

No. 32612

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

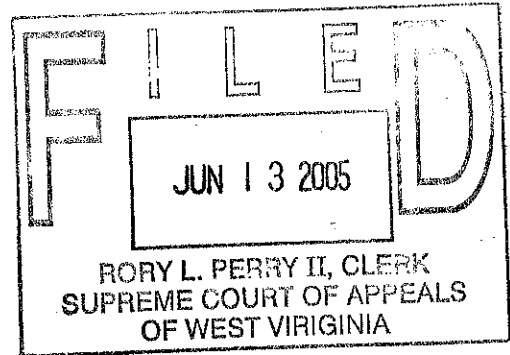
THORNTON COOPER,

Appellant,

v.

CITY OF CHARLESTON,
a municipal corporation,

Appellee.



**BRIEF OF THE WEST VIRGINIA MUNICIPAL LEAGUE, INC.
AS AMICUS CURIAE**

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TABLE OF CONTENTS

I. INTEREST OF THE <i>AMICUS CURIAE</i>	1
II. LEGAL DISCUSSION	2
A. <i>The Legislature Granted Municipalities Broad Authority to Collect Fees on Users of Municipal Services and Established Standards for Such Fees.</i>	2
B. <i>Charleston Reasonably Exercised Its Plenary Power to Impose a Service Fee on Users of Police and Street Maintenance Services.</i>	5
C. <i>The Charleston Ordinance Does Not Impose a Prohibited Tax.</i>	9
III. CONCLUSION	13

TABLE OF AUTHORITIES

W.Va. Const, Art. X, § 1	9
W.Va. Const. Art. X, § 9	11
W.Va. Code § 8-1-7	3, 7
W.Va. Code § 8-12-6	1
W.Va. Code § 8-13-3	11
W.Va. Code § 8-13-5	11
W.Va. Code § 8-13-13	passim
W.Va. Code §§ 11-21-1 <i>et seq.</i>	11
<i>Amidon v. Kane</i> , 444 Pa. 38, 279 A.2d 53 (1971)	5
<i>Clarksburg v. Grandeotto, Inc.</i> , 204 W.Va. 404, 513 S.E.2d 177 (1998)	10
<i>Clay County Citizens for Fair Taxation v. Clay County Commission</i> , 192 W.Va. 408, 454 S.E.2d 724 (1994)	7
<i>Dean v. Addison</i> , 207 W.Va. 538, 534 S.E. 2d 403 (2000)	7
<i>Ellison v. Parkersburg</i> , 168 W.Va. 468, 284 W.Va. 903 (1981)	4, 7
<i>Folio v. Clarksburg</i> , 134 F.3d 1211 (4 th Cir. 1998)	10
<i>Hare v. Wheeling</i> , 171 W.Va. 284, 298 S.E.2d 820 (1982)	9, 10
<i>Huntington v. Bacon</i> , 196 W.Va. 457, 437 S.E.2d 743 (1996)	3, 6, 1
<i>McCoy v. Sistersville</i> , 120 W.Va. 714, 199 S.E. 260 (1938)	7, 10
<i>Princeton v. Stamper</i> , 195 W.Va. 685, 466 S.E.2d 536 (1995)	6, 7
<i>State ex rel. Charleston and Huntington v. West Virginia Economic Development Authority</i> , 214 W.Va. 277, 588 S.E.2d 655 (2003)	8
<i>State ex rel. Charleston v. Hutchinson</i> , 154 W.Va. 585, 176 S.E.2d 691 (1970)	3
<i>Tanner v. Premier Photo Service, Inc.</i> , 147 W.Va. 37, 125 S.E.2d 609 (1962)	5
<i>United States v. Huntington</i> , 999 F.2d 71 (4 th Cir. 1993)	9, 10
<i>Valero Terrestrial, Inc. v. Caffey</i> , 205 F.3d 130 (4 th Cir. 2000)	10
<i>Wetzel County Solid Waste Authority v. West Virginia Division of Natural Resources</i> , 462 W.Va. 1, 462 S.E.2d 349 (1995)	10
Chas. City Code § 6-203	8
W. Lorensen, "Rethinking the West Virginia Municipal Code of 1969," 97 W.Va. L. Rev. 653, 659 (1995)	3

