



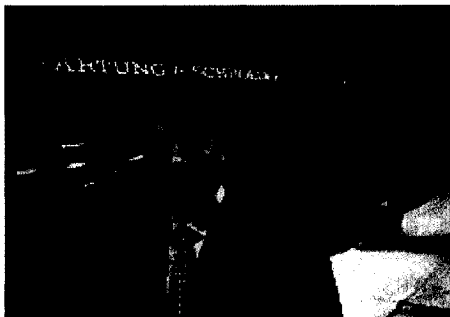
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A soft-spoken lawyer falls in the spotlight

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Brad Schroeder outside his Locust Street law office. You might ask, as others have, is he old enough to practice law? Photo by Duane Tinkey

Brad Schroeder took on city hall when it made a high-stakes gamble that it could beat the lawyer and his client in court. That was a misstep that could cost Des Moines taxpayers several million dollars, money that they will be paying themselves.

Schroeder and Lisa Kragnes waged a five-year legal battle to prove that a franchise fee

In early June, a Polk County judge agreed and, in a sharply worded opinion, basically told the city that it had drummed up expenses to justify collecting about \$12.5 million a year under the fee.

The city has until July 3 to decide whether to appeal the ruling or file additional motions before Judge Joel Novak, who issued the 49-page opinion. But many City Council members had an immediate reaction to their opponents.

Schroeder was tagged as something of a legal vulture looking to fatten himself on attorney's fees. After emotions cleared, at least one council member said that he regretted his public statements.

Still, the words stung Schroeder, who at 37 had built a practice on less high-profile cases.

State franchise fee law has a local flavor

The city of Des Moines and its legal staff suffered a big defeat in the franchise fee lawsuit, but just before a judge ruled in the case, City Attorney Bruce Bergman could claim a small victory.

Bergman spent the last five years trying to convince Iowa legislators that the state's decades-old franchise fee law needed some updating. Basically, it needed to more closely mimic the city's interpretation of the law.

Not long after Brad Schroeder filed a lawsuit in 2004 on behalf of Lisa Kragnes claiming that the Des Moines franchise fee was an illegal tax, Bergman began drafting language that would amend the state law. That lawsuit later was certified as a class-action case.

On the final day of this year's legislative session, lawmakers stuffed much of Bergman's thoughts on the subject into a catch-all spending bill, which was signed by Gov. Chet Culver.

Among other things, the new law allows city and county governments to charge a 5 percent franchise fee on utility bills and to spend the money not only on the costs of servicing the utilities but also on other public services, just as Des

"You can imagine how it felt to read those comments," he said.

He is soft-spoken and has the youthful appearance of a college freshman. He looks so young that the potential buyer of a car Schroeder was attempting to sell a few years ago showed up at his Pleasant Hill home, looked beyond Schroeder and asked, "Is your dad at home?"

So what if he is mistaken for a teenager?

"A lot of people like to hear it, but not in my profession," Schroeder said.

In the franchise fee case, Schroeder won rulings at the district court and Iowa Supreme Court that essentially told the city that it was playing a losing game by continuing to fight.

Schroeder had few people to introduce him to the legal profession while growing up on a farm near Remen. In fact, he says he didn't know a single lawyer while growing up; he just realized he didn't want to farm all his life.

He received a bachelor's degree at Buena Vista University in Storm Lake, where he received a full academic scholarship. He earned his law degree at the University of Iowa.

While a student, he became a law clerk for prominent Des Moines attorney Jerry Crawford, although he might have gotten the job in spite of himself.

Schroeder, dressed in blue jeans and a flannel shirt, stopped by Crawford's office to check the date of his appointment. He was a little surprised to hear that the appointment was that very day.

"There sat Jerry with his stern face and piercing eyes and I said, 'Boy have I got a story for you,'" Schroeder recalled. "He said, 'If it's about the way you're dressed, save it.'"

Schroeder later learned that his appearance mattered little to Crawford.

