

“Bolt”

References to “Bolt” are references to a case decided by the Michigan Supreme Court in 1998, *Bolt v. City of Lansing*, 459 Mich. 152 (1998), which addressed the difference between a valid user fee and a user fee that is actually a tax. If the charge is determined to be a tax rather than a user fee, it may be found invalid under the Headlee Amendment to the Michigan Constitution, which prohibits levying a tax not authorized when the Headlee Amendment was adopted, and prohibits increasing the rate of an existing tax above the rate authorized when the Headlee Amendment was adopted, unless approved by the voters. (Michigan Constitution, Art. 9. Sec. 31)

The *Bolt* decision articulated a three-prong test, that (1) a user fee serve a regulatory purpose rather than a revenue-raising purpose; (2) that the amount of the charge be proportionate to the cost to provide the service, and (3) that the charge be generally voluntary in nature. The Court described in general terms that valid water, sewer or storm water charges “must reflect the bestowal of a corresponding benefit on the person paying the charge, which benefit is not generally shared by other members of society.”

The three factors stemmed from the court’s more general distinction between a fee and a tax: “Generally, a ‘fee’ is ‘exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit.’... A ‘tax,’ on the other hand, is designed to raise revenue.”

Bolt found the City of Lansing stormwater charges to be invalid taxes, and not valid user fees, in part because they required users to cover capital costs that would benefit some users but not all users on whom the charge was imposed, and in part because the fees covered services that benefitted the public generally rather than the property owners who paid the fees.

In a recent case, the City of Jackson’s stormwater fees also were found to be invalid taxes, not fees, in part because a portion of the fees was to cover activities that benefitted the public generally and not the users who paid the fees, in part because the fees were not related to the services provided to the property owners who paid the fees, and in part because the fees covered services that had previously been financed with taxes.

Other cases have upheld fees, including water and sanitary sewer rates, connection charges, and tap in charges, as satisfying *Bolt* analyses.

Although *Bolt* spells out three criteria or factors to be considered to determine whether a charge is a user fee or tax, the three factors need to be considered in their totality; the strength or weakness of a factor does not mandate a particular conclusion. The “voluntary” factor tends to have the least weight, which means the proportionality and regulatory factors tend to have greater weight, with proportionality generally having the most weight. Nevertheless, care must be taken because of the uncertainty as to how the three factors might be weighed for a particular fee.