

ORDINANCE NO. 00080

AN ORDINANCE AUTHORIZING EMPLOYMENT OF PRIVATE  
LEGAL COUNSEL FOR KING COUNTY IN ANTI-TRUST  
LITIGATION

WHEREAS by Resolution No. 36467 dated December 10, 1968, the board of county commissioners appointed the law firm of Corbett, Siderius & Lonergan to represent King County in connection with certain anti-trust litigation relative to the purchase of liquid asphalt products, and a contingent fee agreement was entered into with said law firm, and

WHEREAS by Ordinance No. 00075 passed on July 14, 1969, the King County Council did authorize the employment of the law firm of Ferguson & Burdell to represent King County in connection with the above referenced litigation, and

WHEREAS both law firms have indicated that the work involved in representing the County in this case is of such magnitude as to require the cooperative efforts of both law firms, and

WHEREAS it is necessary to re-appoint the law firms of Corbett, Siderius & Lonergan and Ferguson & Burdell as counsel, and repeal all resolutions and ordinances in conflict herewith,

NOW, THEREFORE,

BE IT ORDAINED that the King County Executive is hereby authorized to employ the law firms of Corbett, Siderius & Lonergan and Ferguson & Burdell in accordance with the terms embodied in the form of resolution attached hereto and made a part hereof, subject to the approval of a majority of the King County Superior Court Judges.

The Council finds that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health and safety or for the support of county government and its existing public institutions.

King County Resolution No. 36467, dated December 19, 1968,

and King County Ordinance No. 00075 passed July 14, 1969, are hereby repealed.

INTRODUCED AND read for the first time this 25<sup>th</sup> day of July, 1969.

PASSED by the Council at a regular meeting thereof on the 25<sup>th</sup> day of July, 1969.

Robert B. Dunne  
Chairman of the County Council

ATTEST:

Ralph R. Stender  
Clerk of the Council

APPROVED this 4<sup>th</sup> day of August, 1969.

[Signature]  
King County Executive

A RESOLUTION ADOPTING AN AGREEMENT AMONG  
VARIOUS PUBLIC AGENCIES OF THE STATE OF  
WASHINGTON FOR THE PURPOSE OF JOINTLY  
PERFECTING CLAIMS FOR ALLEGED OVERCHARGES

WHEREAS, the State of Washington has commenced an action in the United States District Court for the Western District of Washington against certain manufacturers of asphalt and asphalt products, alleging that such manufacturers have engaged in certain activities in restraint of free and open interstate trade and commerce in asphalt products in violation of the Sherman Act; and

WHEREAS, the action of the State of Washington alleges that the activities of said manufacturers have arbitrarily and unlawfully increased the cost to it of asphalt products purchased for use in highways and other facilities constructed and maintained by the State and said action, pursuant to the Clayton Act, seeks threefold the damages sustained by the State in connection with its purchases of asphalt products; and

WHEREAS, the commencement of such action by the State constitutes a certification by it that good cause exists to justify the allegations of the complaint; and

WHEREAS, the Attorney General of the State of Washington has notified this public agency of the pending

litigation and has advised it that the prices paid by it for asphalt products have probably been affected in the same manner and to the same extent as the prices paid by the State of Washington have been affected by the alleged unlawful activities of the manufacturers; and

WHEREAS, this public agency has invested substantial sums of money in the construction and maintenance of roadways and other facilities utilizing asphalt products, which sums of money may have included unlawful and recoverable overcharges; and

WHEREAS, the duly authorized officials of this agency hold it to be their duty and obligation to minimize the costs of government and of supplying services and facilities to the public and believe that an effort to recover unlawful overcharges is a proper means by which to accomplish this objective; and

WHEREAS, the Attorney General of the State of Washington has advised this and other public agencies in Washington that he anticipates: (a) that the court will require the activities of all claimants to be coordinate, not only with those of other public agencies located in Washington but also with those of public agencies located in the States of California and Oregon, which have filed similar lawsuits; (b) that to obtain the evidence of liability and damages necessary to perfect the claims of any of the public agencies in Washington will require the expenditure of substantial sums of money and amounts of time; (c) that in order to obtain the information needed

to develop an adequate economic proof of both the fact and amount of damages alleged, it will be necessary to obtain information from this and other public agencies concerning their purchases of asphalt products whether or not such agencies participate in the litigation; and

WHEREAS, it is apparent that neither this nor any other public agency in Washington has available to it individually sufficient finances with which to pay the costs of seeking recovery or personnel with sufficient time or expertise in antitrust law;

NOW THEREFORE BE IT RESOLVED that it is in the best interests of this public agency to enter into a joint and coordinated undertaking with the State of Washington and all other public agencies which desire so to do for the purposes of participating in the subject litigation; providing joint financing for the costs thereof, establishing a manner for distributing the proceeds, if any, of the litigation; adopting a workable program for the coordination of the activities of those agencies participating in the subject litigation; and of retaining experienced antitrust counsel to represent and perfect the claims of this agency.

