will prohibit cities from growing and providing these services to those located within two miles of the city. It will cause such citizens to be without services while they wait for the rural water districts and associations to spend millions to connect and improve service infrastructure. And then, they are still left without fire protection as many if not all rural water associations and districts

install only the minimum requirements of lines, insufficient to provide that protection.

Xenia's website indicates, relative to the disputed areas:

Service was extended into Polk and Southern Dallas Counties in 1994 by purchasing water from Des Moines Water Works.

.... All or portions of 11 counties, 16 communities and over 10,000 customers/members currently comprise Xenia Rural Water District.

About Us, <https://www.xeniawater.org/about-us> (accessed October 8, 2020).

Conversely, the City of Johnston served 22,040 citizens as of 2018 and maintains and repairs approximately 117 miles of water mains, 1,526 hydrants, 1,216 water valves and three storage tanks that hold an estimated four million gallons of water. *Demographics*, <https://www.cityofjohnston.com/661/Demographics-Data> (accessed October 23, 2020); *Water Services*, <https://www.cityofjohnston.com/272/Water-Services> (accessed October 23, 2020).

Section 357A.22A only requires rural water districts to establish rural fire protection programs which include providing access to designated soft hose fill stations. Iowa Code § 357A.22A. A much lower standard exists for rural water districts and associations than the standard required for municipalities. A rural water district is not liable for any claims for failure to

provide or maintain fire hydrants, facilities or an adequate supply of water or water pressure for fire protection services. Id. In comparison, Iowa Code section 364.16 requires that a city provide for the protection of life and property against fire and that the standards required of cities must be consistent with code standards promulgated by nationally recognized fire prevention agencies. Id. § 364.16. This disparity in fire suppression requirements results in development being halted if urban fire flows are not provided or results in a city having to provide urban fire flow services without the ability to receive compensation or reimbursement for water services provided to the areas insufficiently serviced by rural water districts and associations.

Xenia's Rural Water District Policy Fire Protection provides:

This Fire Protection Policy is adopted pursuant of the requirements of § 357A22 of the Code of Iowa (2001). Although Xenia Rural Water District has a rural water system that provides potable water to participating members, its supply system is not designed for fire protection. ... The hydrants will have a minimum barrel diameter of 4". Some "end of line" flush hydrants will not be considered soft fill stations, but may be used by fire departments in the same manner as soft hose fill stations.... Any interested fire department will be responsible for the purchase of any equipment needed to utilize the District's soft hose fill stations.

Xenia Rural Water District Policies, 2015, pp. 14-15 found at https://www.xeniawater.org/documents/1086/District_Policies_2015_Revised_Proofed_with_page_s.pdf (accessed October 8, 2020).

Soft fill stations are not traditional fire hydrants. While pumper trucks can fill their trucks and carry the water to the scene of a fire from a fill station, they do not provide the water pressure and volume necessary to fight a fire. FIRE!: WHEN AN OLD RULE CREATES A HOT MESS, 52 *Tulsa L. Rev.* 343, 349 Caroline Guerra Wolf (Winter 2017). Pumper trucks take turns driving to the soft fill station and refilling with water and then driving back to the fire and expelling the water. *Id.* Nonetheless, Iowa cities are required to provide fire prevention and protection services consistent with code standards promulgated by nationally recognized fire prevention agencies in the and furnish a sufficient supply of water and water pressure for same. Iowa Code § 364.16.

If Xenia's interpretation of section 357A.2 is adopted, cities will be required to provide the necessary water services to support required fire protection duties but will be wholly unable to fund the costs of those services from citizens located in annexed and two-mile areas as they are not able to charge for such services. Iowa cities, including Johnston, Ames, Nevada, Huxley and Marshalltown, have encountered situations where rural water

associations and districts have effectively blocked development because these rural water districts or associations claim exclusive rights to territory and customers despite the fact that the rural water association or district has not provided any infrastructure or services to customers in the area and they are not capable of providing infrastructure and services of the quality and extent needed for the customers (water volume and pressure necessary for fire protection, volumes needed for commercial and industrial customers and untreated water provision). When rural water associations and districts are unwilling to negotiate with cities under Iowa Code Chapter 357A, they hold cities hostage. By demanding payments for undeveloped areas with no customers where the associations and districts have not provided significant, if any, infrastructure they are using the law as a sword; rather than a shield as intended by it.

