



michigan municipal league

The Legal Defense Fund

Top 13 Legal Cases Consequential to Michigan Municipalities

The Legal Defense Fund was formed in 1983 through the efforts of the Board of Directors of the Michigan Association of Municipal Attorneys, including John J. Rae, former city attorney of Midland, working with the former MML general counsel William L. Steude, and the Michigan Municipal League Board of Trustees.

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Welcome to the second sequel of the Michigan Municipal League's Legal Defense Fund (LDF) publication on the most significant cases recently addressed by the Fund.

The Top 25 Cases /25 Years of Excellence! was published in 2008 in celebration of the 25th anniversary of the League's LDF. The LDF was formed in 1983 as an advocacy program for Michigan's municipalities in the state and federal appellate courts. The LDF provides support and assistance to member municipalities and their attorneys in cases in which the issues have a broad impact on both the municipality involved and on other municipalities throughout the state.

The form of assistance is generally through the preparation and filing of an amicus curiae brief. The amicus briefs are filed on behalf of the Michigan Municipal League in the appellate courts, financed in whole or in part by the LDF. On occasion, the LDF also supports municipalities in administrative agencies. Most cases stem from requests from LDF member communities. And most cases in recent years have been joint efforts—with co-amicus participation by several groups, including: the Michigan Townships Association, the Government Law Section (formerly Public Corporation Law Section) of the State Bar of Michigan, the Michigan Association of Counties, the MML Liability and Property Pool, and the Michigan Association of School Boards. Correspondingly, the LDF often joins amicus briefs of these associations, especially the Michigan Townships Association.

The Top 25 Cases were selected as the most significant cases in which the LDF had participated from 1983 through 2008. Our second publication, *A Summary of 13 Recent Cases*, prepared by Sue A. Jeffers, the League's former Associate General Counsel, highlighted significant cases from 2008-2011. This third installment picks up from where we left off. Thirteen new cases have been selected for this sequel.

These cases represent a broad range of issues—from campaign financing to the regulation of billboards; from “dark store” undervaluation issues to home rule authority related to blighted properties and municipal ordinance authority. The involvement of the LDF in each of the cases has provided a means by which the municipal voice is heard in the courts. Kim Cekola, Research Specialist and Editor, prepared this document. Amicus counsel for the cases assisted in editing our summaries. Additionally, Carter Fisher, during his legal internship, assisted with the write up of *Taxpayers for Michigan Constitutional Government v State of Michigan*. Member communities of the LDF are located throughout Michigan and are of a broad range of population. Exemplifying this, please see the map on page _ of the communities and populations.

Again, we are proud to provide this booklet. The Michigan Municipal League's Legal Defense Fund continues to be a significant benefit for member municipalities by advocating their interests in the state and federal judicial systems.

William C. Mathewson
General Counsel
Michigan Municipal League
July 2018

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where you live.



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HOME RULE

Municipal Authority in Michigan

In the 1800s, local government authority and self-determination was a topic of national discussion. The leading proponent of restricting local authority was John Dillon, a justice of the Iowa Supreme Court, federal Court of Appeals judge, and law professor. What became known as “Dillon’s Rule” states that local governments only have the powers that are expressly granted to them by the Legislature. In Michigan, the leading advocate of the philosophy opposed to Dillon’s Rule was Michigan Supreme Court Justice Thomas M. Cooley. He established the “Cooley Doctrine”—local units had an inherent right to self-determination.

Michigan was the eighth state in the nation to adopt the principles of home rule. Our 1908 Constitution gave the electors of each city and village the ability to frame and adopt a charter and “pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.” As noted by the Constitutional Convention of 1907, “each municipality is the best judge of its local needs and the best able to provide for its local necessities.” Following adoption of the 1908 Constitution, the Legislature enacted the Home Rule City Act, PA 279 of 1909 and the Home Rule Village Act, PA 278 of 1909. Both enabled municipalities to adopt and amend their own charters for the purpose of exercising municipal powers and managing their own affairs, and to adopt laws and ordinances related to their particular municipality’s needs.

In 1963, Michigan citizens approved a new Constitution which strengthened local control by stating, Comments from the 1963 Constitutional Convention indicate that local units of government would be given a broad framework by which to operate, “a new section intended to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments.”

“ The provisions of this constitution and law concerning counties, townships, cities, and villages shall be liberally construed in their favor.”

— Michigan Constitution, Article VII, Section 34

Despite the apparent strength of local control, the Constitution provides no guarantee to the right of local self-government. Article VII, Section 22 specifically states that, “Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government subject to the Constitution and law [emphasis added].” As a result, there is nothing to prevent the Legislature from exercising its powers of control over local government.

Dillon’s Rule

Local governing bodies have only those powers:

- Which are expressly granted by the state Legislature,
- That are fairly or necessarily implied from expressly granted powers, and
- Which are essential and indispensable.

Dillon vs Cooley

Does the government have the authority to act?

Cooley: Local governments have inherent power.

Dillon: All power derives from the state and as delegated power the powers must find support in the enabling actions, charter, constitution, or act.

Some states embraced Cooley, whereas the majority followed Dillon.

“ Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government subject to the Constitution and law.”

— Michigan Constitution, Article VII, Section 22

Erosion of Home Rule

Over the years, there have been a number of changes affecting the ability of local units to govern without interference. Both statutory and constitutional measures have been passed, including mandated collective bargaining and compulsory arbitration of police and fire labor disputes; the prohibition of residency requirements for municipal employees; and the prohibition of ordinances regulating mobile homes, firearms, obscene materials, and school site plans.

Constitutional changes, such as the adoption of the Headlee amendment in 1978 and Proposal A in 1994, have affected finance and revenue administration while statutory changes have impacted local property tax bases. Local authority received a setback in 2006, in *City of Taylor v Detroit Edison* where the Supreme Court reiterated its previous opinion that, “local governments have no inherent jurisdiction to make laws or adopt regulations of government; they are governments of enumerated powers, acting by a delegated authority; so that while the state legislature may exercise such powers of government...as are not expressly or impliedly prohibited, the local authorities can exercise those only which are expressly or impliedly conferred.”

