

FREEDOM FIRST

P.O. Box 371 * Swampscott, Massachusetts 01907 * (617) 596-2517

PRESS RELEASE

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For Immediate Release
April 20, 1989

For further information
Contact: Robert "Chip" Ford
(617) 596-2517

CONSTITUTIONAL CHALLENGE OF FEE INCREASES

On Friday, April 21st at 10:30 AM, FREEDOM FIRST will sponsor a press conference at the Omni-Parker House to announce the filing of a 10-taxpayer lawsuit to challenge the constitutionality of the governor's unilateral fee increases.

Among those supporting this effort who will be on-hand to discuss this legal challenge will be FREEDOM FIRST chairman **Robert "Chip" Ford**, WRKO radio talk-show host **Jerry Williams**, Citizens for Limited Taxation executive director **Barbara Anderson**, and others representing statewide grassroots citizens' organizations who have signed-on to this challenge as taxpayers.

Attorney **Steven Weisman** of Amherst, who will present our case, will explain the legal issues to be addressed and will be available to answer specific questions concerning our challenge.

"Over 200 years ago, taxation without representation ignited a revolution," said Robert "Chip" Ford, "and this is nothing less than another form of such taxation upon the citizens of Massachusetts. Article 23 of the Massachusetts Constitution certainly seems to spell it out clearly enough to me and others. The Legislature gave away something which we entrusted to it. This action is being taken to reclaim the integrity of our constitution and to ensure that it remains intact, as it was passed down to us."

The legal challenge will focus upon the questions of the constitutionality of the Legislature's actions in abdicating its responsibilities and powers under Article 23, and on whether current fees are in excess of the amounts required to provide existing services by various state agencies.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TRIAL COURT
SUPERIOR COURT DEPARTMENT
CIVIL NO.: 89-2288

ROBERT F. FORD, et al.,)
Plaintiffs)

v.)

EDWARD LASHMAN, SECRETARY OF)
ADMINISTRATION AND FINANCE,)
COMMONWEALTH OF MASSACHUSETTS,)
Defendant)

REQUEST FOR PRODUCTION OF
DOCUMENTS OF THE DEFENDANT,
EDWARD LASHMAN

The documents and tangible things herein described are to be produced at the office of the plaintiff's attorney, Steven J.J. Weisman, 20 Gatehouse Road, P.O. Box 913, Amherst, MA 01004, on or before April 12, 1990.

This request is to include all after-acquired documents of the type to which reference is made.

Pursuant to Rule 34 of the Massachusetts Rules of Civil Procedure, the plaintiff hereby requests that the defendant produce for inspection and copying, the following documents and tangible things:

1. Any written policies of the Secretary of Administration and Finance as to the setting of fees since July 1, 1988.
2. Fiscal Impact Statements for any and all fees first set or increased since July 1, 1988.
3. All other documentation of any kind or papers which pertain to the setting or increasing of any fees since July 1, 1988.

The Plaintiff

By his attorney,

STEVEN J.J. WEISMAN
20 Gatehouse Road
P.O. Box 913
Amherst, MA 01004
(413) 253-9359
BBO#: 521020

LAW OFFICES OF STEVEN J. J. WEISMAN

ATTORNEY & COUNSELLOR AT LAW

PLEASE ADDRESS ALL CORRESPONDENCE TO . . . 20 GATEHOUSE ROAD, P.O. BOX 913

AMHERST, MA 01004

(413) 253-9359

FAX: (413) 256-8354

March 9, 1992

TEN POST OFFICE SQUARE

SUITE 600 SOUTH

BOSTON, MA 02109

(800) 926-9404

Mr. Richard Carey
20 Riverside Street #22
Watertown, Massachusetts 02172

Dear Mr. Carey:

