

IRRIGATION DISTRICTS AS “PUBLIC CORPORATIONS” – THE LATEST INDUCTEE INTO THE GOVERNMENTAL IMMUNITY CLUB

by Harriet M. Hageman

The Wyoming Supreme Court ruled in January of this year that irrigation districts are “public corporations” for purposes of the Governmental Claims Act (“WGCA” or “Act”). In reaching that conclusion, the Court noted that *Krenning v. Heart Mountain Irrigation District*, 200 P.3d 774 (Wyo. 2009), was the first case in which it had been “squarely presented with the question of whether the WGCA provides governmental immunity to an irrigation district.” *Id.* at 778. The Court then undertook an in-depth interpretation of the statutory language of the WGCA in an attempt to determine the Legislature’s intent “based primarily on the plain and ordinary meaning of the words used in the statute.” *Id.* The purpose of this article is to summarize the Court’s analysis and conclusion, and identify a few of the implications of the *Krenning* decision.

1. Facts and Procedural Background

Heart Mountain Irrigation District (“Heart Mountain” or “District”) is an irrigation district formed pursuant to Wyo.Stat. § 41-7-201. James Flowers was an employee of Heart Mountain. Steven Krenning owned and leased lands within the District and received irrigation water from Heart Mountain. On October 4, 2004, Mr. Flowers and Mr. Krenning had a chance meeting on the road paralleling one of the District’s canals. They began arguing, a physical altercation ensued, and Mr. Flowers struck Mr. Krenning with a shovel at least twice. Mr. Krenning suffered a broken arm and head injuries. Mr. Flowers was arrested and charged with assault with a deadly weapon. At trial Mr. Flowers did not deny hitting Mr. Krenning with the shovel, but claimed that he acted in self defense. The jury agreed and acquitted Mr. Flowers.

On July 14, 2005, the Krennings presented the District with a Verified Notice of Claim pursuant to Wyo.Stat. § 1-39-113 of the WGCA. On August 10, 2005, the Krennings filed suit against the District and Mr. Flowers. In June, 2007, Heart Mountain moved for summary judgment arguing that it was immune from suit pursuant to the WGCA. Mr. Flowers joined that motion, claiming that he was also subject to governmental immunity as an employee of Heart Mountain. The District Court granted both motions for summary judgment.

2. Irrigation Districts are “Governmental Entities”

The Supreme Court began its discussion by noting that the WGCA grants governmental entities “broad immunity from tort liability. . . .” *Id.* The Court pointed out that “[t]he first question to be resolved is whether the Irrigation District is a governmental

entity to which immunity is granted.” *Id.* In answering this foundational question, the Court provided the following statutory guidance:

The term ‘governmental entity’ is defined to include ‘the state, University of Wyoming or any local government.’ Wyo.Stat. Ann. § 1-39-103(a)(i). In turn, the term “local government,” is defined to include ‘cities and towns, counties, school districts, joint powers boards, airport boards, **public corporations**, community college districts, special districts and their governing bodies, all political subdivisions of the state, and their agencies, instrumentalities and institutions.’ Wyo.Stat. Ann. § 1-39-103(a)(ii). (Emphasis in original).

Id. Heart Mountain claimed that it was a “public corporation” subject to immunity. Because “public corporation” is not defined in the WGCA, the Court looked to the 1979 definition of that phrase as found in *Black’s Law Dictionary* 1105-06 (5th ed. 1979): “An artificial person ... created for the administration of public affairs.... A public corporation is an instrumentality of the state, founded and owned in the public interest, supported by public funds and governed by those deriving their authority from the state.” *Id.* at 779.

The Court analyzed each of the foregoing factors and concluded that an irrigation district is an “artificial person.” *Id.* Relying upon Wyo.Stat. § 41-7-102, the Court ruled that irrigation districts are founded and owned in the public interest “as indicated by the legislature’s direction that the statutes concerning irrigation districts ‘shall be liberally construed **to promote the public welfare** by reclaiming and irrigating lands.’” *Id.* (emphasis in original). The Court also found that, to the extent irrigation districts “promote the public welfare,” they are created for the promotion of public affairs, and they derive their authority from the State (being created by the district court in the county in which they are located - Wyo.Stat. § 41-7-210). *Id.*

The only question that seemed to give the Court any pause related to whether irrigation districts are supported by public funds. The Court explained that irrigation districts are not funded by taxes paid by the public at large, but by assessments levied against district members. Wyo.Stat. §§ 41-7-401 through 415. The Court then concluded, however, that “the public nature of these assessments is established by other statutory provisions.” *Id.* For example, an irrigation district’s annual budget must be approved by the district court. Wyo.Stat. § 41-7-402. Such assessments are approved, levied, and assessed by county commissioners. Wyo.Stat. § 41-7-403. The assessments are “extend[ed] upon the tax roll” by the county assessor. *Id.* The assessments are collected “by the same officer, and in the same manner and at the same time as state and county taxes are collected.” Wyo.Stat. § 41-7-404(a). Based on these findings the Court concluded as follows:

Read together, these statutory provisions give the Irrigation District’s assessments the character of public funds. Accordingly, we conclude that the

Irrigation District satisfies all of the requirements of *Black's* definition of a public corporation.

