

What Water Rates Can Be Charged to Extraterritorial Customers?

FACTS:

In 1980, Oneida Township wanted to expand residential development by contracting with Grand Ledge for the purchase of sanitary sewer and potable water services. Accordingly, Grand Ledge and Oneida entered into a water agreement under which Grand Ledge supplies water and sanitary sewer services to Oneida residents within a designated area. The water is delivered directly to residents and each resident is billed directly by the city. Although Oneida is the contracting party, it does not receive any water service. Under the agreement, Oneida users are to pay twice the rate charged to city customers.

The state statute in effect at the time that the agreement was entered into, MCL 123.141, allowed such agreements between municipalities and specifically provided that the rate charged, under most circumstances, was to be twice that charged to the residents of the municipality providing the water services.

Just eight months after the agreement was entered into between Grand Ledge and Oneida Township, MCL 123.141 was amended. The provisions of the statute relating to permissible charges were expanded and language related to “contractual customer,” “wholesale customers,” and “retail rate” was included.

Oneida Township and some of its residents sued Grand Ledge claiming that the statute expressly prohibited the rate charged under the agreement and that the rate could not exceed the actual cost of providing the services. Grand Ledge claimed that a certain exemption in the statute applied and that it was authorized to charge the rate provided under the agreement, i.e., twice that charged its city residents. Both Grand Ledge and Oneida Township claimed that language in the statute supported their respective arguments.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

Sue Jeffers is a legal consultant to the League. You may reach her at sjeffers@mml.org.

QUESTION:

Can a municipality charge more than the actual cost of service to an extraterritorial customer under Michigan law?

Answer according to the trial court:

Yes.

Answer according to the Court of Appeals:

No. The court of appeals overturned the trial court’s decision and held for the township and its residents.

The court of appeals distinguished language in the statute on the basis of “wholesale” and “retail” customers. Finding that Oneida Township residents were retail customers, the court of appeals applied MCL 123.141(3) and, accordingly, Grand Ledge was not permitted to charge beyond the actual cost of providing the service, despite the language of the agreement.

Answer to the Michigan Supreme Court:

Yes. The Michigan Supreme Court reversed the decision of the court of appeals. The Court found the court of appeals misinterpreted the statute. The Court found that the statute exempts water departments that are not contractual customers of another water department and that serve less than 1 percent of the population of the state from the cost-based requirements despite the language of the agreement.

Grand Ledge was permitted to continue to charge Oneida Township residents the rate outlined in its agreement with the township. The Michigan Supreme Court ruled that the provisions of the statute that outlawed charging more than the actual cost of service did not apply to Grand Ledge.

Municipalities that supply water services to less than 1 percent of the state’s population and are not contractual customers of another water system are not subject to the “actual cost” requirement of the state statute.

A large number of cities have agreements to supply water services to extraterritorial customers, some of which are other municipalities and some of which are individual residents. This case was extremely important to support the terms of those agreements.

Oneida Charter Township v Grand Ledge, No. 138520 (2009).