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Schertz urges AG to look at impact fee law

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By David DeKunder - Staff Writer/Northeast Herald [RSS](#) | [EMAIL](#) | [PRINT](#) | [SAVE](#)

The city of Schertz believes it should not have to pay impact fees for any of its public facilities, so much so that it is taking its case to the state's top lawyer.

At its Feb. 2 meeting, the Schertz City Council approved hiring a law firm that would provide legal support for the city as it files a request with the Texas Attorney General's Office to revisit a 1993 decision that required political entities, such as cities, to pay impact fees to other political entities.

The issue for the city is whether they are required by law to pay impact fees to the Cibolo Creek Municipal Authority on two of its newer buildings, the Schertz Public Library and the soon-to-be-completed recreation center. CCMA provides sewer services for Schertz and other Metrocom-area cities.

Assistant City Manager John Bierschwale said paying impact fees to CCMA is a form of double-taxation. Schertz residents already pay a monthly rate to CCMA for their services; an impact fee on public facilities, he said, would force city taxpayers to pay twice.

"We believe government entities are exempt," Bierschwale said.

The section of the Texas Local Government Code that covers impact fees is vague on whether political entities are required to pay impact fees, as it states that they "may" pay the fees. The attorney general's opinion in 1993 interpreted that political entities had to pay the fee. School districts are the only political entities under the law exempted from paying impact fees.

If the Attorney General's Office were to up hold its 1993 decision, Bierschwale estimated the city would have to pay CCMA between \$100,000 to \$150,000 in impact fees for both the public library and the recreation center.

Clint Ellis, interim CCMA general manager, believes the attorney general's previous ruling on the issue is very clear. "Essentially the law reads (cities) are required to pay impact fees," Ellis said. "I do believe city projects qualify for impact fees. The law clearly states political subdivisions are required to pay impact fees."

CCMA and other political entities charge a one time impact fee, usually to developers, to pay for improvements to present infrastructure that must be built or added on because of the new development.

Ellis counters the city's double-taxation argument by pointing out that non-Schertz residents will also be using the recreation center and that once it opens, the center will put additional stress on CCMA's present system.

"It would increase the load on a certain portion of our system," Ellis said. "That would be an additional flow on our system that had not been there before."

If the state Attorney General were to overturn their previous ruling, it would have ramifications not only locally but across the state, Ellis said.

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"This would be a pretty large decision," Ellis said. "They would have to do a 180-degree turn on where they have stood in the past."

Schertz will have to file its legal request through the Guadalupe County Attorney's Office, which is authorized to request Attorney General opinions. The law firm of Denton, Navarro, Rocha and Bernal, will provide legal support and research for the city in the case.

Bierschwale said the city had to hire the services of another law firm because current City Attorney Michael Spain's law firm provides legal services to CCMA, which would have caused a conflict of interest for Spain.

In other business, the council approved a resolution supporting a \$150,000 loan from the Schertz Economic Development Corporation that would help with the construction of a medical office complex on an 8-acre site on Schertz Parkway near Interstate 35. The loan will be for 20 years.

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