However, that same year in *GE Property & Casualty v Detroit Edison*, the Court of Appeals stated, including quotes from two decisions of the Michigan Supreme Court, that “home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied” and that the Michigan Constitution maintains a system of municipal governance that includes a “general grant of rights and powers, subject only to certain enumerated restrictions instead of the earlier method of granting enumerated rights and powers definitely specified.” These decisions indicate that Michigan’s courts are apt to be flexible in balancing authority of local governments with that of the state, depending on the facts of the case.

With this backdrop of municipal home rule in Michigan, this publication will begin with the recent, and fundamentally important, decision of the Supreme Court in *Associated Builders and Contractors v City of Lansing*.

Home Rule City Act:

MCL 117.3 Mandatory charter provisions
Each city charter shall provide for:
(j) The public peace and health and for the safety of persons and property.

Home Rule Village Act:

MCL 78.23 Village charter; mandatory provisions
Each village charter shall provide for:
(f) The public peace and health, and for the safety of persons and property.

General Law Village Act:

MCL 67.1 General powers of council
The council of a village subject to this act may enact ordinances relating to 1 or more of the following:
(c) To abate nuisances and preserve the public health.
(z) To adopt other ordinances and make other regulations for the safety and good government of the village and the general welfare of its inhabitants that are not inconsistent with the general laws of this state.

Fourth Class City Act:

MCL 91.1 General powers
(2) The council may enact ordinances and make regulations, consistent with the laws and constitution of the state as they may consider necessary for the safety, order, and good government of the city and the general welfare of the inhabitants of the city.

HOME RULE AUTHORITY – PREVAILING WAGE ORDINANCES

Associated Builders and Contractors v City of Lansing

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. The trial court determined that the city did not have the authority to enact the ordinance despite the city's "compelling arguments," and found in favor of Associated Builders. However, the Court of Appeals reversed the trial court finding, based on the changes in Michigan's 1963 Constitution and case law since 1923.

The 1963 Constitution granted broad authority to municipal governments to govern their own affairs. The Home Rule City Act likewise recognizes the broad power of municipalities to govern their affairs. The city of Lansing's ordinance is carefully limited to apply only to city contracts, and only to contractors "employed directly on the site of work" in Lansing. Lansing's ordinance does not apply to State contracts—the two work alongside one another and do not conflict. The State prevailing wage statute (repealed in June 2018) regulates only wages paid on State contracts.

Why did our LDF get involved?

The case presented significant issues affecting the home rule authority of cities and villages.

What action did the LDF take?

The LDF filed an amicus brief with the Michigan Supreme Court.

What was the outcome?

The Ingham County Circuit ruled in favor of Associated Builders and Contractors, but that decision was reversed by the Michigan Court of Appeals, which upheld the right of the city to pass such an ordinance. The Michigan Supreme Court 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.

What are the implications for local governments?

The decision is considered to be highly significant and favorable with respect to the scope of home rule powers in Michigan. The Michigan Supreme Court provided an answer to one of the most important questions concerning the authority of Michigan's cities and villages. In its unanimous decision, the Court underscored the significance of language in the 1963 Constitution related to local government home rule powers. While the decision is important in upholding the city of Lansing's prevailing wage ordinance, the impact should far exceed this one ordinance. There will no doubt be future cases, with different facts, that will offer the Court other opportunities to interpret the proper relationship between Michigan's local governments and the State. Until then, the powerful and insightful language of this Court in this decision should go a long way in supporting the authority of local government officials to make choices about the nature and extent of their local governments services, on behalf of the citizens who elected them.

Who prepared the amicus brief?

Clifford W. Taylor, Paul D. Hudson, and James D. Boufides (Miller Canfield)

Associated Builders and Contractors v City of Lansing,
880 N.W.2d 765 (2016)

HOME RULE AUTHORITY – PROPERTY MAINTENANCE ENFORCEMENT

Shoemaker v City of Howell

The City of Howell has an ordinance requiring landowners to maintain the land between the sidewalk and the street (known as a curb strip, curb lawn, or berm) and within the city's **right-of-way**. The ordinance requires landowners to keep the area free and clear of any weeds, tall grasses, or other types of plants that are hazardous to health. The city manager, or his/her representative, is authorized to serve written or verbal notice upon the land owner to comply with the provisions of the ordinance. A violation of the ordinance is a **municipal civil infraction**.

The city started reconstruction of the street where Shoemaker lived. Prior to the street renovation, Shoemaker maintained both the sidewalk and the right-of-way area between the sidewalk and the edge of the road abutting his home and property. After renovation, he refused to maintain the area because the city had removed a tree and grass he planted. The city planted new trees and grass in the area, but Shoemaker asserted that it was more difficult to maintain the curb strip.

For a period of 16 months, the city requested Shoemaker maintain this area. Initially Shoemaker complied; however, as he continued to be cited for municipal civil infraction violations, he refused to maintain the area altogether. Consequently, the city had a contractor mow the area then billed Shoemaker for the cost. Shoemaker argued that the city failed to notify him about the ways in which he could challenge those charges. He then filed suit against the city in federal district court alleging violations of **procedural due process** and **substantive due process**.

In his procedural due process claim, Shoemaker alleged that the ordinance imposed fines, costs, and penalties without giving him the opportunity for a hearing. As to the substantive due process claim, Shoemaker alleged that the ordinance imposed a duty upon a citizen to maintain city-owned property without pay and additionally, that the city had no power under law to impose such a duty. Though the city argued that there were adequate procedural protections in the ordinance, the federal district court found that the ordinance did not include a method for a citizen to seek a hearing. As to the issue of substantive due process, the court declared that the city's ordinance was unconstitutional because the city imposed costs on citizens to abate a nuisance on public, city-owned property.

Why did our LDF get involved?

The federal district court's decision invalidating parts of a city's health, safety, and sanitation ordinance is a cause of great concern to municipalities. Similar ordinances exist throughout the state of Michigan as appropriate exercises of municipal authority to protect the health, safety, and welfare of residents. Requiring additional processes to abate nuisances would constitute a significant burden on the municipality. If not maintained, the unkempt properties would have a detrimental impact on municipal efforts to encourage traffic safety, enhance aesthetics, and to abate or prevent potential nuisances and improve property values.

