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Mahon v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - November 20, 2020 - Cal.Rptr.3d - 2020 WL 6817061 - 20 Cal. Daily Op. Serv. 12,107

Electric utility customers brought class action against city challenging undergrounding surcharge, collected by utility from customers pursuant to franchise agreement with city, as an illegal tax obtained without voter approval under Right to Vote on Taxes Act.

The Superior Court granted summary judgment for city. Customers appealed.

The Court of Appeal held that surcharge was valid franchise fee rather than a tax subject to voter approval.

Undergrounding surcharge that electric utility collected pursuant to franchise agreement with city from its customers with electric utility service within city's boundaries was valid franchise fee rather than a tax subject to voter approval under Right to Vote on Taxes Act; surcharge was compensation validly given in exchange for franchise rights.

City's failure to deposit revenues from undergrounding surcharge collected by electric utility from its customers pursuant to franchise agreement with city into city's environmental growth fund did not demonstrate that surcharge was a tax subject to voter approval under Right to Vote on Taxes Act rather than a valid franchise fee; city charter provision establishing environmental growth fund did not serve same object as did test for franchise compensation, and any error in not depositing surcharge revenue into fund might well have resulted from inadvertence, negligence, or even malfeasance that was entirely distinct and unrelated to city's determination of whether surcharge constituted a charge for franchise rights.

City was not required to present a valuation analysis of franchise rights in order establish that the amount of undergrounding surcharge that electric utility collected from its customers pursuant to franchise agreement with city bore a reasonable relationship to value of franchise rights, to show that surcharge was a valid franchise fee rather than a tax subject to voter approval under Right to Vote on Taxes Act; city could establish value of franchise through bona fide negotiations surrounding the franchise.