

Sue Jeffers is a legal consultant to the League. You may contact her at [sjeffers@mml.org](mailto:sjeffers@mml.org).

# Michigan Supreme Court Supports Authority of Local Units of Government

## FACTS:

The city of Lansing enacted an ordinance requiring contractors working on city construction projects to pay their employees a prevailing wage. Associated Builders and Contractors, a trade association, sued the city claiming that the ordinance was unconstitutional on the basis that municipalities do not have the authority to adopt ordinances regulating the wages paid by third parties, even where the work is done on municipal contracts paid for with municipal funds.

Associated Builders relied upon the 1923 Michigan Supreme Court decision of *Attorney General ex rel Lennane v Detroit*, which held that, under Michigan's 1908 Constitution, the setting of wage rates was a matter of state concern into which a city could not intrude. The city argued that the subsequent ratification of the 1963 Constitution, and specifically Article 7, section 22, grants to a city the power to adopt ordinances relating to its municipal concerns, subject to the Michigan Constitution and laws. The 1963 Constitution contains further language that no enumeration of powers granted to cities and villages in the Constitution limits the grant of authority by article 7, section 22. The *Lennane* decision was never overruled.

## QUESTION:

Did the city of Lansing have the authority under Const 1963, art 7, section 22 to enact an ordinance that established a prevailing wage?

### ANSWER ACCORDING TO THE TRIAL COURT:

The trial court held that the *Lennane* Supreme Court decision of 1923 was controlling, i.e., regulation of wages was a matter of state, not municipal concern.

### ANSWER ACCORDING TO THE COURT OF APPEALS:

Yes. The court held that the city had the authority under the 1963 Constitution to adopt the ordinance and that the legal landscape had changed since the *Lennane* decision, making it "obsolete and inapplicable."

### ANSWER ACCORDING TO THE MICHIGAN SUPREME COURT:

Yes. The Court initially overruled the *Lennane* decision. The Supreme Court then affirmed the court of appeals' result on the basis that the 1963 Constitution

grants to cities and villages the authority to enact ordinances relating to municipal concerns, including those regulating wages paid to third-party employees working on municipal construction contracts. The Court noted, "Furthermore, *Lennane's* holding appears to rest on an implicit dichotomy: if something is a matter of 'state concern' it cannot also be a matter of 'local concern.' But this binary understanding does not comport with the plain language of the 1963 Constitution, which grants cities and villages broad powers over 'municipal concerns, property and government' whether those powers are enumerated or not." Although the court upheld the result of the court of appeals, it vacated the decision for failure to follow precedent established by the Supreme Court.

*Associated Builders & Contractors v City of Lansing*, No. 149622 (May 17, 2016)

**Editor's Note:** The decision is considered to be highly significant and favorable with respect to the scope of home rule powers in Michigan. An amicus brief was filed by the Michigan Municipal League's Legal Defense Fund with the Supreme Court in the case; the brief was authored by Paul Hudson of Miller Canfield.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

## Michigan Association of Municipal Attorneys

### Upcoming Events

March 21, 2017

### 31<sup>st</sup> Annual Advanced Institute

Lansing Center - Lansing

June 23-25, 2017

### PCLS/MAMA Summer Conference

Grand Hotel - Mackinac Island

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