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# Revisiting the 1998 Seminal Bolt Decision

## In a Nutshell

- Michigan's local governments face significant challenges in sustaining local revenues to fund the public services they provide because of their overreliance on property taxes and their accompanying revenue and rate limitations.
- As local governments look to various fees or charges to generate new revenue, it behooves them to keep in mind the seminal Michigan Supreme Court decision in Bolt vs. The City of Lansing that offers a test to determine when an authorizing act and the Headlee Amendment's requirement for voter approval of a new local tax are necessary.
- Failure to do so leaves communities vulnerable to legal challenge.

As we have highlighted frequently, Michigan's local governments face significant challenges in sustaining local revenues to fund the public services they provide. The challenges stem from a fiscal structure that relies primarily on property taxes subject to growth and rate limitations and few local revenue raising options. Local governments face two particularly demanding requirements when considering a new tax.

Michigan law requires an authorizing state law before local governments may levy new taxes (1963 PA 243)

**Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964.**

Michigan's Constitution requires voter approval of new taxes after 1978 (Article IX, Section 31)

**Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.**

As local government leaders look instead to various fees or charges to generate new revenue, such as fees for permits, applications, entrance to public facilities, and charges to businesses for access to city property (franchise fees), it behooves them to consider what revenue generating efforts are potentially taxes rather than fees and charges. Since the 1995 Michigan Supreme Court decision

in *Bolt vs. The City of Lansing* (587 N.W.2d 264).[1], local government leaders can rely on the test established in the Bolt decision. Should a newly imposed fee function more like a tax, the fee could be legally challenged as a violation of the Headlee Amendment (1978). Litigation will not only burden a local government with the added headaches of managing a legal proceeding but could also involve the loss of future revenues from anticipated fee income.

## **The Test: User Fee vs. Tax**

In 1995, the City of Lansing adopted a city ordinance to create a stormwater enterprise fund for the purposes of funding the final phase of a project to separate an existing combined sanitary and stormwater sewer system. The fund was financed by an annual stormwater service charge imposed on each parcel of property calculated by the amount of runoff from that property.[2] Lansing taxpayer Alexander Bolt challenged Lansing's stormwater service charge as being a tax, disguised as a fee. The Michigan Court of Appeals found that the stormwater service charge was a legal fee, noting that the Headlee Amendment provided no definition of what is a fee vs. what is a tax. Relying on a 1954 decision, *Ripperger v. Grand Rapids*, the Michigan Court of Appeals opined that charges for stormwater runoff fees were similar to the water charges declared as fees in *Ripperger*. The water charges at issue in that case were determined to be charges for a commodity – water and not a tax on the property. The Court of Appeals wrote that the judiciary's only role is to determine whether the fee violated the Michigan Constitution, not to address the political question of whether user fees were a way for local governments to avoid the voter authorization requirement for new taxes under the Headlee Amendment. Alexander Bolt appealed to the Michigan Supreme Court.

In its ruling, the Michigan Supreme Court directly addressed the ambiguity in the meanings of a tax versus a fee. Relying on a common interpretation, the Court distinguished a fee from a tax by stating that a user fee was imposed when there was some exchange of service or benefit that was related to the value of that fee. For example, a user fee of \$5.00 to enter a local park would cover the costs of entry, parking, and security for daily visitors. In contrast, a parks and recreation tax imposed on all residents raises revenues for the general operations and maintenance of a community's park system. The Court relied on a common understanding of the terms fee and tax. A fee is a charge for access to a public service or privilege granted by government. A tax underwrites a public service available to anyone, regardless of whether they have paid the tax.

In its seminal 1998 decision, the Michigan Supreme Court established a test consisting of three criteria to distinguish what constituted a user fee and what constituted a tax. The components of the test are as follows:

### **User Fees**

- User fees must serve a regulatory purpose rather than a revenue-raising purpose;
- User fees must be proportionate to the necessary costs of the service or commodity, and imposed on those benefiting from the right/service/improvement supported by the fee; and
- User fees are voluntary in nature.

### **Taxes**

- Taxes are levied to raise revenue for the general operation of government;
- Taxes are levied to benefit the general public; and

- Taxes are compulsory in nature.

Using these criteria, the Michigan Supreme Court invalidated the City of Lansing's stormwater management fee as it functioned as a city-wide tax on residents who had no option for energy service from an alternate provider to Lansing Board of Power and Light. The fee was imposed without approval by the city's voters, therefore violating Article IX, Section 31 of the Michigan Constitution.

