Advisory Opinion 277

Parties: Tooele County School District / Tooele City

Issued: October 16, 2023

TOPIC CATEGORIES:

Application Review Fees

Compliance With Land Use Regulations

A city's ability to otherwise require public agencies to pay a fee for a development service that the public agency does not itself provide is not applicable in the context of school districts, because state statute provides that school districts may only be required to pay for impact fees, certain inspection fees, and certain costs for roadways or sidewalks. It was therefore improper for Tooele City to require the Tooele County School District to pay a conditional use application fee and site plan review fee in regards to the District's development of its property.

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ADVISORY OPINION

Advisory Opinion Requested By:	Terry Christensen
Local Government Entity:	Tooele City
Applicant for Land Use Approval:	Tooele County School District
Type of Property:	School District Facilities
Date of this Advisory Opinion:	October 16, 2023
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

Has Tooele City lawfully imposed certain application and review fees on Tooele County School District's development of a bus transportation facility?

SUMMARY OF ADVISORY OPINION

State statute requires school districts to conform to certain land use regulations and exempts them from others in developing or using its land.

A city's ability under state law to impose certain development-related fees on various public agencies, generally, is not fully applicable to school districts where state law has provided more explicit direction on exactly what kinds of fees may be imposed on school district development. Namely, a city's ability to otherwise require public agencies to pay a fee for a development service that the public agency does not itself provide is not applicable in the context of school districts, because state statute provides that school districts may only be required to pay for impact fees, certain inspection fees, and certain costs for roadways or sidewalks. It was therefore improper in this case for Tooele City to require the Tooele County School District to pay a conditional use application fee and site plan review fee in regards to the District's development of its property.

EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for an Advisory Opinion, submitted by Terry Christensen, on behalf of the Tooele County School District, received on January 24, 2023.
2. Email responses from Roger E. Baker, on behalf of the City of Tooele, from March 28, 2023 and May 17, 2023.

BACKGROUND

The relevant facts are short, and not in dispute. Tooele County School District (TCSD) owns property at 86 N Onyx in Tooele City, adjacent to the TCSD administration building, on which TCSD has recently constructed the new Tooele County School District Transportation Center. As part of that development, Tooele City ("City") required TCSD to obtain a conditional use permit for a fueling station, as well as to submit a site plan for review and pay certain application and review fees in accordance with City ordinances.

The fees at issue include a $1,200 fee for City's review of TCSD's subdivision plat, and a $600 fee for the City's review of TCSD's conditional use permit application. The two fees are standard city fees, calculated to recoup a portion of the city's cost to review development applications.

TCSD believes that the fees are prohibited by law, but has paid the fees under protest to allow the development to move forward, and has asked for an Advisory Opinion as to whether the City may lawfully impose these fees on the school district's development.

ANALYSIS

The core of this dispute revolves around the interpretation of separate sections of Utah's Land Use, Development, and Management Act ("LUDMA"), wherein the state legislature has addressed the authority of political subdivisions to regulate the development of land found within its borders by certain public agencies, including the imposition of certain fees in the development review process, and the application of these sections to the development of school district property, specifically.

First, Section 305 of LUDMA provides that "[e]ach county, municipality, *school district*, charter school, special district, special services district, and political subdivision of the state shall conform to any applicable land use ordinances of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality." UTAH CODE § 10-9a-305(1) (emphasis added).

Second, Section 510 of LUDMA also provides that:

A municipality may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) . . . a fee for a development service that the public agency does not itself provide;
(b) . . . a hookup fee; and

(c) an impact fee for a public facility . . . .

Id. § 10-9a-510(6). LUDMA defines "public agency" to include "school district." *Id*. § 10-9a-103(51)(c).[1]

However, for school districts, specifically, Section 305 of LUDMA provides further guidance regarding which local ordinances are "applicable" to school districts when "constructing, operating, or otherwise using" land within the municipality. Each party has interpreted Section 305 to draw different conclusions as to whether the City has authority to impose certain fees on TCSD's development.

