
PUBLIC CORPORATION

Newsletter of the Public Corporation Law Section of the State Bar of Michigan

Law Quarterly

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CHAIRPERSON'S CORNER

By Daniel Matson
Chairperson

How many times have you attended a first-rate seminar in an exceptional setting and wished your colleagues and clients had been there to participate with you? Our annual winter event at the Ritz-Carlton crafted by our Secretary/Treasurer Carol Rosati and her team of innovators is still drawing appreciative comments. The afternoon panel addressing sexual harassment in the public work place was an exceptional offering. Special thanks to Michael Watza for superb work in filling a last-minute vacancy in the program.

We return to the Grand Hotel on Mackinac Island on June 27 and 28 for the summer seminar co-sponsored by the Section and Michigan Association of Municipal Attorneys, which has become a traditional annual event. It is our best opportunity to share one occasion per year that brings our families and friends together in an education and social offering within Michigan's most treasured resource, The Island. A preview of the schedule by Peter Letzmann appears in the issue. Recreational events for all ages and interests directed by our youthful planners are being designed to exercise our most cherished freedoms, to tour, to be sporty, or to simply enjoy the ambiance.

A change in the State Bar policy now permits Sections to conduct their annual meetings at a time and location other than that of the State Bar. A number of Sections, including ours, have scheduled the 2003 annual meeting to coincide with a major section event. Ours will be held at the Grand Hotel at 4:30 p.m. on Friday, June 27. It is an opportunity for greater participation by our members, since attendance at the Island is likely to far exceed the turnout experienced at our recent annual meetings. Our Section Bylaws are in the amendment process to accommodate the change.

All Section members are invited to participate in the PCLS listserv. You may subscribe by contacting Milton Firestone for information at 517/351-4947 or miltonf@pilot.msu.edu.

Articles for the *Quarterly* are in constant demand. Please contact Dan Dalton, Editor at 248/591-7000 or ddalton@tomkiwdalton.com with your request for submission on any law topic within our Section's sphere of interest.

We hope to see you at the Island.

Dan Matson

Notice of Annual Meeting

The Annual Meeting of the Public Corporation Law Section for 2003 will be held on Friday, June 27, 2003, at 4:30 p.m. at the Grand Hotel, Mackinac Island.

Proposed Section Bylaw Amendment

The following amendment of Article 6, Section 6.1. Section Meetings, has been proposed by the Council for adoption by the Section members at the Annual Meeting. (The new language has been underscored; there are no deletions.)

ARTICLE 6 MEETINGS

SECTION 6.1. SECTION MEETINGS. The Annual Section Meeting shall be held at the same time and place as the Annual Meeting of the State Bar of Michigan, or at such other place or time as may be arranged by the Council. A second Section meeting may be held at such time and place, as the Council shall specify. The Council may authorize such additional meetings of the Section as it shall determine necessary. A quorum shall be those Section members present and voting.

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Public Corporation Law Quarterly

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The views expressed in the publication do not necessarily reflect those of the Public Corporation Law Section or the State Bar of Michigan. Their publication does not constitute an endorsement of the views.

Mackinac Island Hosts PCLS & MML Conference



Jack Beras, the President of the Michigan Association of Municipal attorneys said, "I'm looking forward to the conferences, they get better every year."



Summer Educational Conference

June 27-28, 2003

Would you believe summer is almost here? And, on Friday June 27 and Saturday 28, 2003, as has been the tradition for the past four years, the Public Corporation Law Section of the State Bar of Michigan is conducting its Summer Educational Conference in conjunction with the Michigan Association of Municipal Attorneys at the Grand Hotel on Mackinac Island.

To register go to http://www.mml.org/legal/mama_calendar.htm or call the MML at 800 653-283

The retreat to Mackinac Island has always been popular with the attorneys, their families and friends. Mackinac Island ranks as one of the nations top tourist attractions. Not only will there be the first rate educational opportunities for the attorneys and the enjoyment of northern Michigan, there is the comfort of the Grand Hotel.

Grand Hotel beckons you to a bygone era of old-world hospitality and charm. Back to a time of horse-drawn carriages, Afternoon Tea, and croquet on an endless lawn. An era of dining to chamber music and dancing the evening away. Here, no automobiles are permitted, and nothing intrudes on the serenity and natural beauty of the Island. The crown jewel of pristine secluded Mackinac Island, Grand Hotel has been the world's largest summer hotel since 1887. Check out their web site, <http://www.grandhotel.com/>.

There are ample opportunities for shopping, sightseeing, photography recreation and every other form of recreation on Mackinac Island.

