

Cite as 2023 Ark. App. 538
ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-22-142

BENTON COUNTY REGIONAL SOLID
WASTE MANAGEMENT DISTRICT
APPELLANT

V.

WASTE MANAGEMENT OF
ARKANSAS, INC.; AND ECO-VISTA,
LLC

APPELLEES

Opinion Delivered November 29, 2023

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. 72CV-20-1522]

HONORABLE JOHN C. THREET,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellant Benton County Regional Solid Waste Management District (“Benton County RSWMD”) appeals the order of the Washington County Circuit Court granting summary judgment in favor of appellees, Waste Management of Arkansas, Inc. (“Waste Management”); and Eco-Vista, LLC (“Eco-Vista”). On appeal, Benton County RSWMD argues that the circuit court’s ruling that it lacked statutory authority to determine the fee charged its citizens was in error as a matter of a law and that summary judgment was inappropriate because it did not lack statutory authority to assess a per-ton service fee on waste haulers. We affirm.

Arkansas is divided into regional solid-waste-management districts, each tasked by the Arkansas legislature with, among other things, evaluating the solid-waste-management needs

of the district and regulating landfills within the district. Ark. Code Ann. § 8-6-704 (Repl. 2022). Arkansas Code Annotated section 8-6-714 (the “Fee Statute”) authorizes these districts to assess certain fees. Before 2011, the Fee Statute authorized a district to assess fees “for the disposal, treatment, or other handling of solid waste by the district.” Ark. Code Ann. § 8-6-714(a) (Repl. 2000). This authority extended to “levy[ing] a service fee [the “Service Fee”] on each residence or business for which the board makes solid waste collection or disposal services available.” *Id.* § 8-6-714(b).

Some of the districts unilaterally began charging fees other than the statutorily authorized Service Fee. In 2011, after several legal challenges, the General Assembly amended the Fee Statute. The amendment kept the Service Fee in place and authorized an additional fee of “no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the district” (the “Waste Assessment Fee”¹). Act 209 of 2011, § 2; Ark. Code Ann. § 8-6-714(a)(1)(A) (Supp. 2011). Unlike the Service Fee, the Waste Assessment Fee may not be assessed on residences or businesses for which the board makes solid waste collection or disposal services available. *Id.* § 8-6-714(a)(2). Rather, the Waste Assessment Fee may be assessed against the generator, transporter, or disposal facility for any solid waste generated within the district or brought into the district for disposal. *Id.* § 8-6-714(4)(A), (B).

¹As clarified during oral argument, this fee has been referred to as the disposal fee, the waste-assessment fee and the waste-disposal fee; they are all the same fee. For purposes of uniformity, we will refer to this fee as the Waste Assessment Fee. It is separate from the Service Fee.

When waste generated in one district is disposed of in another, the Waste Assessment Fee may be assessed by “[e]ither the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed”—but not both. *Id.* § 8-6-714(a)(4)(A). Because only one district may assess the Waste Assessment Fee, the districts “shall determine by interlocal agreement” how the fee will be assessed, administered, and divided. *Id.* § 8-6-714(c)(3)(A). “If districts cannot reach an interlocal agreement regarding the division of the fees, then the fees shall be divided equally between the districts.” *Id.* § 8-6-714(c)(3)(B).

There are no landfills within the boundaries of Benton County RSWMD and much of the waste generated there is disposed at the Eco-Vista Landfill, which is located in, and regulated by, Boston Mountain Regional Solid Waste Management District (“Boston Mountain RSWMD”). Shortly after the 2011 amendment to the Fee Statute, Benton County RSWMD and Boston Mountain RSWMD both adopted rules assessing a \$1.50-per-ton Waste Assessment Fee. As required by the Fee Statute, both districts’ 2011 rules called for the Waste Assessment Fee on waste generated in Benton County RSWMD and disposed of in Boston Mountain RSWMD (“interdistrict waste”) to be divided evenly between the districts absent an interlocal agreement. The districts, however, reached an interlocal agreement that allowed Benton County RSWMD to receive the entire \$1.50-per-ton Waste Assessment Fee on interdistrict waste for a period of five years. As authorized by statute, both districts’ rules required Eco-Vista Landfill to collect the \$1.50-per-ton Waste Assessment Fee on interdistrict waste received by the landfill.