For all other issues and arguments related to Certified Question Number 1, the Iowa League of Cities adopts the arguments as set forth by the City of Johnston in its Proof/Final Brief as though fully set forth herein.

For these reasons, the two-mile rule applies to water districts prior to the 2014 amendment. Rural water districts, even those that were non-profits before electing to become water districts, did not have a legal right to provide water service to portions of an area described in its county board of

supervisors resolution when those portions were also within two miles of the limits of the municipality and when the municipality had not waived its rights to provide water serve to the area.

II. Certified Question 2: Whether Iowa Code § 357A.2(4), as amended by the Iowa legislature in 2014: (a) exempts a rural water district from following notice-of-intent procedures when the area the district seeks to serve is within the district’s boundaries as designated in the county board of supervisors’ resolution creating the water district and/or (b) otherwise provides the rural water district a legal right to serve such areas when the municipality has not waived its rights? If so, whether the 2015 amendment to § 357A.2(4) had retroactive effect?

Following the decision in Rural Water System No. 1 v. City of Sioux Center, 202 F.3d 1035, 1038 (8th Cir. 2000), rural water associations began taking the position that they had exclusive rights to serve all areas within their designated district and/or the State of Iowa and that the two-mile rule had no application to them. In doing so, the associations acted to prevent the growth and development of Iowa cities. Cities were prevented from expanding housing and attracting commercial and industrial projects because the associations claimed exclusive rights to areas and customers despite the fact they had not provided services and could not provide sufficient infrastructure or services to meet the needs of the projects. Cities had no idea whether water services were being provided in any given area as claimed because the

association was not required to submit plans or provide notice. When they did negotiate, cities were forced to pay exorbitant amounts in order to provide required services and move forward with development and growth.

As a result of the actions of the rural water districts and associations, the Iowa Association of Municipalities proposed legislation to amend Iowa Code Chapter 357A. Both House File 516 (84th General Assembly) and subsequent Iowa House File 2192 (85th General Assembly) were legislation proposed by the Iowa Association of Municipalities and, originally, opposed by the Iowa Rural Water Association. *See Des Moines Water Works Legislative Priorities*, p. 2, <http://www.dmww.com/upl/documents/about-us/meetings/legislative-priorities.pdf> (accessed October 15, 2020). The purpose of the bills was to add “associations” to the provisions of Iowa Code Chapter 357A, to facilitate development within the two miles of a city, require transparency and notice from districts and associations when they wanted to develop services and infrastructure within those two miles, and provide for a back and forth mechanism between cities and districts and associations for negotiating and approving water plans and services. The legislation was never intended to eliminate the two-mile rule.

On February 10, 2014, as successor to the previous House File 516, Iowa House File 2192 (“Bill”) was introduced in the 85th General Assembly.

Iowa H.F. No. 2192, 85th Gen. Assemb., 2d. Sess (2013-2014). The Title of the Bill was “A bill for an act relating to rural water providers by making changes to water service requirements.” Id. When introduced, the explanation for the Bill provided, in relevant part², as follows:

This bill relates to rural water providers by making changes to water service requirements.

The bill defines “rural water association”.

The bill places certain limitations on the provision of water services by rural water associations to areas that are within two miles of a city after July 1, 2014.

Current law provides that a rural **water district may provide notice of intent to provide water service to a new area within two miles of a city by submitting a water service plan to the city.** The bill requires that if a city’s water service is provided by a city utility, notice **shall** be provided to the governing board of the city utility. ...

