



Iowa General Assembly

2010 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.

LOCAL GOVERNMENT TAXATION - CURATIVE LEGISLATION

Filed by the Iowa Supreme Court

June 4, 2010

Zaber v. City of Dubuque

No. 07-1819

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20100604/07-1819.pdf

Background Facts and Procedure. The plaintiff sued the City of Dubuque (City) by claiming that the City had collected an illegal tax from the plaintiff and others similarly situated in the form of franchise fees for gas and electric utilities and for cable television services in excess of the reasonable cost of regulating these industries. The plaintiff's claims were based largely on the Iowa Supreme Court's decision in *Kragnes v. City of Des Moines*, 714 N.W.2d 632 (Iowa 2006). The City filed a motion for partial summary judgment, requesting dismissal of the plaintiff's claim for the refund of franchise fees paid for cable television services. This motion rested on the General Assembly's enactment of Iowa Code §477A.7, which authorized franchise fees on cable television services in excess of the cost of regulation, including fees assessed by and paid to a municipality prior to May 29, 2007, the effective date of the legislation. Plaintiff resisted this motion on the ground that the retroactive aspect of the statute violated his due process rights in two ways: (1) it deprived the plaintiff of an accrued refund claim and (2) the period of retroactivity exceeded the "modest" period constitutionally permitted. The district court ruled Iowa Code §477A.7(5) retroactively authorized these fees and, accordingly, rejected the plaintiff's contention that Iowa Code §477A.7(5) violated his due process rights.

Issue on Appeal. Whether the enactment of Iowa Code §477A.7(5) violates the plaintiff's due process rights and, specifically, whether the General Assembly could exercise its power to ratify the unauthorized, but otherwise constitutional, acts of the City.

Analysis. The Iowa Supreme Court (Court) disagreed with the plaintiff's reliance on *Kragnes* because the case involved "not the collection of taxes that government for constitutional reasons lacks the power to impose in some or all instances, but instead involves local taxes that the state has the power to authorize." Additionally, the Court reiterated the longstanding rule in Iowa that retroactive legislation is not inherently unconstitutional.

The Court, in examining the plaintiff's due process argument, held that the plaintiff's right to a refund is not a fundamental right. Accordingly, there need only be a "reasonable fit" between the General Assembly's purpose in ratifying the previously collected franchise fees and the means chosen to advance that purpose. Such deference is accorded whether or not the legislation is applied retroactively.

The cases and legal authorities cited by the Court that address the retroactive application of curative legislation established that: (1) ratification of a tax already imposed and collected cannot be equated with the retroactive imposition of a new tax for purposes of determining the constitutionality of retroactive application of a curative act, (2) curative acts do not impair any vested right of the taxpayer, (3) there is no litmus test for a reasonable period of retroactivity for curative acts, and (4) ratification of a tax collected without authority is given full retroactivity as long as the retroactivity furthers a legitimate purpose. The legislative purpose behind the curative act in this case was clearly to allocate the burdens of government and to avoid financial disruption to the finances of the cities involved. The Court found this purpose to meet the "reasonable fit" standard.

Specifically, the Court held that "so long as the legislature had the power to confer authority on the local public body to so act, it has the power to cure or ratify the local body's act exercised without the requisite authority." Therefore, because the General Assembly had the power to authorize this tax prior to May 29, 2007, it also had the power to validate

unauthorized taxes imposed prior to that date. The Court also rejected the plaintiff's suggestion that a one-year retroactive period pushes the limits of due process.

Conclusion. Ultimately, the Court held the General Assembly's ratification of the City's unauthorized tax is a curative statute whose purpose—to safeguard the public fiscal and the financial stability of local municipalities—is rationally related to its retroactivity. Therefore, the statute does not violate the plaintiff's substantive due process rights. The Court affirmed the district court's summary judgment for the City on the plaintiff's claim for a refund of fees paid on cable television services. However, the Court remanded the case for further proceedings on the plaintiff's claim for a refund of gas and utility fees.

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