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I. INTEREST OF THE *AMICUS CURIAE*

The West Virginia Municipal League, Inc. (the "League") is a West Virginia chartered non-profit organization with approximately 200 member-municipalities formed pursuant to W.Va. Code § 8-12-6 to disseminate information to and provide advocacy on behalf of West Virginia municipalities in matters of common concern. League members throughout the State collect a variety of municipal fees pursuant to W.Va. Code § 8-13-13 to support a number of essential and special services. Huntington, Weirton and Charleston each have separately adopted ordinances pursuant to this law designed to collect fees uniformly from individuals working within the municipalities to defray, in part, the cost of providing police protection and street maintenance services benefiting such individuals while they are within the municipalities.

In this case, the Appellant, a West Virginia Public Service Commission official, challenges Charleston's authority to raise revenues to pay for services under W.Va. Code § 8-13-13. Thornton Cooper objects to the order of the Circuit Court of Kanawha County that rejected his multiple claims for declaratory and injunctive relief related to the Charleston service fee

ordinance. Mr. Cooper requests that this Court adopt new judge-made restrictions on the plenary authority the West Virginia Legislature expressly granted to West Virginia municipalities by the enactment of W.Va. Code § 8-13-13.

West Virginia municipalities oppose Mr. Cooper's prayer for relief and support the separate Brief of the Appellee, City of Charleston, responding to Mr. Cooper's copious alternative theories. The League files this *amicus* Brief to provide a focused review of W.Va. Code § 8-13-13, an important home rule statute utilized extensively by West Virginia municipalities to fund a variety of services.

II. LEGAL DISCUSSION

A. *The Legislature Granted Municipalities Broad Authority to Collect Fees on Users of Municipal Services and Established Standards for Such Fees.*

West Virginia Constitution Article VI, § 39(a) (entitled "Home Rule for Municipalities") provides, in pertinent part, that

[t]he legislature shall provide by general laws for the incorporation and government of cities, towns and villages[, and] [s]uch general laws shall restrict the powers of such cities, towns and villages to borrow money and contract debts, and shall limit the rate of taxes for municipal purposes, in accordance with section one, article ten of the Constitution of the State of West Virginia. Under such general laws, the electors of each municipal corporation..., through its legally constituted authority, may pass all ... ordinances relating to its municipal affairs: Provided, that any such ... ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this Constitution or the general laws of the State then in effect, or thereafter, from time to time enacted.

Accordingly, West Virginia municipalities derive their powers from their home rule charters and the general laws of the State, as enacted by the Legislature.¹

¹ Under the auspices of Article VI, § 39(a) of the State Constitution, the Legislature has enacted extensive general laws concerning powers of municipalities. The exercise by local governments of these powers has naturally led to numerous disputes over the years. Before a recodification of the basic municipal law of West Virginia (into Chapter 8 of the West Virginia Code), the Legislature had not specified clear rules of construction relating to powers delegated to municipalities, so West Virginia courts applied "Dillon's Rule" (a common-law rule of strict

The Legislature in W.Va. Code § 8-1-7 enacted a clear rule of statutory construction concerning municipal powers: “The enumeration of powers and authority granted in this chapter shall not exclude the exercise of other powers and authority fairly incidental thereto or reasonably implied and within the purposes of this chapter; and the provisions of this chapter shall be given full effect without regard to the common-law rule of strict construction....” This legislative statutory construction rule applies when courts are called upon to review claims, like those of Mr. Cooper in this case, seeking to second-guess the wisdom of legislative determinations by elected governing bodies of municipalities.²

We now turn to the specific powers and authority granted by the Legislature in W.Va. Code § 8-13-13, concerning municipal service fee ordinances:

Notwithstanding any charter provisions to the contrary, every municipality which furnishes any essential or special municipal service, including, but not limited to, police... protection... [and] street maintenance... shall have plenary power and authority to provide by ordinance for the installation, continuance, maintenance or

construction) which essentially reserved to the judiciary the power to substitute its policy choices for those of locally elected officials. W. Lorensen, “*Rethinking the West Virginia Municipal Code of 1969*,” 97 W.Va. L. Rev. 653, 659 (1995). However, the Legislature statutorily overturned “Dillon’s Rule” by enacting W.Va. Code § 8-1-7. *Id.*

² The rule of liberal construction in W.Va. Code § 8-1-7 supports judicial deference afforded municipalities in modern service fee cases decided by this Court. In *Huntington v. Bacon*, 196 W.Va. 457, 437 S.E.2d 743 (1996), the Court stated:

[I]n recognition of the legislature's constitutional power to determine this State's fiscal policy, this Court has accorded it and municipalities wide latitude in how they choose to fund municipal services.... The legislature's power to determine this State's fiscal policy is limited only by the Constitution. See also syl. pt. 3, *State ex rel. Lambert v. County Comm'n*, 192 W.Va. 448, 452 S.E.2d 906 (1994) (This Court must use every reasonable construction of a legislative enactment in order to sustain its constitutionality).

Sometimes (in disputes outside the scope of W.Va. Code § 8-13-13, at issue here) West Virginia courts have not acknowledged the rule of liberality specified in the text of W.Va. Code § 8-1-7. For instance, Mr. Cooper cites a syllabus point in *State ex rel. Charleston v. Hutchinson*, 154 W.Va. 585, 176 S.E.2d 691 (1970), a case in which the Court did not even cite W.Va. Code § 8-1-7 (passed a year earlier), which expressly overrode the cases upon which the Court relied in formulating the syllabus point. The prior cases underlying the “strict construction” syllabus point in *Hutchinson* (and carried on from time-to-time in subsequent opinions of this Court) no longer constitute good law since the Legislature repealed in no uncertain terms the former “common-law rule of strict construction” in this arena.

improvement of such service, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such service reasonable rates, fees and charges to be collected in the manner specified in the ordinance....

Accordingly, the general laws of the State expressly grant municipalities the plenary power by ordinance to impose reasonable fees upon users of police protection and street maintenance services. It is hard to imagine what language the Legislature could have used to grant greater flexibility and power to municipalities to impose municipal service fees.³ Unlike statutes in many other states,⁴ West Virginia's statute does *not* restrict a municipality to charge only for "special services" and it does *not* limit how an ordinance may classify users of services or the basis of the service fee other than by a *reasonableness* standard.

With this critical background in mind, this Court stated, in *Ellison v. Parkersburg*, 168 W.Va. 468, 284 W.Va. 903 (1981), that

The standard of review of an ordinance exercising such power as that granted by *W.Va. Code*, 8-13-13 [1971] is the reasonableness of the ordinance. The determination of whether an ordinance reasonably serves the purpose for which it was enacted is initially made by the municipal authorities. Their passage of the ordinance gives it a presumptive validity and a court should not hold the ordinance to be invalid unless it is clear that the ordinance is unreasonable. (Citations omitted.)

Applying *Ellison's* standard, West Virginia courts have repeatedly declined to strike presumptively valid legislative determinations by municipal authorities enacting service fees.

³ The Legislature *could have* for instance limited the user classifications to residents, property owners or otherwise; the Legislature *could have* limited the type of fees (*e.g.*, flat fees or weekly fees could have been prohibited); and the Legislature *could have* limited the types of services to be supported by fees (*e.g.*, only special types of services). The Legislature did *not* enact such limitations.

⁴ West Virginia's Constitution and statutes concerning local government structure and revenue-raising are not at all like those in the Commonwealth of Pennsylvania, for instance. Mr. Cooper's reliance upon select Pennsylvania cases is misplaced.