This year's Saturday night dinner speaker will give an informative and entertaining peek at the inner workings of the United States Supreme Court. **Evan H. Caminker** Professor at the University of Michigan Law School and former Clerk to US Supreme Court Justice William Brennan and for Judge William Norris of the Ninth Circuit, will give us that glance "Behind the Burgundy Curtain."

The METRO Act (2001 P. A. 48) has implications to every city, village, and township in the State. A panel of **Tim Lay, Neil Lehto, and John Pestle**, three expert telecommunications attorneys, will discuss the effects and ramifications after eight months of its implementation.

As things continue to change in Lansing we need to keep up-dated. A portion of the program will recap this spring's activities and make a prediction of the future activities of the Legislature and the Governor's office. **Michael L. Brady**, Director MML State and Federal Affairs will provide this insightful presentation.



The ever present Personnel and Labor issues facing Local Governments will be discussed by **Melvin J. Muskovitz**, a long time Ann Arbor attorney now with Dykema Gossett.

The Friday program will conclude with the traditional Cracker Barrel session that has been popular for years. This is the time for the attorneys to bring their questions and conundrums to be pondered by a panel of experts and the

audience. Bring your successes and other experiences of the year to be shared with your colleagues.

On Saturday morning, back by popular demand is **Richard Ruda**. He will provide a review of local government cases decided by the U.S. Supreme Court during the 2002-2003 term. Ruda is the Legal Counsel of the State and Local Government Legal Center in Washington DC.

"I call this meeting to order." Attorneys representing public corporations must always be prepared to advise their clients about conducting legal and better meetings. Snips of role playing of the various issues regarding parliamentary procedure, rules of order, disturbing the public meeting, etc. will be coordinated by **Eric Williams**, City Attorney, Big Rapids, and **Archie C. Brown** Chief Judge Washtenaw County Trial Court and Parliamentarian to the State Bar of Michigan. That should be fun.

And, before the program adjourns for an afternoon of golf and other recreation, **David F. DuMouchel**, from Butzel Long's Detroit office, will discuss the shift in ethics considerations for local government lawyers after Enron, and Arthur Andersen; who really is the client, the mayor, the council, or the taxpayer?



Registration form

Legislative Update

By: Kester K. So and Matthew F. Hiser
Dickinson Wright PLLC

Since the current legislative session began on January 1, 2003, the Michigan Senate and House of Representatives have introduced numerous bills of municipal interest. The following are summaries of some of those bills that have already generated significant legislative activity.

Legislation Vetoed By The Governor

Sewer System Regionalization: **Senate Bill 195** would create a new act to establish an authority to provide additional review and oversight of the "contract process" of and the rates charged by the Detroit Water and Sewerage Department ("DWSD"). The bill would also require the DWSD's chief financial officer to prepare and submit to each member of the authority a proposed budget for the next fiscal year, require the authority to establish policies and procedures for the contracting of services for the water or sewer system, and establish remedies for customers who are overcharged by the system. The bill was passed by the Senate and by the House, and was ordered enrolled on March 18, 2003. However, the bill was vetoed by the Governor on March 21, 2003.

Pending Legislation Passed By The House And The Senate

Biodiesel Plants; Tax Abatement: **House Bill 4010** would amend the Plant Rehabilitation and Industrial Development Act, 1974 PA 198, as amended, to permit local units of government to extend property tax abatements to facilities that create or synthesize biodiesel fuel, and to electric generating plants fueled by biomass. The bill was passed by the House on February 20, 2003 and was passed by the Senate on April 3, 2003.

Pending Legislation Passed By The House

Supplemental Appropriations: **House Bill 4032** provides for supplemental appropriations for the State's 2002-2003 fiscal year, and provides for expenditures of such appropriations. The bill was passed by the House on April 3, 2003.

Transportation Authority: **House Bill 4072**, one bill in a three bill package, would create a new act, the Detroit Regional Transportation Authority Act. The new act would take effect June 30, 2003 and would establish a new regional transportation authority ("DARTA") in five counties in the Detroit area. The Metropolitan Transportation Authorities Act of 1967 would be repealed as of the same date. Other bills in the package: **House Bill 4073** would amend the Motor Bus Transportation Act, 1982 PA 432, as amended, and **House Bill 4074**

would amend the Michigan Transportation Fund Act, 1951 PA 51, as amended, to acknowledge in those acts the creation of DARTA. Each of these bills was passed by the House on February 20, 2003 and referred to the Committee on Commerce and Labor in the Senate on February 25, 2003.

