IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LISA KRAGNES, et al.,	)	
Plaintiffs,	)	EQUITY NO. CE 49273
VS.	)	RULING ON PLAINTIFFS' MOTION FOR: (1) AWARD OF ATTORNEYS'
CITY OF DES MOINES, IOWA,	)	FEES AND REIMBURSEMENT OF EXPENSES TO PLAINTIFFS'
Defendant.	)	COUNSEL; (2) PAYMENT OF OF INCENTIVE AWARD TO CLASS
	)	REPRESENTATIVE PLAINTIFF

STATEMENT OF FACTS

The background facts of this case prior to this Court's involvement are fully described in Lisa Kragnes v. City of Des Moines, Iowa, 714 N.W.2d 632. The Court will refer to this case as *Kragnes I*. In Lisa Kragnes v. City of Des Moines, Iowa, 810 N.W.2d 492, 496 (2012), hereafter referred to as *Kragnes II*, the Iowa Supreme Court discussed the background facts and proceedings prior to this Court's involvement as follows:

> **I. Background Facts and Proceedings.**
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> The background facts of this case are fully described in *Kragnes I*, 714 N.W.2d at 633-37. In 2004, the City of Des Moines considered raising property taxes to hire more police and fire-fighters, maintain the library's hours, and rehabilitate certain deteriorating neighborhoods. The City realized the state was phasing out sales and use taxes on residential gas and electric services and determined that it would be possible to increase the franchise fees on these services to raise revenue. After deciding this source of revenue was preferable to an increase in property taxes, the City renegotiated the franchise agreements with MidAmerican Energy (MEC), which provided gas and electric service for the city, and increased the franchise fee from 1% to 3% for both gas and electric service effective September 2004. Effective June 2005, the franchise fees were increased to 5% for each utility.

> Lisa Kragnes promptly filed a petition in equity on behalf of herself and all others similarly situated challenging the franchise fees as illegal taxes. She sought reimbursement for all illegal taxes paid through the allowable statute of limitations and sought an injunction prohibiting the City from charging such franchise fees in the future. The district court granted Kragnes's motion for summary judgment and the City appealed. We concluded in *Kragnes I* that
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> > a city has the authority to assess a franchise fee expressed as a percentage of the gross receipts derived from the utility's sale of its services to the public, so long as the charge is reasonably related to the reasonable costs of inspecting, licensing, supervising, or otherwise regulating the activity that is being franchised.
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> *Id.* at 642-43. Because there was a genuine issue of material fact as to whether all or part of the franchise fees were reasonable related to the City's administrative expenses in exercising its police power, we remanded to the district court for the determination of whether a class should be certified and for a trial on the merits. *Id.* at 643.

Plaintiffs' petition in equity was filed on July 27, 2004, after the City had passed these ordinances but before the City actually acted to implement the increase and the franchise fee from 1% to 3%. Notwithstanding there was now a case challenging the legality of the increased franchise fees, the City acted to implement the increase effective September 1, 2004. Then the City increased the franchise fees from 3% to 5% for each utility effective June 1, 2005.

Lisa Kragnes entered into a written agreement regarding attorney fees and expenses with class counsel. The agreement provided for a contingent fee in the amount of 33-1/3% of the gross amount received through the conclusion of trial and 45% of the gross amount received if a notice of appeal was filed. If any retrial was necessary, whether by result of motion or appeal, client and attorney were to negotiate a fair additional sum for the performing of such services. In addition to the

attorneys' fee, expenses incurred by counsel were the responsibility of Lisa Kragnes regardless of the outcome.

Judge Michael Huppert was the first judge to be involved in the case. After reviewing the written agreement regarding attorney fees and expenses, Judge Huppert did not certify the class. He was bothered by the fact that Lisa Kragnes did not have the resources to satisfy the potentially significant expense of this case as a class action. As a result, Lisa Kragnes and counsel amended the fee arrangement to provide that counsel would advance litigation expenses and costs with reimbursement of the same being solely contingent on the outcome. In other words, as the Court understands it, if plaintiff class was not successful, counsel was going to bear the expenses and cost of litigation. Counsel also renewed its request to Judge Huppert for reconsideration for class certification.