Right-of-way easement: property owners own the land to the middle of the street and municipalities have permission to use the land for highway purposes.

Municipal civil infraction: A civil infraction is a violation of the law less serious than a misdemeanor. A municipal civil infraction is a civil infraction involving a violation of a municipal ordinance.

Procedural Due Process: requires government officials to follow fair procedures before depriving a person of life, liberty, or property.

Substantive Due Process: prohibits government officials from infringing on fundamental constitutional liberties.

What action did the LDF take?

The LDF filed an amicus brief with the federal Court of Appeals, joined by the Michigan Municipal League's Property & Liability Pool, the Michigan Townships Association, and the Michigan Public Corporation Law Section of the State Bar.

What was the outcome?

The Sixth Circuit Court of Appeals reversed the district court and found the purpose of the city's ordinance to advance traffic safety, sanitation, animal and rodent control, protection of property values, aesthetics, and public health, safety, and welfare to be legitimate.

Regarding procedural due process, the court found that the city provided Shoemaker with multiple notifications of the ordinance violation, alerted him of the charges against him, and notified him of the avenues available to challenge those charges. Regarding substantive due process, Shoemaker claimed the city owned the land and could not require him to maintain it. However, under Michigan law, the property owner owns the land to the middle of the street and a municipality has an easement, or right-of-way. The court ruled that Shoemaker did have an interest in the property and the city merely possessed a right-of-way for public use.

What are the implications for local governments?

Michigan municipalities continue to have the authority to require property owners to maintain those portions of the right-of-way which abut their properties—the curb strip, between the sidewalk and curb/edge of the road—be it mowing the grass during the summer, or removing snow and ice from the sidewalk in the winter.

Who prepared the amicus brief?

Julie O'Connor (O'Connor, DeGrazia, Tamm & O'Connor, P.C.)

Shoemaker v City of Howell, 795 F.3d 553 (2015)

NUISANCE ABATEMENT/ DEMOLITION OF UNSAFE STRUCTURES

Bonner v City of Brighton

This case involves three structures—two former residential homes and one barn/garage—that sat unoccupied and generally unmaintained in the city of Brighton for over 30 years. In January 2009, the city’s building and code enforcement officer informed the owners of these properties, through a written notice, that the three structures were “unsafe” and in violation of the city’s ordinance. In addition, the property owners were informed that the building official had determined that it was unreasonable to repair these structures consistent with the standard set forth in the ordinance (an “unreasonable-to-repair-presumption”—where the cost of the repairs exceed the value of the property). Consequently, the property owners were ordered to demolish the structures within 60 days of the date of the building official’s letter.

Instead of demolishing the houses, the property owners filed suit against the city, alleging procedural and **substantive due process** violations. Brighton also filed suit, seeking **injunctive relief** to compel demolition of the houses.

The two suits were consolidated and two subsequent trial court decisions were appealed—one reaching the Michigan Supreme Court with regard to the property owners’ procedural and substantive due process claims.

Why did our LDF get involved?

The Brighton ordinance addresses unsafe structures, and ample evidence supported the assertion that abandoned houses and other unsafe structures had reached epidemic proportions nationwide. More than just unsightly blight, these abandoned buildings result in increased crime, a severe strain on municipal resources, and a threat to public health, safety, and welfare. If the Court of Appeals decision had been allowed to stand, it would have prevented municipalities from effectively and efficiently protecting the public from the danger of unsafe and abandoned structures.

What action did the LDF take?

The LDF filed an amicus brief with the Michigan Supreme Court.

Procedural Due Process: requires government officials to follow fair procedures before depriving a person of life, liberty, or property.

Substantive Due Process: prohibits government officials from infringing on fundamental constitutional liberties.

Injunctive Relief: a judge’s order to a person to do or refrain from doing a particular thing.

What was the outcome?

The Michigan Supreme Court found in favor of the city. It held that the city’s ordinance does not deprive a property owner of substantive due process because the ordinance is reasonably related to the city’s legitimate interest in promoting the health, safety, and welfare of its citizens. Furthermore, the ordinance is not an arbitrary and unreasonable restriction on a property owner’s use of his or her property because there are circumstances under which the presumption may be overcome and repairs permitted. In addition, the Court held that the city’s existing demolition procedures provide property owners with procedural due process.

What are the implications for local governments?

This case upholds a far-reaching remedy as part of a municipality’s legitimate interest in removing structures that are unsafe or present a health hazard, in the interest of protecting the health, safety, and welfare of its citizens. Nuisance ordinances regulating unsafe structures are related to a permissible regulatory objective. Municipalities and their attorneys should review their dangerous building ordinances and all ordinances related to building and enforcement procedures in terms of scope and needs of the community.

Who prepared the amicus brief?

Mary Massaron and Josephine A. DeLorenzo
(Plunkett Cooney)

Bonner v City of Brighton, 298 Mich App 693 (2015)

ZONING – BILLBOARDS

International Outdoor, Inc v City of Livonia

Shortly after the City of Livonia incorporated in 1950, city leaders drafted the city's first zoning ordinance. Among other things, that original ordinance contained an outright ban on billboards, along with a grandfather clause protecting billboards already in existence. The last of those billboards came down in 1986, and Livonia has been billboard-free ever since. This is unusual in the metro Detroit area: a 36-square-mile billboard-free zone crossed by two busy interstate highways—I-96 and I-275. While there are no billboards in Livonia, there are more than 50 billboards in the roughly two-mile wide zone just outside Livonia's borders. International Outdoor, an outdoor advertising company, applied to the City of Livonia for a permit to erect a digital billboard at a site adjacent to I-96. The city denied the request pursuant to its 1952 ordinance banning billboards. International Outdoor applied for a variance and was denied.

International Outdoor filed suit against the city, claiming the city used prohibited **exclusionary zoning** to keep billboards out. The protection against certain exclusionary zoning practices, however, were developed to counteract the use of zoning laws designed to keep low to moderate income housing within certain areas. No Michigan court had ever applied the concept of prohibited exclusionary zoning to billboards. Rather, the amended zoning law's protection against exclusionary zoning practices were applied to protect necessary uses within a municipality where there is a "demonstrated need." It was not contemplated that billboards would be considered protected under restrictions against exclusionary zoning or that billboards were a demonstrated need in a community.

