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Cities may lose impact-fee funds

- State high court rules that residents must vote to allow them or there must be new law

By Leah Rupp
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Ridgeland could stand to lose about \$150,000 annually and Clinton nearly \$70,000 in funds collected last year from impact fees, based on a Mississippi Supreme Court ruling.

The court last week upheld Jackson County Circuit Judge Dale Harkey's ruling that Ocean Springs could not legally impose the fees and that the fees amounted to an illegal tax.

The court ruled that to enact the fees, residents must vote to allow them or there must be new legislation to authorize the fees.

Since the decision was handed down, Madison, Clinton and Ridgeland have discontinued collecting the fees and are consulting with city attorneys to see if the ruling could apply to them.

Brandon officials did not return phone calls Friday for comment.

Also, following the ruling, the 4,000-member Homebuilders Association is calling on municipalities to refund developers. It's time for the cities to "come up with a plan to pay these cities back with interest," said Marty Milstead, executive vice president and chief executive officer of the association.

As many as six cities - including Brandon, Madison, Clinton and Ridgeland - have been charging the fees, said State Auditor Phil Bryant.

Notices may go out to cities if Attorney General Jim Hood decides it may apply to other municipalities, Bryant said.

"Our concern is, if that money is an illegal tax, to make sure those cities have that money in reserve and haven't spent it," Bryant said.

For many city leaders, the fees are a way to combat shrinking budgets.

"It's not easy trying to do good, I can tell you that," said Ocean Springs Alderman-at-Large Julia Weaver, who was elected after the initial lawsuit, but said the fees were not imposed maliciously.

Ocean Springs has been putting the money in a separate account since 2003, Weaver said. "We'll be talking to developers soon about how to handle the situation," she said.

Randy Wrigley, owner of Randall Corp., which develops property in the coastal counties of Jackson, Harrison and Hancock, said Ocean Springs may owe him more than \$85,000.

The fees, which are assessed when building permits are issued, are often passed on to home buyers because they average about \$5,000 in Ocean Springs, and developers couldn't absorb that cost.

"Down here, a lot of people who lost everything need to buy new houses and that kind of fee can disqualify them immediately," Wrigley said.

Ocean Springs aldermen are disappointed with the decision.

"We thought it was an equitable way to benefit our citizens while not

WHAT ARE THEY?

Impact fees are a cost charged to developers to finance the services required by a new development such as building streets, sidewalks and sewers in new developments. The fees also are used to shift the costs of those services from taxpayers to the residents of the new development.

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burdening our previous residents," Weaver said.

Ocean Springs isn't the first city to be challenged in court, though.

In 2001, U.S. District Judge William H. Barbour Jr. ruled the city of Madison's impact fees were illegal. The 5th U.S. Circuit Court of Appeals in 2002 upheld Barbour's ruling that the fees were a "tax" and not a "fee" as city leaders claimed since they began collecting the money in 1986. The 5th Circuit said the city of Madison had no authority under Mississippi law to levy any taxes.

Efforts by Madison to win approval of the impact fees failed in the 2001 Legislature. Legislation earlier this year also failed.

Ridgeland has been imposing an impact fee on developers since 1987, Mayor Gene McGee said. In Clinton, Mayor Rosemary Aultman said they've had a similar fee for about eight years.

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