Prior to Judge Huppert acting on the Application for Reconsideration, the City filed an Interlocutory Appeal which was accepted by the Iowa Supreme Court. In *Kragnes I*, the Iowa Supreme Court reaffirmed that the law in Iowa prohibited the imposition of a fee by a City for revenue collection. The Court found Judge Huppert's ruling entered on January 5, 2006, was correct on the law governing the City's imposition of franchise fees. However, the Supreme Court did remand the case for the district court to "determine what, if any, part of the franchise fees are related to the City's administrative expenses in exercising its police power, including the costs associated with any incidental consequences of the franchised services." *Kragnes I*, 714 N.W.2d at 643. The Iowa Supreme Court further held that if the District Court determined that all or part of the franchise fees are reasonably related the City's administrative expenses, the Court was to enforce the ordinances up to an amount equal to the fees reasonably related to the City's administrative expenses in exercising its police powers. *Id.*

On remand following *Kragnes I*, Judge Huppert approved the amended fee agreement between plaintiff and her counsel and certified the matter as a class action in his ruling of June 23, 2006. Crucial to Judge Huppert's reconsideration and a certification of the class was counsel of record placing himself in a position to suffer the financial consequences should counsel not be successful in the action resulting in no monetary relief awarded to the class members.

In *Kragnes II*, 810 N.W.2d page 503, the Iowa Supreme Court defined the goal of a class action and discussed what was involved in this case as follows:

> **[11, 12]** As we have described in the past, our class action rules "are remedial in nature and should be liberally construed to favor the maintenance of class actions." *Comes v. Microsoft Corp.*, 696 N.W.2d 318, 320 (Iowa 2005). The goal of the class action rule is the
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> > "efficient resolution of the claims … of many individuals in a single action, the elimination of repetitious litigation and possibly inconsistent adjudications involving common questions, related events, or requests for similar relief, and the establishment of an effective procedure for those whose economic position is such that it is unrealistic to expect them to seek to vindicate their rights in separate lawsuits."
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> Id. (citation omitted).
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> The litigation of this case has resulted in two Supreme Court opinions, a forty-nine page district court decision after a fourteen-day bench trial involving the testimony of twenty-eight witnesses, including eight experts—three for the City and five for Kragnes. The record fills five bankers' boxes. However, Kragnes's claim standing alone would likely fall within the jurisdictional limit of the small claims court. We think this case demonstrates the very necessity and importance of class action litigation both for the plaintiffs and for the City. The likelihood of a plaintiff bringing such a complex suit requiring substantial resources to litigate in small claims is highly unlikely. And if she, and scores of thousands of others like her, did bring their claims individually, it could easily overwhelm the legal department of the City and the resources of the Polk County district court and would likely result in inconsistent adjudications. We affirm on this issue.

In *Kragnes II*, the Iowa Supreme Court, with a few modifications, for the most part affirmed the decision of this Court, and agreed that the excess amount collected be refunded to those from whom the excess fees were collected. The responsibility for entry of a final judgment and distribution of the funds to the class was left to the responsibility of this Court.

Class counsel was required to defend motion after motion filed by the City from the very beginning. This included repeated challenges to class certification and decertification, two interlocutory appeals to the Iowa Supreme Court regarding the City's limitation in assessing franchise fees, and the City's petitioning the United State's Supreme Court for a writ of certiorari which was successfully defended by class counsel.

This case has been in our courts since 2004. To say it was highly contested would be a gross understatement. The history of this case shows that the City, while it was entitled to do so, erected one barrier after another in an attempt to prevent the class from being successful in obtaining a refund. Almost without exception, class counsel was successful in dismantling each of those barriers.

On several occasions the City looked to the Iowa legislature for relief. In March 2007 the City lobbied to change the franchise fee law. This resulted in SF324 being introduced. If the bill passed, among other things, it would have made all past fees charged by cities authorized and legal. This bill did not pass.

In April 2009, SF478 passed allowing cities to charge up to 5% franchise fees. It denied the City's request to make the law retroactive.

In May 2012, the Iowa legislature passed a bill that was subsequently vetoed by Governor Terry Branstad. If not for his veto, the bill would have allowed the City, subject to approval in a referendum, to raise the franchise fee from 5% to 7.5% for a period of seven years. The purpose of the bill was to allow the City to pay its entitled residents their refunds.

