



District Court Tax Farming

Are Judges the New Publicans?

By Hon. David A. Hogg

As Roman legions vanquished Asia Minor in about 125 B.C., politicians struggled with the escalating costs of an expanded government. Understanding his countrymen's distaste for direct taxation, a clever tribune named Gaius Gracchus invented the practice now known as *tax farming*.¹ Rome assigned the duty to collect taxes in the recently acquired provinces to *publicans*, entrepreneurs who underwrote the cost of the collection process.² By sharing the wealth with the provincial tax collectors, Gaius guaranteed that the new revenue source would be enthusiastically exploited, without antagonizing tax-averse Roman citizens.³

Segue to twenty-first century Michigan. Our state is broke, and the taxpayers have learned how to say no.⁴ Where can lawmakers find the money to create or enhance worthwhile programs without appearing to raise taxes to pay for them? The answer: district courts.

As were Roman publicans, today's judges have been appointed revenue agents, collecting sums to be shared with the state from people in no position to complain. Local governments bankroll a collection hub, known as the district court, hoping this investment will provide a sufficient return for them, after obligations to the state treasury are satisfied. The beauty of collecting this money in district court is that the exaction process is almost invisible to the general public. Lawmakers can speciously pledge no new taxes, then increase court assessments to pay for their favorite programs.

Requiring people to pay for the privilege of using their own court system is nothing new. Judges have historically assessed costs of prosecution,⁵ and courts have long charged fees to cover administrative expenses.⁶ These sums are logically and transparently retained by the local units of government that foot the bill.⁷

Beyond that, these reimbursements are required to bear a reasonable relationship to the expense that the government actually incurred on a case-specific basis.⁸ But today, commingled with monies intended to reimburse direct court expenses, are mandatory charges that pay for an assortment of state programs that one would expect to be supported by general taxation. All trial courts participate, but the district courts' high case volume provides the most lucrative cash pool by far. This scheme is efficient, but it poses serious unintended consequences for the courts, state policymakers, and the people they serve.

The History of Trial Court Tax Farming

Tax farming in the Michigan court system began by requiring trial courts to collect money for state officers' pensions. When the judicial retirement system was created in 1951, the state paid for it by grabbing a portion of each circuit court filing fee.⁹ The Legislative Retirement System was born in 1961, and it was funded the same way.¹⁰ Next, the Law Enforcement Officers' Training Council was established in 1965, and trial judges were required to impose a surcharge on penal fines to pay for the new state program.¹¹ The Court of Appeals invalidated this assessment,¹² but lawmakers followed up with a \$5 judgment fee for state retirement programs.¹³ The judgment fee survived a constitutional challenge,¹⁴ and this practice has metastasized since then. Court users now unknowingly support a variety of state programs by paying hidden fees that may have nothing to do with the purpose of their court visit, in amounts unrelated to their consumption of government resources.

District Court Tax Farming Today

People filing civil lawsuits and offenders fulfilling sentences all contribute to a myriad of dedicated funds maintained by the state treasurer. Between 56 and 79 percent of every civil filing fee is deposited in the Civil Filing Fee Fund.¹⁵ Motion fees enrich the State Court Fund.¹⁶ When levying fines and costs for a crime or

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traffic civil infraction, a judge must order the payment of \$40, \$48, \$53, or \$68 to the Justice System Fund.¹⁷ One convicted of a serious misdemeanor pays an additional \$75 or \$130, and 90 percent of this amount is sent off to the Crime Victim's Rights Fund.¹⁸ A person who pays a traffic ticket too late illogically contributes \$15 to the Juror Compensation Reimbursement Fund.¹⁹ Trial courts now send off more than \$100 million a year to the state treasury to be deposited in these funds.²⁰

