

Excerpt from March 7, 2007 Direct Testimony given by Randy Hayman, MSD General Counsel, Direct Testimony given during the 2007 Rate Commission rate change proceeding:

- Q6. Please state the general chronology of the past wastewater rate litigation and indicate if any of the court findings support whether or not the Rate Change Notice is consistent with constitutional, statutory or common law.
- A. The following is a general chronology of the past wastewater rate litigation and court findings supporting the Proposed Rate Change Notice as being consistent with constitutional, statutory and common law.

Article X, § 22(a) of the Missouri Constitution (The Hancock Amendment) prohibits a political subdivision of Missouri from increasing the current levy of an existing tax, license, or fee, above the current levy authorized by law or charter...without the approval of the required majority of the qualified voters of the political subdivision voting thereon.

The Supreme Court of Missouri subsequently interpreted the above-cited section of the Hancock Amendment to mean that “user fees” are not subject to said section, and do not require a vote to be increased; but taxes are subject to it, and do require a vote to be increased. *Keller v. Marion County Ambulance District*, 830 S.W. 2d (Mo. Banc 1991). To determine whether a particular charge is a user charge or a tax, the *Keller* Court established a five-pronged analysis.

In 1992, the District increased sewer service charges in the belief that the sewer service charges were user fees in the purview of the Keller decision, and that no vote would be required to implement the increase. Suit was brought by Richard Beatty, alleging that the sewer service charge increases violated the Hancock Amendment insofar as no vote was taken. The Supreme Court of Missouri in Beatty v. The Metropolitan St. Louis Sewer District, 867 S.W. 2d 216 (Mo. Banc 1993) held that the District's sewer service charges did not comply with the five-pronged test of the Keller decision, and were indeed taxes rather than user fees, so as to require a vote for an increase.

In 1993, the District again increased sewer service charges. However, prior to this increase the District's billing procedures had been changed in an attempt to comply with the five-pronged Keller test. In a challenge to the 1993 increase, the Missouri Court of Appeals in Missouri Growth Association v. Metropolitan St. Louis Sewer District, 941 S.W. 2d 615 (Mo. App. E.D. 1997) held that the District's sewer service charges satisfied the five-pronged Keller analysis, were user fees, and as such did not require a vote for increase.