"He told me that he assumed I had learned how to wear a suit and tie in law school," Schroeder said.

Crawford remains a friend and inspiration, Schroeder said. In fact, he sought Crawford's advice before taking the franchise fee case.

"What I learned from him was: Don't back down from a

Moines has done and will continue to do.

"It is fair to say that a reason that I worked on that legislation was to attempt to clarify Iowa law regarding charging franchise fees," Bergman said in an e-mail. "It became apparent in the Kragnes litigation that there was a need for clarification."

The franchise fee was expanded in Des Moines in an effort to recoup lost tax revenues and to prevent increases in property taxes.

When the fee was being debated, city leaders promised to use the funds for a variety of purposes, including police and fire protection.

Those expenses and others are codified under the new franchise fee law, which also allows but does not require the use of franchise fees for property tax relief.

Under the law, Des Moines would not have to adopt a new franchise fee ordinance in order to continue charging its 5 percent fee and spending the money as it has done in the past, Bergman said.

Here are some of the other allowed uses of franchise fees:

- The repair and improvement of existing public improvements and other publicly owned property;
- Projects designed to prevent or mitigate future disasters;
- Energy-conservation measures for low-income homeowners, low-income energy-assistance programs and weatherization programs;
- The establishment, construction, reconstruction, repair, equipping, remodeling and extension of public works, public utilities and public transportation systems;
- Repair and construction of streets, bridges, highways and sidewalks; and

challenge; don't be afraid to take on something that at first blush might seem to be more than you can chew," Schroeder said.

•Property tax abatements, building permit fee abatements and abatement of other fees for property damaged by a disaster.

Lisa Kragnes was recently divorced when she sought out Schroeder, on the advice of her ex-husband, after receiving a utility bill and seeing charges that she wasn't familiar with.

Schroeder said the two made a good team. "She was a great lead plaintiff on a case like this," Schroeder said. She understood the implications of what the city was doing in charging the fee. She attended every day of the three-week trial last fall. She also took some criticism for challenging the fee.

While legal issues were being argued in court, a public relations campaign also was being waged that frequently amounted to more of an attack on the messengers, Schroeder and Kragnes, than an argument over the policy. In what amounted to another diversion from issues in the case, the city sought a gag order against a public relations specialist who represented Schroeder.

A judge denied the request.

When city officials criticized Schroeder after the recent court ruling, Schroeder said he was not surprised.

"We've been prosecuting for five years, and they haven't stopped the attacks," Schroeder said.

The city "took the attitude of do what I say, not what I do," Schroeder said.

"They were saying that everybody else should follow the law, but it's OK if we don't. That's really where the conversation needed to start and end," he said.

In 2006, the Iowa Supreme Court ruled that state law allowed for a franchise fee to be charged that covered the costs of administering the fees. The city argued that it did not have to account for its actual costs when levying the fee. (See accompanying story about a recent change to the franchise fee law.)

Despite the ruling, the city continued to charge the fee, and that stubbornness could end up costing it millions of dollars on a settlement that might have been avoided.

Schroeder said the city has accrued \$30 million in interest and costs since that ruling in 2006. The Supreme Court ruling came in response to the city's appeal of a previous ruling in Polk County District Court that the fee was illegal. At the time of the local court ruling, the city's franchise fee was 1 percent. It later jumped to 3 percent, and then to 5 percent.

"If they had stopped this after the Supreme Court ruling, three years of damages could have been avoided," Schroeder said.

Schroeder does not know what the final settlement will be. A judge ordered the city several years ago to stop applying the franchise fee to Kragnes' utility bill. Schroeder's out-of-pocket expenses for expert witness fees and other costs total about \$500,000, he said.

"That's money that didn't have to be spent," he said.

It could be several years before the case is resolved and it's determined whether there is a settlement that would include refunds to all residential and business utility customers in Des Moines.

In other words, Schroeder isn't gloating over beating city hall.

"It hasn't changed my approach to getting out of bed every morning," he said.

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