However, once the five-year term of the interlocal agreement expired, Boston Mountain RSWMD declined to renew the interlocal agreement and instead exercised its statutory right to receive half of the Waste Assessment Fee on interdistrict waste. In response, Benton County RSWMD filed suit, arguing that it was entitled to the entire Waste Assessment Fee on interdistrict waste, even without an interlocal agreement. In October 2019, this court rejected Benton County RSWMD's argument that Boston Mountain RSWMD was being unjustly enriched by receiving half of the Waste Assessment Fee. See *Boston Mountain Reg'l Solid Waste Mgmt. Dist. v. Benton Cnty. Reg'l Solid Waste Mgmt. Dist.*, 2019 Ark. App. 488, 587 S.W.3d. 294.

However, two months after this court held that the two districts must share the Waste Assessment Fee on interdistrict waste, Benton County RSWMD's board approved new "emergency" rules purporting to reduce the Waste Assessment Fee from \$1.50 per ton to \$0.01 per ton and levy a Service Fee of \$1.49 per ton. Under Benton County RSWMD's new rules, when waste is disposed of outside the district, including in Boston Mountain RSWMD at Eco-Vista Landfill, both the Waste Assessment Fee and the Service Fee must be paid to Benton County RSWMD by the waste hauler, unless the disposal facility agrees in writing to do so. Benton County RSWMD claims that it is entitled to the entire \$1.49-per-ton Service Fee and half of the \$0.01-per-ton Waste Assessment Fee, leaving Boston Mountain RSWMD to receive only half a cent per ton and unilaterally eradicating Boston Mountain RSWMD's separate Waste Assessment Fee. Boston Mountain RSWMD's rules,

however, continue to provide that both Benton County RSWMD and Boston Mountain RSWMD are entitled to receive \$0.75 per ton of interdistrict waste.

Appellee Waste Management is a waste hauler whose operations include collecting waste generated in Benton County RSWMD and transporting it to Eco-Vista Landfill for disposal; appellee Eco-Vista, an entity affiliated with Waste Management, owns and operates Eco-Vista Landfill. The changes to Benton County RSWMD's rules and regulations subjected Eco-Vista and Waste Management to competing demands from Benton County RSWMD and Boston Mountain RSWMD. The new fee structure purported to reduce the Waste Assessment Fee--which the Benton County RSWMD would split equally with the Boston Mountain RSWMD for waste disposed at Eco-Vista Landfill--to \$0.01 per ton of solid waste and required Eco-Vista Landfill to collect a Service Fee from Boston County RSWMD and remit it back to Benton County RSWMD.

On July 15, 2020, Eco-Vista and Waste Management filed suit in the Washington County Circuit Court seeking a declaratory judgment that the changes adopted in January 2020 by the Benton County RSWMD's board exceeded the district's statutory authority. After hearing argument regarding the motion for summary judgment on October 22, 2021, the circuit court granted summary judgment to Eco-Vista and Waste Management, holding that Benton County RSWMD "lacks the statutory authority to unilaterally supersede and replace Boston Mountain RSWMD's Waste Assessment Fee of \$1.50 per ton on waste generated in Benton County RSWMD and disposed within Boston Mountain RSWMD." With respect to the Service Fee, the circuit court held that Benton County RSWMD "may

assess a service fee on residences and businesses for which the district makes solid waste collection or disposal services available” but “lacks statutory authority to assess the Service Fee on haulers and require haulers to collect and remit the Service Fee.” This timely appeal is now before us.

