

RENDERED: AUGUST 11, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000716-MR

CITY OF LANCASTER, KENTUCKY;
GARRARD COUNTY WATER
ASSOCIATION, INC.; HARLAN
BRATTON; AND JOE NAYLOR

APPELLANTS

ON REMAND FROM SUPREME COURT OF KENTUCKY
NO. 2014-SC-000738-DG

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 12-CI-00383

GARRARD COUNTY, KENTUCKY;
AND GARRARD COUNTY FISCAL
COURT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; JONES AND TAYLOR, JUDGES.

TAYLOR, JUDGE: This matter is before the Court of Appeals on remand from the Kentucky Supreme Court by Opinion and Order entered February 18, 2016, in Appeal No. 2014-SC-000738. The Supreme Court vacated and remanded this Court's July 3, 2014, Opinion for further consideration in light of *Greater Cincinnati/Northern Kentucky Apartment Association, Inc. v. Campbell County Fiscal Court*, 479 S.W.3d 603 (Ky. 2015). Our review proceeds accordingly.

The underlying facts were previously set forth in this Court's July 3, 2014, Opinion, and we shall recite those facts herein:

On August 13, 2012, the Garrard County Fiscal Court enacted Ordinance No. 0-08-13-12-1 to provide financial support for the 911 emergency telephone service provided to the residents of Garrard County. The Ordinance provides, in relevant part:

WHEREAS, there currently is a system for financial support based upon a charge on "land line" phones in Garrard County, Kentucky, and

WHEREAS, technology advancements have resulted in the current financial system for support of 9-1-1 emergency communications unfairly placing the burden of supporting the system on a disproportionately small segment of the citizens of Garrard County, Kentucky, and

WHEREAS, Kentucky Revised Statutes (KRS) 65.760 provides that the financial support of 9-1-1 emergency "may be obtained through the levy of any special tax, license or fee not in conflict with the Constitution and Statutes of this state," and

WHEREAS, the Garrard County Fiscal Court believes that distributing the burden among the citizens through a fee on water meters is more equitable and requires more persons to support the system than a “land line” phone fee.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Garrard County Fiscal Court that there is established, imposed and implemented a charge of .25 cents on each and every water meter located in Garrard County, Kentucky.

IT IS FURTHER ORDAINED that every water company, water association or other entity operating a water distribution system in Garrard County, Kentucky shall collect the herein established fee and remit said amounts so collected, on not less than a quarterly basis, to Bluegrass 911 Communications and shall be permitted to withhold 2% of these monies for the administration of this fee.

Under the Ordinance, a “fee” of .25 cents was imposed upon every water meter located within the geographical confines of Garrard County to finance the county’s 911 emergency communications system. A concomitant duty was imposed upon entities providing water within the county to collect the fee; this included the City of Lancaster and the Garrard County Water Association (GCWA).

Consequently, on November 9, 2012, the City of Lancaster filed a Verified Complaint for Declaratory and Injunctive Relief against Garrard County and the Garrard County Fiscal Court. Therein, the City alleged the Ordinance was unconstitutional and that collection of the fee was an unconstitutional taking of property. The Fiscal Court filed an Answer and Third-Party Complaint against GCWA. The Fiscal Court then filed a motion for summary judgment alleging that the Ordinance merely

established a valid user fee. By Opinion and Order entered March 21, 2013, the circuit court rendered a summary judgment upholding the validity of the Ordinance and concluding that the Ordinance imposed a valid user fee. The Court specifically reasoned:

Here, the Court finds the fees levied under the Garrard County ordinance are for the statutorily provided governmental objective for the citizens of Garrard County, that is, funding and continuation exclusively of the 911 emergency services not otherwise provided by a nongovernmental entity/provider. The monies generated by the fee cover only the operational costs of the 911 service, are not revenues or profits in excess of the reasonable costs associated with the public service. The fees are placed within a specific 911 account, not Garrard County's general fund.