Abandoned Building Codes: **House Bill 4081** would amend the Housing Law of Michigan, 1917 PA 167, as amended, to expand the definition of "dangerous building" to include buildings damaged by deterioration, neglect, abandonment, or vandalism. The bill generally clarifies that such types of abandoned buildings can be subject to demolition under the Housing Law of Michigan. The bill also specifies that demolition costs for which local units of government are eligible for reimbursement from property owners include hearing officer fees, costs related to title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the register of deeds, demolition and dumping charges, court reporter attendance fees, and collection costs authorized under the Housing Law of Michigan. The bill was passed by the House on April 3, 2003.

Groundwater Withdrawals: **House Bill 4087**, one bill in a two bill package, would add Part 371, entitled "Aquifer Protection and Conflict Resolution," to the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to establish a process that would be followed by the director of the Department of Environmental Quality to receive groundwater withdrawal complaints, as well as to investigate and resolve those complaints. The other bill in the package: **House Bill 4097** would amend the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to authorize the Department of Environmental Quality to expend money from the Water Use Protection Fund, upon appropriation, for the implementation and administration of the groundwater conflict resolution process. The two bills are tie-barred to each other. Each of these bills was passed by the House on February 27, 2003 and referred to the Committee on Natural Resources and Environmental Affairs in the Senate on March 4, 2003.

Speed Limit Input: **House Bill 4133**, one bill in a two bill package, would amend the Michigan Vehicle Code, 1949 PA 300, as amended, to allow township boards to be involved in the process for setting speed limits on state trunkline highways and county roads. The other bill in the package: **House Bill 4224** is much like House Bill 4133 except that it provides no provisions permitting a township board to withdraw from the process for

Continued on the next page.

setting speed limits. The two bills are tie-barred to each other. Each of these bills was passed by the House on March 26, 2003 and referred to the Committee on Transportation in the Senate on March 27, 2003.

Charter School Oversight: **House Bill 4148** would amend The Revised School Code, 1976 PA 451, as amended, to encourage more oversight by charter school authorizing bodies, to increase the charter school cap for state public university authorizing bodies, and to allow charter schools to borrow money and issue bonds, among other things. The bill was passed by the House on March 20, 2003 and referred to the Committee on Education in the Senate on March 25, 2003.

Living Wage Ordinance: **House Bill 4160** would amend the Minimum Wage Law of 1964, 1964 PA 154, as amended, to prohibit local units of government from enacting, maintaining, or enforcing by charter, ordinance, purchase agreement, contract (excepting a collective bargaining agreement), regulation, rule, or resolution, either directly or indirectly, a minimum wage rate that is greater than that specified in the Minimum Wage Law of 1964 or the federal minimum wage law. The bill was passed by the House on February 25, 2003 and referred to the Committee on Commerce and Labor in the Senate on February 26, 2003.

Urban Township: **House Bill 4197** would amend the Local Development Financing Act, 1986 PA 281, as amended, to expand the current definition of “urban township” to make more townships eligible to establish local development financing authorities. The bill was passed by the House on April 1, 2003 and referred to the Committee on Commerce and Labor in the Senate on April 2, 2003.

Sewer System Regionalization: **House Bill 4206** would create a new act to establish an authority to provide additional review and oversight of the Detroit Water and Sewerage Department’s contracting process. Under the bill, each city with a population of 750,000 or more (i.e. the City of Detroit) and each county with a population of 400,000 or more that is served by the system (i.e. Genesee, Macomb, Oakland and Wayne Counties) would be represented on the authority. The authority would have to establish an ethics manual governing the conduct of system business and the conduct of the system’s employees. Each authority member and certain employees of the system would have to comply with policies governing conflicts of interest in connection with the procurement of supplies and services for the system. The bill was passed by the House on February 25, 2003 and was passed by the Senate on March 7, 2003, but was referred to the Committee on Government Operations in the House on March 25, 2003 as a result of the Governor’s veto of Senate Bill 195.

Safety System Towers: **House Bill 4259** would amend 1929 PA 152, as amended, which authorizes a State-owned and State-operated radio broadcast system for police purposes, to require the director of the Department of State Police to allow any governmental public safety agency, subject to certain conditions, to utilize the Michigan Public Safety Communications System, including attaching public safety communications equipment to radio towers. The bill was passed by the House on March 25, 2003 and referred to the Committee on Judiciary in the Senate on March 26, 2003.

Candidate Public Funding: **House Bill 4290** would amend the Michigan Campaign Finance Act, 1976 PA 388, as amended, to require candidates for governor who receive money from the State Campaign Fund to participate in public debates. The bill was passed by the House on March 20, 2003, referred to the Committee on Local, Urban and State Affairs in the Senate on March 25, 2003, and reassigned to the Committee on Government Operations in the Senate on March 26, 2003.

