



TEXAS MUNICIPAL LAW BULLETIN™

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"Fees" v. "Taxes"

Under state law, a city may charge a fee to regulate authorized areas, but is limited in the types of general revenue taxes that can be imposed. The Supreme Court of Texas declined to hear *Reagan National Advertising of Austin, Inc. v. City of Austin*. In doing so, the Supreme Court let stand the 2016 appellate ruling that struck down the city's annual billboard fee as a tax. The ruling also directed the city to refund \$198,450 to Reagan, which owns approximately 80% of the billboards in Austin. In *Reagan v. Austin*, the city defended its \$190 annual billboard charge as a fee and not as a tax arguing that it should be entitled to continue charging this registration fee to billboard users.

For a city charge to be a fee, the money must serve a regulatory purpose. In contrast, a tax's primary purpose is to raise revenue. *Reagan v. Austin*, 498 S.W.3d 236 (Tex. App.—Austin 2016, *pet. denied*). Judge Yeakel, who initially presided over this case at the federal level, found that Austin's billboard charge is a tax because the charge was in excess of the reasonable cost of registering billboards. Additionally, the collected billboard "fees" were deposited into the City's general-revenue fund and were used to

benefit the entire community, rather than for billboard registration purposes. The Court of Appeals upheld Judge Yeakel's determination of the billboard charge as a tax under issue preclusion.

The Court of Appeals, having established that Austin's billboard fee is a tax, next turned to whether that tax is permissible. The Texas Constitution limits a local government's taxation on outdoor advertising to half of the tax levied by the state. TEX. CONST. art. VIII, § 1(f). Because the state does not impose taxes on billboards, the Court of Appeals found that Austin's billboard tax is in violation of the Constitution and has been "void from its inception."

Each city should evaluate its fees to ensure that:

- (1) each fee adopted reflects the actual cost of regulation of the item the fee is applied to; and**
- (2) the money can be shown to be used for the regulatory purpose for which it was imposed.**

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