The Appellant's Brief fails to cite *any* authority finding that a municipal service fee like the one imposed in the Charleston ordinance at issue is clearly unreasonable.⁵

B. Charleston Reasonably Exercised Its Plenary Power to Impose a Service Fee on Users of Police and Street Maintenance Services.

The Appellant's Brief asserts that Mr. Cooper himself believes that the Charleston fee is unreasonable. Mr. Cooper fails to support his personal belief by citing any controlling legal precedent. In this critical section of the Appellant's Brief, Mr. Cooper's main complaint appears to be that the fee is unreasonable because it is not based on the net income of the user. Appellant's Brief at 30. Mr. Cooper would prefer the Legislature to have generally granted municipalities the plenary power to impose a local graduated-rate personal net income tax⁶ to fund police protection and street maintenance services. The Legislature has not yet expressly granted municipalities this power.

The Legislature in W.Va. Code § 8-13-13 granted broad authority to municipalities to collect a fee from users of essential police protection and street maintenance services. Working within the authority granted by the Legislature, the elected governing body of the City of Charleston (like Huntington and Weirton) enacted an ordinance to collect a fee on users of essential police protection and street maintenance services to defray part of the cost of such

⁵ Mr. Cooper quotes from a Pennsylvania case dealing with commuter taxes aimed solely at non-residents adopted in the context of Pennsylvania's unique uniformity jurisprudence that has been construed to prohibit, for instance, any personal income tax deductions and limits the use of a graduated tax rate. West Virginia's courts have never adopted Pennsylvania's unique jurisprudence to limit the West Virginia Legislature's authority to impose (or delegate under VI, § 39(a) of the West Virginia Constitution) a revenue measure. *Compare Tanner v. Premier Photo Service, Inc.*, 147 W. Va. 37, 125 S.E.2d 609 (1962) (sustaining the West Virginia Personal Income Tax) with *Amidon v. Kane*, 444 Pa. 38, 279 A.2d 53 (1971) (invalidating the Pennsylvania Personal Income Tax on "uniformity" grounds because it allowed deductions). In any event, the fee at issue does not resemble the "commuter only" tax levied by Johnstown in 1962. Charleston's fee is imposed irrespective of residence and does not discriminate against commuters.

⁶ Mr. Cooper would not have been even been satisfied with an *occupation* tax, which would be based on the amount of earned income but not income from other sources. The applicable statute does not limit a user fee to this "ideal" revenue measure.

services through a flat charge. Elected representatives made extensive legislative findings of fact regarding the use of police protection and street maintenance services by a class of individual users, and Mr. Cooper offered no evidence to counter these findings.

In so many words, the Appellant's Brief also appears to challenge the reasonableness of the "user" classification. In this regard, Mr. Cooper's primary concern appears to be that non-resident individuals who work within a municipality are asked to share⁷ in the cost of providing police protection and street maintenance services. Mr. Cooper requests that this Court craft a new standard to restrict W.Va. Code § 8-13-13 fees to apply only to property owners or residents within the municipality—Mr. Cooper's exclusive *reasonable* classes. But the Legislature did not limit users to the preferred classifications identified by Mr. Cooper.⁸

In essence, Mr. Cooper argues that the service fee reaches too many users (folks that work in town regardless of domicile).⁹ Other critics of the fee at issue might contend that unemployed municipal residents (including children and disabled and elderly individuals) and visitors to (and travelers through) the municipality also benefit from police and street

⁷ The Charleston service fee at issue raises less than 13% of the total amount budgeted and expended by Charleston for police protection and street maintenance services.

⁸ The West Virginia fee cases listed in the Appellant's Brief do not mandate that the only permissible "user" classes are residents or property owners. Under Mr. Cooper's logic, parking fees could not be imposed on an out-of-towner.

⁹ Modern service fee decisions in West Virginia reject arguments by fee opponents that they should not be required to pay the charge because the opponent does not "immediately and directly benefit" from the enumerated service. *See, e.g., Huntington v. Bacon, supra; Princeton v. Stamper*, 195 W.Va. 685, 466 S.E.2d 536 (1995). The Legislature, by expressly authorizing municipalities to impose fees for "essential services" (expressly including police protection and street maintenance) chose not to limit municipalities to select any particular narrow class of users.