Moreover, KRS 65.750 et seq. provides that there can be "other means of funding" in addition to or in lieu of the telephone land line funding collected by a telephone utility. In the Court's view the statute does not restrict the fiscal court's decision as to the source of funding or the collection mechanism, therefore the fee upon a household's water meter and the collection and remittance by a water utility is appropriate under the statute.

Constitutionally, the proposed fee is indistinguishable from the land line fee authorized by KRS 65.750 which, to this point, has remained unchallenged.

CONCLUSION

The Garrard County ordinance, No. 0-08-13-12-1, levies a constitutionally valid and statutorily permissible fee upon the

household water meters in Garrard County, Kentucky for the sole purpose of funding the Bluegrass 911 Communications as allowed under KRS 65.760. The fee may be collected and remitted to the County by the water utilities within Garrard County.

July 3, 2014, Opinion. This appeal follows.

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). In its summary judgment, the circuit court concluded that the .25 cent fee imposed upon every water meter in Garrard County constituted a valid fee to fund the county's 911 emergency communications service.

In its Opinion and Order vacating and remanding, the Supreme Court directed this Court to consider its Opinion in *Greater Cincinnati/Northern Kentucky Apartment Association, Inc.*, 479 S.W.3d 603. In that case, the Supreme Court examined whether the imposition of an annual fee of \$45.00 imposed upon every occupied residential or commercial unit in Campbell County to fund 911 emergency phone service was valid. In answering that question, the Supreme Court recognized that a fee to support 911 service is statutorily authorized by Kentucky Revised Statutes (KRS) 65.760(3) and that such a fee does not constitute a user fee. To be valid under KRS 65.760(3), the Supreme Court held that the fee "must bear some reasonable relationship to the benefit received." *Greater Cincinnati/Northern Kentucky Apartment Association, Inc.*, 479 S.W.3d at 606. To

that end, the Supreme Court believed that the annual \$45.00 fee upon every occupied residential and commercial unit in the county bore a reasonable relationship to the benefit of 911 service:

Here, the 911 emergency service fee is levied upon *occupied* residential and commercial properties. In the narrow context of [KRS 65.760\(3\)](#), occupied properties are an exceedingly logical and practical object of the fee revenue authorized by that provision. Common sense dictates that Campbell County residents engaged in either labor or leisure spend a significant amount of their time at residential and commercial properties located within Campbell County. It naturally follows that demand for this 911 emergency telephone service derives significantly from residents' occupation and use of those properties.

Greater Cincinnati/Northern Kentucky Apartment Association, Inc., 479 S.W.3d at 606. The Supreme Court emphasized that the “nexus required to sustain a fee under KRS 65.750(3) need not necessarily be direct,” but only a reasonable relationship must be found between the fee and the benefit received. *Id.* at 607.

In this case, the Fiscal Court imposed a 25 cents fee per month upon every water meter located within the geographical confines of Garrard County to fund the 911 emergency communication system. The Fiscal Court presumably believed that it was more equitable to its citizens to place the fee upon water meters in Garrard County since they are usually connected to residential and commercial units. It may be true that a few water meters may be located upon nonresidential or noncommercial properties, but such circumstance would be uncommon and atypical. So, for reasons articulated in *Greater*

Cincinnati/Northern Kentucky Apartment Association, Inc., 479 S.W.3d 603, and our duty to follow Supreme Court precedent as set out in Supreme Court Rule 1.030(8), we reluctantly agree that a reasonable relationship exists between the 25 cents fee per month imposed upon water meters in Garrard County and the benefit of utilizing 911 service.

Accordingly, we hold that the circuit court properly rendered summary judgment concluding that the 25 cents fee per month imposed upon every water meter within the geographic confines of Garrard County constitutes a valid fee under KRS 65.760(3) to fund the 911 emergency communication service in Garrard County.

For the foregoing reasons, the Opinion and Order of the Garrard Circuit Court is affirmed.

ALL CONCUR.

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