

Supreme Court rules on water rates for municipalities providing water to customers outside their boundaries

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The Michigan Supreme Court has ruled that, except for the largest systems, municipal water systems providing water to retail customers outside of their boundaries are not required to provide that water at its "actual cost."

In *Oneida Charter Township v the City of Grand Ledge*, the Supreme Court on September 11, 2009, reversed a decision of the Court of Appeals. That decision had held that Public Act 89 of 1981 restricts municipalities from charging more than the "actual cost" of providing water to outside retail customers.

Had the Supreme Court upheld the Court of Appeals decision, the common and long-standing practice of many cities and villages of charging higher rates to customers outside their boundaries would have been jeopardized. Charging higher rates to outside customers (through mutual agreement with adjoining local governments) reflects the investment made in the system by the taxpayers and additional liabilities of the community providing the water.

Specifically, the Supreme Court held that the "actual cost" requirement in PA 89 applies only to larger water systems, meaning those that serve 1% or more of the state's population and are also contractual customers of another water system. It needs to be remembered that under other court decisions (i.e. *Bolt v City of Lansing* and related cases), there continues to be a requirement that rates bear a reasonable relationship to cost.

The Michigan Municipal League Legal Defense Fund and the Public Corporation Law Section of the State Bar of Michigan (PCLS) provided assistance to the City of Grand Ledge by filing a friend of the court brief in the Supreme Court in support of the City's position. Miller Canfield attorneys Don Schmidt and Steve Mann authored the brief for the League and PCLS.