Pending Legislation Passed By The Senate

Officer Impersonation; Officer Impersonation Penalties: **Senate Bill 117**, one bill in a two bill package, would amend The Code of Criminal Procedure, 1927 PA 175, as amended, to enact sentencing guidelines for impersonating a peace officer to commit or attempt to commit a felony. The other bill in the package: **Senate Bill 118** would amend The Michigan Penal Code, 1931 PA 328, as amended, to create a felony penalty for impersonating a peace officer to commit or attempt to commit a crime. Senate Bill 117 is tie-barred to Senate Bill 118. Each of these bills was passed by the Senate on February 26, 2003 and referred to the Committee on Criminal Justice in the House on February 26, 2003.

Speed Limit Input: **Senate Bill 123** would amend the Michigan Vehicle Code, 1949 PA 300, as amended, to allow township boards to be involved in decisions to alter speed limits on county highways. The bill was passed by the Senate on March 12, 2003 and referred to the Committee on Transportation in the House on March 12, 2003.

Homestead Exemption Revision: Since the passage of Proposal A, a substantial number of taxpayers have reportedly become confused and have had difficulty distinguishing between the “homestead exemption” from school operating taxes and the “homestead credit” against income taxes. This has reportedly caused some taxpayers who have filed a homestead exemption not to claim a homestead credit, and vice versa. **Senate Bill 129** is one bill in a series of bills that would amend various statutes to delete references to “homestead” and, in some cases, replace them with references to “principal residence” in provisions that exempt homestead property from school operating taxes. Senate Bill 129 would amend The Revised School

Code, 1976 PA 451, as amended, to replace references to homestead exemption with references to principal residence exemption. Other bills in the series: **Senate Bill 130** would amend the Neighborhood Enterprise Zone Act, 1992 PA 147, as amended, to replace references to homestead exemption with references to principal residence exemption. **Senate Bill 131** would amend the Real Estate Transfer Act, 1993 PA 330, as amended, to replace references to homestead exemption with references to principal residence exemption. **Senate Bill 132** would amend 2002 PA 27 regarding the development of blighted property to replace references to homestead exemption with references to principal residence exemption. **Senate Bill 133** would amend the General Property Tax Act, 1893 PA 206, as amended, to provide for the definition of the homestead property tax exemption to be changed to principal residence property tax exemption. **Senate Bill 134** would amend the School Aid Act, 1979 PA 94, as amended, to replace references to homestead exemption with references to principal residence exemption. **Senate Bill 135** would amend the Seller Disclosure Act, 1993 PA 92, as amended, to replace references to homestead exemption with references to principal residence exemption. **Senate Bill 136** would amend the Tax Tribunal Act, 1973 PA 186, as amended, to replace references to homestead exemption with references to principal residence exemption. Each of these bills was passed by the Senate on March 13, 2003 and referred to the Committee on Tax Policy in the House on March 18, 2003.

Harbor Funding: **Senate Bill 150** would amend the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to permit public colleges and universities to enter into agreements with the Department of Natural Resources to finance harbor and waterway projects and to allow public colleges and universities to receive funding for participation in federal projects, the development of harbors and public boating access sites. The bill was passed by the Senate on March 25, 2003 and referred to the Committee on Great Lakes and Tourism in the House on March 25, 2003.

Detroit Reform Board: **Senate Bill 157** would amend The Revised School Code, 1976 PA 451, as amended, to schedule the vote on whether to retain the school reform board of the Detroit Public Schools and the chief executive officer at the August 2003 primary election, instead of the November 2004 general election as currently authorized by statute. The bill was passed by the Senate on April 3, 2003 and referred to the Committee on Commerce in the House on April 3, 2003.

Farm Renaissance Zones: **Senate Bill 163** would amend the Michigan Renaissance Zone Act, 1996 PA 376, as amended, to increase the cap on agricultural renaissance zones from 10 to 20, and to remove the December 31, 2002, deadline for their designation. The bill was passed by the Senate on March 27, 2003 and referred to the Committee on Agriculture and Resource Management in the House on March 27, 2003.

Economic Development Grants; Revolving Loan Fund: **Senate Bill 239**, one bill in a two bill package, would amend 1851 PA 156, as amended, which prescribes the powers and duties of county boards of commissioners, to allow a county board of commissioners to grant or loan funds that are not derived from ad valorem taxes to a nonprofit corporation organized for the purpose of providing loans for private sector economic development initiatives. The other bill in the package: **Senate Bill 240** would amend 1913 PA 380, as amended, which regulates gifts of property to local units of government, to allow a county to grant or loan funds to a township, city, or village located in the county, for the purpose of encouraging and assisting businesses to locate and expand within the county. Each of these bills was passed by the Senate on March 20, 2003 and referred to the Committee on Local Government and Urban Policy in the House on March 20, 2003.

