

Bond Case Briefs

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Heos v. City of East Lansing

Supreme Court of Michigan - February 3, 2025 - N.W.3d - 2025 WL 377503

Electricity consumer filed class action complaint against city alleging, among other things, that new 5% “franchise fee” charged to in-city consumers by utility provider and remitted to city was unlawful tax that violated Headlee Amendment of state constitution, which required voter approval for new taxes.

The Circuit Court granted summary disposition for consumer on Headlee Amendment claim. The Court of Appeals reversed and remanded. Consumer applied for leave to appeal in Supreme Court.

The Supreme Court held that:

- Franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment, and
- Consumer was “taxpayer,” rather than simply member of public.

New franchise fee charged to in-city electric consumers by utility provider and remitted to city was used for general revenue-raising purpose, as factor weighing in favor of determination that franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment of state constitution; revenue from franchise fee did not correspond with consumer-specific benefits that city provided relating to provider’s supply of electrical services, city provided no benefit specific to consumers in exchange for payment of franchise fee, and revenue collected from franchise fee was placed into city’s general fund and could be used for any purpose that city deemed appropriate.

New franchise fee charged to in-city electric consumers by utility provider and remitted to city was not proportional to costs city incurred for granting provider right to provide electrical services, as factor weighing in favor of determination that franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment of state constitution; franchise fee did not fund and was not collected for purpose of providing electrical services, but revenues from franchise fee were instead put into city’s general fund and spent for variety of purposes unrelated to provision of any benefit specific to consumers.

New franchise fee charged to in-city electric consumers by utility provider and remitted to city was not voluntary, as factor weighing in favor of determination that franchise fee was “tax” requiring voter approval pursuant to Headlee Amendment of state constitution; consumers’ electricity could be shut off for failure to pay franchise fee, and provider was only provider that covered portions of city so consumers did not have alternative option.

Electricity consumer was “taxpayer,” rather than simply member of public, and thus Headlee Amendment claim accrued, and one-year limitations period began to run, when franchise fee was due, rather than when franchise fee was enacted, with respect to consumer’s claim that new franchise fee charged to in-city electric consumers by utility provider and remitted to city was unlawful tax that violated Headlee Amendment of state constitution; consumers bore legal incidence and obligation to pay franchise fee because their electricity could be shut off for failure to pay and

they had no alternative providers, and city required provider's consumers to pay franchise fee to provider, which was required by contract to collect and remit such taxes to city.