

Cash-strapped cities look to tax churches for road use

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(RNS) When a community needs to rebuild crumbling roads, should houses of worship pay fees for the number of times their congregants drive on them?

That's the question behind a recent suit filed by churches in the small city of Mission, Kansas, who argue the city's new "transportation utility fee" is a tax they should not have to pay.

With cash-strapped states and cities facing a slew of tough choices, there's a growing debate nationwide about whether religious congregations should help foot the bill.

"It makes no sense to tax churches and to limit their ability to provide their services, and it does damage to the constitutional separation between church and state," argues Erik Stanley, senior legal counsel for the Alliance Defense Fund, which is representing Catholic and Baptist churches in the city of 10,000.

He acknowledges that church-state separation is generally not an argument made by his conservative Christian law firm; but in this instance, he says "there should be a separation here."

Houses of worship are generally exempt from federal and state taxes, in part because nonprofits are viewed as providing beneficial services for society.

As a result, municipalities often don't gain any revenue from the property on which they sit, and Stanley views the fees as a way to get around the churches' tax-exempt status.

According to the lawsuit filed in December, the city calculated the number of trips generated to and from a property based on a manual of the Institute of Transportation Engineers.

The manual estimates that a church produces an average of 5.8 vehicle trips per week for each seat in a sanctuary. That led to a fee of \$898.77 for First Baptist Church of Mission, and \$1,685.19 for St. Pius X Catholic Church.

Stanley said state courts in Idaho and Florida have ruled against similar fees, determining that city-imposed fees were invalid because they were not authorized by state legislation.

Mission officials deny that the churches should be exempt, as well as the notion that the fee amounts to a tax.

"It was just a fair way to spread the cost among those who are generating the traffic," said Mission Mayor Laura McConwell, "to help pay for the roads that you need to bring people in either for your business or for the churches or to people's homes."

She said calling the fee a "driveway tax" is a misnomer.

"We discussed it also with our attorneys ... to make sure we weren't stepping on anyone's constitutional rights before we instated it," she said. "I'm pretty comfortable with what we've chosen."

McConwell said her city's fees are due to aging infrastructure, not the faltering economy. But experts say economic pressures have led municipalities to levy fees on nonprofits with increasing regularity.

"Given the current economic conditions for cities, we're seeing cities are looking for other ways to find revenue in order to pay essential services," said Gregory Minchak, spokesman for the National League of Cities.

Robert Tuttle, a church-state expert at George Washington University Law School, said the fee debates in Mission and elsewhere aren't about churches' tax-exempt status, but whether a government institution is authorized by state law to impose a fee.

Cash-strapped governments are nothing new, he said, but current economic challenges are prompting creative ways of dealing with money woes.

"To the extent that they weren't willing to engage in political fights before, maybe now they're willing," Tuttle said. "Maybe fees are hurting churches even more because their donor contributions are down."

A drainage fee in Houston, adopted last year in a close public vote, has been criticized by churches, which could pay thousands to hundreds of thousands of dollars for a new city initiative to control flooding.

"If you take \$100,000 out of a church budget, that's personnel, that's benevolent ministries, and those are things that now aren't going to be done," said the Rev. David Welch, director of the Houston Area Pastor Council. "Who's going to do it?"

The Archdiocese of Galveston-Houston said early estimates suggest costs for it and its 78 parishes could reach \$1 million.

"We especially realize this fee will place a particular burden on our poorer inner-city parishes, which have very limited resources," said Jenny Faber, spokeswoman for the archdiocese. "We hope for a more equitable solution for our parishes, other religious entities and nonprofit groups."

Jessica Michan, press secretary for Houston Mayor Annise Parker, said the City Council still needs to vote on how the fee will be calculated and what organizations will be exempted. But a city document about the initiative notes that eight of Texas' 10 largest cities have drainage fees -- and none exempt churches.

As in Mission, there's been a suit filed to try to halt the fee, charging that it was vague and therefore invalid.