THEREFORE, this agency herewith agrees and contracts with the State of Washington that:

1. The terms and conditions herein set forth shall be available to and binding upon each and all other public agencies which by law are empowered to agree and contract with the State of Washington and this agency and

do so by the execution of a counterpart resolution or ordinance containing terms and conditions identical to those herein set forth.

2. There shall be established an account to be known as the "Asphalt Litigation Trust Account," which shall be administered by and the trustees of which shall be the Attorney General of the State of Washington or a designated member of his staff and the Prosecuting Attorney of Snohomish County or a designated member of his staff.

3. Such trustees, in coordination with the hereinafter mentioned special counsel, shall have the authority and responsibility for establishing, on an annual or other periodic basis, the estimated amount of funds which shall be necessary to pay the costs of litigation as the same are incurred over the period established.

4. Upon receipt of notice from the trustees requesting payment, this agency agrees to pay its pro rata share of costs into the Asphalt Litigation Trust Account. This agency's pro rata share shall be determined as set out in the hereto attached and incorporated Appendix A. Inasmuch as the data necessary to make the computations provided in Appendix A will not be available for some period of time, and inasmuch as costs have been incurred and will continue to be incurred during this period of time, this agency agrees, and the fiscal officer hereof is herewith authorized,

to forthwith advance to the Asphalt Litigation Trust Account the amount of money determined in the hereto attached and incorporated Appendix B, provided, however, that when the Appendix A computations are made, the trustees shall make an appropriate adjustment of the Appendix B advance.

5. This agency herewith accepts, adopts and ratifies the terms and conditions of the contract of employment of special counsel heretofore entered into between the State of Washington and the Seattle law firm of Ferguson & Burdell and herewith authorizes the Attorney General to act for and in behalf of this agency in entering into a contract of employment with Ferguson & Burdell in the form set out in Appendix C, hereto attached and incorporated.

6. In addition to the above-described duties and responsibilities of the trustees of the Asphalt Litigation Trust Account, they are also empowered and directed to incur such obligations and disburse funds in payment thereof as, in their discretion, shall be necessary and advisable to perfect the claims of the parties to this agreement, including the disbursement of funds to or at the direction of Ferguson & Burdell in reimbursement for or payment of those costs and out-of-pocket expenses defined in Appendix C.

7. In addition to his responsibility and authority as a trustee, the Attorney General is hereby delegated and herewith accepts such responsibility and authority as is necessary to act for and in behalf of this agency with respect to all matters connected with:

(a) the perfection and management of the claim alleged by this agency in the subject litigation; (b) the management of the litigation itself; and (c) the supervision of special counse; provided, however, that final acceptance of any offer of compromise or settlement is and shall remain the prerogative of this agency; and provided further that the agents and employees of this agency are herewith authorized and directed to extend to the Attorney General and to Ferguson & Burdell full cooperation and assistance in all matters connected with this litigation, including but not limited to gathering of such information and data concerning and possessed by this agency as is requested by the defendant asphalt manufacturers, which gathering of information and data shall be and remain the responsibility of this agency.

8. Inasmuch as the cooperative efforts provided for in this agreement are a necessary prerequisite to the successful prosecution of the subject litigation in behalf of the signatory parties, and inasmuch as it is not possible to exactly know but only to make an economic estimate of the amount of overcharges, if any, paid by this and other



public agencies, and such estimate cannot be made prior to this undertaking; this agency agrees with all others who are or may become parties to this agreement that the proceeds of this litigation, whether payable to it separately or to them jointly will be deposited in the Asphalt Litigation Trust Account and that each agency which is a party to this agreement, upon the termination of the litigation, will be entitled to the same pro rata share of the total amount then in the Trust Account as its pro rata share of costs advanced as of the time of termination; provided however, that prior to the pro rata disbursement of proceeds as herein set forth, all costs shall be paid, all amounts advanced for costs shall be repaid and the fee to special counsel shall be paid as provided in Appendix C.

9. This agreement shall remain in full force and effect until the termination of the litigation or until the final distribution of any proceeds thereof, whichever shall occur later.

The adoption of this resolution and agreement is necessary to the public well-being. Therefore, an emergency is declared and this resolution and agreement shall be effective immediately.

## APPENDIX A

METHOD OF DETERMINING SHARES  
OF COSTS ADVANCED AND OF RECOVERY

Whether an asphalt product has been purchased directly from a manufacturer unmixed with other materials so that the price paid by the purchasing public agency represents the price of asphalt only or whether an asphalt product has been purchased mixed with other materials or otherwise so that the price paid by the purchasing public agency contains elements other than the price of asphalt alone, the figures used in making the computations necessary to determine pro rata shares shall be that portion of the price paid by the public agency which is attributable to the asphalt only.