Current law requires that a water plan submitted by a rural water district **include the new area that the district intends to serve.** The bill requires that a district or association include in its water plan **any area that the district or association intends to serve within three years.**

Current law provides that a **city may waive** its right to provide water service **within the areas designated in a water plan. ... If a city waives the right to provide service, the district or association is permitted to provide service as described in the district or association water plan.** The bill requires that such **water service be provided in sufficient quantity and quality to meet customer demand.**

....

² Portions redacted for brevity.

Id. (emphasis added). Nothing within the explanation for the Bill provides for the reading of section 357A.2(4) that is encouraged by Xenia.

The Iowa Association of Municipal Utilities (IAMU), with the mission "To support and strengthen Iowa's municipal utilities," represents 754 municipal broadband, electric, gas, and water utilities in the state of Iowa. *About IAMU*, [https://members.iamu.org/page/About IAMU](https://members.iamu.org/page/About_IAMU) (accessed October 23, 2020). IAMU, a proponent of and advocate for the Bill, did not and would not propose and support legislation that took away the two-mile prohibition and notice requirements for Iowa rural water associations and districts as suggested by Xenia and its Amici.

After enactment of Bill 2192, Iowa Code section 357A.2 read, in relevant part:

3. Water services, other than water services provided as of April 1, 1987, **shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter except as provided in this section.** Except as otherwise provided in this chapter, a rural water association shall not provide water services within two miles of a city, other than water services provided as of July 1, 2014.

4. a. A rural water district or rural water association may give **notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city. This subsection shall not apply in the case of a district or association extending service to new customers or improving existing facilities within existing district or association service areas or existing district or association agreements.** If

water service is provided by a city utility established under chapter 388, the water plan **shall** be filed with the governing body of that city utility. The district or association **shall** provide written notice pursuant to this subsection by certified mail.

b. The water plan **shall** indicate the area within two miles of the city which the district or association intends to serve within the next three years. ...

c. **If the city fails to respond** to the water plan within seventy-five days of receipt of the plan, **the district or association may provide service in the area designated in the plan.** ...

d. (1) In responding to the plan, **the city may affirmatively waive its right to provide water service within the areas designated for water service by the rural water district, or the city may reserve the right to provide water service in some or all of the areas which the rural water district or association intends to serve.**

....

(4) For purposes of this paragraph “d”, **“provide water service” and “provide service” mean to deliver water in sufficient quantity and quality to meet customer demand. The department of natural resources shall determine whether such service meets customer demand, as provided under section 455B.174.**

5. **This section does not preclude a city from providing water service in an area which is annexed by the city pursuant to section 357A.21.**

Iowa Code § 357A.2 (2014) (emphasis added).

Xenia points to the language “[t]his subsection shall not apply in the case of a district or association extending service to new customers or improving existing facilities within existing district or association service

areas or existing district or association agreements” as being the only applicable language in this matter. However, Xenia’s attempt to spin the argument misconstrues the actual language and completely ignores the surrounding text of section 357A.2.

This language cited by Xenia was and is only intended to refer to “existing”, not new, water services and infrastructure. No notice is needed if a district or association has pipes and infrastructure in the ground and wants to improve that infrastructure or wants to connect new customers to already existing infrastructure and pipelines. The language is not intended to and does not cover expansion of new infrastructure into the designated district. Again, such a reading would effectively eliminate the two-mile rule as most designated districts include areas within two miles of cities across the state. This interpretation renders the language of subsection (3) superfluous; never the intent of the legislature as set forth in the Bill’s explanation. Further, if Iowa cities do not have the right to provide services within two miles of their city limits, there is no right to waive and therefore all of subsection 4 of section 357A.2 is irrelevant.

As found by the Honorable Judge Gritzner

Read together, the provisions of Iowa Code § 357A.2 plainly indicate that a rural water district's permitted service area, as specified by its county supervisors’ resolution, is subject

to the two-mile rule. The two-mile rule's placement in the statute immediately after the provisions permitting petitions for the creation of rural water districts shows that the two-mile rule is meant to restrict the potential scope of rural water district service areas. If a rural water district's boundaries specified in a resolution trumped the two-mile rule, then the two-mile rule would be superfluous—its only function is to limit districts' rights to provide water service within two miles of a city's limits. In addition, the provision immediately after the two-mile rule, § 357A.2(4), sets forth how rural water districts may receive an exception to the two-mile rule with the consent of the relevant municipality, but nowhere creates an exception to the two-mile rule based on a county supervisors' resolution

....

