

received
9-22-2014

PLB
3:26pm

GEOFFREY D. TALMON (ISB # 8521)
CENTER FOR DEFENSE OF LIBERTY
IDAHO FREEDOM FOUNDATION
2404 Bank Drive, Suite 314
Boise, Idaho 83705
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Attorneys for Claimant

HUBERT OSBORNE, and)	
WAYNE HOFFMAN)	
)	
Claimants,)	TORT CLAIM
)	
v.)	IDAHO CODE § 6-906
)	
THE CITY OF NAMPA)	
Respondent.)	
_____)	

Hubert Osborne (hereinafter "Osborne") and Wayne Hoffman (hereinafter "Hoffman"), by and through their attorneys, hereby file a Tort Claim against the City of Nampa (hereinafter "City") pursuant to the provisions of Idaho Code § 6-901 et seq. Claimant Osborne, is an individual resident of the City, and resides at 4199 E. Switzer Way, Nampa, Idaho, 83636. Osborne has continually resided at that address for many years, including the period of six (6) months immediately prior to the time this claim arose. Claimant Hoffman is an individual resident of the City, and has resided in the City for many years, including the period of six (6)

months immediately prior to the time that this claim arose. Claimant Hoffman currently resides at 3311 East Granite Creek Ave, Nampa, Idaho 83686, and previously resided at 124 Fern St., Nampa, Idaho 83686.

DEFINITIONS

Fees For Solid Waste Disposal Services Performed By The Franchisee (Allied Waste Services of America, LLC): The amount collected by the City on behalf of its franchisee (Allied) and the amount the City pays to its Franchisee (Allied).

3% Administrative Fee: the costs actually incurred by the City for billing and bad debt.

15% Franchise Fee: excess revenue unrelated to the costs incurred by the City for billing and bad debt. The 15% Franchise Fee is a tax as it is imposed and enacted for general revenue purposes.

CLAIM

Notice is hereby given to City that Claimant Osborne and Claimant Hoffman will file a petition in district court seeking a writ of mandate declaring the City's solid waste disposal "15% franchise fee" to be illegal, unauthorized, and unconstitutional; a writ of prohibition prohibiting the City from any further collection of the "15% franchise fee;" and a Complaint seeking refund of the "15% franchise fee" previously collected by the City. The Complaint will be filed as a class action consisting of all Residents of the City who, during the previous five (5) years, have paid the City a "franchise fee" in excess of the City's solid waste disposal contractual fees collected on behalf of its franchisee and the City's reasonably related cost of collection of that amount.

Idaho Code §63-1311 “Fees for Services” grants City the power to impose and collect a fee for the administrative costs actually incurred by the City for billing and bad debt above the cost of solid waste disposal services performed by Allied (cost of providing collection services). However, the fee for the cost of providing these services “... shall be reasonably related to, but shall not exceed, the actual cost of the service being provided.” City’s “15% franchise fee” exceeds the City’s actual cost incurred by the City for billing and bad debt and is excess revenue unrelated to the costs incurred by the City for billing and bad debt.

The City’s “15% franchise fee” is either:

1. An impermissible hidden tax, or
2. A fee that is not appropriately and reasonably assessed.

The Injury or Damage Claimed:

The illegal, unauthorized, and unconstitutional collection by the City of solid waste disposal fees/taxes in excess of the reasonable relationship of the costs of the collection service provided by the City.

The Time and Place the Injury or Damage Occurred:

Upon information and belief it is alleged that the City has collected the illegal, unauthorized, and unconstitutional fees/taxes during each of the past five (5) City fiscal years.

The Names of All Persons Involved:

- a. Claimant Osborne.
- b. Claimant Hoffman.
- c. City of Nampa.
- d. City Mayor Bob Henry.
- e. Past City Mayor Tom Dale.

- f. Current and Past Members of City Council.
- g. City Finance Director, Vicki Chandler.
- h. City Clerk, Deborah Bishop.
- i. City Treasurer / Central Services / Utility Billing administrator Deberoh Spille.
- j. City attorney, Matt Johnson.
- k. Claimant reserves the right to supplement his claim at such time as additional names of persons involved become known.

