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Court upholds Lincoln's impact fees

LINCOLN, Neb. (AP) -- The Nebraska Supreme Court ruled Friday that Lincoln's so-called "impact fee" on new homes is legal.

The high court ruled in a case brought by the Home Builders Association of Lincoln and Hartland Homes Inc., which sued after the fees were adopted by the City Council in 2003.

Builders of single-family homes in Lincoln are paying at least \$2,800 in impact fees, which can be used to help pay for things such as streets and sewers elsewhere in the city.

The builders argued that the fees were not authorized by the Legislature and amount to an illegal tax.

Lancaster County District Judge Paul Merritt Jr. ruled that Lincoln lacked the power to collect a fee to pay for growth but said that its city charter gave it the right to collect an impact tax similar to the occupation tax charged for vending machines.

The builders' lawyer, William Blake, cited a 1980 court case in which Lincoln charged developers a fee as a condition for having a new subdivision approved so nearby arterial streets could be paved.

In that case, the high court ruled the fee was illegal because the arterial streets were general improvements and there was no local benefit that could be specially assessed against the subdivision.

"Improvements which benefit the general public, such as water treatment and sewage disposal plants or distribution systems, cannot be financed by special assessments," the court said.

Blake said the impact fees were merely a way to generate revenue and must, by definition, be categorized as a tax.

Chief Assistant City Attorney Rick Peo cited a case decided by the Montana Supreme Court that said impact fees imposed only upon new users of expanded water and wastewater services in Billings was "a valid exercise of a city's home rule power."

The Montana court distinguished taxes and special assessments from service charges.

"A tax is levied for the general public good, and without special regard to the benefit conferred upon the individual or property," the Montana court said, "A special assessment is levied to force payment for benefit equal in value to the amount.

"The fee is imposed for the benefit of new users of water and sewer facilities, whose use of

these systems gives rise to the need for the additional water and sewer capacity," the court said.

Nebraska's high court said that Lincoln was within its authority.

"The very purpose of a home rule charter is to permit municipalities to exercise 'every power connected with the proper and efficient government of the municipality, including those powers so connected, which might lawfully be delegated to it by the legislature, without waiting for such delegation,'" wrote Judge John Gerrard "In short," the state constitution "provides that the Legislature can empower a city to tax, and Article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation."

On the Net:

Nebraska Supreme Court: <http://court.nol.org/>

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