

It's a Dirty Job

The Jefferson County Sewer and the Non-user Fee

By Bill Fortenberry

On September 22nd of last year, Judge Albert Johnson ended the lengthy legal battle against Jefferson County by appointing Mr. John S. Young to be the receiver over the Jefferson County Sewer System. Mr. Young has a very difficult job ahead of him. He has been tasked with collecting enough money to pay off \$3.2 billion of debt, and he recently announced that he has a plan that will do just that. Unfortunately, that plan includes a proposition of dubious ethical standing known as a non-user fee.

Mr. Young gave reporters two reasons that the business community should support this tax which he referred to as a clean water fee. First, he explained that everyone in Jefferson County has benefited from the repairs which the County has made to the sewer system since the implementation of the 1996 federal consent decree. He then claimed that this fee would be “a way to get a solution without burdening the people who can't afford it.” On the surface, that seems to be a very reasonable position, but let's take a few moments to look beyond the rhetoric and see what the facts themselves tell us about this fee.

First, it is important for us to understand that there is no such thing as a non-user fee. A fee is defined by Webster's Second Collegiate Dictionary as “a charge for a professional service,” but the non-user fee proposed by Mr. Young is a charge for services not rendered. This charge would be better described as a non-user tax. Taxes can be defined as funds paid to the government above the price of any goods or services. For example: a sales tax is the amount of money that you must pay above the cost of the goods that you are purchasing. The proposed non-user fee would be an amount paid to the government above the cost of managing your own waste. Therefore it is a tax, and it should be labeled as such.

When we recognize that this proposal is for a tax instead of a fee, something else becomes immediately apparent: this tax would be unfairly levied against a single group of citizens to the exclusion of all others. Those citizens of Jefferson County who use the county sewer system pay a variable monthly rate based on the amount of use that they made of that system, but those that do not use the system would be charged a flat monthly rate. This would create a situation in which a citizen with a septic tank could be charged more for his non-use of the sewer system than his neighbor who has a sewer hookup. If both men were to take a business trip which lasted at least a whole month, then the one without the sewer hookup would be charged the flat rate for his non-use of the system while the one with the sewer hookup would not be charged at all for the same amount of non-usage. This would be a gross violation of the equity under the law that our government guarantees to each of its citizens.

This recognition provides solid grounds for the business community to oppose the non-user tax, but there are a few more reasons that really cinch the deal. The first is that this tax is wholly outside the realm of authority which the court granted to Mr. Young. According to the court decision, Mr. Young has “exclusive right and authority to fix and charge rates and charges for services furnished by the System,” but he stated in his own words that this tax should be considered a clean water fee instead of a sewer fee. What he failed to mention is that the Jefferson County Sewer System does not provide us with clean water. For most of us, that service is provided by the Birmingham Water Works which is wholly separate from and independent of the sewer system. Mr. Young has no authority to charge citizens for services provided by an entity other than the Jefferson County Sewer System.

Furthermore, while it is true that we do benefit from having a clean water supply, it is also true that we do not benefit from that water supply any more now than we did before a poorly managed sewer system created the danger of contamination in the first place. Is Mr. Young also considering a “healthy catch” fee for all those who fish our public waterways? No, of course not. Our fishermen reap just as much benefit from a properly managed sewer system as those who use the waterways to supply their homes with clean water, but it is obvious to everyone that this benefit is provided by God and not the sewer system.

It should also be pointed out that the Birmingham Water Works won many awards for providing clean water before the 1996 consent decree forced improvements to the Jefferson County Sewer System. If we had access to one of the cleanest water supplies in America before repairs were made to the sewer system, then it is not possible for those repairs to be the source of our clean water.

The final reason that businesses should oppose the non-user tax is one of economics. Mr. Young claims that this tax would lessen the burden of those who cannot afford the increased rates which he has planned for the future, but he is ignoring the increased burden that he is placing on those that use septic systems. A septic system is not free, nor can it be properly maintained without significant cost. If septic systems were free, then no one would be using the sewer. The only reason that the citizens of Jefferson County have continued to pay steeply rising sewage costs is that those costs are still less than the cost of a septic system. The initial installation, of course, is the largest portion of that cost, but then there is the cost of inspections every 3 years and pumping every 3 to 5 years, and the cost of repairs can sometimes be just as much as the installation. Plus the presence of a septic system limits the amount of land that can be used for property improvements such as landscapes, hardscapes and buildings. Those who have a septic system instead of a sewer hookup are already paying a significant price, and it is irresponsible of Mr. Young to compound that with the added burden of a non-user tax.

When we focus on the facts instead of the rhetoric, it becomes obvious that the non-user fee is actually an illegal and unethical tax levied as punishment against those who have chosen not to participate in a particular government program. Sound familiar? Yeah, it reminds me of the individual mandate too. Cleaning up the sewer system is bound to be a dirty job, but there’s no need to add unethical taxes to the mess. If Mr. Young continues to press for the non-user tax, it will be the responsibility of the business community as good citizens of this county to speak up against that tax and remind Mr. Young that his position is not as boundless as he thinks.