Student Cell Phone Use: **Senate Bill 294** would amend The Revised School Code, 1976 PA 451, as amended, to permit the board of education of a school district to adopt and implement its own local policy concerning whether pupils can use cellular phones and pagers in school, beginning with the 2004-2005 school year. The bill was passed by the Senate on March 28, 2003.

Pending Legislation Introduced In The House

School Construction Wage: **House Bill 4161**, one bill in a two bill package, would amend the prevailing wage law, 1965 PA 166, to exclude construction projects involving public schools from the act's definition of what constitutes a state project. The bill also provides that a "contracting agent" would not include a school district or board of education or an agent acting on behalf of a school district. The other bill in the package: **House Bill 4162** would amend The Revised School Code, 1976 PA 451, as amended, to eliminate provisions requiring charter schools and strict discipline academies from having to comply with Michigan's prevailing wage law. Each of these bills was introduced in the House and referred to the Committee on Employment Relations, Training and Safety on February 5, 2003.

Boards of Review Meetings: **House Bill 4211** would amend the General Property Tax Act, 1893 PA 206, as amended, to permit the governing body of a city or township to authorize, either by ordinance or resolution, alternative March dates at which the board of review must initially meet. The bill was introduced in the House and referred to the Committee on Tax Policy on February 13, 2003.

Nonprofit Grants: **House Bill 4324** would amend 1851 PA 156, as amended, which prescribes the powers and duties of county boards of commissioners, to specify that the members of a county board of commissioners could grant or loan funds that are not derived from ad valorem taxes to a nonprofit corpora-

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Recent Public Law Decisions Of Interest

By Anne Seuryneck and Ronald D. Richards Jr., of Foster, Swift, Collins & Smith, P.C.

Court of Appeals

Division of Property Proper Under Land Division Act

Sotelo v Twp of Grant, ___ Mich App ___; ___ NW2d ___ (COA Docket No. 238690, issued 2/21/03).

The land at issue was divided into two adjacent parcels in the defendant township. The plaintiffs owned a 2.35 acre parcel of land ("Plaintiff Parcel"); immediately to the south was land owned by Robert Filut ("Filut Parcel"). The Plaintiff Parcel was increased when Filut conveyed 3.25 acres from his parcel to the plaintiffs. Thereafter, the reconfigured Plaintiff Parcel consisted of 5.6 acres, while the Filut Parcel was reduced to 4.38 parcels. Through respective deeds, the Filut Parcel and Plaintiff Parcel were divided into four separate parcels each more than one acre in size. The parcels were split without township approval under Section 109 of the Land Division Act ("LDA"), MCL 560.109. The township rejected the property owners' subsequent request for land division approval on the ground that the divisions made within the parcels exceeded the number that the LDA permitted. The trial court upheld the township's decision, ruling that the plaintiff's division of property violated the LDA.

The Court of Appeals reversed, and held that the division of the Plaintiff Parcel into four separate parcels satisfied the requirements of § 108 of the LDA; thus, the township was required to approve that division under § 109 of the LDA, MCL 560.109. It rejected the township's argument that the splitting of the Plaintiff Parcel was not a "division" under § 8 of the LDA as having no basis in the plain language of the LDA, and violating the principle that the LDA is to be narrowly construed since it is "in derogation of the common law right to freely alienate real property." The Court then rejected the trial court's reliance on OAG 1981-1982, No. 5929, p 237 (June 25, 1981), because (a) courts are not bound by such opinions and (b) the opinion itself lacks cited authority for its conclusions. Since the division of the Plaintiff Parcel into four parcels satisfied the requirements of § 108, the township was required to approve that division under § 109. The trial court's decision to the contrary was reversible error.

Building Official Not Entitled to "Just Cause"

Savage v Township of Lyon, Case No. 230312 (unpublished COA decision, dec'd 11/1/02).

The plaintiff began working for the defendant township in 1995, filling in for the township building inspector and building official. The plaintiff was later offered a part-time position of building and mechanical inspector to replace the previous inspector. In 1998, the township board hired a full-time building inspector at a regular salary, and later hired another full-time person to perform the duties of building inspector. The plaintiff

alleged that no one fired or terminated him, but simply did not ask him to perform any inspections after the township board hired the full-time building inspector in 1998. The plaintiff filed suit against the township, claiming he was improperly terminated without just cause. The trial court ruled that the plaintiff could not establish that he had a just-cause employment relationship, and granted the defendant's summary disposition motion.

On appeal, the plaintiff argued that he was the "code official" for the township under § 104.2 of the Building Officials and Code Administrators National Building Code ("BOCA Code"), which the township had adopted. He maintained that he therefore could not be removed from his position without just cause.

