

Bond Case Briefs

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UTILITY FEES - MONTANA

Houser v. City of Billings

Supreme Court of Montana - March 3, 2020 - P.3d - 2020 WL 1024791 - 2020 MT 51

Ratepayers brought action against city, challenging franchise fees city imposed on water, wastewater, and solid waste disposal services.

The District Court certified class action. City appealed.

The Supreme Court held that:

- Inclusion of ratepayers in class definition whose claims were time-barred did not defeat commonality requirement for certification;
- Possibility that city was entitled to legislative immunity on ratepayers' claims did not defeat commonality requirement for certification;
- Certification of class for declaratory or injunctive relief was warranted; and
- Certification on the basis of predominance of common issues was also warranted.

Inclusion of ratepayers for water service in class definition, whose claims were time-barred, did not defeat commonality requirement for class certification, in action by ratepayers against city, challenging imposition of franchise fees with respect to water, wastewater, and solid waste disposal services; while four-year limitations period applicable to goods applied to claims by ratepayers with respect to water service, and class definition included ratepayers from a period more than four years prior to commencement of suit, district court maintained discretion to modify class definition at any time until final judgment.

Possibility that city was entitled to legislative immunity under statute on claims by ratepayers, challenging imposition of franchise fees on water, wastewater, and solid waste disposal services, did not preclude commonality of ratepayers claims for purposes of class certification on such claims; whether city was entitled to legislative immunity was a merits question, which would have stood or fallen equally for all members, as there was no distinction between members of proposed class that would have changed question, as common contention of each class member's claims was that city violated their rights by improperly charging a franchise fee.

Certification of class of ratepayers for declaratory or injunctive relief was warranted, in ratepayers' action against city, challenging imposition of franchise fees on water, wastewater, and solid waste disposal services; while city asserted that it could not have been enjoined from exercising its legislative rate-setting powers, this constituted a question on the merits, and ratepayers demonstrated that imposition of such fees was a common policy affecting class as a whole in the same fashion, and that any declaratory or injunctive relief would have been appropriate for all class members, or none of them.

Common questions of law predominated over any questions involving individual ratepayers, and thus certification of class was warranted on the basis of predominance, in ratepayers' action challenging city's imposition of franchise fees for water, wastewater, and solid waste disposal services; while city

asserted that common issues did not predominate since ratepayers asserted claims based on both legislative and administrative acts, same legal question common to all class members, namely city's potential legislative immunity, predominated over any question affecting only individual ratepayers.