## Contemporary Example – City of East Lansing

As local governments seek to cover increasing expenses by adopting new charges or user fees, it is important that they consider the Bolt test as they design their proposed charges and fees to avert any legal challenge. Unfortunately, this area of law remains somewhat ambiguous. Even with sound legal advice, local government leaders sometimes have proceeded with charges and fees that could be challenged under the Headlee amendment. A recent case – one of several – is worth exploring to see how easily this can occur.

### James Heos vs. City of East Lansing (2025 MSC No. 165763)

The City of East Lansing was considering ways to address the underfunding of its pension and other-postemployment-benefits obligations (OPEB). In 2017, the city negotiated a new franchise agreement with the Lansing Board of Power and Light,[3] which serves about 89 percent of East Lansing's residents. The ordinance was approved by the City Council (Ordinance 1411), but no vote of East Lansing residents was taken. The franchise agreement stated that the Lansing Board of Power and Light "shall ... collect and remit to the City a franchise fee in the amount of five percent (5%) of the revenue, excluding sales tax of electric energy...Such a fee will appear on the corresponding energy bills."

A resident, James Heos, challenged the new franchise fee that appeared on his utility bill. Legal testimony revealed that the new fee was not related to any costs to the City for hosting the Lansing Board of Power and Light to provide electricity to its residents. Franchise fee revenue collected by the Lansing Board of Water and Light were sent to the City of East Lansing and deposited in the city's general fund (less a 0.5 percent collection allowance) to be used for general expenditures. In fact, the funds were ultimately used to make supplemental pension contributions.

The Michigan Supreme Court ruled that the franchise fee was not a fee, but a tax. Relying on the test outlined in Bolt, the court determined that (a) the fee's ultimate purpose was to raise general revenues, (b) the fee was not proportional to the costs of the City of East Lansing granting the franchise to provide electricity, and (c) that the fee was compulsory. Residents had no alternative but to take electrical service from Lansing Board of Water and Light and also pay the required franchise fee on their utility bill. Finally, because the franchise fee was determined to be a tax, the tax was unlawful under the Headlee Amendment since a majority of the voters in East Lansing did not approve the tax.

East Lansing officials sought a solution to increase the discretionary revenue for their community. However, attributes of the new franchise fee fit more like a tax than a user fee, and as such, required voter approval, which was not pursued. To resolve the case, East Lansing reached a settlement agreement to refund those residents who paid the franchise fee to the Lansing Board of Water and Light between April 2019 and April 30, 2025. The total settlement amount is \$7,800,971.13. The settlement agreement will be considered for approval this month. A majority of East Lansing voters will either have to approve a new tax to replace the revenues collected by unconstitutional franchise fee, or be supportive of lawful fees, budget revisions, and/or service cuts their City Council proposes

to address any revenue shortfalls.

## Next Steps

No one disputes Michigan's local governments' challenges to sustain local revenues, especially given the overreliance on property tax revenue and the limitations on growth. As local government leaders consider new ways to diversify and generate income for their community, they must take expert counsel and review any new charges and fees within the context of the Bolt decision and subsequent case law. The failure to meet all three criteria of the test for a fee will render a new charge or fee vulnerable to legal challenge and could potentially increase costs for local taxpayers in the long run.

[1] Bolt v. City of Lansing, 1998 MSC 115739, (459 Mich 152, 587 N.W.2d 264)

[2] Residential properties of less than 2 acres were to be assessed a flat rate.

[3] Consumers Energy also served customers in the City of East Lansing but refused to collect the proposed franchise fee. However, Consumers Energy still served customers within city limits.

### ABOUT THE AUTHOR

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Madhu held several leadership positions in state government and the non-profit sector prior to joining the Citizens Research Council in 2024. Her expertise is in local and state taxation, government finance, and regulatory policy. In addition to working on landmark tax, school finance, and pension reforms, she helped Michigan earn a AAA bond rating as Chief Deputy State Treasurer. Under her directorship of CEPI, Michigan became one of the first states to offer web-based performance metrics for school districts. Madhu also served as a Deputy Director at the Department of Environmental Quality and at the Michigan Agency for Energy. Her non-profit experience includes Director of Government Relations for the Michigan chapter of The Nature Conservancy, and Treasurer for a local ceramics cooperative.

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