

# **Bond Case Briefs**

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## **WATER & SEWER FEES - MICHIGAN**

### **Shaw v. City of Dearborn**

**Court of Appeals of Michigan - September 19, 2019 - N.W.2d - 2019 WL 4548372**

City resident brought action against city, alleging that water and sewer rates charged to residents qualified as unlawful taxes, rather than valid user fees, because they were imposed without authorization by city voters in violation of constitutional amendment, and that such rates unjustly enriched city.

The Circuit Court, Wayne County, entered summary disposition in favor of city. Resident appealed.

The Court of Appeals held that:

- To the extent that resident's claim that city violated amendment relied on city's alleged plan to spend money from rates in order to complete sewer-separation project, such claim was not ripe;
- Evidence was insufficient to establish that city paid for sewer-separation project with funds obtained from increasing water and sewer rates;
- Resident failed to establish that charge for operation and maintenance of sewage storage structures, which was included in rates, constituted tax;
- Rates served regulatory purpose of providing water and sewer service to residents, as necessary for such rates to constitute valid user fees;
- Residents paid proportionate share of expenses associated with operation and maintenance of water and sewer systems, and thus water and sewer rates constituted valid user fees;
- Individual residents decided amount and frequency of their usage of city's water and sewer systems, and thus water and sewer rates constituted valid user fees; and
- Resident failed to demonstrate inequity based on rates, as necessary to establish that city was unjustly enriched by collecting rates.

To the extent that city resident's claim that city violated constitutional amendment prohibiting governmental units from imposing taxes not authorized by law or charter without voter approval relied on city's alleged plan to spend money from water and sewer rates charged to residents in order to complete sewer-separation project, such claim was not ripe, where claim rested on speculation about possible future events.

Evidence was insufficient to establish that city paid for sewer-separation project with funds obtained from increasing city residents' water and sewer rates, and thus that such increase constituted tax, as necessary for resident to prevail in action brought against city, alleging violation of constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; resident presented no evidence that city charged residents for separation work, and record indicated that city actually charged residents for other, ancillary work, quotes from city officials that seemed to indicate that rate funds were spent on separation project were taken out of context, and record stated that project was funded by bonds and loans to be paid by approved taxes.

City resident failed to establish that charge for operation and maintenance of structures used to hold sewage, which was included in water and sewer rates city charged residents, constituted tax, and

thus that city violated constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; resident conceded that charges did not finance investment in infrastructure, as city paid for construction of structures with previously-approved funds, and although resident argued that not all residents benefited from structures, since structures were used for sewage discharged by only some residents, structures were part of system that benefited entire city, and city was not required to individualize rates based on usage.

Sewer and water rates that city charged residents, which included charge for operation and maintenance of structures used to hold sewage, served regulatory purpose of providing water and sewer service to residents, as necessary for such rates to constitute valid user fees, rather than taxes that violated constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; although rates generated funds to pay for operation and maintenance of city's water and sewer systems in their entirety, such funds supported underlying regulatory purpose of providing water and sewer service to residents, and charge for operating and maintaining structures was part of cost of providing sewer service.

City residents paid proportionate share of expenses associated with operation and maintenance of water and sewer systems, and thus water and sewer rates that city charged residents, which included charge for operation and maintenance of structures used to hold sewage, constituted valid user fees, not taxes, as necessary for resident to prevail in action brought against city, alleging violation of constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; city determined water and sewer rates charged to residents based on residents' metered-water usage, and resident failed to establish that such method was insufficiently precise measurement of actual costs of using water and sewer systems.

Where municipality's charge to residents for either storm or sanitary sewers reflects the actual costs of use, metered with relative precision in accordance with available technology, including some capital investment component, sewerage may properly be viewed as a utility service for which usage-based charges are permissible, and not as a disguised tax, as necessary to avoid violating constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval.

Individual residents voluntarily decided amount and frequency of their usage of city's water and sewer systems, through controlling how much water they used, and thus water and sewer rates that city charged residents, which included charge for operation and maintenance of structures used to hold sewage, constituted valid user fees, rather than taxes that violated constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval.

City resident failed to demonstrate inequity based on water and sewer rates that city charged residents, as necessary to establish that city was unjustly enriched by collecting such rates; resident presented no evidence that rates had been increased in order to pay for city's sewer-separation project, and thus that they constituted unconstitutional tax, that there was anything improper about charge for operation and maintenance of sewage storage structures that was included within rates, or that rates were unreasonable.