The Michigan Zoning Enabling Act (MZEA) establishes the framework for a local government to create a comprehensive zoning plan to promote the public health, safety, and welfare of the community. The Home Rule City Act provides for "licensing, regulating, restricting, and limiting the number of locations of billboards within the city," and the courts have stated that home rule cities have broad powers with respect to billboards. The challenged ordinance here did allow billboards—provided they were in existence at the time the restriction was enacted for on-site signs.

Exclusionary zoning: using zoning ordinances to exclude certain types of land uses in a community.

Why did the LDF get involved?

This case represents a fundamental question relating to a city's power to regulate billboards

as authorized by the Michigan Constitution, the Home Rule City Act, and promoting the health, safety, and welfare of a community through zoning.

What action did the LDF take?

The LDF, Scenic Michigan, the Michigan Townships Association, and the Public Corporation of Law Section of the State Bar of Michigan filed a joint amicus brief with the Court of Appeals in support of Livonia in the case.

What was the outcome?

The Court of Appeals affirmed the trial court's decision finding in favor of the city. International Outdoor appealed the decision to the Michigan Supreme Court. On April 4, 2017, the Michigan Supreme Court denied International Outdoors' request to appeal.

What are the implications for local governments?

The Court of Appeals' decision is unpublished. This means that the decision cannot be used as precedent in other cases. However, it is a major victory for Michigan communities and their ability to regulate and ban billboards. On April 4, 2017, the Michigan Supreme Court denied International Outdoors' request to appeal.

International Outdoor also filed cases against the cities of Roseville and Harper Woods; the Court of Appeals also found in favor of the cities—in 2014 and 2016, respectively.

Who prepared the amicus brief?

Andrew J. Mulder and Vincent L. Duckworth
(Cunningham Dalman, P.C.)

International Outdoor v City of Livonia, 500 Mich 959; 892 N.W. 2d 359; (2017).

ZONING – MEDICAL MARIHUANA

Ter Beek v City of Wyoming

The Michigan Medical **Marihuana** Act (MMMA), passed in 2008 by voter initiative, allows certain protections under state law for the medical use of marihuana. Section 4(a) protects registered qualifying patients from penalties for specified medical marihuana use. In 2010, the City of Wyoming amended its zoning code by adding: “Uses not expressly permitted...are prohibited in all districts. Uses that are contrary to federal law, state law, or local ordinance are prohibited.” The federal Controlled Substances Act (CSA) classifies marijuana as a Schedule I controlled substance and largely prohibits its manufacture, distribution, or possession. By prohibiting all uses that are illegal at the federal level, the city’s ordinance incorporated the CSA’s prohibitions relating to marijuana and associated land uses.

John Ter Beek, a registered “qualifying patient” under the MMMA, desired to exercise his rights to grow, possess, and use medical marihuana in his home. Ter Beek brought a case against the city claiming that its ordinance prohibited the exercise of medical marihuana rights, punished such use, and was **pre-empted** by the MMMA. The trial court rejected Ter Beek’s challenge to the ordinance, finding that section 4(a) of MMMA is preempted by the CSA. The Michigan Court of Appeals reversed, and found in favor of Ter Beek. The Court of Appeals stated that the CSA does not preempt section 4(a) of the MMMA, finding instead that section 4(a) preempts the city’s ordinance because the ordinance directly conflicts with the MMMA.

Why did our LDF get involved?

Michigan law gives local governments broad authority over land use. In areas where the Legislature wanted to limit local zoning authority, it made explicit exemptions (e.g. airports, and oil and gas wells). Yet a similar exemption was not made for qualified medical marijuana patients to use land in violation of zoning ordinances. If the Legislature intended, it could have provided for it like it did for a variety of other specially protected land uses. Municipalities are entrusted with the responsibility of providing basic and necessary community caretaking services. They should be able to respond to the desires of their citizens and regulate activities that protect the health, safety, and welfare of the community.

What action did the LDF take?

The LDF filed an amicus brief with the Michigan Supreme Court.

Marihuana: The spelling, with an “h,” was chosen for the Marihuana Tax Act of 1937. Michigan’s adopted definition of marihuana in the Public Health Code uses the federal spelling.

Pre-emption: when a state law supersedes, or has precedence over, a local law.

What was the outcome?

The Michigan Supreme Court affirmed the judgment of the Court of Appeals. The Court found that Wyoming’s ordinance directly conflicted with the state statute (MMMA) and was invalid. The ordinance did not conflict with the MMMA because it generally pertained to marijuana, but rather because it penalized registered qualifying patients for engaging in MMMA-compliant use. Note, however, in a footnote the Court stated: “[c]ontrary to the city’s concern, this outcome does not ‘create a situation in the State of Michigan where a person, caregiver, or a group of caregivers would be able to operate with no local regulation of their cultivation and distribution of marijuana.’”

What are the implications for local governments?

Cities with the same ordinance provision as the city of Wyoming had to change their ordinances. While the Michigan Supreme Court ruled against the city of Wyoming, it did say that this ruling does not necessarily mean that municipalities can’t regulate medical marihuana at all. In fact, municipalities have passed ordinances regulating medical marihuana uses—as home occupations for example, or requiring local licenses.

Who prepared the amicus brief?

Andrew J. Mulder and Vincent L. Duckworth
(Cunningham Dalman P.C.)

Ter Beek v City of Wyoming, 495 Mich 1 (2014)

ZONING – SHOOTING RANGES

Addison Township v Barnhart

In 1993, the defendant requested to build a shooting range on his 80-acre property which was in an agricultural zone. Addison Township approved the request because “it was agreed that only defendant and his family would use the shooting range.” But the defendant began conducting firearm lessons and charged at least one person a fee. He also used the range for testing firearms for various companies and for deputy sheriffs’ training. The defendant thus allowed not just his family, but the ‘public’ to use the shooting range. In 2005, the township issued the defendant a misdemeanor citation for operating the shooting range without a zoning compliance permit.

