



Legal Alert

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QUESTION: HOW CAN THE CITY CHARGE ME THIRTY TIMES MORE THAN IT CHARGES MY NEIGHBORS FOR THE SAME SEWER HOOK-UP?

ANSWER: SOMETIMES GOVERNMENT FLUSHES FAIRNESS DOWN THE SEWER WHEN ASSESSING FEES AGAINST PROPERTY!

Sometimes government treats taxpayers like feculent offal! The Equal Protection Clause of the Constitution is supposed to prevent gross disparity in taxing. Some taxpayers are still left spouting scatological expletives, however.

While most cities are happy with incremental progress, Indianapolis was working on excremental progress. The City of Indianapolis began the Brisbane/Manning Sanitary Sewer Project in 2001 and connected 180 homes to the City's sewage system. The sewer system was completed in 2003 and assessment notices of \$9,278 per property were sent to 180 affected homeowners in July 2004.

The homeowners with the new sewer connections could pay the entire assessment in a lump sum or in installments. The installment plans available extended as long as 30 years. Thirty-eight of the sewer project homeowners were Johnny-on-the-spot and promptly paid the assessment in full.

The next year, however, the City flushed the rules for financing sewer systems down the drain. The City decided to charge each connecting lot owner a \$2,500 fee and "float" bonds to pay for the rest of the cost of the sewer system. Eventually the bonds would be paid for by all property owners in the City.

On October 31, 2005, the City decided to "forgive all assessment amounts... established...for Municipal Sewer programs due and owing from the date of November 1, 2005 forward." So, all of the homeowners who chose the installment plans had their debts forgiven. The 38

homeowners who had already paid the \$9,278 raised a stench! Their claimed refunds were stopped-up by the City.

When the City denied the request to refund the pre-paid assessments, 31 of the 38 homeowners sued. They argued that wiping off the assessments of their neighbors, but refusing to refund their assessment payments violated the Equal Protection Clause of the Constitution. The trial court agreed and ordered the City to disgorge refunds of \$380,914.16 to the homeowners. The Supreme Court of Indiana said there was no violation of the Equal Protection Clause just because the City forgave unpaid installments, but refused to refund amounts already paid for the same improvements.

The case flowed uphill to the U.S. Supreme Court. The U.S. Supreme Court stated:

As long as the City's distinction has a rational basis, that distinction does not violate the Equal Protection Clause. This Court has long held that a "classification neither involving fundamental rights nor proceeding along suspect lines...cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose."

Armour v. City of Indianapolis, Ind., 132 S.Ct. 2073 (2012). The Court reasoned that paying for septic or sewer systems does not involve a "fundamental right." The homeowners were not being discriminated against for some unlawfully foul reason. The Court said that all that government needs is "a plausible policy reason for the classification," or "any reasonably conceivable state of facts that could provide a rational basis for the classification." The potential cost to the City and the City's unwillingness to finish the paperwork were sufficient reasons for the City to sit on the money.

The homeowners thought that reasoning was a crock! In his dissent Chief Justice Roberts also felt that it stunk that the City would not refund approximately \$300,000 in assessments when it had an annual budget of approximately \$900 million. He noted that "Indiana law requires that the costs of sewer projects be apportioned equally among all abutting lands." The smell of the equal protection violation could not be masked by room deodorants. The State had promised homeowners that they would be treated equally when paying for sewer hook-ups. Then the City charged some homeowners 30 times what it charged their neighbors for the same hook-ups. Nevertheless, the homeowners watched their

prepayments swirl down the drain.

Legal mechanisms for funding government infrastructure, such as sewer lines are complicated. Equal treatment of taxpayers is not guaranteed. If you are concerned with legally constructing and funding public improvements, please call me.

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