The Court of Appeals rejected the plaintiff's argument, and affirmed the trial court's dismissal of the plaintiff's claim. It noted that Section 104.2 of the BOCA Code provides that "[t]he code official shall be appointed by the chief appointing authority of the jurisdiction." It stated this section requires a formal appointment in order for one to rise to the status of an "executive official in charge" under § 104.1. Because the plaintiff presented no evidence that he was formally appointed as the "code official," he could not be a "code official" possessing just cause employment status under the BOCA Code.

Open Meeting Act "Reenactment" Approved

Federated Publications v Lansing City Council, Case No. 234210 (unpublished COA decision, dec'd 10/22/02).

The plaintiff sued the defendant city council, arguing that its alleged "secret voting" process contravened the Open Meetings Act ("OMA"), MCL 15.261 *et seq.* It challenged the defendant's method of selecting final candidates to interview for city clerk and city council member positions wherein (1) each city council member circled three names on a piece of paper, (2) the votes were tallied to determine the finalists, and (3) each of whom would receive second interviews. According to the plaintiff, the process' anonymity was a "secret ballot" failing to attribute the choices of finalists to the individual council members who voted for them.

After both parties filed motions for summary disposition, the defendant city council convened on January 13, 2001. At that meeting, each council member publicly indicated the candidates whom he or she selected on January 8, 2001, whereupon the council subsequently reenacted the January 8, 2001, decision. At the subsequent summary disposition hearing, the defendant argued that (1) this re-enactment cured any defect in the prior selection process and nullified any OMA violation, and (2) eliminated any case or controversy in the matter. The trial court granted the defendant's summary disposition motion.

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Opinions of the Attorney General

Mike Cox



Editor's note: Mike Cox was sworn in as the new Attorney General on January 1, 2003, and the former Attorney General Jennifer M. Granholm was sworn in as Governor of Michigan on that date. Assistant Attorney General George M. Elworth of the Freedom of Information and Municipal Affairs Division and a member of the Publications Committee furnished the text of the headnotes of these opinions. The full text can be accessed at www.ag.state.mi.us.

Concealed Weapons:

A municipal outdoor recreation park does not, by itself, constitute an "entertainment facility" within the meaning of section 5o(1)(f) of the Concealed Pistol Licensing Act, and thus is not a gun-free zone as established by that statute.

Opinion No. 7120, December 4, 2002

The Concealed Pistol Licensing Act, as amended, does not authorize a county concealed weapon licensing board, based merely upon its finding that issuing a concealed pistol license to an applicant is not detrimental to the safety of the applicant or to any other person, to issue a license to carry a concealed pistol to a person who has been convicted of: (1) a felony; (2) a misdemeanor described in section 5b(7)(h)(i)-(xxxvii) of the Concealed Pistol Licensing Act within the past eight years; or (3) any other misdemeanor within the past three years.

The Concealed Pistol Licensing Act, as amended, does not authorize a county concealed weapon licensing board to issue a concealed pistol license to an applicant convicted of a felony merely because the applicant has obtained relief from the disability to possess a firearm under both state and federal law and the board determines under section 5b(7)(o) of the Concealed Pistol Licensing Act that issuing a license to the applicant to carry a concealed pistol in this state is not detrimental to the safety of the applicant or to any other individual.

A county concealed weapon licensing board lacks the authority to revoke a

restoration of firearm rights made under section 4 of the Concealed Pistol Licensing Act.

Opinion No. 7121, December 30, 2002

A person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park provided that the pistol is not loaded. A person licensed to carry a concealed pistol may possess a loaded pistol within a state park only during established hunting seasons on lands designated open to hunting or at a target range established by the Department of Natural Resources or during an officially sanctioned field trial.

A person licensed to carry a concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.

Opinion No. 7123, February 11, 2003

County Retirement And Pensions:

Consistent with MCL 46.12a(28), a county may adopt a deferred retirement option plan (DROP) and may, with approval of the affected employee, pay the employee's retirement or pension benefit into the DROP program if (1) the reemployed retiree works less than 1,000 hours per 12-month period or the position is an elected or appointed position

Continued on the next page.

Opinions of the Attorney General

Continued

meeting the requirements of MCL 46.12a(b)(i)(B)-(D); (2) the employee is not eligible for any employee benefits other than those required by law or those provided by virtue of being a retirant; and (3) the employee is not a member of the county's retirement plan and does not receive additional retirement credits during the period of reemployment.

Opinion No. 7122, January 14, 200

Incompatibility:

The Incompatible Public Offices Act does not prohibit a person from simultaneously serving as an elected county commissioner and appointed township manager in the same county that has a voter-approved fixed allocation of millage for the county, its townships, and its intermediate school district, provided that the township manager has no responsibility for administering, negotiating, or enforcing contracts with the county.