The shooting range, which at the start was for a recreational purpose, changed to a business purpose. The township zoning ordinance requires a permit before constructing, altering, or repairing any structure; a permit is also required to change the use of land or the use of any building. Barnhart was given a permit for land in an agriculture zone; he changed the use over time to business use by charging for shooting lessons.

Barnhart argued that Michigan’s Sport Shooting Range Act (SSRA) protected him against the township’s ordinance so long as the shooting range complied with portions of the Act. The intent of the Act, passed on July 5, 1994, was to supply some protection to the recreational activity of shooting ranges against noise complaints by neighbors and/or regarding danger from stray bullets. The SSRA defines a “sport shooting range” as “an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.”

To receive the protection of the SSRA, Barnhart’s shooting range would have to have been legally in existence on July 5, 1994 as a “sport shooting range,” (not a range for non-sporting activities), and comply with existing zoning regulations, as well as with “generally accepted operation practices.” According to testimony, none of these conditions were complied with. The Court of Appeals ruled in favor of the township and found that the defendant’s shooting range did not meet the requirements of the SSRA. The Court found that because the defendant’s operation of a shooting range was in part for business/commercial purposes, the SSRA did not shield the defendant from compliance with local zoning regulations.

Pre-emption: when a state law supersedes, or has precedence over, a local law.

Why did our LDF get involved?

Local jurisdictions should be able to regulate the location of shooting ranges within their boundaries as part of their home rule authority to protect the health, safety, and welfare of their citizens.

What action did the LDF take?

At the request of the Michigan Supreme Court, the LDF and Michigan Townships Association filed a joint amicus brief.

What was the outcome?

The Michigan Supreme Court reversed the Court of Appeals and found in favor of the property owner. The Court stated that a shooting range may meet the statutory definition of a ‘sport shooting range’ despite the fact that the owner of the shooting range makes a profit. The status of the use of the shooting range doesn’t matter because the shooting range is legislated under a state law and only the state law applies to it, thus **pre-empting** local ordinances.

What are the implications for local governments?

Shooting ranges may be protected from the reach of local zoning ordinances if they are in part used as sport shooting ranges even if they are also used commercially.

Who prepared the amicus brief?

John H. Bauckham (Bauckman, Sparks, Lohrstorfer, Thall, & Seeber, P.C.)

Addison Township v Barnhart, 845 N.W. 2d 88 (2014)
495 Mich 90

GUN CONTROL/OPEN CARRY

Capital Area District Library v Michigan Open Carry, Inc.

Michigan law prohibits gun owners from bringing guns into schools, child care centers, sports arenas, churches, certain entertainment facilities, hospitals, and colleges. But, there is no statute prohibiting bringing weapons into public libraries. Capital Area District Library (CADL) is a district library established under the District Library Enabling Act (DLEA) and a district library agreement executed by the City of Lansing and Ingham County. Under the DLEA, the operating board has the authority to adopt bylaws and regulations—it essentially operates as an independent public body. CADL's operating board adopted a code of conduct that contains the following weapons policy: "All weapons are banned from Library premises to the fullest extent permitted by law."

Michigan Open Carry (MOC) is a nonprofit corporation whose objectives are to "educate and desensitize the public and members of the law enforcement community about the legality of the open carry of a handgun in public." One method MOC uses to accomplish these purposes is to hold "informal gatherings in public places throughout the state while [openly carrying] our handguns." On multiple occasions between December 2010 and February 2011, individual members of MOC openly carried firearms (pistols and a shotgun) in CADL's downtown Lansing branch. Some library patrons and employees were disturbed by the presence of exposed firearms.

CADL believed that Michigan law permitted it to prohibit the open carrying of firearms on its premises. Accordingly, when a person openly carried a handgun on CADL's premises, one of CADL's security guards asked the person to leave. Generally, persons complied with a security guard's request. If the person did not comply with the request, a security guard would stay near the person until he or she left the library. In this instance, CADL's employees called the Lansing police when a person openly carrying a firearm entered the library.

However, the Lansing police refused to remove the person without a court order. CADL filed suit, asking the court to establish the validity of its weapons policy and permitting it to enforce the policy. CADL won at the lower court but MOC appealed the ruling. The Court of Appeals ruled in favor of MOC, finding that the CADL does not have the right to enact or enforce a policy banning all weapons from its premises.

Pre-emption: when a state law supersedes, or has precedence over, a local law.

Why did our LDF get involved?

The LDF filed an amicus brief in a similar case in 2003. The City of Ferndale's ordinance banning weapons at city hall was found to be pre-empted by state law. We believed the decision was in error—this case had the potential of improving the result for local concerns. CADL's policy relating to weapons in its buildings should be one of purely local concern and responsibility.

What action did our LDF take?

The LDF filed an amicus brief with the Michigan Supreme Court joined by the Michigan Association of Chiefs of Police.

What was the outcome?

The Michigan Supreme Court denied CADL's appeal; so, the Court of Appeals decision that the field of firearms regulation is **pre-empted** by state law is final.

What are the implications for local governments?

Local units of government were already prevented from adopting policies regarding the regulation of firearms under a series of state laws. District libraries were not included in this statute, however. As it stands, individuals can carry weapons in district libraries openly.

Who prepared the amicus brief?

Thomas Schultz (Johnson, Rosati, Schultz & Joppich)

Capital Area District Library v Michigan Open Carry,
839 N.W.2d 198 (2013)

BOUNDARY ADJUSTMENT – ANNEXATION AND 425 AGREEMENTS

Clam Lake Township v Dept of Licensing/State Boundary Commission, Teridee LLC, and City of Cadillac

For more than seven years, TeriDee, LLC attempted to spur economic growth in Wexford County by developing its property located near highways M-55 and US-131. Desiring services the City of Cadillac could offer, such as water and sewer, it twice petitioned for annexation of its property in Clam Lake Township to the city, which would allow for development of the property. The proposed annexation would have facilitated a commercial development project that would create an estimated 850 to 1,000 jobs. The township opposed such development and appealed a decision of the State Boundary Commission (SBC) to approve the annexation.

