

BOLT VS CITY OF LANSING

A Taxing Question for Michigan's Local Governments

By Mark Nettleton

In 1978, Michigan voters adopted the “Headlee Amendment” to the Michigan Constitution. The amendment revised existing provisions and added new ones including an express limitation on the ability of local governments to enact new taxes or increase existing taxes without a vote of the electors. Following the adoption of the Headlee Amendment, taxpayers began to challenge local government fees, such as sewer and water connection fees, on the basis that the fees were invalid and impermissible taxes.

In 1998, the Michigan Supreme Court decided the seminal case, *Bolt v City of Lansing*, to address the “fee” versus “tax” question. Since the *Bolt* decision, local governments have struggled to determine whether proposed or adopted fees would survive a “*Bolt* challenge” by a taxpayer, thus raising a taxing question for local governments.

VALID USER FEE VERSUS AN INVALID TAX

Municipalities frequently charge numerous fees: application fees; permit fees; sewer and water connection fees; cable franchise fees; and commodity fees. In *Bolt*, the Michigan Supreme Court tried to clarify when such fees are valid.

The city of Lansing had, for many years, a combined sanitary sewer and storm water system. During heavy rain events, the combined sewer systems became overwhelmed and untreated or partially treated sanitary sewage flowed into the Grand and Cedar Rivers.¹ The city sought to remedy the overflow by separating the storm sewers from the sanitary sewers. At that time, the estimated cost to separate the two systems was \$176 million over 30 years.² To pay the project cost, the city imposed an annual stormwater service charge on each parcel of property located within the city. The revenue from the charge was expected to pay half of the capital cost of the separation project; the balance of the cost was to be paid from the city's general fund.

The charge was roughly based on estimated stormwater runoff from each parcel and factored in parcel size and the amount of the parcel covered by impervious surfaces: blacktop, sidewalks, patios, and buildings, for example. Residential parcels under two acres were charged a flat fee. The annual charge was included in the city's property tax bill and, if not paid when due, was considered delinquent and then collected as a delinquent tax.

Alexander Bolt, a property owner within the city of Lansing, challenged the annual stormwater fee alleging the fee was an impermissible tax imposed without a vote of the city's electors, in violation of *Headlee*. The Michigan Supreme Court agreed.

In invalidating the fee, the Court noted that a valid user fee is “exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit.”³ In contrast, taxes are “exactions which are imposed primarily for public rather than private purposes.... Revenue from taxes, therefore, must inure to the benefit of all, as opposed to exactions from a few for benefits that will inure to the persons or group assessed.”⁴ The Court held that a valid fee must serve a “regulatory purpose,” but concluded that the city's fee was imposed to raise revenue, as evidenced by the city's intent to use the revenue to pay half of the cost of the project. The Court also determined that the

¹ *Bolt* at 155; ² *Id.*; ³ *Id.* at 161; ⁴ *Id.*; ⁵ See *Graham v Township of Kochville*, 236 Mich App 141 at 155 (1999); ⁶ See *Mapleview Estates, Inc v City of Brown City*, 258 Mich App 412 (2003); see also *Graham at v Township of Kochville*, 236 Mich App 141, 155-156; ⁷ See *Lapeer County Abstract & Title Co. v Lapeer County Register of Deeds*, 264 Mich App 167 (2004); ⁸ See *Wheeler v Charter Township of Shelby*, 265 Mich App 657 (2005); ⁹ See *Meadows Valley, LLC v Village of Reese*, Case No. 309549 (Mich Ct App, unpublished opinion, 06/11/2013); ¹⁰ See *Tobin Group LLP v Genesee County*, Case No. 248663 (Mich Ct App, unpublished opinion, 12/14/2004); ¹¹ See *In re Petition for Foreclosure of Certain Parcels of Property v Township of Chesterfield*, Case No. 309229 (Mich Ct App, unpublished opinion, 05/27/2014); see also *County of Jackson v City of Jackson*, 302 Mich App 90 (2013)

amount of the fee was not proportionate to the service provided to those paying the fee because the fee was imposed on properties that were already served by separated storm sewers. Without such a corresponding benefit, the fee is no different than a tax imposed on all property owners. Finally, the Court determined that the fee was not voluntary—Mr. Bolt could not avoid paying the fee.

According to the *Bolt* Court, in order for a fee to be valid and not an impermissible tax, the fee must:

- 1 **SERVE A REGULATORY PURPOSE AND NOT BE IMPOSED SOLELY FOR A REVENUE-RAISING PURPOSE;**
- 2 **BE REASONABLE AND PROPORTIONATE TO THE COST OF THE SERVICE PROVIDED; AND**
- 3 **BE VOLUNTARY—A USER MUST HAVE A WAY TO LIMIT THE AMOUNT OF THE SERVICE USED AND THE FEE INCURRED.**

The Court noted that the three criteria are not to be considered in isolation, and subsequent courts have held that the criteria should be considered “in their totality,” such that a “weakness in one area would not necessarily require a finding that the charge at issue is not a fee.”⁵

WITHSTANDING A *BOLT* CHALLENGE

Since Bolt, numerous challenges to fees have been filed and decided. Courts have upheld mandatory connection to, and connection fees for public sewer and water;⁶ utility debt service fees; fees for copying public microfilm records;⁷ waste hauler fees;⁸ sewer “ready to serve” charges;⁹ and sanitary sewer and public water capital improvement charges,¹⁰ to name a few. Key to upholding these fees are the facts underlying the fee structure. Fees that pay for, or approximate, the municipality’s cost to provide the service to only those customers that benefit from the service, serve both a regulatory purpose and are proportionate. Further, even where payment of the fee is mandatory, such as a sewer or water connection fee, if the customer can regulate its use of the commodity (by using less water, for example), the courts are more likely to determine that the fee is “voluntary” under the Bolt “test.”

Fees are typically invalidated when they are imposed for a revenue-raising purpose, or when the fee is disproportionate to the cost of the service provided.¹¹

CONCLUSION

When enacting new fees or adjusting existing fees, local governments must carefully analyze whether the fee complies with the three-part Bolt test to ensure the fees will not be invalidated. 

Mark Nettleton is an attorney with Mika Meyers Beckett & Jones. You may contact him at 616-632-8048 or mnettleton@mmbjlaw.com.

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