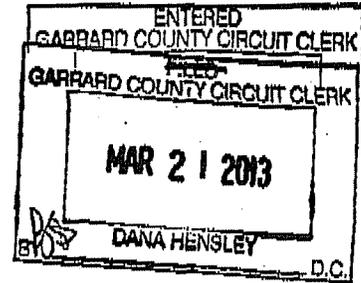


COMMONWEALTH OF KENTUCKY
GARRARD CIRCUIT COURT
13TH JUDICIAL DISTRICT
CIVIL ACTION NO. 12-CI-00383



CITY OF LANCASTER,
HARLAN BRATTON, Garrard County Water
Association customer,
JOE TAYLOR, Lancaster City Utility customer

PLAINTIFFS

V.

GARRARD COUNTY AND
GARRARD FISCAL COURT

DEFENDANTS and
THIRD-PARTY
PLAINTIFFS

And
GARRARD COUNTY WATER ASSOCIATION

THIRD-PARTY
DEFENDANT

OPINION AND ORDER

GRANTING DECLARATORY/SUMMARY JUDGMENT

This matter is before the Court upon Defendants' Motion for a Declaratory/Summary Judgment in this Declaration of Rights action, filed pursuant to KRS 418.080. Upon review of the parties' memorandum, affidavits, oral arguments, and being otherwise sufficiently advised, the Court hereby GRANTS Defendants' motion and enters this judgment upon the accompanying opinion.

STATEMENT OF FACTS

The Plaintiffs, City of Lancaster and two residents of Garrard County, Kentucky filed this declaration of rights action seeking to have an ordinance enacted by the Garrard Fiscal Court held unconstitutional. More particularly, the Plaintiffs claim the ordinance at issue imposes a tax or fee in violation of Kentucky Constitution Section 181. The ordinance, No 0-08-13-12-1, imposes a .25 cent per month fee upon every water meter within Garrard County, Kentucky and ~~was~~ enacted to fund a governmental safety function, more specifically, Garrard County's share of operating expenses for the 911 emergency dispatch response center (Bluegrass 911 Communications). Bluegrass 911 Communications, created under KRS Chapter 65.760, establishes a 911 emergency telephone service by a joint inter-local governmental agreement between the Garrard and Lincoln Counties dated, August 21, 2007. The ordinance further provides that the collecting utilities shall be permitted to withhold 2% of the monies collected and remitted as compensation for the expenses associated with and for the administration of the fee collection under the ordinance.

The Plaintiff, the City of Lancaster, alleges that the collection of the fee under the ordinance imposes an undue and improper burden contrary to Kentucky Constitution Section 181 because the fee imposed under the ordinance is to be collected by water utilities within Garrard County, Kentucky, which there are two: (1) the City of Lancaster's water utility and (2) the third-party defendant, the Garrard County Water District. In addition, Plaintiffs argue that Garrard County lacks the authority to have a utility or a city owned utility serve as the fiscal agent for collection and remittances of funding for Bluegrass 911 Emergency Services. Lastly, the Plaintiffs contend the statute pertaining to 911 emergency services only provides for funding

from fees imposed upon telephone land lines, collected by a telephone utility, and not from other funding sources.

The Defendants maintain that authority is granted in KRS 65.760, allowing imposition of a fee from any funding source and that the fee is not a tax, but more particularly a user fee as defined in KRS 91A.510 and as developed by case law. In addition the Defendants contend KRS 67.083, sometimes called the "Home Rule" statute provides a fiscal court with broad latitude to conduct the business of the county, including financing 911 services, so long as the power at issue has not been specially restricted by the Kentucky General Assembly.

STANDARD OF REVIEW

KRS 418.080 (Declaratory Judgment Act), CR 57, CR 56 (Summary Judgment) provide mechanisms for parties to address actual controversies in an expeditious and economical manner. Kentucky Courts have held that a summary judgment is an appropriate method for resolving the pending issues of a declaratory judgment action. *See Preferred Risk Mutual Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 872 S.W.2d 469 (Ky. 1994) (wherein the Supreme Court sustained the entry of a summary declaratory judgment on the issue of insurance coverage under a liability insurance policy.), *Mid-Southern Toyota, Limited v. Pennington*, 458 S.W.2d 776 (Ky. App. 1970) (wherein the Court held that a trial judge clearly was acting within his jurisdiction to enter a summary judgment on issues pending in a declaratory judgment action.) and *Absher v. Illinois Cent. R. Co.*, 371 S.W.2d 950 (Ky. App. 1963) (wherein the Court held that in the absence of disputed issues of material fact, a summary judgment on a declaratory judgment petition should have been granted.)

CR 56.03 states in relevant part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together

with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In applying the standard for summary judgment found in CR 56.03, Kentucky Courts have routinely held that judgments should be entered when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *Steelvest, Inc., v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991).

In the present case, the Court finds there are no genuine issues of material fact which would preclude the Court, as a matter of law, ruling upon the issues presented, and granting Judgment in favor of Defendants.

ANALYSIS

The Plaintiffs and Defendants have, as recited above, raised multiple issues which the Court will not address, rather deciding what it sees as the central issue before it: whether the Garrard County Ordinance before this Court is valid and constitutional as it pertains to KRS 65.760 funding of 911 emergency services? This question is answered in the affirmative.

Specifically, KRS 65.760 allows for the establishment of 911 emergency centers and authorizes funding by levy of any special tax, licensing or fee not in conflict with the Kentucky Constitution. In the Court's view the Garrard County ordinance levies a lawful fee, not a constitutionally prohibited tax. “[T]he distinction between a fee and a tax is one that is not always observed with nicety in judicial decisions, but any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax. On the other hand, a fee is generally regarded as a charge for some particular service.” *Dickson, Sheriff, et al. v. Jefferson County Board Of Education et al.*, 225 S.W.2d 672 (Ky.

1949). Taxes are a means for the government to raise general revenue without regard to direct benefits which may inure to the payor or to the property taxed. *Krumpelman v. Louisville & Jefferson County Metropolitan Sewer District*, Ky., 314 S.W.2d 557, 561 (Ky.1958)(Emphasis added).

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.

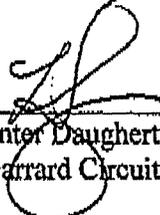
Constitutionally, the proposed fee is indistinguishable from the land line fee authorized by KRS 65.750 which, to this point, has remained unchallenged. 

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.

WHEREFORE, the Court GRANTS Defendants' Motion. There being no just cause for delay, this is a final and appealable judgment and order.

SO ORDERED, this the 19 day of March, 2013.



Hon. Hunter Daugherty
Judge, Garrard Circuit Court

DISTRIBUTION:

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