Court of Appeals, State of Michigan

ORDER

William J Vajk v City of Iron River

Docket No. 320550

Christopher M. Murray
Presiding Judge

Kurtis T. Wilder

Pat M. Donofrio
Judges

The Court orders that plaintiff's request for relief is DENIED. MCR 7.206(E)(3)(b). The circumstances as well-pleaded by plaintiff and revealed in the supporting documentation do not implicate § 31 of the Headlee Amendment, Const 1963, art 9, § 31. *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998). Water and sewer service charges, including readiness to serve charges, are quintessential user fees – and, not taxes. See e.g., *Ripperger v City of Grand Rapids*, 338 Mich 682, 686-688; 62 NW2d 585 (1954); *Jones v Board of Water Commissioners of Detroit*, 34 Mich 273, 275 (1876). According to the unrebutted evidence submitted by defendants, the water and sewer service charges generate revenue in an amount roughly equivalent to the costs of operating and maintaining the City's sanitary sewer system and the water distribution system. Thus, the charges complained of generate revenue in an amount proportional to the cost of the services rendered, and do not generate any tax-like benefit on behalf of the general public, *Wheeler v Shelby Charter Twp*, 265 Mich App 657, 668; 697 NW2d 180 (2005). Nor do they generate revenue in excess of the cost of the regulation, *Saginaw Co v John Sexton Corp of Michigan*, 232 Mich App 202, 210; 591 NW2d 52 (1998). In light of these acknowledgments, the readiness to serve charge and the current sewer and water service charges "cannot be considered a 'tax' under any reasonable meaning of the term," as applied to the users of the City's sanitary sewer and water distribution systems. *Lapeer Co Abstract & Title Co v Lapeer Co Register of Deeds*, 264 Mich App 167, 182; 691 NW2d 11 (2004).

This Court has ruled that a municipal solid waste disposal charge constitutes a user fee rather than a tax even though the voluntary criterion articulated in *Bolt* was not satisfied. *Wheeler*, 265 Mich App at 664-667. The $12 monthly fee charged by the City must be presumed reasonable "'unless the contrary appears upon the face of the law itself, or is established by proper evidence . . . .'" *Graham v Kochville Twp*, 236 Mich App 141, 154-155; 599 NW2d 793 (1999), quoting *Vernor v Secretary of State*, 179 Mich 157, 168; 146 NW2d 338 (1914). The $12 monthly fee is not unreasonable on its face and plaintiff offers no evidentiary support to sustain a finding that the charge is unreasonable.

Plaintiff provides no authority from which it may be inferred that, by turning off the water at curbstop, the City is released from its continuing obligation to maintain the capacity to provide water and sewer services to the Plum Street property should plaintiff or a successor owner request a resumption of the water supply. Under such circumstances, plaintiff receives the benefit of use of the municipal water distribution and sanitary sewer systems, albeit to a lesser degree than other users of these systems, and the City's allocation of maintenance costs to those like plaintiff who are connected to these systems constitute a fee for service for purposes of the Headlee Amendment.

Finally, we lack original subject matter jurisdiction over plaintiff's claims that the fees charged by the County pursuant to MCL 15.234(1) are unreasonable and excessive and that the City failed to enact its city charter and code of ordinances in a manner that comports with the applicable statutes. Const 1963, art 9, § 32; *Durant v State of Michigan (On Remand)*, 238 Mich App 185; 605 NW2d 66 (1999).

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 0 2 2014

Date

Chief Clerk