

City Ambulance Service Charges Invalidated

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Editor's Note: This article is excerpted from an article in Municipal and Public Finance News, Summer 2004, and reprinted with permission.

Arborwood v. City of Kennewick concerned funding for a city ambulance system established under a statute that was not a model of clarity. That statute provides three ways for cities to fund ambulance services - two separate excise taxes and an ambulance service charge. Kennewick had initially imposed an ambulance charge, but later amended the ordinance to turn it into an excise tax. The State Supreme Court invalidated Kennewick's charge – or tax (the Court had trouble determining which it was).

The opinion did not provide a coherent interpretation of a statute that was not particularly coherent in the first place, but a few points can be gleaned from the decision. First, a true “excise tax,” according to the Court, must be “based upon on the voluntary action of the person taxed in performing the act, enjoying the privilege, or engaging in the occupation which is subject to the excise tax.” If the tax cannot be avoided, it is not a true excise tax. In this case, the Court could not discern any way that a business or individual could escape the tax by declining to engage in an identifiable activity. Thus, the Court concluded that Kennewick was essentially trying to impose an extra (and unauthorized) utility tax on water customers for ambulance services. Second, the Court suggested that if Kennewick's charge was actually an ambulance “utility” charge, then it was not proper because it was structured with flat rates for all residents regardless of benefit received or usage of the service. The court's discussion in this context suggests that ambulance charges could be based on individualized factors such as distance from the ambulance station, distance from a hospital, response time, frequency of ambulance calls for the type of customer served (e.g., single-family dwellings versus apartments), and effect of the service on insurance rates.

The lesson from this somewhat murky decision is, however, that the ambulance service statute should be amended to clarify the activity subject to an “excise tax.” In the meantime, it appears cities may need to restrict themselves to imposing ambulance charges based on factors such as those described above.