This Court, in *Huntington v. Bacon, supra*, recognized that the broad grant of power to municipalities in W.Va. Code § 8-13-13 threatens to result in a number of "creative" local fee measures and took the unusual step to urge the *Legislature* to address fee opponents' complaints. 196 W.Va. at 471, 466 S.E.2d at 757. Despite being openly sympathetic to the fee opponents' concerns that a plain reading of W.Va. Code § 8-13-13 will open the "flood gate" of new municipal service fees, this Court rejected fee opponents' plea to have the Court, by judicial fiat, adopt standards to rein in the Legislature's express grant of plenary powers to municipalities.

maintenance services. These critics might suggest that, since the service fee does not reach all classes of possible users, a municipality should be precluded from charging a large group of identifiable users (employees and self-employed persons regularly working within the municipality) a fee defraying part of the aggregate cost of providing these services. Hence, the classification is *too narrow* for such a critic's liking.¹⁰

By challenging the "user" classification established in the Charleston ordinance, Mr. Cooper invites this Court to reject the findings of Charleston municipal authorities and to adopt new standards to curtail the plenary power and wide latitude granted to the City respecting fees for police protection and street maintenance services. This Court should reject Mr. Cooper's invitation to make new law.

Charleston acted reasonably when it identified a broad class of users: persons regularly employed within Charleston. Commuters and residents traveling to and from (and while stationed at) employment locations within the City demand and consume these services and are otherwise benefited by police protection (including traffic control, emergency response, deterrence, etc.) and street maintenance (enabling employees to get to and from work). The municipality's elected legislative authority, Charleston's City Council, made this express

¹⁰ Modern service fee decisions in West Virginia reject arguments by fee opponents that a local government must, in adopting a service fee ordinance, identify and charge all possible users. *See, e.g., Clay County Citizens for Fair Taxation v. Clay County Commission*, 192 W.Va. 408, 454 S.E.2d 724 (1994) ("perfect equity is not the test"; administrative considerations in collecting fee are relevant). *McCoy v. Sistersville*, 120 W.Va. 714, 199 S.E. 260 (1938), a "special" service fee case decided *before* the enactment W.Va. Code § 8-1-7 and *before* the municipal service fee enabling statute granted "plenary" authority to municipalities, might have lent support to the critic's argument in this regard, but it is no longer good authority. *See Ellison v. Parkersburg, supra* and *Princeton v. Stamper, supra*.

This Court has also rejected similar arguments by fee opponents that a municipal fee must support a service that solely benefits the class of users paying the fee. The Court held that the municipal service might benefit individuals outside the class so long as the amount collected from the user class subject to the fee is reasonable in proportion to the services provided to the class paying the service fee. *Dean v. Addison*, 207 W.Va. 538, 534 S.E. 2d 403 (2000). Inherently, police protection services and street maintenance services will benefit a large class of users. The Legislature expressly authorized municipal fees for these broad general services.

finding. Chas. City Code § 6-203. As this Court stated in *State ex rel. Charleston and Huntington v. West Virginia Economic Development Authority*, 214 W.Va. 277, 588 S.E.2d 655 (2003):

This Court reviews legislative findings with great deference. In Syllabus Point 2 of *State ex rel. Ohio Cty. Comm'n v. Samol*, 165 W.Va. 714, 275 S.E.2d 2 (1980), we held that "[a]bsent a claim that legislative findings are irrational or have no bearing on a legitimate State purpose, they are not subject to judicial investigation." Even "the legislative finding of a juristic fact is entitled to great weight and serious consideration[.]" *State ex rel. Cashman v. Sims*, 130 W.Va. 430, 449, 43 S.E.2d 805, 817 (1947) (citation omitted).