The path this money travels afterward looks like a money laundering scheme. Each dollar is broken to bits and then transferred back and forth through a labyrinth of other dedicated funds. A big chunk of dough is eventually returned to the counties that financially support the trial courts.²¹ But before this occurs, enough cash has been siphoned off by the state to pay for lots of other things that may have no relationship to the court activity that generated the money in the first place. (The author's best attempt at describing this process is the creation of the flowchart shown on page 31.²²)

It's probably best that people paying speeding tickets don't know they are making a defined contribution to their legislator's pension.²³ Why should stray-dog citations help to house felons in county jails?²⁴ And judges should be embarrassed that the solvency of their retirement plan depends on the number of cases filed by people whose taxes have already paid their salaries.²⁵ A recent addition to this family of dubious fees is an \$8 Justice System Fund add-on to pay for the newly created Sexual Assault Victim's Medical Forensic Intervention and Treatment Fund and the Children's Advocacy Center Fund.²⁶ Most people who pay this increase will not have abused a child or sexually assaulted anyone. They won't derive a benefit from these new programs greater than the vast majority of Michigan citizens who will pay nothing toward funding them. Is it legal to do this? And, more importantly, is it wise?

Is This Legal?

Are Justice Fund Assessments and Victim's Rights Charges Unconstitutionally Diverted Fines?

The legality of requiring trial court users to pay for unrelated expenses of state government may depend on whether these charges are considered to be costs of prosecution, penal fines, taxes, or user fees.²⁷ This issue was last addressed in 1982, when the Court of Appeals in *Saginaw Library Bd v District Judges* considered a \$5 "judgment fee" earmarked for legislative and judicial retirement funds.²⁸ Article 8, §9 of the 1963 Michigan Constitution requires that state penal fines be used exclusively to support public libraries. The library board claimed that the judgment fee was

FAST FACTS

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Some district court assessments may violate United States and Michigan constitutional protections.

District court tax farming is fundamentally unwise. It is regressive and unfair, hurts local trial court funding, and promotes tangential programs over core services. Worst of all, it diminishes respect for our justice system.

a fine because it was uniform in each case and unrelated to the actual costs of prosecution. The Court disagreed, holding that the state could obtain revenue by requiring trial courts to collect reasonable, uniform “base costs” that were not considered to be fines because their purpose was *compensatory*.²⁹ How court users consume or benefit from state officers’ pensions was not explained.

Whether today’s justice fund and victim’s rights charges would survive a similar challenge is uncertain. These assessments are significantly larger than the judgment fee considered in *Saginaw Library Bd*, measured both by their absolute amounts and in proportion to the overall fines and costs imposed. For example, a meager \$81 speeding ticket now includes a whopping \$40 Justice System Fund assessment.³⁰ Trial court collections for the Justice System and Crime Victim’s Rights funds now exceed \$70 million annually.³¹ This past December, crime victim’s rights assessments were drastically increased to provide \$3.5 million in seed money for a statewide trauma center.³² After that, these court charges will continue to provide trauma center funding of at least \$1.75 million annually, even if crime victims’ use of the trauma center is never demonstrated.³³

The Court warned in *Saginaw Library Bd* that “fee[s]... which would be considerably greater than that involved here might offend the constitutional or statutory provisions.”³⁴ As these charges have grown larger and become disconnected almost completely from the expense of prosecution, a constitutional challenge based on the misdirection of fine revenues has become more likely to succeed.

Do Mandatory District Court Charges Violate Constitutional Equal Protection?

