

# **Bond Case Briefs**

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## **UTILITIES - IDAHO**

### **Manwaring Investments, L.C. v. City of Blackfoot**

**Supreme Court of Idaho, Pocatello, September 2017 Term - November 3, 2017 - P.3d - 2017 WL 5017433**

Owner of commercial building brought action against city for declaratory judgment, an injunction, and \$1,803.66 in damages, alleging that city had overcharged owner for wastewater utilities, and further alleging that such overcharge violated Idaho Revenue Bond Act, constituted unconstitutional tax, and violated due process.

The District Court affirmed the magistrate's decision granting city's motion for summary judgment and denying owner's motion for summary judgment. Owner appealed.

The Supreme Court of Idaho held that:

- Evidence was insufficient to overcome presumption that city ordinance, which assessed flat monthly rates for wastewater utility services, was valid, as was required to show that ordinance violated Idaho Revenue Bond Act;
- City's wastewater utility ordinance imposed fee, not tax, and thus ordinance did not violate article of Idaho Constitution which required taxes imposed by municipal corporations to be approved and authorized by legislature;
- Owner failed to allege that it had protected interest in specific wastewater utility rate under city ordinance, as was required for owner to state claim for violation of its procedural due process rights;
- Owner failed to show that it presented any new argument or evidence to create genuine issue of material fact to defeat city's motion for summary judgment, and thus owner was not entitled to reconsideration; and
- City, which was prevailing party, was not entitled to statutory attorney fees.

Evidence was insufficient to overcome presumption that city ordinance, which assessed flat monthly rates for wastewater utility services based on specified building classifications, was valid, as was required to show that ordinance violated provision of Idaho Revenue Bond Act which required public works to be furnished at lowest possible cost, where ordinance considered several factors, including square footage, contaminants discharged into system, and estimated number and types of users under each classification, ordinance's assessment structure, while not based on actual wastewater flowrates, was not arbitrary, and there was no evidence that city used wastewater fees for anything aside from expressly permitted purposes of operation, maintenance, replacement and depreciation.

City ordinance, which assessed flat monthly rates for wastewater utility services based on specified building classifications, imposed fee, not tax, and thus ordinance did not violate article of Idaho Constitution which required taxes imposed by municipal corporations to be approved and authorized by legislature, where rates imposed by ordinance conformed to statutory scheme set forth under Idaho Revenue Bond Act, and, further nothing suggested that city was impermissibly using money collected from wastewater utilities for revenue raising purposes, or that city was collecting wastewater utility fees in attempt to unduly improve or expand sewer system.

Owner of commercial building failed to allege that it had protected interest in specific wastewater utility rate under city ordinance, which assessed flat monthly rates for wastewater utility services based on specified building classifications, as was required for owner to state claim for violation of its procedural due process rights under Fourteenth Amendment and Idaho Constitution based on city's act of changing rate applicable to building.

Plaintiff failed to show that it presented any new argument or evidence to create genuine issue of material fact to defeat defendant's motion for summary judgment, and thus plaintiff was not entitled to reconsideration of summary judgment entered in favor of defendant.

City, which was prevailing party in property owner's appeal from adverse judgment, was not entitled to attorney fees under statute which provided that, in proceeding involving political subdivision, prevailing party was entitled to reasonable attorney fees if nonprevailing party acted without reasonable basis in fact or law, since property owner did not act without reasonable basis in fact or law, but, instead, argued complex issues in good faith.