Section 305 states that, "[e]xcept as provided [within that section], a school district or charter school is subject to a municipality's land use ordinances." *Id.* § 10-9a-305(2). Subsection (3) then provides that "[a] municipality may not . . . require a district or charter school to pay fees not authorized by this section." *Id.* § 10-9a-305(3)(c).

TCSD argues that "*this section*" refers to Section 305, and that the only other references to allowable "fees" in Section 305 applicable to school districts are, as follows:

- Section 305(3)(b): "a municipality may . . . require a school district . . . to *participate in the cost* of [a] roadway or sidewalk . . . that is . . . reasonably necessary for the safety of school children . . . located on or contiguous to school property . . . [that] is required to connect an otherwise isolated school site to an existing roadway." (emphasis added);
- Section 305(3)(d): "a municipality may . . . provide for inspection of school construction or *assess a fee or other charges for inspection* . . . [if] the school district . . . is unable to provide for inspection by an inspector . . . ." (emphasis added);
- Section 305(3)(e): "a municipality may . . . require a school district . . . to pay [an] *impact fee* for an improvement project . . . [if] imposed as provided in Title 11, Chapter 36a, Impact Fees Act."

TCSD therefore concludes that the only fees "authorized by this section [10-9a-305]" are (1) impact fees, (2) charges for school building inspection when the district is unable to use its own inspector, and (3) certain charges relating to roadways and sidewalks contiguous to school property.

In reaching an opposite conclusion, the City notes that Section 305 further provides that a "specified public agency"—which, similar to "public agency" in Section 510, is defined to include a school district, *see id.* § 10-9a-103(63)(b)—that "intend[s] to develop its land shall submit to the land use authority a development plan and schedule." *Id*. § 10-9a-305(8). This development plan and schedule required by Section 305(8) must include "sufficient detail to enable the land use authority to assess," among other things, "the specified public agency's compliance with

[1] The parties agree that neither "hookup fee" or "impact fee" are relevant here. Therefore, the dispute is only whether the site-plan review fee and conditional use application fee imposed by Tooele City are permissible "fee(s) for a development service that [TCSD] does not itself provide," as provided in Section 10-9a-510(6).

applicable land use ordinances," as well as "the amount of any applicable fee described in Section 10-9a-510." *Id.*

In other words, the City concludes that whereas Section 305(8) references "any applicable fee described in Section 10-9a-510," then Section 510's allowance for "a fee for a development service that the public agency does not itself provide," *see id*. § 10-9a-510(6), is necessarily a fee "authorized by this section [10-9a-305]." *Id*. § 10-9a-305(3)(c). The City argues, then, that its site plan review and conditional use application review are development services that the school district does not itself provide, and are required by the City's ordinances, they are properly assessed against TCSD's development.

The Utah Supreme Court has addressed the role of Utah courts in matters of statutory interpretation, as follows:

> When faced with a question of statutory interpretation, our primary goal is to evince the true intent and purpose of the Legislature. We do so by looking at the best evidence of legislative intent, namely, the plain language of the statute itself. As part of this well-worn canon of statutory construction, we must read the plain language of the statute as a whole. Under this whole statute interpretation, we construe provisions in harmony with other provisions in the same statute and with other statutes under the same and related chapters. We do so because a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.

Archuleta v. St. Mark's Hosp., 2010 UT 36 (internal quotations and citations omitted).

Reading LUDMA sections 510 and 305 together as a harmonious whole, we conclude that LUDMA precludes the City from assessing from TCSD the site plan review and conditional use application fees in question.

First, Section 510 addresses a city's general limitation on imposing development-related fees on various kinds of "public agencies," which beyond school districts, also includes "the federal government; the state; a county, municipality, . . . special district, special service district, or other political subdivision of the state; [and] a charter school." UTAH CODE § 10-9a-103(51).