Clam Lake previously refused to rezone the property to allow for commercial development, and its citizens voted against an Act 425 Agreement between the township and the city. In 2011, TeriDee filed an annexation petition to transfer the property into the city. Clam Lake immediately entered into an Act 425 Agreement with Haring Township in an attempt to block the annexation, which the SBC determined to be invalid (it denied the annexation petition for other reasons, however).

Two years later, after hearing that TeriDee would be filing a new annexation petition, Clam Lake and Haring townships drew up another Act 425 Agreement. The timing of the agreement and circumstances surrounding its approval, along with a series of emails between the townships' officials, indicated that the Act 425 Agreement was a ploy intended to divest the SBC of jurisdiction.

After receiving more than 2,000 pages of documents and conducting a public hearing, the SBC voted that the Act 425 Agreement was, once again, a sham that did not deprive the SBC of jurisdiction over the annexation petition. The SBC approved TeriDee's annexation request after reviewing the evidence and determining that the request satisfied the statutory criteria. The township then appealed to circuit court, which affirmed the SBC's decision. The township further appealed to the Court of Appeals (which denied hearing), and then to the Michigan Supreme Court.

Why did the LDF get involved?

Annexation will allow for economic development of the property and bring needed revenue and revitalization. The actions of the townships are contrary to the concept of PA 425, and improperly undercut the authority of the SBC.

Annexation: The process of bringing land from one jurisdiction to another by petition or resolution.

Act 425 agreement: The conditional transfer of land from one unit of government to another for an economic development project that envisions the sharing of taxes and revenue. The land included in an Act 425 agreement that is in effect cannot be annexed.

What action did the LDF take?

At the request of the Michigan Supreme Court, the LDF filed an amicus brief.

What was the outcome?

The Michigan Supreme Court concluded that the SBC does not have authority to determine the validity of a 425 agreement beyond ensuring such an agreement is in effect.

What are the implications for local governments?

The Michigan Supreme Court's ruling overruled *Casco Township v State Boundary Commission*, a 2000 decision of the Michigan Court of Appeals which had concluded that the SBC did have authority to determine the validity of 425 Agreements. Unless addressed legislatively, this decision will likely result in the increased use of 425 Agreements between townships to defeat legitimate annexation efforts. Cities and villages commonly provide water and sewer services to businesses—services deemed valuable in the development of their properties. This decision stymies annexation as a tool for cities and villages in their commitment to economic growth.

Who prepared the amicus brief?

Jeffrey Sluggett and Crystal Morgan
(Bloom Slugget Morgan, P.C.)

Clam Lake Township v Dept. of Licensing, 902 N.W.2d 293 (2017) 500 Mich 362

GOVERNMENTAL IMMUNITY

Luckett v Southeast Macomb Sanitary District

On March 12, 2008, 14-year old William Luckett went snowmobiling, traveling at 45-50 mph, on Lake St. Clair at 8:30 p.m. He struck the pier, and the impact caused a cervical fracture that resulted in quadriplegia. His parents filed a lawsuit against the Southeast Macomb Sanitary District (SMSD) and employee Rick Kittell alleging **gross negligence**, and supervisor Patrick O'Connell for failing to properly train/supervise Kittell in his duties.

The lights on the pier had a photocell/solar panel and automatically turned on at dusk and automatically shut off in the morning. As part of his duties, Kittell was required to go to the pier and check the lights once per shift. On the day before the accident, Kittell entered in the log book that all the lights were on. On the day of the accident, another employee noted at 12 a.m. in the log book that all the lights were on. When it was again his shift, Kittell entered in the log book that all lights were on at 8:11 p.m.

The trial judge ruled that the evidence did not show that Kittell engaged in conduct so reckless as to amount to gross negligence, as required by the Governmental Tort Liability Act. There was no evidence of willful disregard of safety measures or of disregard for substantial risks. Instead, his actions were consistent with the duties he was required to perform. Luckett then appealed to the Court of Appeals. The Court of Appeals affirmed the trial court dismissal as to O'Connell, but reversed as to Kittell, finding that there was a question as to whether his actions amounted to gross negligence. The SMSD appealed to the Michigan Supreme Court.

Why did our LDF get involved?

Governmental immunity is a significant issue and one on which all governments should want clarification. In this case, the analysis of the Court of Appeals of the “**proximate cause**” of the accident was incorrect, which led it to decide that there was a question as to whether Kittell’s conduct was “the proximate cause” of Luckett’s injury. The Court misapplied the interpretation of proximate cause from an earlier case.

What action did the LDF take?

The LDF filed an amicus brief to the Michigan Supreme Court joined by the Michigan Townships Association and the Public Corporation Law Section of the State Bar of Michigan.

Governmental immunity: a governmental agency is immune from tort liability if it is engaged in the exercise or discharge of a governmental function.

Proximate cause: the primary cause of an injury without which the injury would not have occurred.

Gross negligence: conduct so reckless as to demonstrate a substantial lack of concern for whether injury results.

What was the outcome?

The Michigan Supreme Court found in favor of the SMSD, and stated that the only evidence concerning the illumination of the pier lights was Kittell’s log where he recorded that they were all lit approximately 20 minutes prior to the accident. Luckett’s evidence all concerned the status of the lights following the accident. There was no evidence that Kittell was grossly negligent, that is, that he engaged in “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” The Court went on to state that there was no evidence that Kittell’s acts or omissions were the proximate cause of Luckett’s injuries.

What are the implications for local governments?

Municipalities can still rely on the immunity statute that exempts them from liability unless there is gross negligence and the governmental employee was the “sole” cause of the accident. In this case, snowmobiling in the dark at high speed could have been a contributing factor to the accident.

Who prepared the amicus brief?

Rosalind Rochkind (Garan Lucow Miller P.C.)

