

IN THE IOWA DISTRICT COURT  
FOR POLK COUNTY

LISA KRAGNES, et. al.

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

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)  
) Law No. CE 49273  
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)

) STATEMENT OF MATERIAL  
) FACTS NOT IN DISPUTE  
) IN SUPPORT OF CITY'S MOTION  
) FOR SUMMARY JUDGMENT UNDER  
) IOWA CODE §§ 670.4(2) and 670.4(3)

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CLERK DISTRICT COURT

1. The gas and electric franchise fees at issue in this case began years ago at the level of 1% pursuant to ordinance. Kragnes v. City of Des Moines, 714 N.W.2d 632, 633-634 (Iowa 2006); (App. 2-3).

2. In 2004, the state began phasing out taxes on gas and electricity. (Id. at 634; App. 3-4).

3. At the same time, the City was considering an increase in property taxes due to diminished funding from the state. (Id. at 634; App. 3-4).

4. As an alternative to raising taxes, the City considered replacing the reduced state taxes with an increased franchise fee. (Id. at 634; App. 3-4).

5. The City Manager prepared a summary proposal for the City Council, giving an "overview of franchise fees." (Id. at 634-635, App. 3-5).

6. The City Council determined that a franchise fee increase was preferable to a property tax increase, and negotiated an increase to 3% with MidAmerican Energy for both gas and electricity, with an ability to increase the fees to 6% upon certain conditions. (Id. at 635; App. 4-5).

7. In June of 2004, the Council placed on its agenda ordinances amending the gas and electric franchise fees. (Id. at 635; App. 4-5).

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8. Prior to the meeting, the City Manager circulated a council communication examining the multiple policy issues at play in the franchise fee debate. Those policy issues considered by the Council included:

1. The need for more police and fire personnel because of homeland security concerns.
2. Deteriorating neighborhoods and streets.
3. Reduced library hours.
4. The possibility of a property tax increase to meet the needs above.
5. The possibility of more diminished funding from the state.
6. That City resources had been stretched to provide quality services.
7. That a franchise fee offered the best alternative for providing those services because the net effect to most residents would be minimal.
8. Without a franchise fee increase, a property tax increase would be necessary to cover existing services.
9. And the Manager closed the communication by recommending the Council adopt the franchise fee increase, which in turn would allow the hiring of 12 additional police officers, 24 additional firefighters, street reconstruction and reinstated library hours.

(Id. at 635; App. 3-5).

9. The Council passed the ordinances amending the franchise fees and the Iowa Utilities Board approved the same. (Id. at 635; App. 4-5).

10. The City began receiving the amended fees in September 2004 and soon thereafter the Council enacted one of the largest property tax cuts in history. (Id. at 636; App. 5).

11. In January 2005, the City Manager reported to the Council that revenue from the franchise fees was such that:

1. Library hours were restored.
2. 24 firefighters were hired.
3. 12 police officer were hired.
4. Assistance was being provided to those who otherwise would have their utilities cut off.
5. Four economic development grants had been awarded.
6. A grant to the school system was made.
7. Money was placed in the City's reserves.

(Id. at 636; App. 5).

12. In March 2005, the Council raised the fees to 5%. (Id. at 636; App. 5).

13. Plaintiff alleges that the natural gas and electricity franchise fees at issue in this case are illegal taxes assessed and collected in violation of a state statute, namely Iowa Code §364.3(4).

(Petition ¶¶ 5-8; App. 13-14).

14. Our Supreme Court has framed the issue in exactly the same manner.

A citizen of the city of Des Moines brought an action against the city alleging the franchise fees the city assessed in its franchise agreements for gas and electric power services are illegal taxes.

(Kragnes at 632; App. 2).

15. For purposes of this case, a tax is generally defined as:

Our court has defined as tax as “ ‘a charge to pay the cost of government without regard to special benefits conferred,’ ” meaning its primary purpose is to raise revenue. *Home Builders Ass'n of Greater Des Moines v. City of West Des Moines*, 644 N.W.2d 339, 346 (Iowa 2002)(citations omitted).

(Id. at 639; App. 8).

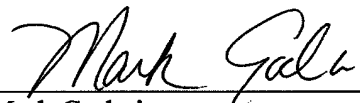
16. For purposes of this case, a tax is specifically defined as:

If a fee charged by a city exceeds the amount necessary to inspect, license, supervise, or otherwise regulate the activity, it is nothing more than a tax levy, which the legislature has strictly prohibited. Iowa Code § 364.3(4).

(Id. at 641; App. 10).

17. On 5/1/07, the City moved to amend its answer to include, among other things, affirmative defenses under Iowa Code §§ 670.4(2) and 670.4(3). (See Court File).

18. The motion was granted on 6/15/07. (See Court File).

  
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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:

Signature Diane Roscoe