

No. 127547

IN THE
SUPREME COURT OF ILLINOIS

RITA LINTZERIS, et al., individually and)	On Appeal from the Appellate
on behalf of all others similarly situated,)	Court of Illinois, First Judicial
)	District, Case No. 1-19-2423
)	
Plaintiffs-Appellants,)	
)	
v.)	There Heard on Appeal from the
)	Circuit Court of Cook County,
)	Illinois, Chancery Division
CITY OF CHICAGO, a Municipal)	
Corporation,)	Hon. Anna M. Loftus and
)	Hon. Kathleen M. Pantle
Defendant-Appellee.)	Case No. 17-CH-11375

AMICUS CURIAE BRIEF OF THE
ILLINOIS COUNTIES RISK MANAGEMENT TRUST

Brian M. Funk, #6277501
OKGC Law, LLC
650 Dundee Road, Suite 475
Northbrook, IL 60062
Phone: 847/291-0200
Fax: 847/291-9230
Attorney for Illinois Counties Risk Management Trust

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CYNTHIA A. GRANT
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INTRODUCTION

Illinois home rule municipalities, including the City of Chicago (hereinafter the “City”), have enacted ordinances that impose fines on vehicle owners that use, or allow their vehicles to be used, in the commission of certain offenses. These home rule municipalities are authorized to impose such charges pursuant to Article VII, Section 6, of the Constitution of the State of Illinois.

In the case at bar, the First District Appellate Court correctly classified the monetary charge imposed under City of Chicago Ordinance No. 2-14-132 (hereinafter the “Ordinance”) as an “administrative penalty or fine” — a finding that Plaintiff did not dispute. *See Lintzeris v. City of Chicago*, 2021 IL App (1st) 192423-U, ¶ 49. Based on that classification, the appellate court correctly found that the City’s Ordinance was not preempted by 625 ILCS 5/11-208.7. *Id.* In addition to the plain and unambiguous language of the Ordinance, the charge imposed under the City’s Ordinance is a “fine” for the reasons set forth *infra*.

ARGUMENT

I. THE MONETARY CHARGE IMPOSED UNDER THE CITY'S ORDINANCE IS A "FINE" BECAUSE IT HAS ALL OF THE ATTRIBUTES OF A "FINE."

To determine what test should be applied to a statute imposing a monetary charge, courts ascertain whether the legislature intended the charge to be a fine or a fee. *People v. Gildart*, 377 Ill.App.3d 39, 41 (1st Dist. 2007) (citing *People v. Jones*, 223 Ill.2d 569, 597-98 (2006)). To determine this, a court must look at the actual attributes of the charge at issue. *Jones*, 223 Ill.2d at 599.

A fine is a pecuniary punishment payable to the public treasury. *People v. Graves*, 235 Ill.2d 244, 250 (2009). A charge that varies depending on the degree of a defendant's offense is punitive in nature and therefore a fine. *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21.

A fee is a charge that is "taxed by a court [,] such as a filing fee, jury fee, courthouse fee or reporter fee." *Jones*, 223 Ill.2d at 581. A fee is a "charge for labor or services, especially professional services." *Id.* Unlike a fine, a fee is a collateral consequence of a violation. *People v. Guadarrama*, 2011 IL App (2d) 100072, ¶ 9.

The most important factor in the fee/fine analysis is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant. *Jones*, 223 Ill.2d at 600.¹ A charge is a fee if and only if it is intended to reimburse the government for some cost incurred in defendant's prosecution

¹ In this case, the prosecution is in the form of a quasi-criminal administrative adjudication pursuant to the City's Ordinance.

(emphasis added). *Graves*, 235 Ill.2d at 250-51.² The fact that a charge is imposed after a conviction is another factor courts can consider. *Id.* at 251.

A. **The Charge Imposed Under The City's Ordinance Is A "Fine" Because It Does Not Reimburse The City For Any Costs Incurred In The Quasi-Criminal Administrative Adjudication.**

The charge at issue in this case does not reimburse the City for costs incurred in prosecuting vehicle owners in administrative hearings. Rather, the Ordinance imposes a monetary charge on vehicle owners when those vehicle owners use, or allowed their vehicles to be used, in the commission of offenses that jeopardize the public's health, safety and welfare. Nothing about the charge remotely resembles reimbursement for costs incurred by the City such as a filing fee, jury fee, courthouse fee, court reporter fee, probation fee or any other charge that Illinois courts have deemed to be a "fee." Therefore, the charge imposed under the Ordinance should be classified as a "fine."

² Recently, in *Saladrigas v. City of O'Fallon*, the appellate court erred by relying on a typographical error in *Graves*. *Saladrigas v. City of O'Fallon*, 2020 IL App (5th) 190466, ¶ 37. In *Graves*, the Court inadvertently changed the "em dash" in the rule laid out in *Jones* to the word "or." See *Jones*, 223 Ill.2d at 582 (holding that "a 'fee' or 'cost' seeks to recoup expenses incurred by the state – to 'compensat[e]' the state for some expenditure incurred in prosecuting the defendant"); *Graves*, 235 Ill.2d at 250 (stating that "[a] 'fee' is defined as a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant"). The typographical error in *Graves* changed the meaning of the *Jones* rule and led to the appellate court misinterpreting the law.

