

WMC lawsuit paints Pewaukee transportation fee as unlawful tax

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Wisconsin Manufacturers & Commerce has filed a lawsuit against the Village of Pewaukee, arguing a transportation fee the village enacted last year is “unlawful and invalid.”

WMC says the village is charging all residential and commercial utility accounts a base fee of \$15.74 along with a usage fee that varies depending on the number of vehicle trips associated with the property.

“In simple terms, this transportation user fee is just an additional tax on property owners that violates both state law and the constitution’s uniformity clause,” Scott Manley, executive vice president of government relations for WMC, said in a statement.

Meanwhile, the League of Wisconsin Municipalities argues such fees should not be seen as a tax and local governments will continue to collect them until directed otherwise by the governor and the Legislature.

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According to Manley, the business group tried last year to obtain a copy of the manual used to calculate the usage fee, but its open records request was denied by the village.

“They said they don’t have one, that they contract for engineering services from a third party, and the third party has the manual, not them ... which we thought was kind of interesting,” Manley told WisBusiness.com. “So everybody is going to be paying this tax on their quarterly utility bill, and no one can know what it is ... it’s got a lot of problems. Also happens to be illegal.”

He argued that because businesses that see more vehicle traffic have to pay a higher fee, it “violates the uniformity clause of the constitution, which says that all property has to be taxed at the same rate.” And he noted local governments are prohibited from levying a tax unless the legislature grants them authority to do so.

“They haven’t explicitly said you can levy this tax, so they can’t do it,” Manley said.

He said the village is applying the fee as “a way around the state-imposed tax levy limits — we would argue an unlawful way around them.”

After WMC’s initial notice of claim was denied by the village in December, the group filed a lawsuit in Waukesha County Circuit Court seeking to end the fee.

Curt Witynski, deputy executive director for the League of Wisconsin Municipalities, says other communities including Neenah and Little Chute have implemented a similar transportation utility fee, noting “this is nothing new.”

“WMC argues that this is really a tax, it’s like a property tax and therefore needs to comply with all the rules and regulations and process that apply to property taxes,” Witynski said. “And we disagree ... I think it can be legitimately characterized as a fee. Until the Legislature and the governor enact legislation saying we can’t do this, that cities and villages can’t do this, we think we can.”

He pointed to an opinion written by the League’s legal team in 2020 supporting this perspective.

The village did not immediately respond to a request for comment.

See the WMC release:

<https://www.wmc.org/press-releases/wmc-sues-village-of-pewaukee-for-illegally--enacting-a-transportation-tax/>

See the complaint:

<https://media.wmc.org/wp-content/uploads/2022/04/11085512/002-Summons-and--Complaint.pdf>

See the League’s legal opinion here:

<https://www.lwm-info.org/DocumentCenter/View/4060/Funding-Streets-through--Transportation-Utility-Fees-final-61620>