In April 2013, the City once again lobbied the Iowa legislature for a law similar to the one vetoed by Governor Terry Branstad in May 2012. This measure passed both houses subject to approval in a referendum. It would allow the City to raise the franchise fee from 5% to 7.5% for a limited period. This legislation was signed by Governor Terry Branstad in June 2013. The referendum has yet to take place.

Class counsel was required to hire its own lobbyist in opposition to the City's attempts to have the franchise fee law changed as discussed above. They also retained a law firm to advise them on tax related matters.

The City views the legislation passed on its behalf as legislative affirmation what the City did was an attempt at good government and has allowed that good government to continue. In May of 2013, the City asked this Court to partially dissolve the "no contact" order with the class in order for the City to communicate with certain members of the class in hope of getting those members to decline their refund. As part of the hearing on this issue, the City presented the Court with Defendant's Exhibit A. Bullet point 5 of Exhibit A provides as follows: **"THE LEGISLATURE HAS ALLOWED THAT GOOD GOVERNMENT TO CONTINUE.** During the pendency of the litigation, legislation was enacted allowing cities in Iowa to collect up to 5% franchise fees going forward. This legislative action stands for the proposition that what the City did was an appropriate government function, even if procedurally infirm."
What the City deems "procedurally infirm," this Court and the Iowa Supreme Court deemed an illegal tax on its residents.

The City does not question the competency, diligence, legal ability, or quality of advocacy of plaintiffs' counsel. Nor does it question the right of plaintiffs' attorneys to obtain an award of reasonable fees from the common fund. It does, however, contend that the fees and expenses that the attorneys seek to have paid to them from the common fund are excessive. The City does not object to an award to Lisa Kragnes as the named plaintiff in the case, but asks the Court in granting the requested award to her at the same time require her to pay her share of allowable franchise fees that the City has been enjoined from collecting from her since early in this litigation. Judge Huppert enjoined the City from exacting any franchise fee from Lisa Kragnes during the pendency of this action. This Court discerns no reason to revisit that issue

The work of class counsel is not yet complete. They will be required to oversee distribution of refunds to the class and defend against any further legal issues disputed by the City during the processing of the refunds and possible future appeals to the Iowa Supreme Court.

The work of class counsel has been exemplary. They have met every challenge posed by the City during the pendency of this case. Between counsel and their respective staffs, more than 10,600 hours have been expended in this case. 8,928 hours can be attributed to the work by the senior attorneys and approximately 1,707 hours attributable to other attorneys, paralegals, and law clerks.

There would have been no common fund to make refunds to the class members without the time, effort, and determination of class counsel who not only risked losing millions of dollars in compensation based upon an hourly rate involving in excess of 10,600 hours, but also being responsible for litigation expenses in excess of $560,000 that class counsel have already paid.

The City does not claim that class counsel and their staff have not expended the hours claimed by them in this litigation. The City does question whether all of the time was necessary. Furthermore, the City questions the expense reimbursement class counsel is seeking in the amount of $560,597.79. The City states that the list deserves scrutiny as it includes expenses for Attorney Bill Wimmer and the Nyemaster law firm. The City also questions the expense for EnQ Strategies/Jamie Buelt.

Attorney Bill Wimmer, a lobbyist with over 30 years' experience of lobbying in the state of Iowa, was retained to provide the lobbying services required as a result of the City's efforts to secure a change in Iowa law authorizing a retroactive change in the law to authorize the illegal fees in this case. The Nyemaster Goode law firm was retained to advise class counsel as to tax matters associated with the administration and distribution of refunds to class members. EnQ Strategies/Jamie Buelt was hired as a publicist which class counsel admits is unusual in private litigation cases. They thought it was necessary to hire a publicist in this case to assist counsel and Lisa Kragnes with shielding, managing, and responding to media requests and informing the public of the issues involved.

The Court is of the opinion that with the exception of the publicist, all of the expenses including the lobbyist and tax attorneys were necessary, and the expenses related to same should be reimbursed. While the Court does not question the time or value of the publicist to class counsel, the Court does not believe that this is the type of expense that is necessary and declines to reimburse class counsel for the expense of retaining the publicist in the amount of $43,157.75. Class counsel's request for expense reimbursement in the amount of $560,597.79 is reduced and expenses will be reimbursed on the amount of $517,440.00.

