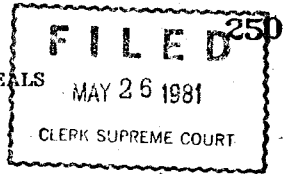


IN THE IOWA COURT OF APPEALS



NORTH LIBERTY LAND COMPANY,)
A General Partnership,)

Plaintiff-Appellant,)

Filed May 26, 1981

vs.)

INCORPORATED CITY OF NORTH)
LIBERTY, et al,)

Defendants-Appellees.)

1-82
65394

Appeal from Johnson District Court - Clinton E. Shaeffer, Judge.

Plaintiff land developer appeals from trial court's ruling in declaratory judgment action that defendant city had the authority to charge a \$5,000 sewer connection fee. REVERSED.

Alan R. Bohanan & William Lucas of Lucas, Nolan, Bohanan & Moen, Iowa City, Iowa, for plaintiff-appellant.

Marion Neely, Iowa City, Iowa, for defendant-appellee.

Robert W. Jansen of Trott, Jansen & Bramhall, Iowa City, Iowa, for intervening defendant.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff land developer appeals from trial court's ruling in declaratory judgment action that defendant city (city) had the authority to charge a \$5,000 sewer connection fee. Plaintiff argues that the city did not have the authority to charge the fee and that the amount of the fee was inequitable. The case having been tried in equitable proceedings, our review is *de novo*. Iowa R. App. P. 4. We disagree with the trial court's conclusions and reverse the judgment.

Plaintiff, a general partnership in the business of buying, developing and subdividing real estate, filed this petition in equity on August 30, 1978. The petition alleged that on May 18, 1972, the city entered into an agreement with Lloyd and Norma Myers to extend sewer facilities to their property for which the Myers' would pay the entire cost (which amounted to approximately \$10,900). In getting to their property, the sewer extension went across property now owned by plaintiff. The agreement also provided as follows: "It is contemplated that as the area develops that additional service connections will be installed and a portion of the first cost of the sewer will be reimbursed to [the Myers]." On May 1, 1973, the city council passed an ordinance under the alleged authority of section 393.14, The Code 1973, to establish a method of collecting sewer connection charges. Under the ordinance, sewer connection, maintenance and repair costs which have not been assessed against abutting or beneficial properties "shall be paid by any person, firm or corporation before such facilities are tapped or used by them. No sewer connection charge or fee established hereinafter shall exceed the equitable portion of the total original cost of the project."

In 1977, plaintiff filed with the city an application for a sewer connection permit. The city invoked the 1973 ordinance and charged plaintiff a \$5,000 connection fee. Plaintiff paid that amount into an escrow account under protest, asserting that the city had no authority under section 393.14, The Code 1973 or otherwise, to charge a sewer connection fee. Plaintiff then filed its petition seeking a declaratory judgment that the city may not charge the fee. On October 11, 1978, Norma Myers filed a petition of intervention, alleging that the contract between them (Lloyd died before this action was commenced) and the city provided that the entire cost of extending sewer service to their property would be paid by them. The petition further alleged that "a portion of the cost would then be reimbursed to the Myers as additional persons connected on to the system with said reimbursement collected by and to be paid by the Town of North Liberty to the Myers."

The trial court issued its decree on June 10, 1980, holding that the city had the authority to assess the \$5,000 fee. The court noted that plaintiff knew about the sewer line crossing the property when it bought that land; this "was considered to be a benefit and a factor in considering the purchase of the land." The court concluded that the \$5,000 paid into escrow by plaintiff should be paid to Norma Myers. This appeal followed.

I. We first consider whether the city's action in imposing the disputed charge may be sustained by reason of its local ordinance. The ordinance in question, by its express terms, is designed to implement section 393.14, The Code 1973. This section, which was in effect at the time the city passed the ordinance, was repealed along with many other provisions of the Iowa Code when the legislature enacted home rule for cities. Acts, 1972 Session, 64th G.A., ch. 1088, section 199. The repeal provisions took effect on July 1, 1975. Acts, 1974 Session, 65th G.A., ch. 1212. Section 362.7 of the present Code, enacted as part of the 1972 home rule statute, states that "[a] valid measure adopted by a city prior to July 1, 1975, remains valid unless the measure is irreconcilable with the city code." From this we conclude that to the extent the local ordinance was a valid implementation of section 393.14, The Code 1973, actions of the city in accordance with the ordinance are valid. But because at the time of its adoption the ordinance was dependent entirely upon the now-repealed code section for its validity, it must be interpreted as intending any limitations which inhere in that statute.