The Amount of Damages Claimed:

Claimant Osborne and Claimant Hoffman each claim damages in the approximate amount of \$2.00 per month for each of the past five (5) City fiscal years (a total of \$120.00 per claimant), which consists of the excess fee/tax. Upon information and belief it is alleged that the total amount of damages claimed by the class of Residents will exceed \$1,000,000 for each of the past five (5) City fiscal years.

This claim is the result of the City's illegal, unauthorized, and unconstitutional collection of a fee/tax that the City designates as a "15% franchise fee" which is imposed upon all City Residents. Claimant Osborne and Claimant Hoffman acknowledge that the City (pursuant to Idaho Code §50-334, Solid Waste Disposal) has been granted the power to establish a solid waste disposal franchise. However, the City, in reliance upon its power to regulate solid waste disposal has also made participation in the City's solid waste disposal service mandatory pursuant to City Code, Chapter 3, Section 3.3.7. Osborne, Hoffman, and all City residents, therefore, have no option but to participate and remit not only the valid franchise costs but also the illegal, unauthorized, and unconstitutional fee/tax imposed by the City and identified as the

“15% Franchise Fee.”


The conduct and circumstances which bring about this claim are that the City, in addition to collecting fees for the solid waste collection services performed by franchisee Allied Waste Services of America, LLC, also collects a “3% administrative fee” and a “15% franchise fee.” *See* Exhibit A, City’s sewer, water, and trash bill addressed to Osborne (“Trash rates include a 3% administrative fee and a 15% franchise fee”), attached.

In the coming year City will collect approximately \$8,108,000 as solid waste disposal revenues. *See* Exhibit B, July 7, 2014 Memorandum from City Finance Department to City Council, attached. City’s approximate administrative cost of collecting this revenue (\$8,108,000) is \$241,445 (approximately 3% of solid waste disposal revenue of \$8,108,000). *See* Exhibit B. In the coming year the balance of the solid waste disposal revenue, \$1,221,275 (approximately 15% of solid waste disposal revenue of \$8,108,000) is allocated to Streets and the General Fund. *See* Exhibit B. City has imposed and collected from Claimant Osborne, Claimant Hoffman, and all City Residents this illegal, unauthorized, and unconstitutional fee/tax for each of the past five (5) City fiscal years.

Claimant Osborne and Claimant Hoffman contend that for the current City fiscal year it is the amount allocated by City to Streets and the General Fund (\$1,221,275) which constitutes an illegal, unauthorized, and unconstitutional fee/tax.

Claimant Osborne and Claimant Hoffman also seek to recover their attorney fees and costs incurred in bringing suit against City pursuant to Idaho Code 6-918A, 12-120(3), 12-121, and 12-117 or other applicable provision providing for the recovery of attorney fees and costs.

DATED this 22nd day of September, 2014.



HUBERT OSBORNE

Claimant



WAYNE HOFFMAN

Claimant



GEOFFREY D. TALMON

Idaho Freedom Foundation

Center for Defense of Liberty

Attorney for Claimants Hubert Osborne and
Wayne Hoffman



JOHN L. RUNFT

Runft & Steele Law Offices, PLLC

Attorney for Claimants Hubert Osborne and
Wayne Hoffman



JON M. STEELE

Runft & Steele Law Offices, PLLC

Attorney for Claimants Hubert Osborne and
Wayne Hoffman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of September 2014, a true and correct copy of the foregoing **TORT CLAIM** was served upon opposing counsel as follows:

Deborah Bishop
City Clerk
City of Nampa
411 Third Street South
Nampa, Idaho 83651
Fax: 208-465-2314
Email: bishop@cityofnampa.us

US Mail
 Personal Delivery
 Facsimile
 Email



HUBERT OSBORNE
Claimant

MAKE CHECKS PAYABLE TO:



