STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY TAXPAYERS ASSOCIATION, ROSE BOGAERT, MARILYN WOOTTON, BETTY SCHABO, ED BARTOS and ROBERT MONTGOMERY,

Plaintiffs-Appellants,

v

COUNTY OF WAYNE, WAYNE COUNTY BOARD OF COMMISSIONERS and MICHIGAN BELL TELEPHONE, a/k/a AMERITECH CORPORATION,

Defendants-Appellees,

and

CONFERENCE OF WESTERN WAYNE and DOWNRIVER COMMUNITY CONFERENCE,

Intervening-Defendants/Appellees.

UNPUBLISHED
May 5, 1998

No. 197279
Wayne Circuit Court
LC No. 95-527476-CZ

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order granting summary disposition in favor of defendants. We affirm.

Pursuant to the Emergency Telephone Service Enabling Act, MCL 484.1101 *et seq.*; MSA 22.1467(101) *et seq.*, defendant County of Wayne established four emergency telephone service districts to give its residents access to emergency telephone service by dialing 911.[1] As originally enacted, § 401(3) of the Act, MCL 484.1401(3); MSA 22.1467(401)(3), authorized telephone service

suppliers, such as defendant Michigan Bell Telephone Company/Ameritech Corporation (Ameritech), to collect from each service user a charge of up to two percent of the highest monthly base rate charged by the service supplier for a one-party line to cover the costs of providing 911 service within the service district. In 1994, the Legislature amended § 401 to provide, in relevant part:

> With the approval of the county board of commissioners, a county may assess an amount for recurring emergency telephone operational costs and charges that shall not exceed 4% of the highest monthly flat rate charged by a service supplier for a 1-party access line within the geographical boundaries of the assessing county. [MCL 484.1401(3); MSA 22.1467(401)(3).]

In August 1994, defendant Wayne County Board of Commissioners adopted a resolution authorizing an increase in the 911 service charge from two percent to four percent of the highest monthly flat rate charged by the service supplier, Ameritech, for a one-party access line within the county. Plaintiffs filed suit alleging that the 911 service charge violates the Headlee Amendment to the Michigan Constitution, Const 1963, art 9, §§ 25-34. Specifically, plaintiffs claim that the 911 service charge violates Const 1963, art 9, §§ 25 and 31. Const 1963, art 9, § 25 provides:

> Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in Sections 26 through 34, inclusive, of this Article.

Const 1963, Article 9, § 31 provides, in relevant part:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.

Following the parties' cross-motions for summary disposition, the trial court granted summary disposition in favor of defendants. The trial court concluded that the 911 service charge authorized under MCL 484.1401(3); MSA 22.1467(401)(3) is a "fee" rather than a "tax" and, therefore, does not violate the Headlee Amendment. Plaintiffs now appeal from that decision, claiming that the trial court erred in determining that the 911 service charge is a fee. Whether the 911 service charge constitutes a fee or an illegal tax is a question of law that we review de novo on appeal. *Northgate Towers Associates v Royal Oak Twp*, 214 Mich App 501, 503; 543 NW2d 351 (1995), modified on other grounds 453 Mich 962 (1996); see also *Bolt v City of Lansing*, 221 Mich App 79; 561 NW2d 423 (1997). To establish that MCL 484.1401(3); MSA 22.1467(401)(3) violates the Headlee

Amendment, plaintiffs must overcome the presumption that the statute is constitutional. *Taxpayers United for the Michigan Constitution, Inc v Detroit*, 196 Mich App 463, 466; 493 NW2d 463 (1992).

The Headlee Amendment does not define the terms "tax" or "fee," and there is no bright line test to distinguish a tax from a fee. *Bolt*, *supra*, 221 Mich App 86. However, there are several general principles used to determine whether a charge constitutes a fee or a tax. The purpose of a tax is to raise revenue. In contrast, a fee should have as its purpose something other than the raising of revenue, such as protecting the public health, safety, and welfare. *Merrelli v City of St Clair Shores*, 355 Mich 575, 583; 96 NW2d 144 (1959). Furthermore, unlike revenue from taxes, which is paid into the state fund, money collected from fees does not become part of the state fund, but is used solely for the necessary expenses of the service provided. *Dukesherer Farms, Inc v Director, Dep't of Agriculture (After Remand)*, 405 Mich 1, 16; 273 NW2d 877 (1979). Moreover, to be considered a fee rather than a tax, there must be a reasonable relationship between the amount charged and the value of the service or benefit received. *Vernor v Secretary of State*, 179 Mich 157, 168-169; 146 NW 338 (1914); *Bolt*, *supra*, 221 Mich App 86; *Iroquois Properties v City of East Lansing*, 160 Mich App 544, 562-564; 408 NW2d 495 (1987).

The evidence submitted by defendants establishes that the 911 service charge is a fee rather than a tax. The funds collected pursuant to § 401(3) are used solely to defray the costs of operating the 911 system.[2] Moreover, there is a reasonable relationship between the 911 charge and value of the service provided. Indeed, James Jones, executive director of defendant Downriver Community Conference (DCC), stated in his affidavit that, from November 1994 through February 26, 1996, the DCC received $1,195,743.97 from Ameritech. However, the cost associated with providing 911 service during that same time period was in excess of $3,000,000.[3] Finally, the benefit of the 911 service inures primarily to those who subscribe to telephone service and pay the fee accordingly. That there may be an incidental public benefit does not make the charge a tax. See *Dukesherer*, *supra*, 405 Mich 15-19.

Accordingly, we conclude that the trial court properly determined that the 911 service charge is a fee rather than a tax and, therefore, that MCL 484.1401(3); MSA 22.1467(401)(3) does not violate the Headlee Amendment.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Michael J. Kelly
/s/ Martin M. Doctoroff

[1] There are four such districts in the County of Wayne: (1) the Downriver Community Conference; (2) the Conference of Western Wayne; (3) the Conference of Eastern Wayne; and (4) the Detroit Emergency Telephone District.

[2] Indeed, the Act itself limits the use to which those funds can be put: MCL 484.1102(h); MSA 22.1467(102)(h) expressly defines "emergency telephone operational charge" as "a charge for nonnetwork technical equipment and other costs *directly related to the operation of 1 or more [primary public safety answering points]*." (Emphasis added).

[3] Similar sentiment, that the operational charges collected are insufficient to cover the costs of providing 911 service, was expressed by Daniel Gilmartin, executive director for defendant Conference of Western Wayne. In support of their claim that the charges collected "may very well have exceeded the cost of the service," plaintiffs cite a May 12, 1992, letter from Ameritech to the Wayne County Board of Commissioners regarding Ameritech's 1991 "Enhanced 9-1-1 Annual Accounting" for the Detroit Emergency Telephone District. The letter vaguely refers to a "$52,902 over collection" by Ameritech. However, it is not clear from the face of the letter exactly what the "over collection" refers to or, more important, whether it relates to the cost of the *service district* in providing 911 service that year, including equipment, dispatch personnel, etc. In any event, "[t]he law does not demand a precise correlation between costs and fees required, but, rather, a reasonable relation." *Merrelli*, *supra*, 355 Mich 588.