CONCLUSIONS OF LAW

Class actions are a necessary part of the legal system. They allow a large class of individuals who have been injured in a like manner an opportunity to redress the wrong done them through the courts in one common action which they could not have done individually because the cases are difficult and individually they don't have the money needed to pursue their claims. (*See Theodore Eisenberg and Geoffrey P. Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008 Journal of Empirical Studies, Vol No. 7, No. 2, pp. 248-281 (2010) (online publication of May 10, 2010, pp. 1-33)*.

The Court incorporates by reference herein the Iowa Supreme Court's statement as to the necessity and purpose of class actions as discussed in *Kragnes II*, 810 N.W.2d, page 503, heretofore cited in the Findings of Fact at page 4.

Compensating an attorney in a class action differs greatly from normal litigation in that in the latter the attorney's fee is reached by private agreement. This is not possible due to the nature of a class action case. In determining compensation, the Court must keep in mind the essential role class actions play in the legal system. A certain balance must be maintained. If attorneys willing to handle class actions are not fairly compensated, the number of attorneys willing to handle these cases significantly diminished. However if attorneys are awarded an excessive percentage of the amount awarded the class members courts may be inundated with class action cases by attorneys which could result in attorneys receiving an excessive share of the award in cases that are brought. (*See Theodore Eisenberg and Geoffrey P. Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008 Journal of Empirical Studies, Vol No. 7, No. 2, pp. 248-281 (2010) (online publication of May 10, 2010, pp. 1-33 at pp. 1.)*

It is undisputed this Court has the authority to award attorney fees and expenses in a case such as this one. This authority includes making the award of such fees on a percentage basis against the entire common fund helping to prevent inequity by spreading the fees proportionately among those benefited by the class action. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. at 749 (1980).

Iowa Rules of Civil Procedure 1.261-1.278 govern the processing of class actions. I.R.C.P. 1.275(3) adopts the "common fund" theory in that it provides that if a prevailing class recovers a judgment for money or other award that can be

divided for the purpose, the court may order reasonable attorney fees and litigation expenses of the class to be paid from the recovery. The case of *King v. Armstrong*, 518 N.W.2d, 336, 338 (1994), is authority for this Court to award attorney fees in a class action out of the common fund based on a percentage of the fund awarded to the class. However, class action attorney fees are subject to control of the court. While this Court may award fees based on a contingent fee agreed to between the class representative and class counsel, it is not bound to do so.

In determining the appropriateness of attorney fees in a class action, I.R.C.P. 1.275(5) provides the court shall consider all of the following factors:

a. The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered.
b. Results achieved and benefits conferred upon the class.
c. The magnitude, complexity, and uniqueness of the litigation.
d. The contingent nature of success.
e. [Not applicable here because the case established a common fund and a proportion of the award is sufficient to defray the fees and expenses.]
f. Appropriate criteria in the Iowa Rules of Professional Conduct.

There are also factors for the Court to consider in determining the reasonableness of attorney fees set out in the Iowa Rules of Professional Conduct in Rule 32:1.5(a). Those factors are as follows:

1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3) The fee customarily charged in the locality for similar legal services;
4) The amount involved and the results obtained;
5) The time limitations imposed by the client or by the circumstances;
6) The nature and length of the professional relationship with the client;
7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
8) Whether the fee is fixed or contingent.

As hereafter discussed the Court has given due consideration to the factors discussed above in an effort to determine a fair and reasonable attorneys' fee to be awarded class counsel in this case.

a. The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered.

It is a given that class counsel had the competency, intelligence, legal ability, or quality of advocacy to process this class action from beginning to end. This is conceded by the City. The City does, however, contend that the fees and expenses that the attorneys seek to have paid to them from the common fund are excessive.

Attorneys Schroeder, Stoltze, and Brick have provided the Court with individual affidavits in support of their application for award of attorney fees and expenses. Each affidavit sets forth the qualifications of each attorney to handle class action litigation. In addition, each attorney sets forth the hours expended by that individual attorney and his staff in this case. Attorney Schroeder, to the date of the filing of the application, recorded 2,121.58 hours spent working on this case; other attorneys in his office recorded 96.6 hours; and paralegals and law clerks in his office recorded 126.4 hours, for a total of 2,344.58 hours for the firm in the processing of this case.