“Summary judgment is no longer viewed by this [C]ourt as a drastic remedy; rather, it is viewed simply as one of the tools in a circuit court’s efficiency arsenal.” *Marlar v. Daniel*, 368 Ark. 505, 507, 247 S.W.3d 473, 475 (2007). Benton County RSWMD does not assert that factual issues precluded summary judgment but only that the circuit court erred in interpreting the Fee Statute. We review issues of statutory interpretation de novo. *Ark. Dep’t of Hum. Servs. v. State*, 2017 Ark. App. 137, at 4, 516 S.W.3d 743, 746.

Here, we hold that the circuit court correctly determined that the Benton County RSWMD lacked statutory authority to unilaterally supersede and replace Boston Mountain RSWMD’s \$1.50-per-ton Waste Assessment Fee with its own \$0.01-per-pon Waste Assessment Fee. The Fee Statute unambiguously requires the Waste Assessment Fee imposed on interdistrict waste to “be divided equally” between Benton County RSWMD and Boston Mountain RSWMD in the absence of an interlocal agreement. Ark. Code Ann. § 8-6-714(c)(3)(B). Benton County RSWMD seeks to circumvent this court’s previous ruling requiring application of the plain language of the statute by renaming its Waste Assessment Fee to a Service Fee, leaving only a nominal Waste Assessment Fee to be shared by the districts.

“The basic rule of statutory construction is to give effect to the intent of the legislature.” *Ark. River Educ. Servs. v. Modacure*, 371 Ark. 466, 469, 267 S.W.3d 595, 597 (2007). “Where the language of a statute is plain and unambiguous,” legislative intent is found in “the ordinary meaning of the language used.” *Id.* Here, the plain and unambiguous language of the Fee Statute provides that Boston Mountain RSWMD has the right to assess a Waste Assessment Fee of up to \$2.00 per ton on interdistrict waste and to keep half of that fee. Ark. Code Ann. § 8-6-714(a)(4)(A), (c)(3)(B).

Benton County RSWMD argues that this holding is “expressly contrary” to the Fee Statute, which allows “[e]ither the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed [to] assess the fee.” Contrary to Benton County RSWMD’s argument, the circuit court did not hold that Benton County RSWMD lacks authority to assess a fee on interdistrict waste. The circuit court held only that Benton County RSWMD may not unilaterally reduce, supersede, and replace Boston Mountain RSWMD’s longstanding Waste Assessment Fee of \$1.50 per ton with a nominal fee of \$0.01 per ton. Nothing in this holding is inconsistent with the Fee Statute, which does not explicitly address how a conflict in the fees assessed by the districts is to be resolved. Ark. Code Ann. § 8-6-714(a)(4)(A), (C) (“Either the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed may assess the fee. . . . Each ton or cubic yard of waste may be assessed only one (1) fee.”).

On appeal, Benton County RSWMD relies on the Arkansas Legislative Council's approval of its 2019 rule change over Boston Mountain RSWMD's opposition. Boston Mountain RSWMD's alleged opportunity to oppose the rule change before the Legislative Council was not raised in the circuit court, and Benton County RSWMD's factual allegations about Boston Mountain RSWMD's opposition are not supported by citations to the record on appeal. Accordingly, we decline to address this argument. It has long been held that the appellate court will not consider arguments raised for the first time on appeal. See *Boellner v. Clinical Study Ctrs., LLC*, 2011 Ark. 83, 378 S.W.3d 745.

Moreover, the approval of Benton County RSWMD's 2019 rules by the Arkansas Legislative Council has no bearing on whether Benton County RSWMD exceeded its statutory authority in enacting those rules. Ark. Code Ann. § 10-3-309(i) (Supp. 2023) ("The review and approval of a rule [by the Arkansas Legislative Council] shall not be construed to: (1) represent an expression by the General Assembly that the rule is consistent with [s]tate or federal law. . . or . . . [l]egislative intent; and (2) have any effect in a judicial proceeding relating to the rule. . . .").