Furthermore, Charleston's municipal authorities are also competent to estimate the cost of providing services to this substantial class of users. The City acted reasonably by charging a small flat fee on each member of the user class as a charge for the services. The service fee covers a part, but by no means all, of the total cost of providing police and street maintenance services. Charleston's lawmakers are the appropriate authorities to estimate the cost of police services and street maintenance services reasonably attributable to individuals who work within the City, whether or not they are residents.¹¹

In summary, Mr. Cooper fails to carry the heavy burden of establishing that Charleston's ordinance is clearly unreasonable. The ordinance, fits comfortably within the wide latitude afforded and plenary powers granted to municipalities.

¹¹ City Council made express findings concerning the relationship between the user class and the services at issue. Moreover, the record reflects that the Charleston Police Chief and the Director of the Public Works Department both consider individuals working within Charleston as "substantial users" of their respective departments' services.

Mr. Cooper laments that lack of definitive statistics (Appellant's Brief at p. 30), but he fails to identify a universally accepted standard for measuring the extent that police protection and street maintenance services "directly" benefit a particular class. Crime deterrence and traffic control benefits everyone. The same can be said for filling potholes. Charleston's decision to fund less than 13% of the costs of providing a safe and accessible work environment so employees and self-employed persons can earn a livelihood is entitled to deference. Consider also that an employee physically present 40 hours a week (based on commuting to and working) within Charleston, spends more than 24% of his or her waking and sleeping hours within the City simply by reason of employment.

C. The Charleston Ordinance Does Not Impose a Prohibited Tax.

Mr. Cooper also criticizes the service fee by engaging in a semantics exercise: Does the ordinance impose a *fee* or a *tax*? Mr. Cooper's Brief assumes that, if the fee is really a *tax*, then it is unlawful.¹²

The relevant *fee* versus *tax* inquiries addressed by this Court under W.Va. Code § 8-13-13 have been concerned with one issue: is the operation and effect of a purported municipal fee a back-door *ad valorem* property tax? This Court has determined that a purported fee computed directly based on the *value* of property constitutes an *ad valorem* property tax. If such a value-based charge, when combined with regular levies otherwise imposed on that same property pursuant to the normal *ad valorem* property tax system, exceeds the maximum rate limits specified in Article X, § 1 of the West Virginia Constitution, the purported fee is invalid. *Hare v. Wheeling*, 171 W.Va. 284, 298 S.E.2d 820 (1982).¹³ The special constitutional limits in the

¹² Operating under this assumption, one may be tempted to look to cases in other states to aid in a tax-fee exercise. The fundamental problem here is that the laws in other states differ fundamentally from W.Va. Code § 8-13-13 so out-of-state courts' standards are not helpful reviewing a West Virginia municipality's service fee ordinance adopted pursuant to W.Va. Code § 8-13-13. There is no uniformity in state laws concerning local government financing.

Inherently, any charge for police services (and other essential service fees) would not satisfy "fee" criteria developed in out-of-state cases, many of which concern themselves with "special assessments" and "special charges" to landowners under other states' constitutions and statutes. The state law regimes reviewed in many out-of-state cases do *not* authorize a service fee to support "essential" services, including police protection and street maintenance because the fee-enabling statutes in those states do not provide power to municipalities to charge fees for "essential services." (But other states' laws often grant other local revenue raising powers not afforded to West Virginia municipalities.) Indeed, the municipal fire service fees approved by our Court in *Bacon*, and its progeny, would not be authorized under the "special fees and assessment" laws of other states.

¹³ In response to *Hare*, municipalities eliminated property value as the basis for municipal service fees. But municipal fees for essential services did not simply vanish. Many municipalities soon adopted square footage based municipal fire service fees.