Attorney Stoltze has recorded 4,301.6 hours work on this case; other attorneys in his office have recorded 537.5 hours; and paralegals for his office have recorded 854.14 hours, for a total of 5,693.24 hours for the firm in the processing of this class action.

Attorney Brick has expended 2,504.88 hours of work on this case; a partner of Attorney Brick has expended 8.3 hours, and an associate attorney 10.4 hours; paralegals for his office have recorded 73.4 hours, for a total of 2,586.58 hours for the Brick office in the processing of this class action.

As a result, total hours expended in the processing of this class action by the respective attorneys and their staff totaled 10,624.44 hours. Of this total amount, 8,928.06 hours is attributable to the work of the three senior attorneys.

In addition to their own affidavits, class counsel has provided the affidavits of three attorneys as expert witnesses in support of their request for attorney fees in the amount of 37% of the common fund. The three attorneys include Steve Wandro, Glenn Norris, and Roxanne Conlin. These three attorneys

are outstanding attorneys and experienced in class action cases. They are well qualified to render an opinion as to attorney fees in a case of this nature. They all agree that the attorneys in this case are well-deserving of the percentage fee requested. Notwithstanding the qualifications of these lawyers the court is not bound by their opinions.

b. Results achieved and benefits conferred upon the class.

The City argues there was no financial benefit conferred upon the class due to the amount of refund to be received by most of the class members. This court strongly disagrees. Not only was there a financial benefit to the class but a non-financial benefit that the class received that should not be categorized as insignificant.

The word "principal" and "principle" are words that sound-alike (homophones). However, they have totally different meanings. The Oxford American Dictionary Heald College Edition, 1979, defines the word "principle" in part as follows: "a basic truth or general doctrine that is used as a basis of reasoning or a guide to action or behavior - a personal code of right conduct." It defines "principal," "a capital sum as distinguished from the interest or income on it."

This case cannot be measured in the monetary benefit to the class alone. This case has established a very important "principle" not only for the residents of the City of Des Moines, but every other utility paying resident in any city in this state. This case should send a message to all cities that no matter how well-intentioned their conduct or the purpose for which the money taken from its residents is used to benefit the residents, cities in this state must adhere to the rule of law. Hopefully the consequences that have resulted from this court's ruling will go a long way to ensure the adherence to the rule of law by our governing units.

In addition to the direct financial benefit of a refund, there was additional financial benefit to residents of cities throughout the state. This additional financial benefit was best described by class counsel in support of their brief requesting attorney fees and expenses where they state as follows:

> Additionally, the City's initial position in this case was that the law allowed it the ability to assess a franchise fee without restriction. The fee could be $5 per month or $500 per month, or 1%, 3% or 5% or more or less. (See October 11, 2005 City Brief in Support

> of City's Motion for Summary Judgment, pp. 5-6.) The processing of this case served to define and delineate statutory case law which limits fee exactions by cities to the cost incurred in administering the activity being regulated, and certainly served to remind the City of the limitations established in the law. As to gas and electric franchise fees this case has served to specifically delineate the types of regulatory expenses which are proper in assessing a regulatory fee. While the legislation enacted in 2009 by the Iowa legislature allows for an imposition of a gas or electric franchise fee up to the amount of 5% irrespective of the actual amount of regulatory cost, the legislation places a limit on that exaction and affords and requires that the users who will be so taxed be supplied with a process by which they are informed of the needs, amounts and the usage to which the funds will be placed. Accordingly, the legislature has thereby placed specific amount limitations upon municipalities and imposed procedural safeguards for the class members on this new source of taxation revenue. This issue was a specific result from the issues engendered and determined in this class action.

