



MLGMA

<http://www.mlgma.org>

**MICHIGAN
LOCAL GOVERNMENT
MANAGEMENT ASSOCIATION**

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The Manager

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June 2002

New Management Dangers in Municipal Rate Ordinances

By Brian Donovan, City of East Grand Rapids, and Karl Tomion, City of Midland

In 1998, the State Supreme Court struck down the City of Lansing's storm water rates. The language used in the opinion indicates other municipal user fee ordinances may be in jeopardy.

In *Bolt vs. City of Lansing*, Mr. Bolt, a property owner, challenged a newly imposed storm water utility fee. He argued that the fee was actually a tax levy without voter approval in violation of the Headley Amendment to the State Constitution. In its decision, the Court agreed and applied three new criteria to determine whether a user charge will be considered a fee or considered a tax.

1. Does the fee serve a regulatory purpose?

If the fee is only to raise revenue and does not provide a general regulatory purpose (such as protecting the public health) or a specific statutory or permit requirement, it may be a tax. For example, if excess water rate revenues are used for other expenses unrelated to the provision of water service (i.e. police, library, etc.) the fee may be unconstitutional.

2. Is the fee proportionate to the cost of the purpose?

A fee needs to be based on a current and reasonably accurate accounting/engineering study that relates charges to costs incurred for the service (utility billings, labor, equipment etc.). If no study is referred to in the applicable ordinance, does not exist, or the rates are established on an "arbitrary basis," they could be successfully challenged.

3. Is the fee voluntary?

Can a customer refuse or limit his service? If all property owners are required to pay sewer fees, whether or not they are connected to the system, or if the fees are fixed and not related to usage, they may be considered a tax.

Based on the Court's findings, new challenges to municipal rate ordinances have been filed in several courts across the state. These have included suits by property owners, utility customers, and litigation between municipalities over utility contracts. Even though most managers review utility rates and user fees annually as part of the budget

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President's Message

by Warren D. Renando, Jackson City Manager

I have just returned from a conference of managers at Norway, Michigan.

Norway is a town of about 3,000 right on the Wisconsin border, about half-way across the U.P. We got a chance to see a wonderful new city hall and some exciting streetscape projects which are underway there.

For me, the best part of the trip was the realization of how different things are for the small town manager. In over 30 years in this business the smallest town that I have ever worked in was just under 20,000.

In larger cities, a manager is expected to know *who* knows the answers. If there is a question about 345 labor negotiations or the changes in insurance systems, you can talk to the personnel director. Changes in water treatment standards, and NPDS programs are the concerns of the director of a sewage treatment plant or a utilities director.

What you have to know to get by in small cities is everything. That's right—everything!

In Norway we had detailed presentations from representatives from Blue Cross/Blue Shield, in which the U.P. managers learned about the upcoming changes being proposed by the Blues.

They also learned some labor strategies that could help hold down future health care costs.

State and federal elected officials spoke, and a representative of the Department of Environmental Quality (DEQ) gave a presentation. The knowledge was direct, the input from the managers was direct, and it will be put into practice directly by the same manager who was present to learn it.

Everyday, small town managers have to answer the telephone and have direct personal knowledge that a constituent or an elected official will need to solve a problem. There are no referrals of problems to committees or to well-trained, experienced department heads. It has to be done day in, day out, by the managers themselves to get it done.

Credentialing's greatest hope and challenge is to make relevant training opportunities for our "small town" city managers. As we go through the process of credentialing, we should make sure that the information we learn from it helps practitioners in the small communities.

The meeting in Norway was put together by the managers, and included presentations that were relevant and informative to the membership. The lessons Norway teaches are the lessons the ICMA nationally needs to learn.

Board Highlights

NYC Hero to Speak at Colloquium

The Board finalized plans for the MLGMA Colloquium at the MML Convention this fall. Our special guest and speaker will be Thomas Von Essen, the former fire commissioner for New York City.

Von Essen was the NYC fire commissioner last September when tragedy struck the World Trade Center. Von Essen and New York's Bravest were at Ground Zero within minutes saving thousands of lives and facing unimaginable obstacles and challenges.

Von Essen will portray the facts and the emotions of September 11th from the perspective of a front-line municipal leader. MLGMA members and all local officials are encouraged to attend.