Section 393.14, The Code 1973, provided in relevant part as follows:

Cities and towns may by ordinance establish a schedule of reasonable and equitable sewer connection charges or fees to be paid to such city or town by every person, firm, or corporation whose premises will be served by connecting to the municipal sanitary utilities. Such ordinance shall be certified by the city or town and filed of record in the office of the county recorder of the county wherein the city or town is situated. The charges or fees shall be due and payable when a sewer connection application is filed. No sewer connection charge or fee established by said ordinance shall exceed the equitable portion of the total original cost to the city or town of extending the sanitary utilities to the near vicinity of the property less any part of said cost which has been previously assessed or paid to the city or town under chapters 391, 391A, or 417.

Thus, for an ordinance enacted under this statute to be valid, it must contain a "schedule" of sewer connection fees to be charged to those whose properties will be served by the connection. "Schedule" is defined in Webster's New World Dictionary (Second College Edition 1974) as "a list, catalog, or inventory of details."

The ordinance upon which the city relies to sustain the sewer connection charge in the present case reads in its entirety as follows:

**AN ORDINANCE ESTABLISHING FEES FOR TAPPING
SANITARY SEWER FACILITIES IN NORTH LIBERTY,
IOWA UNDER THE PROVISIONS OF SECTION 393.14
CODE OF IOWA.**

Be it Enacted by the Council of the City of North Liberty,
Iowa:

SECTION 1: Purpose. The purpose of this ordinance is to establish a method of collecting sewer connection charges or fees paid by every person, firm or corporation whose premises will be served by connecting to the sanitary facilities of the City of North Liberty, Iowa under the provisions of Section 393.14 of the Code of Iowa.

SECTION 2: Assessment. The construction, maintenance or repair costs of any sanitary sewer facility constructed by the City of North Liberty, Iowa after March 1, 1972, the cost of which has not been assessed against either the abutting or beneficial properties shall be paid by any person, firm or corporation before such facilities are tapped or used by them. No sewer connection charge or fee established hereinafter shall exceed the equitable portion of the total original cost of the project.

SECTION 3: Collection. When any sanitary sewer facility is constructed as described in Section 2, it will be the duty of the City engineer to report the total cost thereof to the City Council. The City Council shall proceed to divide or prorate such cost amongst the properties benefited thereby, and amongst the property abutting thereon, and shall adopt a resolution setting forth the charges or fees against the various properties abutting on said facility or benefited thereby. Before any person, firm or corporation shall tap or use such sewer facility, they shall pay the charge or fee set forth in said resolution against the property for which the sewer facility is to be tapped or used. The City Clerk is hereby directed to collect the monies and to keep them in a distinct part of the sanitation fund, to be known as the "Sewer Connection Fund" and shall be dispersed in such quantities as are determined by the City Council.

SECTION 4: Effective date. This ordinance [sic] shall be in effect after its final passage, approval, publication as required by law.

Compliance with section 393.14, The Code 1973, requires that an ordinance be enacted establishing a comprehensive schedule of sewer connection charges or fees "to be paid by every person, firm, or corporation whose premises will be served." The ordinance relied on by the city contemplates that this will be done but we are not able to discern from the record that such was ever accomplished prior to the assessment of the disputed charge against the plaintiff. Accordingly, such charge cannot be sustained by reason of the ordinance upon which the city relies. The trial court erred in so finding.

II. We next consider whether the city may sustain the sewer connection charge levied against plaintiff on any basis other than the ordinance previously discussed. The city urges that its actions in this regard were proper under the general powers accorded it by section 364.1, The Code 1977, which was in effect at the time the disputed charge was imposed. We disagree. Section 364.6, The Code 1977, provides:

A city shall substantially comply with a procedure established by a state law for exercising a city power. If a procedure is not established by state law, a city may determine its own procedure for exercising the power.

This statute has been applied in City of Iowa City v. Westinghouse Learning Corp., 264 N.W.2d 771 (Iowa 1978). Whether the disputed fee is viewed as a charge for public improvement pursuant to section 384.37, The Code 1977, or as a fee for services pursuant to section 384.84, The Code 1977, it is clear that state law does establish procedures for imposing such charges which were not followed by the city with respect to the disputed fee. Accordingly, we hold the charge was beyond the city's power. The judgment of the trial court is reversed and the cause remanded for entry of a declaratory decree in accordance with our decision.

REVERSED.