The ordinary meaning of extending service and improving existing facilities within existing service areas suggests that the amended language does not contemplate a rural water district expanding its provision of water service to areas which it previously did not serve. See Ferezy, 755 F. Supp. 2d at 1013 (under Iowa rules of statutory interpretation, words in a statute are given their “ordinary and common” meaning (quoting Doe, 786 N.W.2d at 858)). Although the amended language permits a rural water district to extend service within its *existing* service area, it does nothing to change the boundaries or definition of its legal rights to serve.

....

*11 The relevant amended language is in subsection 4 of § 357A.2, which provides the back-and-forth process for cities to grant exceptions to the two-mile rule, *not* in subsection 3, which contains the two-mile rule. The amended language states it only applies to “[t]his subsection,” Iowa Code § 357A.2(4)(a), indicating that the amended language is not meant to apply to the other subsections of § 357A.2, including subsection 3's two-mile rule. The Iowa legislature did not intend to abrogate subsection 3's two-mile rule by placing the relevant amended language in the middle of the *next* subsection in the statute. This interpretation is made clear by the sentence immediately preceding the amended language: “A rural water district or rural water association may give notice of intent to provide water service to a new area within two miles

of a city by submitting a water plan to the city.” Iowa Code § 357A.2(4)(a). The amended language creates an exception to that notice-of-intent requirement, not the two-mile rule.

Xenia's interpretation would also render the two-mile rule superfluous, contrary to Iowa rules of statutory interpretation. See Thoms, 715 N.W.2d at 15. The county supervisors' resolution establishes the areas in which a rural water district may provide water service. If that area falls within two miles of a city's limits, then § 357A.2(3)'s two-mile rule states that the rural water district may not provide water service unless it complies with the procedures set forth in § 357A.2(4), including receiving permission from the city. Under Xenia's reading of the amended language, the two-mile rule would not apply within a rural water district's boundaries as established by its county supervisors' resolution. If so, it is unclear when the two-mile rule would ever apply. The Court will not read the amended language to render the two-mile rule superfluous because it is implausible that the Iowa legislature intended the amendment to have such an effect.

Xenia Rural Water Dist. v. City of Johnston, Iowa, No. 418CV00431JEGCFB, 2020 WL 3399911, at *7,11 (S.D. Iowa Mar. 19, 2020).

This is the correct and reasonable interpretation of the revisions to section 357A.2 in 2014. Any other reading is to the detriment of all cities across Iowa. Any other reading effectively stops each city in Iowa from developing outside its current boundary. Each city is obligated by law to provide the citizens within its boundaries with certain services including, and by no means limited to, fire protection. Each city has obligations to be fiscally

responsible and therefore would be unwilling to extend services to those areas that remain within another district or association for purposes of water service.

In the last five years there have been 148 annexation cases before the State's City Development Board and an untold number of annexations that were approved by cities that did not require Board approval because the annexation was voluntary and not within two miles of another city. The Iowa legislature recognized a city's right to annexation when it added section 357A.21 in 1987 to provide for compensation in the event of annexation by a water district and then when it amended that section in 2014 to include associations and expand the section to provide for mediation prior to binding arbitration. Iowa Code § 357A.21 (1987, 2014). The legislature balanced its recognition of a city's right to expand and to annex with rural water's interest in being able to provide water services and to service its debt. There is absolutely no need for Iowa Code section 357A.21 if a city is not allowed to serve an annexed area that happens to fall within a district or association.