As part of the MLGMA tradition, a distinguished manager will also be honored at the colloquium. The event will take place as part of the MML's Annual Convention and Expo, September 11-13 at the Dearborn Hyatt. Registration materials will be available in late June.

MEDC Offers Seminars on Neighborhood Enterprise Zone

The Michigan Economic Development Corporation will be conducting four regional seminars to provide technical assistance to community leaders regarding recent changes in the Neighborhood Enterprise Zone (NEZ) Act. The newly enacted NEZ legislation will allow your community to revitalize historic neighborhoods by providing a residential tax exemption

for housing construction or rehabilitation.

Regional workshops will be held in the following locations:

Bay City

June 13, 2002, 8:30a.m.-12:00 p.m.
Bay City Holiday Inn

Grand Haven

June 20, 2002, 8:30 a.m.-12:00 p.m.
Grand Haven Community Center

Warren

July 10, 2002, 8:30a.m.-12:00 p.m.
Macomb Community College
M-Tec

Sault Ste. Marie

July 11, 2002, 10:00 a.m.-2:00 p.m.
Ojibway Ramada Plaza

Please call Tricia Tucciarone, MEDC Vice President of Community Relations at 517-241-4441 with questions or to RSVP.

MLGMA News

Professional Development Committee Appointments

Pleasant Ridge City Manager **Sherry Ball** and Clio City Administrator **Kevin Kilby** were recently appointed to the Committee.

Summer Workshop: You'd have to be sick to miss it!

By Tom Wieczorek, City of Ionia; 2002 Summer Workshop Chair

July 23 through July 26 — make sure those dates are marked on your calendar for the 2002 MLGMA Summer Workshop that will be held at Mission Point Resort on Mackinac Island. “Sound Manager; Sound Community — You’d have to be sick to miss it!” is the theme selected for this year’s program.

The committee has been working hard to provide attendees with a substantive program that will touch on hot button issues like:

- **Healthy Buildings** — Are your buildings making your employees sick? Ways will be provided to assess and correct such issues.
- **Healthy Relationships** — Is your relationship with your council healthy? Discussion will center on ways to improve that relationship for successful futures.
- **Healthy Healthcare** — Healthcare budgets are increasing exponentially and ways to minimize those increases as well as the reasons behind the increases will be provided. In addition, attendees will hear the latest on a proposed ballot issue that will require tobacco settlement monies be targeted to health care related matters.
- **Healthy You** — A program will be provided on building trust in your organization; on the stress from change and innovation.
- **Healthy e-government** — What are some of the ways that you

can affordably implement e-government in your community? A hands-on approach will be taken to some relevant topics.

- **Is your knowledge current?** The Education Committee has worked with the ICMA to provide the assessment test for the Credentialing Process on Tuesday.

Time has also been provided for enjoying the island through a scavenger hunt, golf outing (you don’t have to be good to play!), bonfires and other activities.

One radically different approach to the conference will take place in the registrations. Working with Capital Consultants and the MLGMA Technology Committee, the Summer Conference Committee sent out a mailer at the end of May directing people to a website. At the website address, you will be able to register with the hotel or download the registration materials for the summer conference.

The goal of the website method was to work towards online registration for future conferences while providing participants with the ability to carry materials to and from the island in electronic format vs. lugging reams of paper. The website will also be accessible from the “members only” section of the MLGMA main website.

All presentations will be provided on the electronic site for downloading when attendees return home. Other features include a question and answer section, poll for relevant issues, and maps on the summer conference locations.

So watch for the card in the mail and don’t forget to register for the Summer Conference— you’d have to be sick to miss it!

New Management Dangers, continued from page 1

process, it is unlikely that the language in the ordinances or resolutions establishing the rate systems is routinely reviewed. In light of the *Bolt* decision, it is recommended that managers and legal counsel review all rate ordinances and resolutions in order to protect the municipality from similar challenges.

Based on the Supreme Court’s criteria, key areas of focus for this review would include:

- Verification that the regulatory purpose for the fees is stated in the ordinance, and statutes and rules of compliance are cited;
- Documentation of a policy establishing reasonable fund balances and reserves;
- Provision for and explanation of the procedures allowing users to refuse or limit the service for which they are charged;
- Provision for and explanation of the procedures allowing users to challenge the user fee; and
- Use of the revenue only for the specific purpose for which it was collected is essential.

