

LEGAL AND REGULATORY NOTES, OCTOBER 2012

Polices Services Contract Not Subject to Predatory Pricing Provision of Vermont Consumer Fraud Act

In 2010, St. Albans Town requested proposals for the provision of law enforcement services. The Franklin County Sheriff's Office's submitted a first-year bid of \$642,652.97 and the St. Albans City Police Department submitted a first-year bid of \$486,850.99. After considering both proposals, the Town selectboard voted to award the contract to the City Police Department.

The Sheriff's Office then brought suit against the City Police Department, contending that the Department engaged in an unfair method of competition with the intent to harm competition under the Vermont Consumer Fraud Act's (VCFA's) predatory pricing provision. The statute provides, "No person, with the intent to harm competition, shall price goods or services in a manner that tends to create or maintain a monopoly or otherwise harms competition." 9 V.S.A. § 2461c(a). The Sheriff's Office claimed that the Department engaged in predatory pricing by intentionally pricing its services to the Town in a way that would harm competition under 9 V.S.A. § 2461c.

The Vermont Supreme Court held that the Sheriff's Office lacked standing to assert a predatory pricing claim under the VCFA because it had no legally protected right to fair competition in the provision of police services. The Court noted that the provision of police services in Vermont is a governmental function provided only by a limited number of statutorily-authorized governmental entities for the benefit of the public. The provision of police services occurs outside the realm of commerce because it involves no interchange of goods or commodities on an open market.

The injuries that the Sheriff's Office claimed to suffer did not fall within the zone of interests to be protected by the VCFA's predatory pricing statute. As the Court stated, "It is the protection of competition, rather than the protection of competitors, that antitrust laws are designed to protect and the statutory scheme relating to law enforcement embraces no element of competition in an open marketplace. This is because the universe of entities that can provide police services is narrowly limited to state actors, and the 'market' in which the services are contracted for is wholly restricted." A copy of the decision is archived at <http://info.libraries.vermont.gov/supct/current/op2011-266.html>.

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