Opinion No. 7119, November 12, 2002

The Incompatible Public Offices Act prohibits a person from simultaneously serving as a member of a city council of one city and as the city attorney for another where the two cities are parties to a contract.

Opinion No. 7125, February 20, 2003

Law Enforcement – Airboat Noise

The noise limit provisions in section 80156 of the Natural Resources and Environmental Protection Act do not apply to noise produced by an airplane propeller on an airboat.

Opinion No. 7124, February 20, 2003

Public School Academies:

Under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

Opinion No. 7126, March 6, 2003

Register Of Deeds

A county register of deeds may not decline to accept for recording a mortgage, assignment of mortgage, or discharge of mortgage on the ground that the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee.

When recording and indexing a mortgage document in which the mortgagee is identified as a nominee of a dis-

closed or undisclosed mortgagee, the county register of deeds may list the mortgagee as "nominee" or, when appropriate, nominee for identified principal.

Opinion No. 7116, August 28, 2002

Water Supply:

A county board of commissioners lacks authority to adopt a countywide ordinance limiting the amount of well water that may be withdrawn from an underground aquifer.

A local health department may, by regulation, limit the amount of well water that may be withdrawn from an underground aquifer, even though the department has issued a permit to construct a well in the same aquifer, provided that (i) the regulation is necessary or appropriate to safeguard the public health; (ii) the regulation is not more restrictive than necessary to address the threat to the public health; and (iii) the regulation is at least as stringent as any standard established by state law applicable to the same or a similar subject matter.

Opinion No. 7117, September 11, 2002

Legislative Update

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tion organized for the purpose of providing loans for private sector economic development initiatives. The bill was introduced in the House and referred to the Committee on Local Government and Urban Policy on March 11, 2003.

Detroit Reform Board: **House Bill 4508** would amend The Revised School Code, 1976 PA 451, as amended, to schedule the vote on whether to retain the school reform board of the Detroit Public Schools and the chief executive officer for the August 2003 primary election, instead of the November 2004 general election as currently authorized by statute. The bill was introduced in the House and referred to the Committee on Commerce on April 1, 2003.

Pending Legislation Introduced In The Senate

Radio Tower Use: **Senate Bill 293** would amend 1929 PA 152, as amended, which authorizes a State-owned and operated radio broadcast system for police purposes, to require the director of the Department of State Police to allow any governmental public safety agency, subject to certain conditions, to utilize the Michigan Public Safety Communications System, including attaching public safety communications equipment to radio towers. The bill was introduced in the Senate and referred to the Committee on Local, Urban and State Affairs on March 12, 2003.

Recent Public Law Decisions of Interest

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The Court of Appeals affirmed, and held that the re-enactment eradicated any case or controversy. It noted that the re-enactment of the challenged decision on January 13, 2001, removed any basis to invalidate the January 8, 2001, actions of the council since the latter decision left the former decision untainted by procedural deficiencies. *See* slip op at 3 (citation and quotation omitted); *see also* MCL 15.270(5) (“where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of [the OMA], the public body may . . . reenact the disputed decision in conformity with the OMA” [;] such a decision is “effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment”). As there was no pending procedural deficiency, there was no actual controversy. Hence, the Court concluded, there was no basis for declaratory or injunctive relief.

Depositions of Township Planning Commission Members Not Permitted

Pythagorean, Inc v Grand Rapids Township, __ Mich App __ (Case No. 228628, published COA decision, issued 10/22/02).

The plaintiff applied for rezoning, but was denied. It then filed suit against the township on the ground that it arbitrarily denied its application to use the property for commercial purposes. During discovery, it sought to depose the members of the planning commission to discover the reason behind each member’s decision concerning the subject rezoning. The trial court authorized those depositions. The defendant appealed, and asserted that (1) the constitutional privilege against discovery recognized by *Sheffield Development Co v Troy*, 99 Mich App 527; 298 NW2d 23 (1980), should extend to the planning commission members, and (2) the deposition of the planning commission members should be disallowed as irrelevant and harassing.

The Court of Appeals reversed the trial court’s decision. It found no showing that the motivation or thought processes of the planning commission members in making their recommendation to the board might reasonably be calculated to lead to discoverable information. It noted the long-standing proposition that “[c]ourts are not concerned with motives that actuate members of a legislative body in enacting a law . . .” *Id.* at slip op 2 (quoting *Sheffield, supra*, 99 Mich App at 530). It also found persuasive the limited role of the planning commission - it primarily only conducts hearings for the purposes of a recommendation to the township board. Noting, also, that planning commission members are volunteers who give of

their time and efforts for the good of the community, the Court concluded that “[j]ustice requires that [planning commission members] be protected from the annoyance and undue burden and expense of deposition discovery . . .” It thus found erroneous the trial court’s authorizing of the planning commission’s members.