Money collected by the district courts for the state treasury could also be challenged as unconstitutional taxes or user fees; a distinction that sometimes matters.³⁵ In 2007, the Court of Appeals considered a constitutional attack on the contentious Michigan driver responsibility fee, an amount charged by the secretary of state to bad drivers as a requirement of maintaining an operator’s license.³⁶ The Court upheld the constitutionality of this assessment, but the judges on the panel could not agree whether this charge is a tax, a user fee, or a penal fine. A fair reading of the individual opinions suggests that two judges on this panel might find some mandatory district court charges to be taxes.³⁷

Taxes and fees must pass muster of equal protection under both the United States and Michigan constitutions, and analysis under each is the same.³⁸ If taxes or fees are charged to some citizens, but not others, the classification system must be rationally related to

some governmental purpose.³⁹ Clearly, the crime victim’s rights fee, imposed on persons convicted of crimes, would pass this test. But the rational basis for taxing speeders to house felons in county jails is harder to explain. And it is a real stretch to claim that people who use the court system should pay more toward legislators’ pensions than those who do not.

Are Mandatory District Court Charges Really Taxes Not “Distinctly Stated?”

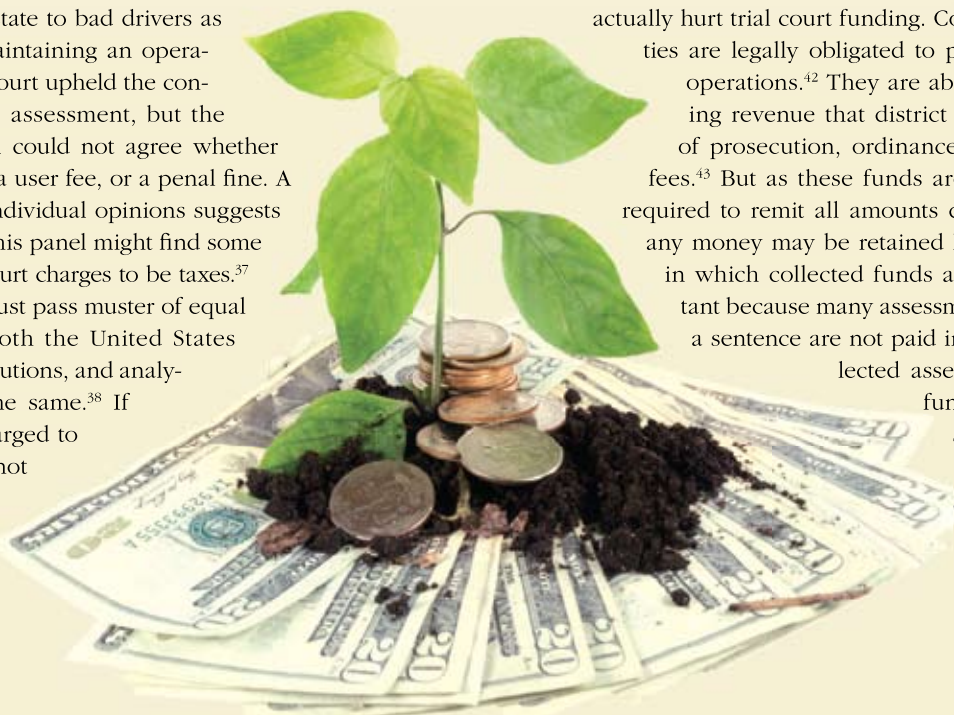
If determined to be taxes, district court financial assessments would also need to comply with article 4, §32 of the 1963 Michigan Constitution, which provides that “[e]very law which imposes, continues or revives a tax shall distinctly state the tax.” This obscure constitutional provision appears to be aimed at preventing the legislature from deceiving itself and furnishing moneys for unintended purposes.⁴⁰ A challenge under this section would determine if the wording of statutes creating various trial court assessments adequately discloses their purpose of funding peripheral state programs, such as legislative pensions.⁴¹ No assessment has ever been struck down for violating this section, but if its true purpose is to prevent deceitful taxation, hidden court charges could be the first.