(See BRIEF IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR: (1) AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES TO PLAINTIFFS' COUNSEL … pages 12 and 13)

The City's position in this case was that the total amount of administrative expenses for maintaining and managing both utilities in their rights-of-way was $19,573,256 per year. Class counsel successfully challenged this amount and showed that the City was wrong and that approximately 8% of the total amount claimed could be attributed to the administrative expenses related to the utilities. If class counsel had not been successful in this challenge, it could have resulted in city officials raising the franchise fee assessed to approximately 8% of the rate payers' utility bills, and not to the percentage found by this Court that was allowable in this case, and in excess of the 5% fee now statutorily set as the limit. Surely this must be considered a financial benefit to the class as well as the refund ordered by this Court. It is also worth mentioning that the city argued that there should be no refund of any illegally charged franchise fees because the residents of the City were benefitted by the additional services provided to its residents with the funds received from the excessive franchise fees.

c. The magnitude, complexity, and uniqueness of the litigation.

There can be no doubt concerning the uniqueness of the litigation, its complexity, or its magnitude.

Simple cases do not require the time, effort, and expense expended by class counsel in this case in the processing of pretrial, trial, and post trial matters. The Court believes this is a case of first impression as it pertains to the issue of what specific cost of supervision, regulation, and administration of activity by a city was valid in establishing a franchise fee. The time, effort, ability, and determination of class counsel in this case established a roadmap giving guidance for similar class action cases. This roadmap consists of caution and warning signs for cities as it pertains to franchise fees exacted from its residents. Cities should now understand the difference between appropriate fees charged to the residents and the illegal exaction of fees amounting to illegal taxation.

d. The contingent nature of success.

It will be obvious to anyone familiar with the history and background of this case that success was as contingent here as it would have been in any case.

There is no doubt of the great risk class counsel placed themselves in as can be seen by the history of this case over nine years and its involvement in the Iowa courts.

e. Vindication of an important public interest.

In cases awarding attorney fees and litigation expenses under Rule 1.275(4), because of the vindication of an important public interest, the economic impact on the party against whom the award is made.

This factor is not applicable here because the case established a common fund and a proportion of the award is sufficient to defray the fees and expenses.

f. Appropriate criteria in the Iowa Rules of Professional Conduct

Iowa Rule of Professional Conduct 32:1.5(3) provides the fee must be a fee customarily charged in a locality for similar legal services. The Court has reviewed the affidavits of Attorneys Stoltze, Schroeder, and Brick, all of whom have several years of experience in the practice of law in the state of Iowa. They have been involved in contingency fee cases consisting of class action and non-class action litigation. The Court is also of the opinion that the local standard and

customary rate for contingency work in non-class actions can range from 33.33% to 45% of the recovery obtained after notice of appeal has been filed.

In addition to the affidavits of counsel involved in this class action, the Court also has received affidavits from Attorneys Steven P. Wandro, Glenn Norris, and Roxanne Conlin, all of whom have outstanding reputations as attorneys experienced in non-class action and class action cases and the attorney fees charged. The court concludes that the contingent fee agreed to in this case would be considered customary in the locality for similar services provided in civil litigation.

Iowa Rule of Professional Conduct 32:1.5(7) relates to experience, reputation, and ability of the lawyers performing the services.

As already mentioned, the City does not question the competency, diligence, legal ability, or quality of advocacy of plaintiffs' counsel. (See page 2 of Response to Plaintiffs' Motion for Award of Attorney Fees, et cetera.) The Court agrees that class counsel has the experience, reputation, and ability in performing the services required in this class action case.

This Court does not dispute that in Iowa, as well as other jurisdictions, under the proper set of facts and circumstances, courts are authorized to approve contingency fee agreements between a class and class action attorneys. However, the Court is not bound to do so in each and every case. It depends on the case. The appropriate attorney fee must be viewed in the light of what is fair, reasonable, just, and equitable on a case by case basis.

This case does not involve Microsoft money, tobacco industry money, or the money of automobile manufacturers who have been involved in class action cases resulting in substantial monetary awards to class members. This is a class action case where the sum $40 million ordered to be refunded truly belongs to the residents of the City of Des Moines, less reasonable attorney fees and expenses incurred in the processing of the case.

As pointed out by defense counsel for the City, this class action involved a different category of litigation involved in most of the class action cases. It wasn't an antitrust case, a security fraud case, or a tort case. This case involved the

City of Des Moines illegally taxing its residents through the exaction of excess franchise fees.

