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Courts Say City of Troy Collected Illegal Taxes in Form of Excessive Permit Fees

Headlee violated but, without consequences (payment of legal fees), builders say justice further delayed

Lansing, MI - Today the Home Builders Association of Michigan (HBAM) announced they are one step closer to upholding the state's constitutional prohibition (known as the Headlee Amendment) on imposing hidden taxes. A lawsuit was filed by HBAM more than 12 years ago, asking the courts to halt an illegal revenue generating scheme in the City of Troy. At the time, the city privatized its construction permitting and inspection services and its provider agreed to remit 25% of all the permit fee revenue they collected back to the city. Michigan construction law says that local governments can only charge permit fees that bear a reasonable relation to the costs of conducting inspections and issuing permits.

The Michigan Supreme Court ruled in 2019 that the city's 25% kick-back arrangement violated state law. It then remanded the case back to a lower court to determine what overhead, if any, the city could collect under the law and whether the city's actions violated the state Headlee Amendment. In February, a circuit court ruled against the city on both issues, stating the city was continuing to violate the Construction Code Act by inappropriately calculating and charging for certain overhead items and that they had violated the Headlee Amendment. If a local government violates Headlee, plaintiffs are entitled to legal fees. However, the Oakland County Circuit Court Judge also ruled that even after 12 years of litigation and a prior circuit court ruling upholding HBAM's standing to bring suit, he didn't believe there was sufficient evidence that HBAM had standing to bring its Headlee claim and collect its legal fees.

"We have appealed this part of the judge's ruling and believe the Michigan Court of Appeals will reverse it. There is long-established precedent that industry associations have standing to bring suit on behalf of their members," noted Bob Filka, HBAM CEO. "The city has dragged its feet and used every technical delaying tactic possible to keep from being held accountable on this flagrant violation of our state's constitution. They continue to run up legal fees and a bill that city taxpayers ought to question. In fact, in response to our claim in the Court of Appeals, this week the city also filed an appeal—now trying to re-litigate every issue already determined by the courts. Justice delayed is usually justice denied, but we won't give up on this fight. To give up and not demand a return of our nearly \$600,000 in legal fees would deem the Headlee Amendment irrelevant in our state. We cannot and won't let that stand."

The Home Builders Association of Michigan, a professional trade association comprised of 19 local homebuilders associations around the state and their 5,000 builder, subcontractor, and supplier members. As the state's largest association representing construction-related sectors, the HBA of Michigan works to positively promote the building industry and impact legislative, regulatory and legal issues affecting housing attainability.

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