Each participating agency's pro rata share shall be determined in accordance with the following formula:

$$\text{Agency's share} = \frac{\text{Total of Agency's Prices}}{\text{All Agencies' Total Prices}}$$

Wherein

"Total of Agency's Prices" means that sum of money which a particular agency has expended for asphalt only during the period 1945 to date.

"All Agencies' Total Prices" means the total of the sums of money expended by all participating agencies for asphalt only during the period 1945 to date.

The fractional or percentage figure thus derived shall be applied to any sum required for costs, as determined by the trustees in accordance with paragraph 3 of the agreement, or to any sum to be disbursed to derive the dollar amount thereof.

As used in the above computation, the price of asphalt only will, in cases of direct purchases, probably be available from agency records. In those cases where the asphalt only price is not available from agency records, it must be obtained, from the defendant manufacturers' records. Where the price information is not available from the foregoing sources, it will be necessary to determine the actual quantity of asphalt used in each transaction and to multiply said quantity by the unit price for asphalt prevailing at the time of the transaction in order to fairly estimate the price of asphalt only for the purpose of prorating shares.

## APPENDIX B

SCHEDULE OF AMOUNTS TO BE  
TEMPORARILY ADVANCED FOR COSTS

I. COUNTIES: Based upon miles of asphaltic surfaced roadways as reported to the State Highways Department (see attached tabulation)

- |   |            |
|---|------------|
| (a) Those counties with more than the average mileage of all counties |            |
| (457 miles)   | \$5,000.00 |
| (b) Those counties with less than the average mileage of all counties |            |
|   | \$2,500.00 |

II. CITIES: Based upon population figures, Washington State Census Board, 1967

- |                                 |            |
|---------------------------------|------------|
| (a) Population 100,000 and over | \$2,500.00 |
| (b) Population 20,000 to 99,999 | 2,000.00   |
| (c) Population 10,000 to 19,999 | 1,500.00   |
| (d) Population 5,000 to 9,999   | 1,000.00   |
| (e) Population 2,500 to 4,999   | 500.00     |
| (f) Population 2,499 and under  | 250.00     |

III. STATE OF WASHINGTON:

50% of costs incurred as invoices are rendered.

## APPENDIX C

FEE AGREEMENT AMONG PARTICIPANTS IN THE  
ASPHALT LITIGATION AND THE LAW FIRM OF  
FERGUSON & BURDELL

Pursuant to an agreement entered into among the State of Washington and the public agencies listed in the attached pages (hereinafter "participants"), the Attorney General herewith employs the law firm of Ferguson & Burdell of Seattle, Washington to render services for and in behalf of the participants in connection with their claims alleged against certain manufacturers of asphalt products. The services contemplated are that Ferguson & Burdell shall have authority to and shall be responsible for the perfection of said claims, including, without limitation, the initiation and prosecution of litigation, including preparation, trial, and appellate proceedings, as may be necessary, and including negotiation, compromise and settlement. The services shall include such assistance and advice to the participants as may be necessary to aid them in collecting information concerning its transactions with the defendants, whether direct or indirect. The gathering of such transaction information, however, shall be and remain the responsibility of the participants.

In return for its services the law firm of Ferguson & Burdell shall be entitled to retain twenty-five percent (25%) of the net recovery from the litigation.

For the purposes of this agreement, the term "net recovery" shall mean the difference between the gross amount collected from the defendants or any of them, whether by settlement or levy of execution following judgment, or in any other manner (such gross amount shall include any court awarded attorneys' fees or any amount paid as attorneys' fees or cost compensation by any defendant) and the amount advanced by the participants for costs and out-of-pocket expenses. As used herein the term "settlement" shall include recovery on a judgment or any compromise thereof.

For the purposes of this agreement the terms "costs" and "out-of-pocket expenses" shall mean those expenses necessarily incurred in this type of litigation, such as: reporters' charges for depositions, transcripts of hearings, transcripts of trial proceedings, and costs of printing briefs; actual travel expenses (accommodations, transportation, and meals); expenses of meetings; expert witness fees and expenses; costs of obtaining copies of documents or reproductions thereof; court costs, long distance telephone charges; postage; and other similar and related expenses.

As provided in the agreement among the participants, they agree to advance their pro rata share of estimated expenses to the "Asphalt Litigation Trust Account," to be administered by and the trustees of which shall be the Attorney General of the State of Washington and the

Prosecuting Attorney of Snohomish County, Washington, or a designated member of their respective staffs. Said trustees shall be authorized to make payments against the invoices of Ferguson & Burdell for costs and out-of-pocket expenses, as herein defined, as incurred.

In behalf of the participants:

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Slade Gorton  
Attorney General  
State of Washington

In behalf of FERGUSON & BURDELL:

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