The City of Des Moines is not a private party which can look to private sources to respond to this court's order that it must refund money to its utility paying residents. It is not the city council members that will pay this judgment out of their own pockets. As already stated this Court believes this is a case of first impression and is also unique in that the very people illegally charged excess franchise fees are now going to be called upon to pay themselves the refunds to which they are entitled, including the attorney fees and expenses that are claimed here. For every dollar paid to class counsel as attorney fees and expenses, those dollars will be paid from the common fund of approximately $40 million, thus reducing the refunds to the city residents.

Because of the budgetary constraints on the City, the City has stated that the refunds, attorney fees, and expenses will be paid from an increase in franchise fees depending upon the result of the referendum or by the City increasing property taxes and/or reducing services normally provided and needed by the City's residents.

The responsibility of determining the appropriate attorneys' fees and expenses in this case is within the discretion of this Court under the requirements of the rules discussed above. This Court has considered the totality of circumstances involved in this case in reaching what this Court believes is a fair and reasonable attorneys' fee and reimbursement for expenses and court costs. This is the polestar guiding the Court's decision in this matter. The Court is also well aware that what this Court believes is fair and reasonable, "like beauty," is in the eyes of the beholder.

This is not a case about punishing the City. The City is made up of its residents, and it is the residents that bear the burden of the City's illegal conduct in this case. This Court believes that the city council of Des Moines, on a day-to-day basis, does an exceptional job performing the tasks required of them as the governing unit of this city. However, in this case it fell way short of the mark. Though their exacting of the franchise fees was well-intentioned and the funds received were spent for the benefit of the City's residents, the act resulted in an illegal taxation of those residents and places the City and its residents in the predicament they find themselves in at this time.

In Chief Justice Mark Cady's dissent in Kragnes,II he recognized that attorney fees in a class action such as this would run into the millions of dollars when he stated "... There is little utility in suing yourself, especially when the associated attorney fees and litigation expenses will run into the millions of dollars...". Kragnes II at 517.The attorneys are entitled to be well paid for their work. Still this court knows it must strike a balance as to what is fair to the attorneys and what is fair to the residents of this city. The fees will be paid by the residents of the City of Des Moines. The money used to pay the attorney fees and expenses will come from the very residents who have already been wronged in the illegal exaction of franchise fees and who may now be called upon to remedy that wrong in the form of increased franchise fees, increased property taxes or the reduction of public services that the residents need and count on. The balance mitigates in favor of the residents.

Based on this court's findings, conclusions and analysis discussed above the Court does not believe an award of 37% of the common fund or approximately $15,000,000 is fair to the class members who have already suffered financially through no fault of their own as a result of the illegal franchise fees they were required to pay.

Under the circumstances of this case the court concludes that an appropriate and fair attorneys' fee for class counsel in this matter would be $ 7,000,000.00 which represents approximately 18.00% of the common fund. The Court further finds that expenses should be reimbursed to the class counsel in the amount of $517,444.00 and costs taxed to the City in the amount of $74,867.37 as set out in a separate ruling filed this day. The costs shall be paid into the common fund. Class representative Lisa Kragnes shall receive $7,500.00 as class representative.

Class counsel shall prepare a Judgment Entry based on the court's rulings filed this date and submit same to defense counsel for review and comment prior to presenting same to the court.

Dated 24th of Oct., 2013.

Joel D. Novak

JOEL D. NOVAK, SENIOR JUDGE
FIFTH JUDICIAL DISTRICT OF IOWA

COPIES TO:

Brad Schroeder
Hartung & Schroeder LLP
Homestead Building, Ste. 300
303 Locust Street
Des Moines, IA 50309
Schroeder@handslawfirm.com

Bruce H. Stoltze
Stoltze & Updegraff, P.C.
300 Walnut Street, Ste. 260
Des Moines, IA 50309
Bruce.stoltze@stoltzelaw.com

Jeffrey D. Lester, City Attorney
Mark Godwin, Deputy City Attorney
City Hall
400 East First Street
Des Moines, IA 50309
JDLester@dmgov.org
magodwin@dmgov.org

Mark McCormick
Belin McCormick
666 Walnut Street, Ste. 2000
Des Moines, IA 50309
mmccormick@belinmccormick.com