In the case before us, the circuit court correctly looked to the plain language of the Fee Statute when it found that Benton County RSWMD could not unilaterally deny Boston Mountain RSWMD its statutory right to assess and collect its own Waste Assessment Fee, and we therefore affirm the grant of summary judgment on this ground.

Benton County RSWMD next argues that the circuit court erred in its holding that it lacked the statutory authority to assess a Service Fee on haulers and require haulers to

collect and remit the Service Fee. Under Arkansas Code Annotated section 8-6-714(d), a “board may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available.” After purporting to reduce its Waste Assessment Fee to \$0.01 per ton, Benton County RSWMD recharacterized the remaining \$1.49 per ton of the Waste Assessment Fee as a Service Fee under this provision of the Fee Statute.

Despite the plain language of the Fee Statute, however, the purported Service Fee adopted by Benton County RSWMD is not levied on “residence[s] or business[es],” nor is it triggered by the board’s making solid-waste-collection or disposal services available. The circuit court correctly held that Benton County RSWMD lacked statutory authority to assess a per-ton Service Fee on waste haulers, thereby making haulers responsible for collecting and remitting the Service Fee to Benton County RSWMD.

The plain language of the Fee Statute provides that the service fee is to be levied on residences and businesses for which the board makes solid waste collection or disposal services available--not on haulers. Benton County RSWMD does not point to any language in the Fee Statute that authorizes it to levy a Service Fee on a per-ton basis against waste haulers. Instead, it argues that the Fee Statute does not specifically prohibit it from doing so and points to its general authority to make contracts as a potential source of authority to assess the Service Fee on haulers.

The legislature saw fit to allow districts to choose whether to levy a Service Fee. *See* Ark. Code Ann. § 8-6-714(d) (providing that a district “may” levy a Service Fee). It also saw

fit to allow districts to decide whether to collect the Service Fee along with property taxes. *See id.* § 8-6-714(e). The legislature did not, however, authorize districts to levy a Service Fee on anyone other than “each residence or business for which the board makes solid waste collection or disposal services available.” *Id.* § 8-6-714(d).

If the legislature had intended to authorize districts to assess a Service Fee against waste haulers on each ton of solid waste generated within the district, it would have said so—or at least omitted the language specifically providing for the Service Fee to be levied against residences and businesses for which the district makes solid-waste services available. And, although the district is not required to collect the Service Fee with property taxes, the availability of a collection mechanism against individual taxpayers further demonstrates the legislature meant what it said when it provided that the districts may levy a Service Fee on “residence[s] and business[es].” *Id.* This argument, like Benton County RSWMD’s argument in favor of its unilateral right to reduce another district’s Waste Assessment Fee, disregards the plain language of the Fee Statute and focuses instead on what the district thinks the legislature should have done to provide funding to districts.

In arguing that it may levy the Service Fee against waste haulers, Benton County RSWMD notes that the Fee Statute does not explicitly provide for the Waste Assessment Fee to be “assessed against the generator, transporter, or disposal facility” except where waste is interdistrict—that is, generated in one district and disposed of in another. Ark. Code Ann. § 8-6-714(a)(4)(B). Benton County RSWMD argues that if the Service Fee may not be assessed against a hauler, neither may the Waste Assessment Fee unless the waste is

interdistrict. The authority of a district to assess a Waste Assessment Fee against a hauler of single-district waste was not an issue presented to the circuit court and is not at issue in this appeal; we decline to address the statutory requirements for such a fee. *Ball v. Phillips Cnty. Election Comm'n*, 364 Ark. 574, 578, 222 S.W.3d 205, 208 (2006) (“It is well established that this court will not render advisory opinions.”).

For the reasons stated above, we affirm the circuit court’s order.

Affirmed.

WOOD and HIXSON, JJ., agree.

Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., by: *Curtis E. Hogue* and *Grace K. Johnson*, for appellants.

Quattlebaum, Grooms & Tull, PLLC, by: *E.B. Chiles IV, Sarah Keith-Bolden*, and *Vince Chadick*, for appellees.