While uniform language for municipal ordinances meeting these criteria would be desirable, at this time the court’s opinion, and its application, do not provide enough clarity to allow for standard language. The MML legislative staff and the MLGMA Public Policy Committee will continue to provide updates as a full meaning of the *Bolt* decision is clarified as a result of pending and future litigation.

DEADLINE

MLGMA members are encouraged to submit articles for publication in *The Manager*. The next issue is scheduled for September 2002. All copy should be submitted to the editor, Sue Lee, [leeford598@aol.com] by Friday, August 2, 2002.

Back page news & Calendar

Regional Managers Groups

BORDER BANDITS

Hillsdale/Branch/Calhoun Counties. *Contact:* Maurice Evans, CM, Marshall.

GENESEE COUNTY

Genesee County—meetings held first Thursday of the month. *Contact:* Michael Senyko, CM, Fenton.

LAKE AREA

Macomb County, parts of St. Clair County and the Grosse Pointe area—lunch meetings held 3rd Thursday, every other month. *Contact:* Brian Vick, AA, Grosse Pointe.

MIDDLE OF THE MITTEN

Lansing metro area—meetings held 1st Thursday of the month. *Contact:* Theodore J. Staton, CM, East Lansing.

MID-MICHIGAN CITY/COUNTY

Upper Central Lower Peninsula. *Contact:* Ken Hibl, CM, Claire.

NORTHERN MICHIGAN L.P.

Meetings held 4th Thursday of the month. *Contact:* George Korthauer, CM, Petoskey.

OAKLAND COUNTY

Meetings held 1st Wednesday of the month, excluding July and August. *Contact:* William Ross, CM, Auburn Hills.

SAGINAW COUNTY

Saginaw County—meetings held last Friday of the month. *Contact:* Ron Lee, Saginaw Township Manager.

SOUTHEAST MICHIGAN

Wayne/Washtenaw/Lenawee/Monroe Counties—meetings held 3rd Wednesday of the month. *Contact:* George Brown, CM, Adrian.

SOUTHWEST MICHIGAN

Berrien/Kalamazoo/St. Joseph/Cass/Van Buren Counties—meetings held 3rd Wednesday of the month. *Contact:* Frank Walsh, CM, St. Joseph.

THUMB NUTS

Thumb area—meetings held three times each year. *Contact:* Charlie Graham, CM, Frankenmuth.

U.P.

Meetings held twice each year. *Contact:* Spencer Nebel, CM, Sault Ste. Marie.

WEST MICHIGAN

Kent/Muskegon/Ottawa Counties; Ludington/Portland areas—lunch meetings held in Grand Rapids, 3rd Wednesday of each month, except July and August. *Contact:* Scott Huebler, CM, Whitehall.

Calendar

2002

July

23- MLGMA Summer Workshop
26 Mackinac Island

24 Retired City Managers
13th Annual Reunion
Mecosta Lake

September

11- MML Convention
13 Dearborn

September/October

29- ICMA Annual Conference
2 Philadelphia, PA

2003

January

28- MLGMA Winter Institute
31 Ypsilanti

ICMA News

ICMA Committee Appointment

John Szerlag, Troy City Manager, will serve as Conference Planning Committee representative for ICMA.

Update: ICMA Executive Director Search

by Mark Wollenweber, City Manager, St. Clair Shores

The ICMA Board, working with the consulting firm of Tryon & Heidemann, has selected 13 individuals for con-

sideration and interviews from an application pool of over 75 candidates.

The ICMA Board plans to interview the top 4-6 candidates at a special meeting in late June 2002.

At the July Board meeting in Michigan, it is expected that a contract for the new Executive Director will be confirmed for the individual to start following the ICMA conference in Philadelphia this September.

If you have questions, please contact me at 586.447.3311.

Retired City Managers to Hold 13th Annual Reunion

Retired city managers will gather at the Ziemke residence on Mecosta Lake, adjacent to Canadian Lakes, on Wednesday, July 24. All current and past city managers are invited.

Plan to arrive at 10:30 a.m.; lunch is at 12:30 p.m. Bring your lawn chairs, a salad or other dish to pass, and beverages and meat for yourself and spouse. A grill and microwave are available.

For directions, e-mail Don at ziemkesr@centurytel.net or you can phone him at 231.972..4111.