City of Nampa
401 3rd St. South
Nampa, ID 83651
208-468-5711

Pay free on-line at www.cityofnampa.us
Or pay by phone 855-322-7410
There is a \$1.50 fee per transaction

DUE DATE: 09/18/2014
SHUT OFF DATE: 09/30/2014
ACCOUNT NO.: 049749-000
CURRENT DUE: 85.78
PAST DUE AMOUNT
DUE UPON RECEIPT:
TOTAL DUE: *Auto Pay* 85.78

NAMPAs SHARES AND CARES DONATION
(noted on reverse side)

541 2*1*****SCH 5-DIGIT 83651



HUBERT OSBORNE
4199 E SWITZER WAY
NAMPAs ID 83686-3011

City Of Nampa
401 3rd St. So.
Nampa, ID 83651-3721



MAKE CHECKS PAYABLE TO CITY OF NAMPAs

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT



City of Nampa
401 3rd St. South
Nampa, ID 83651
208-468-5711

PREVIOUS READING	DATE	SERVICE	DATE READ	CONSUMPTION	NET AMOUNT DUE
64040	5/23/2014	Prev. Balance			79.39
		Payments			-79.39
		Water	07/25	1010	18.63
		Sewer	07/25	1010	37.71
		Trash			29.44
65050	7/25/2014				
Please note, this account receives the Trash Discount					
Auto Debit Do Not Pay Deducted on: 09/18/2014					85.78
Total Amount Due					85.78

Account Number: 049749-000
Service Address: 4199 E SWITZER WAY

Bill To: HUBERT OSBORNE
4199 E SWITZER WAY
NAMPAs ID: 83686-3011

Legal Description: 01-2N-2W NE BRIDGEWATER EST NO 3 LT 12 BLK 5

STATEMENT DATE: 08/19/2014

DUE DATE: 09/18/2014 SHUT OFF DATE: 09/30/2014

Past Due Amounts are subject to \$25.00 late fees. Please be advised that the shut off date is the actual date that water will be discontinued for the CURRENT amount due. Past Due amounts are subject to termination of service at any time. Payments must be received in our office by 5:00 PM MST the day BEFORE the shut off date.

Trash rates include a 3% administrative fee and a 15% franchise fee.

cesita ayuda con la traducción de esta factura, por favor llame 468-5710 o 468-5744.

Pay on-line at www.cityofnampa.us



**CITY OF NAMPA
FINANCE DEPARTMENT**

Vikki Chandler - Finance Director
(208) 468-5737

July 7, 2014

TO: City Council

FR: Vikki Chandler, Finance Director

RE: Sanitation Allocation

In view of the recent budget adjustments, I recommend that Council consider adjusting the allocation from Sanitation. Rather than transferring funds from the Sanitation Fund to the General Fund and then to the Street Fund, Council could instead authorize transfers directly from the Sanitation Fund to the Street Fund, especially in view of the impact on city streets of the heavy sanitation trucks. The following chart represents what would become the percentages of allocation from the Sanitation Fund if Council approves.

Sanitation			
Revenue	8,108,000		
Contractual Fees	6,645,280	82%	
Admin Costs	241,445	3%	
Utility Billing - \$169,945			
Software Maint - \$1,500			
Bad Debt - \$70,000			
Streets	974,170	12%	
Franchise Fees to General Fund	247,105	3%	
Total	<u>8,108,000</u>	<u>8,108,000</u>	

1,221,275

If Council prefers the original budget, then the allocation appears below:

Sanitation			
Revenue	8,108,000		
Contractual Fees	6,645,280	82%	
Admin Costs	241,445	3%	
Utility Billing - \$169,945			
Software Maint - \$1,500			
Bad Debt - \$70,000			
Streets	135,000	2%	
Franchise Fees to General Fund	1,086,275	13%	
Total	<u>8,108,000</u>	<u>8,108,000</u>	

B

It is our intention to include the approved percentages as a memo on invoices beginning with the next billing cycle.