Luckett v Southeast Macomb Sanitary District,
861 N.W.2d 284 (2015)

TAX ASSESSING – DARK STORES

Menard, Inc. v City of Escanaba

Across Michigan, retailers such as Meijer, Lowe's, Target, Kohl's, Menards, IKEA, Wal-Mart, and Home Depot argue that the market value of their operating store should be based on the sales of similar sized "comparable" properties that are vacant and abandoned and may not even be located in Michigan. The stores also place deed restrictions on the vacated buildings that greatly limit what can go in the buildings once they are empty and become dark. These Big Box stores convinced the Michigan Tax Tribunal to give them special treatment as it pertains to the market value of their property. Prior to the dark store theory, Michigan Big Box stores were assessed at an average of \$55 per square foot. Here's where they are now compared to states where various Big Box stores are located:

- In Michigan, Lowes stores are assessed at \$22.10 per square foot. In Lowes home state of North Carolina, the same stores are valued at \$79.08 per square foot.
- In Michigan, Menards and Target are valued at \$24.97 per square foot. In Menards' home state of Wisconsin, the same stores are valued at \$61.23 per square foot.

Dark store: a tax loophole scheme used by Big Box retailers to lower the amount they pay in property taxes.

In this case, Menard appealed its 2012, 2013, and 2014 property tax assessments by the city of Escanaba. The Michigan Tax Tribunal (MTT) reduced the true cash value assessments for the three years roughly from \$7.8 to \$8.2 million for each tax year to roughly \$3.3 to \$3.6 million for each tax year. The city appealed the decision to the Court of Appeals. The Court of Appeals determined that because over half of Menard's appraiser's sales comparables were deed-restricted, for which no adjustments were made to the sale prices for the deed restrictions, the Tribunal's valuation was an error of law not supported by competent, material, and substantial evidence.

Why did our LDF get involved?

Most communities welcome having Big Box retailers such as Lowe's and Home Depot nearby. But they don't expect those stores to then ask to be taxed at artificially low rates. The decision of the Tribunal is precedential to itself, and if allowed to stand will



TAX ASSESSING – DARK STORES CONTINUED

Menard, Inc. v City of Escanaba

impact subsequent decisions of the Tribunal and communities across the state. The result of this case could have put the state's entire property tax base at risk.

What action did the LDF take?

The LDF, joined by the Michigan Townships Association (MTA), the Michigan Association of Counties (MAC), the Michigan Association of School Boards (MASB), the Michigan School Business Officials (MSBO), and the Michigan Assessors Association (MAA), filed an amicus brief with the Court of Appeals.

What was the outcome?

The Court of Appeals rejected the Michigan Tax Tribunal's decision in favor of Menard and found in favor of the city. The Court sent the case back to the Tribunal, ordering it to take evidence on the market effect of the deed restrictions, and directing that if the sales comparables cannot be reliably adjusted as if they were sold for the same highest and best use as the Menard's store, then the comparables should not be used and the Tribunal should consider the cost approach to value.

Menard filed an Application for Leave to Appeal to the Michigan Supreme Court, which the city opposed. On February 1, 2017, the Michigan Supreme Court entered an order for oral argument on the application (known as a "MOAA"—mini oral argument on the application). The order required the parties to file supplemental briefs and the oral arguments were heard on October 12, 2017.

On October 20, 2017, the Michigan Supreme Court declined to take the matter up and denied the Application for Leave to Appeal. Essentially, the Court issued a ruling that Big Box stores can no longer use the "dark stores" property valuation method, which allowed them to escape paying millions in local property taxes.

The case is now back before the Tax Tribunal, as directed by the Court of Appeals, for consideration of the effect of the deed restrictions on sales comparables and utilization of the cost approach.

Additionally, because of the precedent-setting potential, complexity, and huge cost of defending its assessments by the city, the Michigan Municipal League, MTA, MAC, and MASB are supporting the city's request for each of their member units of government to offer financial support.

What are the implications for local governments?

Overall, this is a huge win for local government and its ability to fairly tax all property owners. In its order, the Supreme Court denied Menard's application for leave to appeal. Through the denial, the Court essentially rejected Menard's claims that the Court of Appeals exceeded its permissible scope of review, that the cost approach amounts to a value-in-use standard and should not be used to value real property for tax purposes, and that it is permissible to utilize deed restricted properties to value non-deed restricted properties. The Court's decision upholds the May 26, 2016, published opinion of the Court of Appeals which found the Michigan Tax Tribunal (MTT) committed an error of law when the MTT rejected the cost approach and then utilized a sales comparison approach without accounting "for the effect on the market of deed restrictions" on the sales comparables. Ultimately, since the case is on remand to the MTT, there is at least one more chapter to be written and that result may be appealed yet again to the Supreme Court.

Who prepared the amicus brief?

Stephanie Simon Morita (Johnson Rosati Schultz & Joppich, P.C.)

Menard, Inc. v City of Escanaba, 315 Mich App 512 (2016) and 501 Mich 899 (2017)

TAX EXEMPTION – NONPROFIT CHARITABLE INSTITUTION

Trinity Health-Warde Lab, LLC v Charter Township of Pittsfield

Warde Lab is a for-profit medical laboratory that performs clinical laboratory testing. Although Warde Lab is owned by a nonprofit, Trinity Health Michigan, the lab itself is not a nonprofit charitable institution. Trinity appoints the lab's board of directors, who manage its business and affairs. Trinity created the lab for the purposes of acquiring, owning, and operating the lab's real property—a 57,000-square foot building used solely as a medical laboratory.

Warde Lab filed a motion with the Michigan Tax Tribunal claiming that because Trinity has complete corporate control over the lab, it should be deemed a charitable institution, thus exempting it from taxation. The township responded that, as a for-profit entity, it does not meet the requirements for a charitable institution, and therefore the lab's property is not eligible for tax-exempt status.

The Tribunal found that Warde Lab and the nonprofit Trinity Health are “essentially the same entity,” entitling Warde Lab to the nonprofit charitable institution exemption even though itself it is not a nonprofit charitable institution.

Why did our LDF get involved?