Thereafter, United States government agencies objected to Huntington's square footage based fee, arguing that such municipal fees for fire services were disguised *taxes*. The federal government is immune, pursuant to the Supremacy Clause of the United States Constitution, from direct state and local taxation but is not exempted from charges that are not deemed to be *taxes*. The Fourth Circuit, applying the types of *tax* vs. *fee* tests advanced by the Appellant, reversed Judge Haden's district court ruling and held that Huntington's square footage based fire service fee is a *tax* for Supremacy Clause purposes. *United States v. Huntington*, 999 F.2d 71 (4th Cir. 1993), *cert denied*,

area of *ad valorem* property tax trump the plenary power granted in W.Va. Code § 8-13-13. The service fee has absolutely *no characteristics* of a back-door *ad valorem* property tax, so *Hare* provides no authority to support the Appellant's challenge to the ordinance.

Mr. Cooper's Brief further identifies at least three separate types of "taxes" and argues that the fee is *simultaneously* a capitation tax, an income tax, *and* a business and occupation tax. However, the service fee at issue does not share essential similarities with other revenue measures labeled as *taxes*.

510 U.S. 1109 (1994). In essence, the federal courts consider general user-based police and fire service fees adopted under W.Va. Code § 8-13-13 to be *taxes* for Supremacy Clause purposes based on the difficulty of measuring the precise benefit to the user paying the fee and the general nature of the services provided.

Emboldened by the Fourth Circuit decision, fee opponents challenged similar municipal service fees based on square footage in both federal and state courts. Ultimately, the federal court proceedings were a washout for the fee opponents because the Fourth Circuit determined Clarksburg's square footage based fire service fee to be a *tax* for purposes of the Federal Tax Injunction Act (28 U.S.C. § 1341), which generally divests federal courts of subject matter jurisdiction in state tax disputes. *Folio v. Clarksburg*, 134 F.3d 1211 (4th Cir. 1998). So the federal courts consider broad-based user fees under W.Va. Code § 8-13-13 to be *taxes* for Tax Injunction Act purposes.

Meanwhile, this Court was called upon to address the *fee* versus *tax* distinction in *Huntington v. Bacon*, *supra*. Acknowledging the Fourth Circuit's holding in *United States v. Huntington*, the State's highest Court stated: "we are less concerned with the label of the charge and more concerned with upholding our Constitution." 196 W.Va. at 466, 437 S.E.2d at 752. Even though the municipal service fee is a *tax* for certain federal law purposes, the Court refused to incorporate the federal *tax* versus *fee* analysis into state law challenges concerning the plenary authority granted to municipalities in W.Va. Code § 8-13-13. The only *tax/fee* concern for state law purposes is whether the operation and effect of a service fee in reality imposes a back-door tax that is otherwise constitutionally limited: the *ad valorem* property tax. The *Bacon* Court acknowledges that the square footage based charge might closely resemble a tax, but it is not an impermissible *ad valorem* tax, so it is not prohibited under the State Constitution.

This Court was presented with the opportunity to revisit *Bacon* in *Clarksburg v. Grandeotto, Inc.*, 204 W.Va. 404, 513 S.E.2d 177 (1998) pursued by the same fee opponents who were denied federal court review in the *Folio* case. In a *per curiam* opinion, this Court reaffirmed *Bacon*.

The relevance (or lack thereof) for state law purposes of the *fee* versus *tax* semantics exercise is further illustrated in the solid waste disposal fee context. Compare *Wetzel County Solid Waste Authority v. West Virginia Division of Natural Resources*, 462 W.Va. 1, 462 S.E.2d 349 (1995) (solid waste fee is a *fee* for state law purposes) with *Valero Terrestrial, Inc. v. Caffey*, 205 F.3d 130 (4th Cir. 2000) (a solid waste assessment fee is a *tax* for Tax Injunction Act purposes).

First, the service fee does not reflect the essential characteristics of a modern day income tax. The service fee is not based on net income from whatever sources derived, and there are no complex exemptions, sliding scales, credits, etc. *See, e.g.*, W.Va. Code §§ 11-21-1 *et seq.*

Second, the service fee is not like the capitation tax as it was formerly imposed in West Virginia because the fee does not draw distinctions based upon residency. The classification of users for purposes of the fee ignores residency, whereas place of residency and age were the exclusive basis for imposition of the capitation tax. W.Va. Code § 8-13-3 [1969].