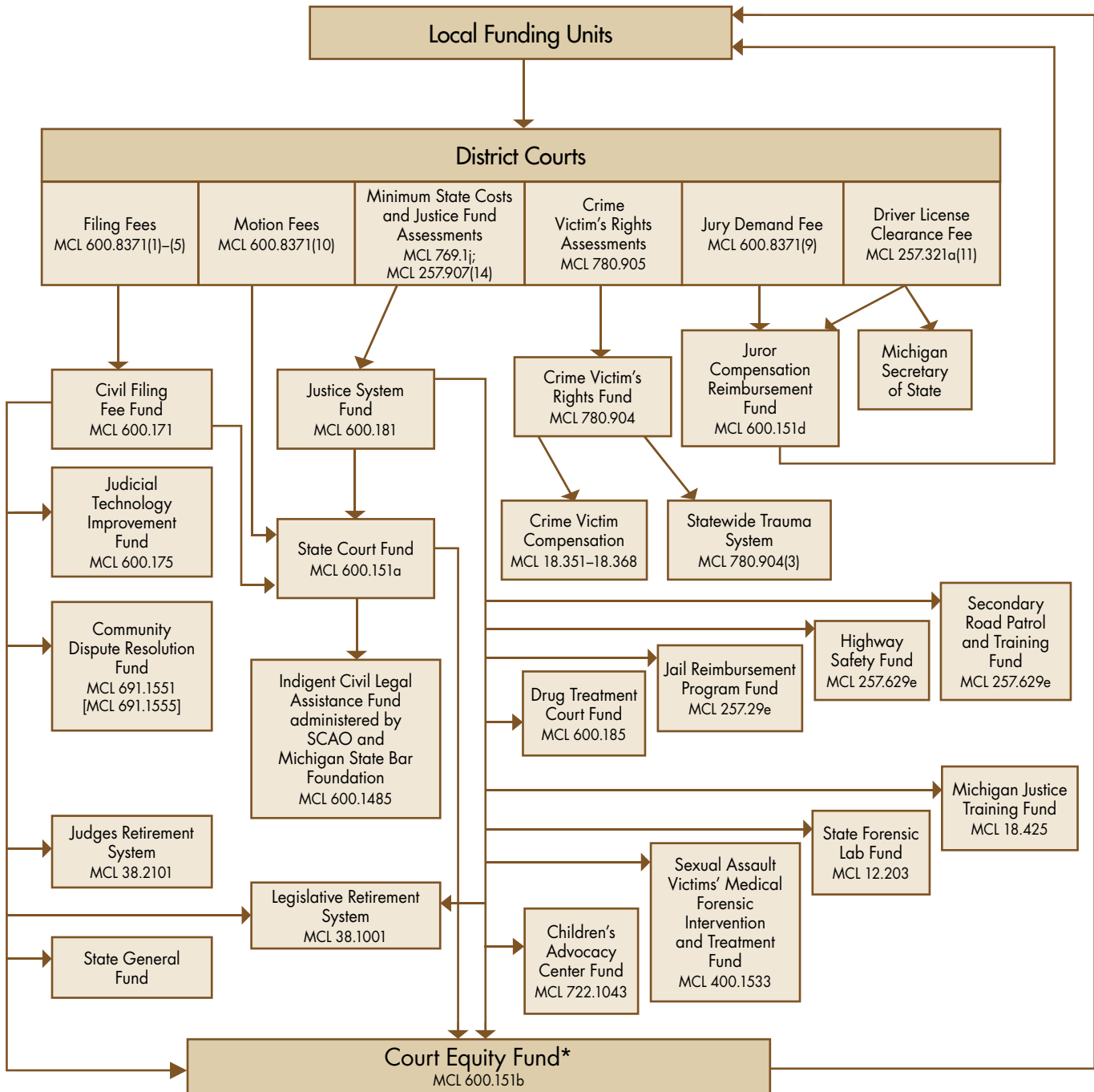
Is This Wise?