Section 510, therefore, constitutes the general ceiling within which a city can legally assess any development-related fee to a defined public agency. However, Section 305, in turn, provides more explicit direction in the context of school districts, specifically. Utah Courts have held that "when two statutory provisions appear to conflict, the more specific provision will govern over the more general provision." *Grynberg v. Questar Pipeline Co.*, 2003 UT 8, ¶ 31. Section 510's application to all public agencies, generally, must necessarily yield to the specific provisions of Section 305 in the context of school districts.

The same is to be said for Section 305's actual reference to compliance with Section 510. That is, Section 305(8) refers to a "specified public agency's" compliance with *applicable* land use ordinances" and "any *applicable* fee described in Section 10-9a-510" (emphasis added). Again,

the general reference to "specified public agency"—which not only includes school districts, but also "the state" and "a charter school," see *id*. § 10-9a-103(68)—must necessarily yield to any more explicit provisions that govern school districts, specifically.

The key provision, then, is found in Section 305(3)(c), which states that a "municipality may not . . . require a district or charter school to pay fees not authorized by this section." In absence of Section 305 entirely, Section 510 would already limit the City's ability to impose any development-related fees on a school district—as a public agency—to only three things (hookup fees, impact fees, and fees for a development service that the public agency does not itself provide), the same as any other public agency. However, the addition of Section 305 adds the starting presumption that no fees may be required of a school district in particular, except where specifically authorized by Section 305. This, we conclude, clarifies which ordinances/fees are then "applicable" to school districts, specifically.

As alluded to by TCSD, then, the only school district-specific fees referenced in Section 305 are (1) impact fees, (2) charges for school building inspection when the district is unable to use its own inspector, and (3) certain charges relating to roadways and sidewalks contiguous to school property.

According to the City's proposed interpretation, however, if the provision in Section 305(3) that "[a] municipality may not . . . require a district or charter school to pay fees not authorized by this section," were to include *authorizing* any and all fees found in Section 510 as applicable to school districts, the result would be to render this provision in Section 305(3) as inoperative, or superfluous, because Section 510 already constitutes a limit on development-related fees that can be charged on any public agency, not just school districts. There would, then, simply be no application for what Section 305(3) is intending to prohibit other than what is already prohibited by Section 510 in relation to school districts. Utah courts, however, are to "give effect to every word of a statute, avoiding any interpretation which renders parts or words in a statute inoperative or superfluous." *State v. Stewart*, 2018 UT 24, ¶ 12 (cleaned up).

As a result, the Legislature's intent is best evidenced by interpreting Section 305(3)'s specific prohibition on requiring school districts to pay fees not authorized by that section as providing more specific restrictions on school district fees than what is already addressed by Section 510's restrictions on public agencies, generally. As such, Section 305(8)'s reference to a specified public agency's compliance with "*applicable* fee[s] described in Section 10-9a-510" (emphasis added), does not include authorization to require a school district to pay for a "fee for a development service" such as the site plan review and conditional use application review fees.

The only fees a city may assess on a development of school district property are, then, impact fees, charges for school building inspection when the district is unable to use its own inspector, and certain charges relating to roadways and sidewalks contiguous to school property. The City's requirement that TCSD pay for conditional use application fees and site plan review fees in conjunction with the development of its transportation facility, then, was not lawful.

CONCLUSION

Utah's Land Use, Development, and Management Act provides an upper limit on the kinds of fees a city may assess on certain defined public agencies, which includes schools. The Act also provides certain express exceptions for a school district's compliance with certain city land use regulations, including applicable fees. The Act provides explicit direction that fees applicable to school districts do not include all the kinds of fees that may generally be assessed against other types of defined public agencies. The Act expressly provides for the only types of applicable fees that may be imposed on the development of school district property, which is limited to impact fees, charges for school building inspection when the district is unable to use its own inspector, and certain charges relating to roadways and sidewalks contiguous to school property.

Therefore, Tooele City may not lawfully require the Tooele County School District to pay conditional use application fees or site plan review fees in connection with the district's development of its transportation facility.

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While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

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