Third, the service fee is not based on gross income or business class and is not imposed upon a person for the privilege of engaging in business in a particular market. *See* W.Va Code § 8-13-5. So the service fee is not a municipal business and occupation tax.

Moreover, unlike general revenue taxes, the service fee at issue does not fund general governmental functions and services unrelated to the users (*e.g.*, the user group is not called upon in the service fee ordinance to pay for fire protection, housing services, health services, recreation facilities, economic development, personnel, municipal planning, etc.). The charge is directly expended solely on police protection and street maintenance services that benefit the user classification paying the fee.

Finally, even if the service fee falls within a newly-formulated judicial tax identification standard (based on similarities with other revenue measures labeled as *taxes*), the tax label does not itself invalidate the revenue measure. There is no constitutional prohibition against the Legislature granting municipalities the plenary power to impose municipal “taxes.” Indeed, our constitution permits municipal taxation. *See* W.Va. Const. Art. X, § 9. The Appellant’s Brief does not point to any West Virginia constitutional limits respecting employment-based charges,

similar to limits on *ad valorem* property taxes, and the Legislature, in W.Va. § 8-13-13, does not prohibit a particular municipal fee because it may resemble a *tax*.

Accordingly, whether the service fee might share features of one or more types of *taxes* is not dispositive. It is unnecessary for this Court to develop a new test or criteria in this regard. The service fee on an identifiable class of substantial users to fund a reasonable portion of the costs of providing essential municipal services is not an impermissible tax.

III. CONCLUSION

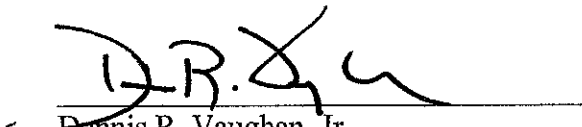
This Court should reject the Appellant's challenge to Charleston's service fee ordinance. First, the Legislature exercised its constitutional authority to grant broad powers to municipalities in this arena. Second, the ordinance is a reasonable exercise of plenary power granted by the Legislature to the City to impose and collect a police protection and street maintenance service fee from a broad classification of users. Third, the service fee is not an impermissible *ad valorem* property tax.

Moreover, to the extent this Court finds it necessary in this case to articulate new standards or requirements concerning the procedure or substance of municipal service fee ordinances adopted pursuant to W.Va. Code § 8-13-13, the West Virginia Municipal League respectfully requests that this Court consider the broad impact any such ruling would have on all West Virginia municipalities.

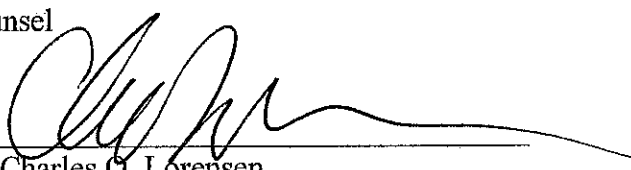
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No. 32612

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

THORNTON COOPER,

Appellant,

v.

CITY OF CHARLESTON,
a municipal corporation,

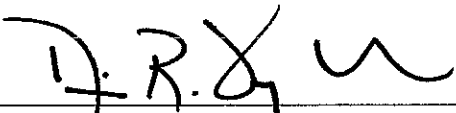
Appellee.

CERTIFICATE OF SERVICE

I, Dennis R. Vaughan, Jr., counsel for West Virginia Municipal League, Inc., hereby certify that on the 13th day of June, 2005, I served the foregoing BRIEF OF THE WEST VIRGINIA MUNICIPAL LEAGUE, INC. AS *AMICUS CURIAE*, by depositing a true and correct copy thereof in the regular United States mail, postage prepaid, in an envelope addressed to the following individuals:

Thornton Cooper
3015 Ridgeview Drive
South Charleston, WV 25303

Karen Tracy McElhinny, Esquire
Shuman, McCuskey & Slicer
1411 Virginia Street, East
Charleston, WV 25301



Dennis R. Vaughan, Jr.