



2008 FEB -7 PM 5:30

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Office of the City Attorney
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February 19, 2008

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Honorable City Council
Oakland, California

City Council President Ignacio De La Fuente and Members of the City Council:

Subject: Report and Resolution Authorizing the City of Oakland to File an Amicus (Friend of the Court) Brief on Behalf of the League of California Cities Regarding Importance of Rules Prohibiting Class Actions to Seek Refunds of Certain Taxes and Fees

Summary of Action Requested

The League of California Cities has asked the Oakland City Attorney's Office to file an amicus (friend of the court) brief in a case regarding the importance of laws prohibiting class actions to seek refunds of certain taxes and fees.

The case is *Stutrud v. City of Rohnert Park*, First District Court of Appeal, A118408. In *Stutrud*, two plaintiffs seek refunds of sewer fees from the City of Rohnert Park. They seek not only refunds of the fees they paid, but refunds on behalf of all rate payers via a class action. However, California statutes and the Rohnert Park Municipal Code (like the City of Oakland's Municipal Code) prohibit class actions for such refunds. The City Attorney's Office requests that the Council authorize the City Attorney to file an amicus brief regarding the importance of retaining the laws that prohibit class actions in these circumstances.

Background

California Statutes provide specific procedures that permit residents to seek refunds of certain taxes or fees which they claim a public agency has mis-charged. But the statutes prohibit the filing of class actions. For example, Health and Safety Code section 5472 and Revenue and Taxation Code section 5140 et seq. authorize the payer of sewer fees to seek a refund of those fees on behalf of himself or herself. But these code sections also prohibit class actions. Similarly, the Rohnert Park Municipal Code (like the Oakland Municipal Code) permits claims for refunds but prohibits class actions.

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FEB 19 2008

Honorable City Council
February 19, 2008
Page Two

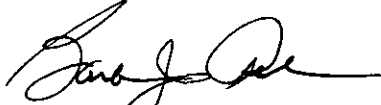
Two ratepayers have sued the City of Rohnert Park, claiming not just that the City owes them refunds of certain sewer fees, but claiming a right to collect refunds on behalf of all the sewer customers in the city via a class action. The trial court ruled that the action could proceed, but not as a class action. The plaintiffs appealed, requesting that the Court of Appeal allow the plaintiffs to proceed via a class action notwithstanding statutes and ordinances to the contrary.

The League of California Cities has asked the Oakland City Attorney's Office to submit an amicus brief to support the enforcement of these important laws.

Recommendation

We recommend that the City Council authorize the City Attorney to submit the amicus brief in the First District Court of Appeal asking the Court uphold the enforcement of laws which ban class actions claiming refunds of certain taxes and fees.

Respectfully submitted,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Kevin Siegel

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Kevin Siegel
Approved as to Form and Legality

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

Oakland City Council

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RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY OF OAKLAND TO FILE AN AMICUS (FRIEND OF THE COURT) BRIEF ON BEHALF OF THE LEAGUE OF CALIFORNIA CITIES REGARDING IMPORTANCE OF LAWS PROHIBITING CLASS ACTIONS TO SEEK REFUNDS OF CERTAIN TAXES AND FEES

WHEREAS, California statutes provide specific procedures which permit residents to seek refunds of certain taxes or fees which they claim a public agency has mis-charged, but which prohibit the filing of class actions; and

WHEREAS, many municipalities, including the City of Oakland, have adopted ordinances that permit a resident who claims he or she is due a refund of certain taxes and fees to present a claim to the city under Government Code section 910 et seq., but specifically prohibit the filing of a class action; and

WHEREAS, these statutes and ordinances fairly provide a mechanism by which anyone who claims they were illegally charged a fee or tax may seek a refund on behalf of himself or herself; and

WHEREAS, two plaintiffs in a lawsuit against the City of Rohnert Park are requesting the First District of the California Court of Appeal to reject the applicable prohibition against class actions in a case challenging a sewer fee imposed by Rohnert Park (*Stutrud v. City of Rohnert Park*, First District Court of Appeal, A118408); and

WHEREAS, the League of California Cities has asked the Oakland City Attorney's Office to submit an amicus brief (i.e., a friend of the court brief) which will address the importance of adhering to the law which permits one to seek refunds of his or her own payment of certain taxes or fees but which prohibits class actions; now therefore be it

RESOLVED: that the City Council authorizes the City Attorney to submit an amicus brief on behalf of the League of California Cities in support of the City of Rohnert Park in *Stutrud v. City of Rohnert Park*, First District Court of Appeal, A118408 .

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,
CHANG, AND PRESIDENT DE LA FUENTE

NOES -
ABSENT -
ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

10.21-CC
ORACOUNCIL

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