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City Council votes to take School Board to court over disputed fees

The city says the board has not paid Fire Service User Fees since they were enacted in 2006.

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Published: Wednesday, March 16, 2011 at 7:03 p.m.

By a 3-1 vote Tuesday, the Ocala City Council agreed to take the Marion County School Board to court in an attempt to collect \$462,000 in Fire Service User Fees the city says it is owed.

Councilman Kent Guinn was the dissenting vote. Councilman John Priester was absent.

"I don't want an adversarial position," Guinn said. "I would like to sit down one more time to see if we can come back with some decision."

By law, before two governmental bodies go to court, they are required to go through a mediation process.

Similar arguments are being fought throughout the state of Florida.

The argument about the fee has been dragging on in Ocala since 2006, when the city instituted both a Fire Service Impact Fee and a Fire Service User Fee.

Shortly after the fees were enacted, the School Board said it was not obligated to pay either charge.

After researching the matter, City Attorney Patrick Gilligan agreed the School Board was not obligated to pay the impact fee, but said it was responsible for paying the user fee.

The City Council at the time elected not to pursue the user fees.

Instead, as a way to avoid going to court, the city proposed getting an opinion from the State Attorney General about whether the fees are owed the city.

Gilligan learned that the Attorney General would not give an opinion on a dispute between two governmental bodies without the direction of both entities, and the School Board had not agreed to do that.

School Board Attorney Beverly Morris said Tuesday the School Board was waiting for a decision in the Gainesville/Alachua County case.

Regardless, the Attorney General's opinion would not be binding on either party, Morris said.

Because the opinion is not binding, and because there is a considerable amount of money at stake, the "losing" side of the Attorney General's opinion likely would ignore the decision and the parties would wind up in court anyway.

"If the Attorney General doesn't do any good, why go that route?" Councilwoman Mary Rich asked rhetorically.

In a memorandum to the City Council, Gilligan opined that, by statute, the city was owed the fire user fee.

Morris disagreed.

Morris told the council Tuesday night there is no written agreement between the city and the School Board requiring her board to pay a Fire Service User Fee.

"It doesn't matter if it is a user fee or not. There has to be a written expressed contract between the School Board and the city of Ocala for the School Board to be required to pay Fire Service Fees or any other type of fee like that," Morris said. "Today Florida courts are in agreement; in the absence of an expressed contract, sovereign immunity prevents the School Board from having to pay the fire service fees the city has been asking to pay."

Assistant City Attorney W. James Gooding III told the City Council on Tuesday the user fees have been in effect for years and the longer the city waits, the more fees the city is losing.

"There is a legitimate interest on both sides," Gooding said. "We are looking out for city taxpayers. They are looking at school board taxpayers."

Gooding said the law is not clear.

Morris said the case is adversarial, but there is understanding and civility on both sides.

The council agreed with Gooding's recommendation to sue the School Board.

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