

IN THE IOWA DISTRICT COURT  
FOR POLK COUNTY

LISA KRAGNES, et. al., )  
)  
Plaintiff, ) Law No. CE 49273  
)  
vs. )  
)  
CITY OF DES MOINES, IOWA, ) MOTION FOR SUMMARY JUDGMENT  
) PURSUANT TO IOWA CODE  
) SECTIONS 670.4(2) and 670.4(3) BY  
Defendant. ) DEFENDANT CITY OF DES MOINES

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

1. Plaintiff has alleged that the City's natural gas and electricity franchise fees are illegal taxes.

2. The City, as part of its answer, adopted an affirmative defense pursuant to Iowa Code §§ 670.4(2) and 670.4(3).

3. Those sections read in pertinent part:

The liability imposed by Section 670.2 shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

2. Any claim in connection with the assessment or collection of taxes.

3. Any claim...based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality...whether or not the discretion is abused.

4. Plaintiff's claim in this case is unequivocally based upon the alleged illegal assessment and collection of taxes and the immunity of §670.4(2) is applicable.

5. In addition, the franchise fees at issue were created by the City Council, by

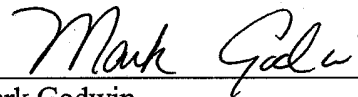
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ordinance, after policy debates over municipal budgeting, property taxes, police and fire staffing, library hours, and the like.

6. There are no material facts in dispute.
7. As a result, the City is entitled to summary judgment as a matter of law.
8. This motion is supported by a statement of material facts not in dispute, an appendix, and a brief, all of which shall be filed simultaneously with the motion.

WHEREFORE, the City prays the Court grant its motion for summary judgment pursuant to the immunity granted to the City under Iowa Code §§ 670.4(2) and 670.4(3), assess the cost of this action against the Plaintiff, and for such other relief as is appropriate.



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Original Filed.

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**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 4-29-08

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

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