Id. The Court summed up its decision as follows:

The WGCA expressly grants governmental immunity to public corporations. Irrigation districts are public corporations, as shown by the ordinary definition of a public corporation, other legislative provisions, and previous holdings by this Court. Thus, the WGCA unambiguously grants governmental immunity to irrigation districts.

Id. at 781.

3. Irrigation Districts are Not “Public Utilities”

The next question addressed was whether irrigation districts should be considered “public utilities” for which governmental immunity has been waived. *See* Wyo.Stat. § 1-39-108(a). The Krennings had argued that Heart Mountain supplies water as a “public utility.” The District responded by pointing out that it does not supply water “to or for the public,” but only to its members. According to the Court, “[w]e have previously explained that the statutory phrase ‘to or for the public’ refers to ‘sales to sufficient of the public to clothe the operation with a public interest.’” *Id.* at 782. Finding that the District “serves only a limited class of individuals, those who are actually members of the irrigation district,” (*Id.*), the Court ruled in favor of Heart Mountain and, quoting from the District Court’s decision letter, noted as follows:

[T]here is ‘no reason to believe that any type of products or services are being sold by the District to the general public.’ These facts support the conclusion that the Irrigation District is not a public utility, just as an electric company supplying electricity to a limited number of distributors was not a public utility. *See Bridle Bit [Ranch Co. v. Basin Elec. Power Coop., 2005 WY 108, 118 P.3d 996, 1011 (Wyo. 2005)].*

Id.

4. The WGCA Extends Immunity to Employees

The Court also discussed the fact that the WGCA extends governmental immunity to a public entity’s employees so long as they are acting within the scope of their duties. *See* Wyo.Stat. § 1-39-104(a). Based upon that limitation, the Krennings argued that Mr. Flowers was acting outside of the scope of his employment. The problem for the Krennings, however, is that they alleged in their Complaint that Mr. Flowers was an employee of the

District and acting within the scope of his employment when the altercation occurred. The Court concluded, based on the Krennings' express allegations, that "[i]n that capacity, he is subject to governmental immunity, and summary judgment was properly granted." *Id.* at 784.

5. The WGCA does Not Violate the Equal Protection Clause

The Court also ruled that the Krennings failed to carry their "heavy burden" of showing that granting governmental immunity to an irrigation district violates the equal protection clause of the Wyoming Constitution. In reaching that conclusion, the Court reverted to its discussion regarding the "public benefits" of irrigation districts:

An irrigation district, reclaiming as it does, desert lands in the state, and accordingly conferring a benefit not alone upon the private individuals within the district, but also upon the people of the state as a whole, is a public, rather than a private corporation.

Id. at 785 (quoting *Sullivan v. Blakesley*, 246 P. 918, 921 (Wyo. 1926)). The Court went on to explain: "In light of the public benefits conferred by irrigation districts, it is apparent that there is a rational relationship to an appropriate legislative purpose served by extending governmental immunity to irrigation districts." *Id.*

6. Significance of Decision

The significance of the Court's decision in *Krenning v. Heart Mountain Irrigation District* cannot be overstated in terms of the operation and management of irrigation districts. Such districts now enjoy the full benefits of governmental immunity, while also being excluded from the definition of a "public utility." The Court's designation of irrigation districts as "public corporations" will shield them from future negligence claims, thereby protecting them from the risk of lawsuits and crippling judgments.

As attorneys who represent irrigation districts, we were pleased with the Supreme Court's willingness to conduct an in-depth analysis of the questions before it. By taking the time to fully analyze the historical and statutory framework in which irrigation districts function, the Court was able to describe the critically important role that such entities have played in Wyoming's past, and will continue to play in Wyoming's future.

Harriet M. Hageman is a partner in the law firm of Hageman & Brighton, P.C., which focuses its practice on water and natural resource issues. Ms. Hageman is licensed in Wyoming, Nebraska and Colorado.