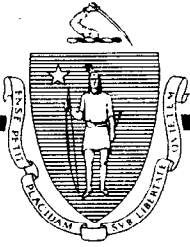
I am writing to inform you of the resolution of the Ford v. Lashman case in which we challenged the constitutionality of the setting of fees by the Secretary of Administration and Finance as illegal taxes. As you are aware, fees must by law relate directly to the cost of providing the service for which they are assessed. The Dukakis Administration in an effort to backdoor tax us had a policy of using fee raises to tax us without the taxes being approved by the legislature. The case was hard fought and the Dukakis Administration challenged us in Court on numerous procedural questions in an effort to defeat the case and avoid facing the issue. All of their efforts were unsuccessful. When the Weld Administration took over, a better climate came about in regard to this case. The Attorney General's Office and the Secretary of Administration and Finance have worked with us on this matter, have admitted there was no prior proper policy for setting fees and are presently putting into effect new regulations which I have met and discussed with them that will work amply to protect our concerns. These regulations will also serve as a basis for challenging individual fees that still may be on the books and improper. However, with the war having been won, namely recognition of the basis for assessing fees, our case would not be the most effective means for challenging individual fees. When the new regulations are fully in place, each fee that is improper may be challenged more effectively. Consequently, we have settled the case with the state. You are to be congratulated for your dedication to fair government. It is good to see that the system can work.

Sincerely,



Steven J. J. Weisman

SJJW:ram



ADMINISTRATIVE BULLETIN

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

92-4

To: All Agency and Department Heads
Fm: Peter Nessen *Peter Nessen*
Dt: April 13, 1992
Re: Agency Revenue Proposal Forms -- Instructions

The process for establishing new fees (or revising existing ones) in Massachusetts is governed by Chapter 7, section 3B and Chapter 30A of the General Laws, as well as Executive Order 145. The Executive Office for Administration and Finance is responsible for setting fees. The following instructions describe the process which A&F will be using to evaluate fee proposals from agencies and meet the prescribed statutory requirements for notification of the legislature and other affected parties.

TIMETABLE

A&F will evaluate agency revenue proposals monthly, approving or disapproving them within two weeks of their submission by secretariats. In order to adhere to this timetable, and also to minimize the costs of meeting the statutory requirements for notification of the legislature and affected parties, the following process will be established.

15th day of each month: New fee proposals due from secretariats.

1st day of second month (week 2): A&F approves/rejects revenue proposals. If approved, A&F provides legislature with 60 day notice of proposed fee change, as required by Chapter 7, section 3B. A&F also gives Local Government Advisory Council 14 day notice of A&F intent to give public notice of fee changes, as required by Executive Order 145.

15th day of second month (week 4): A&F provides 30 day notice of public hearings in newspaper advertisements and text of fee proposal and notice of hearing placed in the Massachusetts Register, as required by Chapter 7, section 3B. Notice and public comment period begins.

15th day of third month (week 8): Hearings held on fee proposals by agencies, with A&F and Budget Bureau representatives attending.

3rd to the 4th week of third month (weeks 9-10) (Depending on Massachusetts Register publication schedule): A&F and agencies evaluate testimony and comments and make final decision on fee proposal.

3rd to the 4 week of third month (weeks 9-10) (Depending on Massachusetts Register publication schedule): Notification of new fee schedule placed with Secretary of State for publication in Massachusetts Register.

1st to 2nd week of fourth month (weeks 11-12): Notification of new fee schedule published in Massachusetts Register. New fees take effect.

A&F will place the advertisements giving notice of public hearings in the appropriate newspapers and the Massachusetts Register. Agencies are responsible for providing A&F with the text that will appear in the Register as well as full descriptions of each fee that they are proposing.

GENERAL GUIDELINES FOR REVENUE PROPOSALS

It is important to set fees and charges so they are not construed as taxes. The Supreme Judicial Court has determined that "fees share common traits that distinguish them from taxes." These characteristics are:

1. Fees are charged for particular governmental services which benefit the parties paying the fees.
2. Fees are paid by choice, in that one can forego the service and thereby avoid the charge.
3. Fees are collected not to raise revenues but to compensate the governmental entity providing the service for its expenses. Expenses may be broadly construed, including "all expenses imposed upon [the government] by the business" being regulated, including, for example, enforcement costs.

SPECIFIC INSTRUCTIONS FOR FILLING OUT FORMS

The purpose of the revenue proposal forms is to permit A&F to make an informed decision on agency fee proposals and to make sure that the rates being proposed by agencies are reasonable. Therefore, A&F is attempting to be as comprehensive as possible in gathering information relevant to fee proposals.

Agencies should fill out one set of forms for each fee proposal. However, if one proposal includes different rates or charges for related services within one program (such as different rates for initial licenses and renewals or for different licensees), these should all be included on one proposal form.

