



Lawsuit Challenges Stockton's Use Of Water Fees

By Eric W. Davis

The Howard Jarvis Taxpayers Association and a former city finance director have filed a lawsuit challenging the City of Stockton's use of city utility fees to fund the construction of the Stockton Events Center. The lawsuit claims that the use of funds generated from a "fee in lieu of property tax" for projects that are not property-related services is a violation of the California Constitutional Provisions enacted by Proposition 218.

Background

Proposition 218, adopted by California voters in 1996, was intended to close alleged loopholes in the taxation restrictions of Proposition 13. Among other things, Proposition 218 further limited state and local government's revenue generating ability by restricting their powers to impose fees and assessments on property. Specifically, the measure limited "fees and charges" assessed for property related services to the amount actually required to provide those services. In other words, a municipality may not impose "fees" on property as a way of raising revenue for purposes other than services that actually benefit the burdened property.

Since 1978, the City of Stockton (City) has levied a "fee in lieu of property tax" on properties served by the City's wastewater and water utilities. These fees originally went into the general fund and supported a variety of City functions, including police, fire, ambulance, and library service. In 2002, the City doubled the fee rate. Revenue from the increase was directed to a special "Infrastructure Reinvestment Fund." In 2003, the City imposed an additional "fee in lieu of property tax" on

stormwater utility users. As with the water and wastewater fees, the City designated half of the stormwater fee for the City General Fund and half for the Infrastructure Redevelopment Fund.

The Infrastructure Reinvestment Fund was used to finance a very particular sort of "infrastructure." It made possible the construction of a new Event Center in downtown Stockton, a complex that included a new minor league baseball park for the Stockton Ports and an indoor arena that serves as home to a minor league hockey team, an indoor soccer team, and an Arena Football League team. Although the Event Center is arguably the centerpiece to an ambitious downtown redevelopment program that has transformed the City's once dilapidated center, critics of the city government have frequently used the facility to support their argument that City staff and elected leaders have mismanaged public funds. The much-anticipated grand opening of the arena in January 2006 was marred by revelations that the City paid seventies crooner Neil Diamond \$1 million to headline the event.

The Lawsuit.

The Howard Jarvis Taxpayers Association (HJTA), a litigious defender of Propositions 13 and 218 and a vigorous opponent of nearly all forms of property tax, filed suit against the City along with two Stockton residents (including former City Finance Director Patrick Samsell). The suit alleges that the City ran afoul of Proposition 218 by charging fees that exceeded the reasonable cost of providing water, wastewater, and stormwater services. The suit further claims that the City failed to

receive voter approval for any fee or tax in excess of the amount necessary for services provided, another violation of Proposition 218. As a remedy for these alleged violations, Plaintiffs seek an injunction that would prevent the City of Stockton from collecting property tax revenues until property owners have been compensated for all allegedly improperly levied fees collected since the enactment of Proposition 218 in 1997.

Although the lawsuit is in its early stages, public comments by City officials suggest that the City intends to challenge the allegation that its fees were unreasonably high, regardless of the fact that revenue from those fees was diverted away from the City Utilities Department to the General Fund and the Infrastructure Reinvestment Fund.

Conclusions And Implications

Proposition 218 attempted to limit government's revenue generating power by limiting fees for property related services to the amount reasonably required to provide those services. The court in the HJTA case will likely be required to determine whether the mere fact that an agency diverts revenue from those fees to pay for general services not directly related to property is proof that the amount of the fee is unreasonably excessive. If HJTA prevails, then municipalities will be constrained in how they can allocate revenue raised through service-specific fees. If the City prevails, then it will be much more difficult for plaintiffs to show in future Proposition 218 suits that the amount of a fee exceeds the reasonable cost of the service provided.