Bond Case Briefs

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Heartland Apartment Ass'n, Inc. v. City of Mission

Court of Appeals of Kansas - July 2, 2015 - P.3d - 2015 WL 4033516

Landowner associations brought action against city for declaratory judgment, injunction, recovery of amounts paid, and due process and equal protection violations, claiming that the city's transportation utility fee was a prohibited excise tax. The District Court granted city summary judgment, finding the fee was a tax, but the fee was not a prohibited excise tax. Associations appealed, and city cross-appealed.

The Court of Appeals held that:

- Transportation utility fee was a tax, rather than a fee, and
- Transportation utility fee was an excise tax prohibited by law.

City's transportation utility fee imposed on owners of developed property within the city was a "tax" and not a "fee." Even though city labeled the expense a "fee," owners of improved real estate across the city were forced to pay annual fee and could not opt out, owners that were exempt from ad valorem property taxes were exempt from paying fee, purpose of fee was to raise revenue to help pay for street maintenance rather than a special service or benefit to any specific landowner, and money was to be used for the common good of providing a way to get around the city, which was one of the core governmental services provided by a city.

City's transportation utility fee, which was a tax calculated by estimating the average number of vehicle trips a developed property generated, was an "excise tax" prohibited by statute. "excise tax" had come to mean and include practically any tax which was not an ad valorem tax imposed on the value of the article or thing taxed, transportation utility fee was not based on the value of the developed property but on the number of vehicle trips, and transportation utility fee did not fit within any of statutory exceptions to ban on excise taxes.