Section I. Fee Proposal/Description/Justification

Agencies should indicate the CMR section and subsection they are proposing to amend, show the old rate(s) (if any), the proposed rate(s), the renewal period, date and amount of last increase and General Law or other authorization to perform the service for which the proposed fee would be charged.

Agencies should also describe the service that is being charged for, who will pay the fee, who will collect the fee, and explain in the justification section why it is necessary that the state charge a fee for this service.

Section II. Fees In Comparable States

Where similar fees are charged in other states for services for which an agency is proposing fees, list the rate currently being charged in the ten largest industrial states, the New England states and any other states where the comparison is relevant.

Section III. Estimated Revenue to be Raised from Proposed New Fees

Estimate, through FY96, revenues to be collected from the proposed fees. Also provide detailed backup showing how you arrived at these estimates, including units of service (for example, the number of licenses issued) and what assumptions you used in projecting the number of units of service.

If there are any other fees charged by the state which go towards defraying the costs of the same service for which the proposed fee would be charged (e.g., an assessment on industry to fund the administrative costs of a program or department), list these fees and the revenues they will generate through FY96.

Section IV. Estimated FY92 Costs of Administering Program or Providing Service for which Fees are being Charged -- Break Down By Function.

Agencies should show all FY92 direct costs of providing the services for which the fee is being charged, including the costs of issuing the license or permit or administering the charge. To the greatest extent possible, agencies should break these costs down into component functions of the services, such as, for example, license issuance, inspection of licensees' premises, etc.

In addition to the direct costs identified in the above paragraph, fringe benefit costs and other indirect costs (which include central services, executive office and departmental administrative costs) should be calculated for each function.

In FY92 fringe benefit costs are calculated at the provisionally set rate of 28.69% of the regular salaries of personnel. Regular salaries are defined as the expenses of object codes A01-A05, A09, A11, A17 and A18. Calculate fringe benefit costs at 28.69% of the personnel costs of a particular function.

Indirect costs for central services, executive office and departmental administrative costs (which should be shown on one line on the forms) can be calculated as follows. First, determine the central service and executive office costs for the department from the Statewide Cost Allocation Plan developed by the Budget Bureau. (Agencies may contact Fred DeMinico of the Budget Bureau at 727-2081 for information regarding these allocated costs.)

Next, calculate the departmental administrative costs (departmental indirect costs). These are the central administrative personnel and supporting costs (including fringe) incurred by the department on behalf of its programs which cannot be identified with specific programs (such as payroll, oversight, etc.)

Central service, executive office and departmental indirect costs are determined on a department-wide basis. To allocate them to a particular function, use the following formula, which distributes these costs proportionately to the direct personnel costs of that function:

$$\frac{\text{personnel costs of the function}}{\text{(total departmental personnel costs minus indirect departmental personnel costs)}} \times \frac{\text{(total central services costs + total executive office indirect costs + total departmental indirect costs)}}{\text{total departmental indirect costs}}$$

Please note that the denominator in this formula should not include any of the personnel costs of the departmental indirect cost pool. In other words, the departmental costs to be allocated to the function should not be included in the base for determining what the allocation percentage for those costs should be.

Agencies should also provide detailed backup on how these cost estimates were arrived at, showing what percentage of employees' time is spent on these functions as opposed to other tasks which they perform.

Agencies should also list and explain costs to the state of administering the program or supplying the service for which the fee is being charged but which are not captured in the direct and indirect cost calculations. These would be costs borne by other state programs or other state agencies which result from activities of the licensee or are required for the service provided. There are no hard and fast rules for calculating such costs. An example of appropriate "other costs" would be the costs of maintaining roads and bridges made necessary by the issuance of drivers' licenses.

Section V. Estimated Full-Year Costs of Administering Program Providing Service for which Fees are being charged -- Break Down by Function.

Same as section V., but for full year. Please provide detailed backup as in section V.

DEPARTMENT/SECRETARIAT SIGNOFF

All fee proposals must be approved by the department head and cabinet secretary before they will be considered by the Executive Office for Administration and Finance. Sign-off lines are included on page one of the forms.

QUESTIONS/FURTHER INFORMATION

Questions or further information concerning these forms or the fee-setting process generally should be directed to Howard Merkowitz of the Budget Bureau, at 727-2081.