



GCSA Fact Sheet – October 2013

Jackson, Michigan Lawsuit Against Local Stormwater Fees

INCOG NOTE: Here are two articles from Michigan that report on a recent court of appeals decision to declare the Jackson, MI local stormwater fee a tax rather than a user fee. The “Headlee Amendment” referred to in the articles is a Michigan law that requires local governments to take all tax proposals to a vote of the people. The appeals court ruled that the local fee was a tax because the use of fee income benefited everyone, including recreational users of the river water the fee was designed to protect. The court apparently felt that the more narrow application of a user fee just for specific users did not apply since benefits were pervasive. The second article relates to the aftermath – municipal services curtailed and 15 employees losing their jobs. These types of lawsuits are increasing nationwide as a backlash to local stormwater fees. It is unknown how these lawsuits will influence or affect any local fees in Oklahoma.



What you need to know about the Jackson stormwater 'tax' Court of Appeals ruling

What does the Michigan Supreme Court ruling on the city's stormwater charge mean?

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JACKSON, MI – The Michigan Court of Appeals issued a ruling this week stating that Jackson's two-year-old stormwater fee is actually an illegal tax.

While the ruling doesn't require the city to pay back what it has collected, it does state the city needs to stop collecting the stormwater tax. Check out our guide to what this ruling means and how it came about.

What was the ruling? The Michigan Court of Appeals ruled the city's stormwater fee is an "illegal" tax. To date, the city has collected \$2.8 million in stormwater billings since the fee's inception in 2011. As a result, it violates section 31 of the Headlee Amendment. The specific section of the Headlee Amendment "prohibits local governments from levying any new tax or increasing any existing tax above authorized rates without the approval of the unit's electorate." Meaning, the issue was not put to the public for a vote. A user-fee would not violate the Headlee Amendment, but the court ruled it was a tax and not a user-fee.

What does this mean for property owners in the city? Property owners will no longer have to pay the charge, but the opinion states the city does not have to pay back property owners who have paid the charge since 2011. The city is required to pay back any funds received from only those named in the lawsuit which are Jackson County and two business owners. But, neither the county nor the business owners actually paid their bills.

How did this issue get started? In 2011, the city adopted ordinance 2011.02 which established a stormwater utility fee to fund stormwater management. City property owners were required to pay a charge to fund services associated with stormwater management including street sweeping, catch basin cleaning and leaf pickup and mulching. This included undeveloped properties.

Before the ordinance was passed, the city used revenue from property taxes, gasoline taxes and vehicle registration fees funds to pay for the management, according to the opinion — meaning, there was no dedicated revenue to pay for the services. City officials started to see a decline in the amount of revenue generated from these sources and hired a consulting company to study the feasibility of creating a stormwater utility to pay for the management of stormwater.

After the feasibility study was conducted, city officials were advised to create the charge. All revenue went into a fund, called an Enterprise Fund, which means that all revenue generated from the charge are deposited into a special account and can only be used to maintain a stormwater system. The city started billing May 2011. **Before the charge was reduced to \$7.50 per quarter**, it cost homeowners \$8 per quarter and business owners with large parking lots several hundred dollar per month.

The city could be forced to pay the court costs of the defendants in the case which are Jackson County, Jackson Coffee Co. and Klein Brothers, LLC.

Why did the court determine it was not a fee? The COA referred to a Michigan Supreme Court case, Bolt v City of Lansing as a precedent when ruling that the fee is really a tax in disguise. In that case, the state Supreme Court considered three primary criteria of a fee. It has to serve a regulatory purpose, it is proportionate to the necessary costs of that service and the fee is voluntary. None are the case in the Jackson stormwater fee.

In addition, the COA's decision was "bolstered" by the fact that the charge is "effectively compulsory," meaning the charge is required and there is no way around it. **The city offered incentives, or credits, to property owners who took action to reduce runoff;** but the ordinance did not guarantee that all property owners would receive 100 percent credit, according to the opinion.

"If the ordinance realistically allowed for all property owners to receive a 100 percent credit, the credit system would undermine the central purpose of the ordinance, which is to generate dedicated funding to maintain and operate the current the current stormwater management system," the opinion stated.

How did the case end up in the Court of Appeals? While most cases do tend to start in lower courts, this case originated in the Michigan Court of Appeals under what is called "original jurisdiction."

Under the state constitution there is a provision in the Headlee Amendment that states a case can be filed in either circuit court or directly into the court of appeals.

Jackson County filed a lawsuit in December 2011 against the city. Shortly after, **Brian Surgener, an attorney and owner of the Jackson Coffee Co., and David Klein, one of the owners of Klein Brothers, filed a lawsuit.** The cases were consolidated.

The city sent county officials a \$32,000 bill. The county did not pay it. Surgener, whose annual fee was \$1,500, and Klein, whose annual fee was \$3,000 also did not pay.

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Jackson officials accept court's decision nullifying stormwater fee; services such as leaf pickup eliminated

Jackson officials said they will not seek an appeal in the court decision that rendered the city's stormwater utility fee illegal.

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JACKSON, MI – Opponents of Jackson's stormwater utility will be happy to hear city officials will stop billing and collecting the fee, but they may be unhappy with the shape of their lawns come this fall.

Jackson officials said at a city council meeting Tuesday, Aug. 13, the city will not seek an appeal in a Michigan Court of Appeal's decision that rendered Jackson's stormwater utility illegal, but the decision brings with it a price.

"In the aftermath of the court ruling ... we must make the difficult decision to eliminate (stormwater utility) services," Jackson Mayor Martin Griffin said, reading from a prepared statement Tuesday.



Griffin said the city – in being fiscally responsible – will eliminate local street sweeping, major street sweeping, leaf pickup, yard waste pickup, and catch-basin cleaning as part of a budget amendment that passed unanimously Tuesday.

Officials are still quiet about the possibility of refunding city residents their stormwater bills. Jackson City Manager Patrick Burtch said it's still too early to say whether residents will see refunds. The city has generated nearly \$3 million in fees since it began collecting it in May 2011.

"We are currently working with city administration to consider options to the residents and businesses affected by these matters," Griffin said.

The fee was created by city officials in 2011 because they said they did not want to use street funds to sweep streets, pick up leaves and keep the Grand River clean, a service required by the federal government.

After receiving a \$32,000 stormwater bill, the County of Jackson sued the city, and other Jackson businesses followed suit.

In a published opinion released Friday, Aug. 2, the court ruled the city's stormwater fee an unconstitutional tax that violates the Headlee Amendment.

The ruling stated that the city will be required to pay back the plaintiffs in the lawsuit that voided the fee, including the County of Jackson, but not other residents or business owners

within the city. None of the plaintiffs paid the stormwater fee, but they could be reimbursed court costs.

"As we work to hold our city to a higher standard, we must be wary of jumping to quick fixes to this problem and focus on long-term solutions," Griffin said in the statement. Officials say they are working to find a "suitable process to sustain the services," but in the interim the services will be eliminated.

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