An appellate court may someday decide if trial courts *can* legally raise revenue for state government in this way, but state government leaders shouldn’t wait until then to decide if they *should*. There are good reasons to question the wisdom of district court tax farming. As a tax policy, it is extremely regressive. Most of this money is paid by criminal or traffic offenders. These people are disproportionately poor and the least able to pay for governmental programs. Imposing these assessments can be counterproductive. Unmet financial obligations cause poor people to fail on probation, thwarting the courts’ primary goal of behavior modification.

Raising revenue for the state through court assessments may actually hurt trial court funding. Counties and municipalities are legally obligated to pay for state trial court operations.⁴² They are able to do this by retaining revenue that district courts collect as costs of prosecution, ordinance fines, and civil filing fees.⁴³ But as these funds are collected, courts are required to remit all amounts due to the state before any money may be retained locally.⁴⁴ The sequence in which collected funds are disbursed is important because many assessments ordered as part of a sentence are not paid in full. For partially collected assessments, it is a court’s

funding unit that is always shortchanged. As state base costs increase, the local share of collected revenue correspondingly shrinks in every case





*Only county funding units receive Court Equity Fund payments. The funding units of third-class district courts—those supported by political subdivisions within a county—do not receive Court Equity Fund payments.

in which court charges are not fully paid. Ironically, the local governments' ability to financially support the district courts is undermined by increasing the courts' burden to collect money for peripheral state programs.

The ability to hide a funding source within a trial court assessment promotes tangential programs over core services. Consider recent events. Plummeting tax revenues caused general fund expenditures to be slashed by executive order.⁴⁵ Prisons were slated for closure,⁴⁶ and state police officers were laid off.⁴⁷ At about the same time, lawmakers incurred the expense of creating the

Children's Advocacy Center Fund.⁴⁸ Was this an intelligent balance of our citizens' limited resources? We don't know because the burden of funding the new program was simply assigned to the trial courts by increasing the Justice System Fund assessment.⁴⁹ Prioritizing the value of enhanced victims' services against the loss of cops and prison cells never occurred. Worthwhile programs should compete on the level playing field provided by general-fund financing to get the biggest bang for our buck.

The most troubling aspect of district court tax farming is its inevitable damage to the stature of the courts. As people look to

the courts to resolve their disputes and enforce our laws, most expect to pay their fair share. Offenders will generally accept a reasonable financial penalty as a consequence of their conduct, and most litigants are resigned to paying for their actual use of court services. But respect for judicial authority will erode as people learn that their court appearance has simply become a taxable event, an opportunity for the government to take their money without regard to their acts or omissions. With each new assessment, the brash, pecuniary goal of our justice system becomes more difficult to conceal.

Conclusion

The scheme of assigning locally funded trial courts to collect money for peripheral state programs is fundamentally unwise, and parts of it may be unlawful. This fertile revenue source cannot immediately be replaced in these difficult times. But we should draw a lesson from the history of the first tax farmers and begin to reverse the trend. Caesar Augustus ended Roman tax farming after it revealed itself to be not only unjust, but ineffective.⁵⁰ And we know this: as Roman revenue collection grew arbitrary and disproportionately directed at the poor, the publicans became disrespected, then ultimately despised.⁵¹ Many Michigan citizens will form their opinions of our justice system solely from their experience in district court. As they seek justice, we can't allow them to view our judges as tax collectors. ■



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FOOTNOTES

1. Balsdon, *Roman Civilization* (Baltimore: Pelican, 1965), p 43.

2. Grant, *History of Rome* (New York: Charles Scribner's Sons, 1978), p 173.

3. *Id.* at 174.

4. Executive Order No. 2009-22.

5. MCL 769.3; MCL 771.3(5).

6. MCL 600.2529 (former MCL 600.2528).

7. *Id.*; MCL 600.8379.

8. *People v Wallace*, 245 Mich 310, 314; 222 NW 698 (1929).

9. 1951 PA 154; former MCL 646.2.

10. Former MCL 600.2528 [now MCL 600.2529].

11. 1965 PA 203; MCL 28.613.