The same reasons as set forth in Certified Question 1 apply to this section, namely the affect on a city's ability to (1) negotiate with rural water districts and associations for quality water services and ensure those within and around the city limits are provided quality water services; (2) provide higher level of water and fire protection services than required of rural water

districts and associations; (3) further development and projects now being discussed or constructed, or being contemplated for the future; and (4) seek compensation from customers utilizing city provided water and fire protection services. The Iowa League of Cities incorporates the explanation and argument set forth in Certified Question 1 as to the effects on Cities as though set forth fully herein.

For all other issues and arguments related to Certified Question Number 2, including retroactivity, the Iowa League of Cities adopts the arguments as set forth by the City of Johnston in its Proof/Final Brief as though fully set forth herein.

The legislature never intended for the 2014 amendment to exempt rural water districts and associations from the two-mile prohibition and notice requirements or to provide districts and associations with the right to provide new services and infrastructure to areas annexed by Cities and/or within two miles of a city without the notice and waiver requirements. The 2014 amendment was not intended to be and should not be found to be retroactive.

III. Certified Question 3: Whether an Iowa Code § 504A nonprofit corporation created in 1977 had a legal right to provide water service anywhere within the state of Iowa? If so, whether a § 504A nonprofit corporation that reincorporated (including through articles of dissolution for the § 504A entity) as a § 357A.2 rural water district in 1990

retained the legal right to provide water service anywhere within the state of Iowa (including outside its boundaries as specified in its county board of supervisors resolution and within two miles of a municipality), prior to and following the 1991 amendments to § 357A.2?

Xenia's argued interpretation that it is able, and was at all time able, to provide water services within two miles of the city limits because it was initially incorporated as a 504A corporation, in effect eliminates the requirements of 357A for any entity that started as a non-profit corporation. Its argument ignores the fact that Xenia's 357A petition and approval by the Board of Supervisor specifically states that it is subject to Chapter 357A. [October 30, 1990 Petition, Pl. MSJ App. pp. 8-12, November 27, 1990 Resolution and Order, Pl. MSJ App. p. 13; App. 93-97, 98]. The two-mile rule was already in existence at the time Xenia became a rural water district in 1990 and thereafter dissolved its 504A corporation in 1991. By making this argument, Xenia is attempting to eliminate the two-mile rule for existing districts and associations and to prohibit cities from providing water services to annexed areas and citizens within two miles of the city limits regardless of whether those services are necessary to meet heightened municipal duties and obligations.

The Iowa League of Cities includes the arguments set forth in Certified Question 1 as to the effects on Cities as though fully set forth herein. For all

other issues and arguments related to Certified Question Number 3, including retroactivity, the Iowa League of Cities adopts the arguments as set forth by the City of Johnston in its Proof/Final Brief as though fully set forth herein. A rural water district or association that was organized as a non-profit corporation does not have the legal right to provide water services anywhere within the State of Iowa.

CONCLUSION

The intent of the legislation, and particularly the amendments to section 357A.2, was to encourage cities and neighboring rural water districts and associations to jointly plan which entity will provide water service and fire protection in annexed areas and in the two-mile area around the corporate limits of a city. The 2014 amendments were the culmination of years of conflict that legislators were unwilling to tackle unless both sides supported the legislation and gave Iowa cities the ability to ensure the right to serve customers within the two-mile radius around their corporate limits. Iowa Code section 357A.2 forces the parties to talk to each other to avoid conflicts. Judge Gritzner's Order that preceded this appeal clearly sets out the meaning and intent of the law. This Court should reach conclusions consistent with that analysis and Order.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on November 18, 2020, I electronically filed the foregoing Brief of the Iowa League of Cities As Amicus Curiae with the Clerk of the Iowa Supreme Court through the electronic document management system, which will send notice of electronic filing to the following:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This Amicus Curiae Brief complies with the type-volume limitation of Iowa R. App. P. 6.906(4), because this Brief contains 6679 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Amicus Curiae Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f), because this Brief has been prepared in a proportionally spaced typeface using Times New Roman font and utilizing the 2018 edition of Microsoft Word in 14-point font plain style.

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