

Bond Case Briefs

Municipal Finance Law Since 1971

Tax or Fee? - The Fate of PA Stormwater Charges to be Decided in 2024

Last year, the Pennsylvania Commonwealth Court held that a stormwater charge from the Borough of West Chester was not a fee for service, but rather an unauthorized local tax in *Borough of West Chester v. Pa. State System of Higher Education and West Chester University of Pa. of the State System of Higher Education*, 291 A.3d 455 (Pa. Cmwlth. 2023). We reported on this decision in [MGKF's 2023 Environmental Forecast](#), and noted that the case would likely be winding its way through the appellate process in 2023.

In early 2023, the Borough promptly appealed the decision to the Pennsylvania Supreme Court, and was joined by several amici curiae, which included municipalities, municipal advocacy organizations, and non-profit environmental groups. Briefs from the Borough and their aligned amici filed in mid-July 2023 argue that the Commonwealth Court's decision was incorrect and should be overturned, because the stormwater fee charged to the University reflected a fee for service rather than a tax, and that the charge was properly established based on impervious surface coverage. The Borough and other proponents of the stormwater charge argue that all properties within a locality benefit from municipal stormwater services and infrastructure, even if the property is not connected to or serviced by that infrastructure. They point to generalized improvements to overall water quality and an alleged "comprehensive" method of managing stormwater and reducing flooding within a locality as among the bases to support a universal stormwater charge. The Borough and several amici argue that if the Commonwealth Court's decision finding stormwater charges to be a tax, rather than a fee, were allowed to stand, local municipalities and authorities will be deprived of a designated funding source for the costs necessary to comply with state and federal laws and regulations involving stormwater.

On the other side of the argument are the Pennsylvania State System of Higher Education and West Chester University, represented by the Pennsylvania Attorney General, and aligned amici, who filed their briefs in mid-October 2023. They argue that the stormwater fee is a classic tax or assessment because the Borough could not show that the university received a concrete, direct, or discrete benefit that can be traced to the stormwater charges. In fact, the only evidence the Borough presented was that monies collected were used to promote generalized benefits of improved stormwater and reduced flooding, benefits that are shared equally by every property owner and resident within a locality. The university and aligned amici also argued that even if the stormwater charge was not declared a tax and considered a fee, the charges imposed were nevertheless inappropriate and illegal because the high value of the charges was not "reasonably proportional" to any benefits provided by the Borough from their stormwater infrastructure systems. They argue that the Borough failed to analyze or consider the actual expected costs of maintaining or operating any portion of the stormwater infrastructure system that is associated with any particular property, including any of the university's properties in the Borough. The university and aligned amici also pointed to the fact that before the Borough's enactment of the stormwater charge, funds for stormwater projects were paid from the Borough's general fund, supplied by local tax dollars.

The fate of stormwater charges in the Commonwealth of Pennsylvania will be decided in 2024, as

oral argument and a decision from the Pennsylvania Supreme Court is expected this year. The resolution of the *Borough of West Chester* case will have far-reaching implications on how local municipalities and authorities will fund stormwater projects, maintenance, and operations in the future.

Manko Gold Katcher & Fox - Diana A. Silva, Danielle N. Bagwell and Michael Nines, P.E., LEED AP

January 18 2024

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com