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Pa. Supreme Court Holds Stormwater Management Fees Are Taxes

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Environmental Alert

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On April 30, 2026, the Pennsylvania Supreme Court released a long-awaited **opinion** about the ability of a municipality to assess charges to manage stormwater runoff. *Borough of West Chester v. Pennsylvania State System of Higher Education*, No. 9 MAP 2023. In the opinion, the Pennsylvania Supreme Court affirmed the unanimous 2023 Commonwealth Court opinion holding that stormwater management charges are taxes, not fees, and, thus, tax-exempt entities are immune from paying such charges. The Commonwealth Court based its decision on findings that the Borough did not enter into a voluntary, contractual relationship with the University, and the University did not receive discrete benefits through payment of the stormwater charge.

As background, the Home Rule Municipality of the Borough of West Chester owns and operates a small municipal separate storm sewer system (MS4) as part of its stormwater management system. In 2016, the Borough adopted an ordinance imposing a “stream protection fee,” otherwise known as the stormwater charge, upon owners of developed property who the Borough claimed benefitted from the stormwater management system to manage and control their stormwater entering the system. The amount of the stormwater charge is calculated based on the amount of impervious surface on the property.

Accordingly, the Borough sent West Chester University invoices for payment of the charge, in the amount of approximately $132,000 per year. However, the University did not pay the invoices, arguing that the charge was a tax, and, thus, the University was exempt from payment as an entity of the Commonwealth.

In affirming the Commonwealth Court, the Court identified a two-step test for distinguishing a fee for a service from a local tax, in which the Court first examined whether the municipality is performing the service in a “quasiprivate or public capacity.” If acting in a quasiprivate capacity, the Court would then determine whether “the associated charge is measured by the service rendered.” Looking at documents, including the relevant ordinance, the Court concluded that the Borough provides stormwater management in the Borough’s public capacity. As such, analysis of the second step of the test was not necessary. The Court held that, “Where a municipality is duty bound to provide a service for the public benefit and in the absence of a voluntary, contractual relationship between itself and those receiving the service, the associated charge is a tax.”

This holding will certainly impact municipalities’ abilities to raise funds to implement stormwater management and pollution control. An amendment to the Municipality Authorities Act signed by Governor Corbett in 2013, allowed certain local governments to create stormwater authorities. Such stormwater authorities are authorized to impose fees, but not taxes. The Court’s opinion raises questions about the continued ability of stormwater authorities to assess stormwater management charges to implement, manage, and update stormwater management controls. It also raises broader questions about a municipal authority’s ability to assess other fees against tax exempt entities. In its opinion, the Supreme Court acknowledged that there will be difficulties “in navigating the regulatory landscape and the environment problems posed by unmitigated stormwater,” but that the Court must adhere to the “basic principles that define taxation.”

Babst Calland attorneys continue to track these developments and are available to assist with stormwater-related matters. For more information on this development and other water matters, please contact Lisa Bruderly at (412) 394-6495 or **lbruderly@babstcalland.com**, Mackenzie Moyer at (412) 394-6578 or **mmoyer@babstcalland.com**, or any of our other **environmental attorneys**.