

---

**Seattle Times, Seattle, WA**

**Seattle School Board Warned That Soda Contract Could Mean  
Lawsuits**

**July 2, 2003**

**Keith Ervin**

<<<>>>

This document is available on the Education Policy Studies Laboratory website at  
<http://www.asu.edu/educ/epsl/CERU/Articles/CERU-0307-125-OWI.doc>

---

The Seattle School Board will be courting a legal challenge if it renews a five year contract with Coca-Cola, a nationally prominent lawyer warned yesterday.

George Washington University law professor John Banzhaf III said vending machines in schools will be a key target of a new movement combating an "epidemic of childhood obesity."

Banzhaf, a driving force behind the lawsuits that have cost tobacco companies billions of dollars, has turned his attention in recent months to the junk food served by fast-food franchises like McDonald's and by school districts in Seattle and elsewhere.

"We have a term in the English language for people doing something they know is wrong for money. We call it prostituting themselves," he said.

School Board members have asked the district's legal department for advice on the likelihood that a lawsuit filed against the district by an aggrieved family could succeed.

A planned vote tonight on the extension of the Coke contract has been postponed to July 17. Board President Nancy Waldman said she sent the contract back to a board committee for possible modifications before she read Banzhaf's e-mail Friday that threatened a lawsuit.

If the board extends Coca-Cola's exclusive contract for "pouring rights" in most Seattle middle and high schools until 2008, schools would share an estimated \$390,000 next year from commissions and an annual payment.

The board's policy committee recommended an end to soft-drink sales in middle schools during the school day and in high-school lunchrooms during lunch hours.

Growing concerns about childhood obesity and a rising incidence of diabetes have led the nation's two largest school districts - New York and Los Angeles - to ban soft-drink sales during the past year. Three districts closer to home - Portland, Puyallup and Tacoma - have reaffirmed cola sales.

Ending the Coke contract in Seattle would mean less money for teaching supplies and student activities at a time when the financially strapped district has cut schools' budgets.

The National Soft Drink Association reports that carbonated beverages are sold in more than 90 percent of U.S. middle and high schools, but that fewer than 10 percent of districts have exclusive contracts with a vendor.

Washington Dental Service President Jim Dwyer and representatives of Citizens' Watch for Kids' Oral Health have asked the School Board to offer healthy alternatives to soft drinks.

Several citizens last week asked the board to sell milk and flavored milk products. Banzhaf said he learned of exclusive "pouring rights" contracts between school districts and soft-drink companies at an obesity litigation conference in Boston less than two weeks ago.

Banzhaf spoke from Washington, D.C., yesterday by speaker phone at a Seattle news conference called by the Citizens' Campaign for Commercial-Free Schools (CCCS), which opposes renewal of the Coke contract.

Seattle attorney Dwight Van Winkle this week wrote a separate message to Waldman echoing Banzhaf's claim that board members could be held individually liable for health problems suffered by students if the district violates its "fiduciary duty" to protect students' health.

Ron English, the district's associate general counsel, said Banzhaf had come up with "a rather novel legal theory. ... What he seems to be talking about is a standard that we're responsible for their overall diet and health.

"I'm going to have to look into it, but that's not something that I thought made a lot of sense." Sean McBride, spokesman for the National Soft Drink Association, said obesity lawsuits would be misguided because obesity is the result of lack of exercise as much as consuming sugary and fatty foods and drinks.

"I think consumers understand that there is a big difference between tobacco, which even if used as instructed is dangerous for you and can cause health problems, as opposed to food, which sustains life and is necessary for life," McBride said.

Experience from four decades of litigation against tobacco companies suggests that the initial obesity lawsuits may be long shots, but their long-term viability is less certain.

Seattle attorney Steve Berman, who represented 13 states in multibillion-dollar negotiations with the tobacco industry, said he would not dismiss the possibility of a successful suit.

"I would treat it seriously," Berman said, "but I think it's going to take a while before the plaintiffs in these cases figure out how to hit the ball out of the infield."

CCCS Executive Director Brita Butler-Wall, who is running for the School Board against Waldman, said her organization held yesterday's news conference not to promote lawsuits against the district but to point out a legal danger the district should be aware of.

"We're trying to save them from themselves," she said.