

Could a town charge non-residents a higher fee for purchasing lots in a town cemetery than residents?

There is more support for a town to charge differing rates than there is for flat-out prohibition. Some English cases state that towns have such power. However, the issue has not been directly presented in an American court. In a 1976 case, *McFall et al. v. The City of Shawnee*, non-residents of a lakeside town sued because the town charged different rental fees for residents and non-residents. *McFall et al. v. The City of Shawnee*, 1976 OK 185. The supreme court of Oklahoma upheld the town's decision to charge differing rental fees because it bore a rational relationship between the treatment and the town's reason for charging different fees (which was to charge non-taxpayers more to adjust for what resident taxpayers were already paying). "There is nothing inherently unfair, unreasonable, or oppressive in the ordinance assessing [differing] fees for resident and nonresident lessees." The court determined that by charging a different fee, the town was not threatening the fundamental rights of nonresidents.

In short, towns may charge differing fees if they choose. As the court in *McFall* stated, towns may have a rational basis for charging different fees for residents and non-residents.

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