COURT OF APPEALS REJECTS HEADLEE AMENDMENT CHALLENGE TO SEWER "READY TO SERVE" CHARGE

On June 11, 2013, the Michigan Court of Appeals upheld the Village of Reese's sewer use Ordinance which imposes a "ready to serve" charge on all users of the Village's public sanitary sewer system. Seibert and Dloski represented the Village of Reese in both the trial court and Court of Appeals.

In *Meadows Valley v Village of Reese*, unpublished opinion per curiam of the Court of Appeals issued June 11, 2013 (Docket No. 309549), the Court of Appeals unanimously held that the "ready to serve" charge did not constitute an impermissible tax in violation of the Headlee Amendment to the Michigan Constitution.

Meadows Valley is the owner of a mobile home park located in the Village of Reese. The entire park discharges its sanitary sewage into the Village's public sewer system. Village Ordinance No. 10 provides that the owners of all houses, buildings or properties from which sanitary sewage originates, must connect to the Village's public sewer system. The Ordinance imposes a charge on all users of the system. The charge consists of two components: (1) a "ready to serve" charge of $18 for each parcel connected to the sewer system and (2) $1.20 per 1,000 gallons of water utilized by the owners of the property. The funds collected by the Village from the "ready to serve" charge are used exclusively for the operation and maintenance of the public system and for no other purposes.

Meadows Valley filed suit against the Village contending that the "ready to serve" charge was an impermissible tax in violation of the Headlee Amendment to the Michigan Constitution because it was imposed for the purpose of raising revenue and required

Meadows Valley to pay the charge even for those mobile home sites that were unoccupied. The trial court ruled against the Village and invalidated the Ordinance on the basis that the revenue collected from the "ready to serve" charge was not used for the operation and maintenance of the private sewer lines within the mobile home park.

The Court of Appeals began its analysis by stating that "[t]here is no bright-line test for distinguishing between a valid user fee and a tax that violates the Headlee Amendment." In relying on the Michigan Supreme Court's landmark decision in *Bolt v City of Lansing*, 459 Mich 152 (1998), the Court of Appeals explained that generally, a fee is exchanged for a service rendered or a benefit conferred and there is some reasonable relationship between the amount of the fee and the value of the service or benefit. "A 'tax' on the other hand, is designed to raise revenue." In the case of the Village of Reese's "ready to serve" charge, the Court of Appeals concluded that the Ordinance's purpose was regulatory and not revenue-raising.

The Court relied on financial statements submitted by the Village demonstrating that the funds collected from the "ready to serve" charge were used exclusively for the operation and maintenance of the public sewer system and operating expenses exceeded revenues in virtually every year. The Court also rejected Meadows Valley's argument that the charge was impermissible since it was imposed on some units within the park that were unoccupied. The Court of Appeals agreed with the Village that the owners of the mobile home park received the benefit of the use of the public system notwithstanding the fact that some units, while connected, were unoccupied. The Court of Appeals reversed the trial court's decision and upheld the validity of the Village's Ordinance and "ready to serve" charge.

In adopting ordinances that impose charges in return for public benefits, municipalities must be aware of and adhere to the criteria set forth by the Supreme Court in *Bolt*. The three criteria of a fee - as opposed to an impermissible tax - are as follows: (1) a fee must serve a regulatory purpose, (2) a fee must be proportionate to the necessary costs of the service, and (3) a fee should be voluntary. The Supreme Court in *Bolt*, however, cautioned that the three criteria are not to be considered in isolation but rather in their totality. A weakness in one area does not necessarily mandate a finding that the charge at issue is not a fee.