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## Bolt v. City of Lansing, 561 N.W.2d 423 (Mich. 1997)

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## MICHIGAN

**Bolt v. City of Lansing**, 561 N.W.2d 423 (Mich. 1997) (holding that city's charge to landowners for cost of separating storm water from sewage system and treating storm water runoff was a "user fee" and not a tax requiring voter approval under local law).

In an effort to comply with requirements of the Clean Water Act, the Lansing City Council adopted an ordinance that provided for the creation of a storm water enterprise fund. The project separated the storm water and sewage water, and provided for treatment of the storm water to remove pollutants before discharging the water into navigable waterways. The city financed the system's cost through an annual storm water service charge. The city imposed this charge on each parcel of real property in accordance with a formula that calculated each parcel's estimated storm water runoff. The ordinance also provided a system of administrative appeals by property owners who disputed the assessment of their parcel. Under this process, the property owner could reduce the storm water fee by showing that his parcel produced little or no storm water runoff, or that its actual runoff was less than the city's estimate. The city began billing property owners in December of 1995.

The Plaintiff ("Bolt") challenged the ordinance on grounds that it violated the Headlee Amendment to the Michigan State Constitution, which required voter approval of any increase in local taxes. The sole issue was whether the court considered the charge to landowners for the cost of separating the storm water a "tax" which required voter approval, or whether it was considered a "user fee" which did not require voter approval.

The court found that the Headlee Amendment to the State's constitution failed to define a tax or a fee. However, in examining old cases and comparing this service to other city services, the court concluded that the storm water charge was a "user fee" and not a tax. Thus, the ordinance did not violate the Headlee Amendment.

The court reasoned by analogy that if, as found in earlier cases, sewage disposal charges to landowners constituted "user fees," then the storm water charges were also "user fees." In addition, the charges did not lose their character as fees simply because the ordinance separated them from the original sewer disposal charge.

The dissenting opinion found that the policy of the Headlee Amendment is to prevent the legislature from increasing its spending and taxing without the approval of the voters, and this ordinance did just that. The dissent also contended that the majority misclassified the storm water charge as a fee although it had more characteristics of a tax within the meaning of the Headlee Amendment.

*Joseph A. Dawson*