B. The Charge Imposed Under the Ordinance Is A “Fine” Because It Has All Of The Other Attributes Of A “Fine” And None Of The Attributes Of A “Fee.”

In addition to the fact the charge does not reimburse the City for prosecuting vehicle owners — which is the dispositive issue in the fee/fine analysis — the charge also possesses every other attribute of a “fine” recognized by Illinois appellate courts.

1. The charge imposed under the Ordinance must be classified as a “fine” because it is punitive in nature.

The charge imposed under the Ordinance clearly has a punitive component.³ Like a criminal fine, the City’s fine punishes vehicle owners when an offense is committed. The punitive component of this type of charge has been recognized by both state and federal courts. In *McGrath v. City of Kankakee*, for example, the Third District Appellate Court held that:

Impoundment ordinances that impose penalties of \$500 or more are constitutional because they serve the legitimate purpose of deterring criminal activity.

Impoundment ordinances deter criminal activity even if someone other than the vehicle owner commits the crime. An impoundment ordinance can act as “a deterrent mechanism preventing owners from negligently allowing others to borrow their vehicles.”

McGrath v. City of Kankakee, 2016 IL App (3d) 140523, ¶¶ 22-23.

³ The monetary charge imposed in this type of ordinance, and fines in general, can have a remedial component and still be a penalty. See *People v. Ratliff*, 282 Ill.App.3d 707, 715 (2nd Dist. 1996).

In *Towers*, the Seventh Circuit similarly recognized that the charge imposed under the City's Ordinance was punitive in nature, stating that:

[I]t is clear that the fines, at least in part, serve the punitive purpose of deterring owners from allowing their vehicles to be used for prohibited purposes.

Because the fines, at least in part, serve this deterrent purpose they constitute payment "as punishment for some offense."

Towers, 173 F.3d at 624 (7th Cir. 1999).

In short, it is indisputable that the charge imposed under the Ordinance represents pecuniary punishment for vehicle owners that use, or allowed their vehicles to be used, in the commission of crimes. Therefore, the charge imposed under the Ordinance should be classified as a "fine."

2. The charge imposed under the Ordinance must be classified as a "fine" because the amount of the penalty imposed under the Ordinance is based on the severity of the offense.

The monetary charge imposed under the City's Ordinance also varies depending on the severity of the underlying offense, which is clear evidence the charge is a fine. *See Smith*, 2013 IL App (2d) 120691 at ¶ 21 (holding that when a charge is correlated directly with the severity of the offense it demonstrates that the charge is punitive); *People v. Youngblood*, 365 Ill.App.3d 210, 214 (2nd Dist. 2006) (holding that a charge was a fine because the amount of the charge was based on the "relative infamy" of the defendant's behavior). Specifically, the Ordinance imposes a \$2,000 penalty for more severe offenses but \$1,000 or less for less severe

offenses. Therefore, the charge imposed under the Ordinance should be classified as a “fine.”

- 3. The charge imposed under the Ordinance must be classified as a “fine” because the charge imposed under the Ordinance is not a collateral consequence of the Plaintiff’s conviction.**

The monetary charge imposed under the Ordinance is not merely a “collateral consequence” like a filing fee, jury fee, courthouse fee, court reporter fee or probation fee. Rather the charge imposed is *the* consequence of violating the Ordinance. Therefore, the charge imposed under the Ordinance should be classified as a “fine.”

- 4. The charge imposed under the Ordinance must be classified as a “fine” because the administrative adjudication process set forth in the ordinance clearly demonstrates that the charge imposed under the ordinance is a penalty.**

All municipalities have the power to enact a system of administrative adjudication for municipal code violations. 65 ILCS 5/1-2.1-2. This type of system employs a hearing officer who holds hearings, considers evidence and imposes penalties and assesses costs. 65 ILCS 5/1-2.1-4 (a)(5).

Quasi-criminal administrative adjudications are not used to determine whether a “fee” should be imposed. They are used to determine whether there is a code violation, which requires imposition of punishment, like the penalty imposed under the City’s Ordinance. Therefore, the charge imposed under the Ordinance should be classified as a “fine.”

CONCLUSION

For the reasons set forth *supra*, the monetary charge imposed under the City's Ordinance, and the charges imposed by home rule ordinances like it, should be classified as a penalty or "fine" regardless of the label used by the municipality and the decision of the First District Appellate Court should be affirmed.

Respectfully Submitted,

**ILLINOIS COUNTIES RISK
MANAGEMENT TRUST**

Date: August 24, 2022

By: s/Brian M. Funk
Brian M. Funk
OKGC Law, LLC
650 Dundee Road, Suite 475
Northbrook, Illinois 60062
Phone: 847/291-0200
Fax: 847/291-9230
Email: bfunk@okgc.com

CERTIFICATION OF RULE 341(c) COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b).

The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, and the Rule 341(c) certificate of compliance, is 7 pages.

s/Brian M. Funk

Brian M. Funk