Disappointed Bidder Lacks Standing

WDG Investment Co, LLC v Michigan Dep’t of Management and Budget, Case No. 229950 (unpublished COA decision, dec’d 10/25/02).

The Department of Management and Budget (“DMB”) issued a Request for Proposals (“RFP”) to collect bids from developers for a new state office building. The plaintiff was announced to be the winning bidder in January 2000. When another bidder protested, the DMB suspended further proceedings and informed the plaintiff it was rejecting all bids. The plaintiff filed suit, and alleged violations of (1) the Administrative Procedures Act (“APA”), (2) the management and budget act, MCL 18.1101 *et seq.*, and (3) constitutional due process and equal protection guarantees. The defendants moved for summary disposition, and argued that the plaintiff lacked standing as a “disappointed bidder.” The trial court ruled that the plaintiff had standing to challenge the bidding process as its bid was initially accepted. It therefore denied summary disposition.

The Court of Appeals reversed, and held that the plaintiff lacked standing to bring the instant suit. It noted the well-settled rule that one who is unsuccessful in bidding on a public contract does not have standing to challenge the result or the bidding process itself. The rationale for this rule is that statutes requiring such bidding procedures for public contracts were adopted for the public’s benefit. The Court found persuasive federal court decisions that reached similar conclusions. (Citing *Malan Construction Corp v Bd of County Road Commrs*, 187 F Supp 937, 939 (ED Mich, 1960); *City Communications Inc v City of Detroit*, 650 F Supp 1570, 1581 (ED Mich, 1987); *United of Omaha Life Ins Co v Solomon*, 960 F 2d 31, 34 (CA 6, 1992)). The Court rejected the plaintiff’s claim that it was a “successful bidder” because the mere selection of the plaintiff’s proposal at an initial stage of the process “created no legally protected interest in a binding agreement” given that the defendant retained discretion to accept or reject the proposal. Because the plaintiff had a mere expectation or “unilateral hope,” and not a right to a binding contract in this matter, the plaintiff lacked standing to seek redress from the defendants.

Mark Your Calendar!

Events of Interest to Local Government Attorneys

Please submit your additions and corrections to Peter A. Letzmann at letzmann@voyager.net or 231 526-7629

2003

- Recurring meeting **PCLS Council** generally meets on the First Saturday of the month in the Lansing area.
- May 8-12, 2003 **ABA Section of State and Local Government**, Spring Meeting, Don Ce Sar Beach Resort & Spa, St. Pete Beach, FL. The program will include issues of "Farms, Forests, and Open Spaces".
- June 27 - 29, 2003 **MAMA/PCLS Summer Educational Conference**, Mackinac Island. This two half day program will discuss ethics and conflicts considerations, supreme court review [Richard Ruda], better public meetings, personnel and labor issues, the METRO Act after eight months, and a legislative update.
- August 7 - 12, 2003 **ABA Annual Meeting**, San Francisco, CA.
- August 17-23, 2003 **IMLA - World Jurist Association 21st Biennial Congress on the Law of the World** Sydney/Adelaide, Australia [see web site IMLA conference page]
- Sept. 11-12, 2003 **PCLS/SBM Annual Meeting**, Lansing Center, Lansing. The State Bar of Michigan's 68th Annual Meeting will be a shorter and leaner event. The Board of Commissioners, the Representative Assembly and Section business meetings and programs will continue.
- September 17, 2003 **MAMA / MML Annual Meeting**, Renaissance Marriott, Detroit. This one day program and business meeting will include, electronic discovery, enforcing civil infractions (including injunctive remedies), business meeting and election of officers.
- Oct. 12 - 15, 2003 **IMLA (International Municipal Attorneys) Annual Conference**, Hilton Minneapolis and Towers Minneapolis, Minnesota. [web site IMLA conference page]
- October 23-26, 2003 **ABA Section of State and Local Government Fall Section Meeting and Seminar** Albany, New York. 20 year anniversary of the *Monell* decision focused on municipal liability under 42 U.S.C. Section 1983 and First Amendment issues, land use, and public finance.
- Nov. 5 & 6, 2003 **MAMA Local Government Law and Practice in Michigan**, version 2003, Sheraton, Lansing. This will be a two day review of many of the basic topics confronting the Michigan legal practitioner from assessments to zoning. New topics for this year include prosecuting the local ordinance, charter revision and amendments, risk management and insurance, with update of municipal financing, public employee relations and others. [mml.org for more information and registration]



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