


MEMORANDUM

TO: Thomas A. Golden, Jr., City Manager 
FROM: John J. McKenna, First Assistant City Solicitor
CC: Corey F. Williams, City Solicitor and
Theodoros Panagiotopoulos, City Treasurer
DATE: August 30, 2023

SUBJECT: MOTION RESPONSE: June 13, 2023 – C. Yem – Request City Manager have the Law Department provide a report on the implications of the U.S. Supreme Court’s Decision, Tyler v. Hennepin County, in the City’s upcoming tax lien auction.

On May 25, 2023, the U.S. Supreme Court decided the case of *Tyler v. Hennepin County, Minnesota*, No. 22-166 (the Decision). In this case, a Minnesota county government foreclosed a homeowner’s property for unpaid taxes then sold it. The government kept the full price of the sale that was more than the tax debt owed. The Supreme Court decided when the government kept the amount received after the sale of a foreclosed tax lien over and above the amount owed to the taxing authority (or its assignee at a tax lien auction) is a violation of the Fifth Amendment to the U.S. Constitution (referred to as the “Taking Clause”). The Court found the Taking Clause, applicable to the States through the Fourteenth Amendment, provides that “private property [shall not] be taken for public use without just compensation.” Government may impose taxes on property that are mandated as contribution from individuals as compensation for the protection which government affords. The government may impose interest, late fees and costs of collecting the taxes. They can seize and sell the property, including the land, to recover the amount owed but no more than is necessary to pay the amount owed to the government. This principal that a government may not take more from a taxpayer than she is owed can trace its origins to the Magna Carta where King John swore that his sheriff could remove property of a dead man until the debt is paid, and the residue shall be left to the executors to fulfil the will of the deceased. The Court stated in the decision, “The Taxpayer must render to Caesar what is Caesar’s, but no more.” The decision requires a government to return of any surplus money received after a Tax Title Foreclosure Auction but does not prevent the auction of tax lien to a third party. The decision may have implications on the desire of third parties to buy tax liens at auction. The Massachusetts legislature could revise the tax title foreclosure statutes (G.L. Ch. 60) in response to the Decision, in fact several bills are pending now. Municipal Officials and the Land Court are currently assessing the impact of the Decision on Massachusetts law and practice.