

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

RECEIVED
OCT 13 2005
BRICK, GENTRY, BOWERS, SWARTZ,
STOLTZE, SCHULING & LEVIS, P.C.

LISA KRAGNES,

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

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Equity No. 49273

DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

FILED
POLK COUNTY IA
OCT 13 PM 2:34
IOWA DISTRICT COURT

COMES NOW the Defendant, the City of Des Moines, and for its motion for summary judgment states:

1. Plaintiff has sued the Defendant claiming that a utility franchise fee is really an illegal sales tax.
2. There are no genuine issues of material fact in dispute.
3. Because the Iowa Legislature has made specific provision for municipalities to grant municipal franchises to utilities and receive a franchise fee from the utility in return, the franchise fees in question, assessed by the City of Des Moines against the gas and electric utilities owned and operated by MidAmerican Energy, are not illegal sales taxes.
4. As such, the City of Des Moines is entitled to summary judgment as a matter of law.
5. This motion is supported by a statement of material facts not in dispute, an appendix containing all relevant supporting documents, and the City's brief in support of its motion for summary judgment, all of which are filed simultaneously.

WHEREFORE, the City prays the Court enter summary judgment in its favor and against the Plaintiff, and assess the cost of this action against the Plaintiff, and for such other relief as is proper.

Mark Godwin

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ATTORNEY FOR DEFENDANT
CITY OF DES MOINES

Original Filed.

Copy to:

Honorable Michael D. Huppert
Judge, Fifth Judicial District

Mr. Brad Schroeder
Hartung & Schroeder LLP
Equitable Building, Suite 100
608 Locust Street
Des Moines, IA 50309
ATTORNEY FOR PLAINTIFF

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 10-11-05

By U.S. Mail FAX
 Hand Delivered Overnight Courier
 Federal Express Other:

Signature

Diane Roscoe