



MUNICIPAL AUTHORITY TO CHARGE USER FEES

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MUNICIPAL FEES

This report discusses municipalities' authority to charge the following types of fees:

- *administrative fees*, which applicants for licenses, permits, or other approvals pay to cover the administrative expense of issuing these documents;
- *user fees*, which property owners pay for services they use or receive, such as water service; and
- *special assessments*, which property owners pay when a public improvement, such as a sewer line extension, benefits them more than others.

QUESTIONS

1. Do municipalities derive their power to impose fees for services from the state or federal government?
2. Does that power include exempting colleges and universities from paying those fees?
3. Does federal law exempt these institutions from paying municipal fees?
4. Does Yale University pay for municipal services?

The answers to some of these questions require a legal opinion, which the Office of Legislative Research is not authorized to give. Consequently, you should not regard this report as one.

SUMMARY

Municipalities derive their power to impose fees and other charges from the state. As discussed in OLR Report [2014-R-0037](#), the U.S. Constitution is silent on municipalities and other state political subdivisions. This leaves it to the states to define municipal powers, including specifying the types of fees municipalities may impose and the conditions under which they may do so. States generally allow municipalities to impose various types of fees and charges, including administrative and user fees and special benefit assessments, but only to cover the actual cost of issuing a permit, providing a service, or funding an improvement.

The states may, if they choose, exempt colleges and universities and other nonprofit organizations from paying municipal fees and assessments, but most do not (Urban Institute, [The Property Tax Exemption for Nonprofits and Revenue Implications for Cities](#), November 2011). Federal laws exempt these organizations from federal income taxes, but not state and local fees.

Some colleges and universities voluntarily make annual payments to their host cities to help defray the cost of the municipal services they receive. Under a 1990 memorandum of understanding, Yale University makes such contributions to New Haven for the fire services that the city provides to the university's tax-exempt property. From FY 2009-2014, these payments averaged about \$2.7 million per year ([City of New Haven Adopted Budget FY 2013-14](#)). The payments are in addition to the payments in lieu of taxes (PILOTs) the city receives from the state for tax-exempt private colleges and universities.

MUNICIPAL FEES AND OTHER CHARGES

Municipalities derive their authority to impose fees and other charges from numerous state statutes authorizing them to perform specific regulatory functions or provide specific public services and improvements.

Administrative Fees

Municipalities' authority to charge administrative fees derives from the statutes authorizing them to issue licenses and permits (e.g., building permits ([CGS § 29-263](#))) or approve specified activities (e.g., subdividing land for development ([CGS § 8-26](#))). The Connecticut Supreme Court has ruled municipalities can charge such fees even if the statutes do not explicitly allow it. In 1872, the Court rejected a claim that New Haven could not charge fees for issuing building permits because the city's special act charter did not specifically authorize such fees. In doing so, the court reasoned,

whenever a municipal corporation is authorized to be made (sic) by-laws relative to a given subject, and to require of those who desire to do any act or transact any business ... to obtain a license therefor, the reasonable cost of granting such license may be properly charged to the persons procuring them, *although the power to do so is not expressly given in the charter* (emphasis added) (*Welch v. Hotchkiss* (39 Conn. 140 (1872))).

Several years later the Court invalidated New Haven's license excavation fees because they went beyond issuance costs. After reviewing the fee schedule, the court noted "the cost of issuing a license can be no greater for eighteen hundred feet of pipe than for nine hundred, and yet the fee is doubled; the cost can be no greater for a paved than for an unpaved street, and yet the cost is raised from one dollar to fifty dollars." Consequently, these fees were "not designed for the sole purpose of paying the cost of licenses," but were "in reality an irregular assessment of taxes for revenue" (*City of New Haven v. New Haven Water Company* (44 Conn. 105 (1876))).

The Superior Court cited *Welch* and *New Haven Water Company* in 1998 when it upheld the Department of Public Utility Control's decision invalidating Hartford's excavation permit fees because they included the cost of inspecting and monitoring the work (*City of Hartford v. Department of Public Utility Control et al.* (1998 WL 61916 Conn. Super.)).

User Fees

User fees are charges municipalities impose on residents and taxpayers for using a service, like trash collection. They differ from administrative fees in that the fee amount increases depending on the amount of service a resident or taxpayer uses. Connecticut law specifically authorizes municipalities to impose such fees for water or sewer services ([CGS §§ 7-239](#) and [7-255](#), respectively). Connecticut courts have not ruled on whether municipalities can impose user fees for other services without specific statutory authorization. Consequently, these fees could be challenged as unauthorized taxes. But courts in other states have upheld such fees if they:

1. were charged in exchange for a service that benefits only the party receiving the service,
2. were imposed on a service a party can choose not to receive, and
3. covered only the cost of delivering the service (*McQuillin, Municipal Corporations*, § 44:24).

Special Benefit Assessments

Special benefit assessments are charges municipalities impose on the owners of property that particularly benefit from a public improvement, such as an extended sewer line. Unlike property taxes, which are imposed on all taxable property to fund general government operations, such as maintaining libraries and providing police and fire protection, special benefit assessments are imposed only on a property that benefits more than others from a specific improvement ([CGS § 7-249](#)).

Municipalities must strictly apply the statutory method for levying these assessments. "Any deviation from the rule that before assessments may become valid, they must be made pursuant to the methods prescribed by the legislature, must be resolved against the municipality's power to levy special assessments" (70c Am. Jur. 2d, Special or Local Assessments, § 4). Connecticut law, for example, allows municipal water pollution control authorities to "levy benefit assessments upon the lands and buildings in the municipality which, in its judgment, are especially benefited thereby, whether they abut on such sewerage system or not, and upon the owners of such land and buildings, according to such rule as the water pollution control authority adopt . . ." ([CGS § 7-249](#)).

In *Joseph W. Pepin, et al. v. City of Danbury, et al.* (171 Conn. 74 (1976)), the Connecticut Supreme Court invalidated a Danbury ordinance imposing a separate tax on city water and sewer customers exceeding the cost of acquiring, constructing, or operating water and sewer facilities. Allowing the city to impose such taxes would be inconsistent with laws allowing municipal authorities to assess customers for only the water or sewer services they receive, the Court stated.

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