12. *People v Barber*, 14 Mich App 395, 407; 165 NW2d 608 (1968).

13. 1970 PA 248; MCL 600.8381.

14. *Saginaw Library Bd v District Judges*, 118 Mich App 379; 325 NW2d 777 (1982).

15. MCL 600.171; MCL 600.8371(1) to (5).

16. MCL 600.151a; MCL 600.8371(10).

17. MCL 600.181; MCL 769.1j(1)(a) to (c); MCL 257.907(14); MCL 600.8381(5).

18. MCL 780.904; MCL 780.905.

19. MCL 600.151d; MCL 257.321a(1)(c).

20. Budget officers at the Michigan Supreme Court and the Department of Community Health have identified for the author the following fund revenues for fiscal year 2009–2010: Civil Filing Fee Fund, \$40,525,043; Justice System Fund, \$63,337,036; State Court Fund (considering motion fees only), \$3,128,687; Juror Compensation Reimbursement Fund, \$4,391,291; Crime Victim's Rights Fund, \$9,068,272.

21. MCL 600.151b. Cities and townships that fund third-class district courts, however, do not receive Court Equity Fund distributions.

22. Amounts retained by funding units, moneys transmitted to state agencies for administrative costs, and fees assessed for conservation violations are omitted from the chart.

23. MCL 257.628; MCL 257.907(14); MCL 600.181(3)(b)(iv).

24. MCL 287.262; MCL 287.286; MCL 769.1j; MCL 600.181(3)(b)(ii); MCL 257.629(e).

25. MCL 600.8371(1) to (5); MCL 600.171(3)(e).

26. MCL 600.181(3)(b)(xi) and (xii).

27. See *Dawson v Secretary of State*, 274 Mich App 723, 740–741; 739 NW2d 339 (2007) (opinion by Wilder, P.J.).

28. *Saginaw Library Bd*, 118 Mich App at 388–389.

29. *Id.* at 389.

30. MCL 257.907(14). For 2009, the State Court Administrative Office recommended a minimum total assessment of \$81 for a minor speed violation. See MCL 257.907(7).

31. See n 20 *supra*.

32. MCL 780.905; MCL 780.904.

33. MCL 780.904(3).

34. *Saginaw Library Bd*, 118 Mich App at 389.

35. See *Wheeler v Shelby Charter Twp*, 265 Mich App 657, 664–668; 697 NW2d 180 (2005).

36. *Dawson*, 274 Mich App at 724 (opinion by Wilder, P.J.).

37. *Id.* at 724 (opinion by Wilder, P.J.); *id.* at 748 (opinion by Zahra, J.).

38. *Id.* at 738 (Wilder, P.J.).

39. *Id.* at 739.

40. See *Westenhaven v People*, 44 Mich 265, 266–267; 6 NW 641 (1880).

41. See, e.g., *Dawson*, 274 Mich App at 747 (opinion by Wilder, P.J.).

42. See *46th Circuit Trial Court v Crawford Co*, 476 Mich 131; 719 NW2d 553 (2006).

43. MCL 600.8379; MCL 8371(1) to (5).

44. MCL 775.22; MCL 780.766a.

45. Executive Order No. 2009-22.

46. State of Michigan Executive Budget, Fiscal Year 2009–2010 <http://www.michigan.gov/documents/budget/budget20small_267048_7.pdf> (accessed January 24, 2011).

47. Michigan State Police, *December 18, 2009—Official Statement: State Police to Recall 28 Troopers Using Grant Funds* <<http://www.michigan.gov/msp/0,16077-123-228254-00.html>> (accessed January 24, 2011).

48. MCL 722.1043.

49. MCL 600.181(3)(b)(xii).

50. Eck, *The Age of Augustus* (Oxford: Blackwell Publishing, 2003), pp 83–84.

51. Cahill, *How the Irish Saved Civilization* (New York: Doubleday, 1995), p 24; *Luke* 18:9–14.