Municipalities have an interest in the proper construction and application of the property tax law, both procedural and substantive. Cities and townships are the assessing units which administer the property tax through the actions of assessors and the local boards of review and as the respondents in most property tax appeals. This case could cause serious negative consequences to municipal property tax administration, tax revenues, and to the public services provided therefrom. The general understanding of assessors throughout the state in the performance of their property tax assessing function has been that the property tax exemptions for charitable, educational, and scientific institutions were not available to for-profit entities. The purpose of a for-profit corporation is to make a profit to distribute or otherwise benefit the shareholders—this is in direct opposition to the purpose of a nonprofit institution with its sole motive to carry out its cause, whether it be educational, scientific, or charitable. Promotion of these nonprofit causes by provision of property tax exemptions is a worthy intent of the legislation; such an exemption should not be extended to for-profit entities.

What action did the LDF take?

The LDF joined the Michigan Townships Association in filing an amicus brief with the Court of Appeals.

What was the outcome?

The Court of Appeals reversed the Michigan Tax Tribunal and ruled in favor of the township. It concluded that a for-profit entity owned by a charitable institution is not exempt from real property taxes. A Supreme Court Order was issued stating that the parties stipulated to dismissal of the case and the Court accordingly dismissed the application for leave to appeal. The dismissal is good news, as it leaves unaltered the favorable Court of Appeals published decision.

What are the implications for local governments?

This is a very important ruling for municipalities since property taxes make up the bulk of the revenue they use to provide services to their residents. Our hope is that it will put a stop to the practice of nonprofit charitable entities, setting up wholly owned for-profit entities to own real estate or other property, and still claim a property tax exemption.

The LDF also filed an amicus brief in three similar cases. In *SBC v Kentwood*, *Baruch v Tittabawassee Township*, and *Chelsea Health and Wellness v Dexter*, the plaintiffs sought charitable tax-exempt status. *Baruch* was decided on June 28, 2017 and *Chelsea* on October 12, 2017—both against the municipalities, which may open the door to more “nonprofits” seeking charitable tax exemptions in this manner.

Who prepared the amicus brief?

Robert Thall (Bauckham, Sparks, Thall, Seeber & Kaufman P.C.).

Trinity Health-Warde Lab v Charter Township of Pittsfield, 904 N.W.2d 599 (2017)

TAX SPENDING SHIFTS — HEADLEE AMENDMENT AND REVENUE SHARING

Taxpayers for Michigan Constitutional Government v State of Michigan

The Headlee Amendment to the state constitution governs revenue sharing between the state of Michigan and local governments. The amendment limits the ability of local governments to raise taxes while ensuring that local governments get the financial support that they need from the state. Among other things, Headlee dictates that the state **must** allocate 48.97% of its funding to local governments and that the state **may not** mandate programs for local governments to implement without providing funding for those programs.

The plaintiffs' brief deals with three areas: 1) whether the state can count monies, spent to meet its funding guarantee to schools under Proposal A, toward meeting the 48.97% funding threshold for local governments under section 30 of Headlee; 2) whether monies expended to fund charter schools can be credited to the state to satisfy its funding obligation under section 30; and 3) whether monies paid to local governments to meet state funding obligations under section 29 of Headlee are properly credited to the state regarding section 30.

Plaintiffs assert, in regard to each of the three areas above, that the state has counted spending that does not fall under Headlee in its yearly calculations related to determining required revenue sharing.

A group of taxpayers and a taxpayers' advocacy organization, Taxpayers for Michigan Constitutional Government, have sued the state for the past shortfalls in Headlee funding and to ensure that the state provides adequate funding following Headlee guidelines going forward. This effort was coordinated by Professor John Mogk of the Wayne State Law School. John Philo and others at the Sugar Law Center are representing the plaintiffs.

Why did the LDF get involved?

Revenue sharing represents a substantial portion of local budgets for vital services like police and fire departments. The consistent reduction has led to shortfalls in the budgets of local governments and contributed to state-mandated receiverships. Further, local governments have had to make difficult decisions due to budget restraints and have had to cut down on a wide range of services. Studies demonstrate that the next economic downturn will push even more Michigan municipalities into fiscal distress and/or bankruptcy if revenue sharing from the state does not increase to its proper level.

What action did the LDF take?

The Michigan Municipal League and its LDF commissioned a study to illustrate the impact of the state's inequitable revenue sharing on local communities, and to highlight how crucial local services such as fire, police, and sewage treatment have been hurt by a lack of funding from the state. Further, the LDF submitted an amicus brief joined by the Michigan Townships Association, the Michigan Association of Counties and the Government Law Section of the State Bar of Michigan.

What was the outcome?

To date, the Court of Appeals has rejected some of the procedural arguments brought by the State and the case is going forward.

What are the implications for local governments?

Without a return to the legally established funding mechanism, municipalities will have to cut back on critical services, raise taxes, or both. One major goal of the suit is to ensure that local governments get much-needed funding from the state and are able to attain a measure of fiscal stability, even in the event of an economic downturn.

Who prepared the amicus brief?

Dennis R. Pollard (Secret Wardle)

Taxpayers for Michigan Constitutional Government, Steve Duchane, Randall Blum, and Sara Kandel v State of Michigan, Dept of Technology, Management and Budget, and the Michigan Office of the Auditor General (Michigan Court of Appeals, Case No. 334663)

ELECTION LAW – LOCAL BALLOT PROPOSALS/“GAG ORDER”

Robert Taylor, Mayor of Roseville, et al v Ruth Johnson and the State of Michigan et al

Michigan's Legislature amended a campaign finance bill in order to prevent local public officials from using public resources to communicate with their constituents regarding ballot measures in the 60 days leading up to an election. The language was added to the bill at the last minute and passed in the middle of the night without a public hearing. The State asserted that the purpose of the added language was “to prohibit communications that are plain attempts to influence voters to vote in a particular way without using words like “vote for” or “support.” The Legislature passed the Act notwithstanding that such a prohibition already existed—in the Campaign Finance Act.

The new law (PA 269 of 2016), prohibited local officials or local government employees from using public resources to communicate with voters within 60 days of an election by giving them factual information about a ballot proposal through radio, television, mass mailing, or prerecorded telephone messages in the two months before an election. Thus, local government officials were limited in their ability to inform the electorate in a factual, non-partisan, unbiased manner on complex issues that are pending on the ballot. The public officials seeking to explain a ballot

question—those in the best position to provide factual information and explanations to voters—were banned from doing so.

Why did the LDF get involved?

The Act placed an immediate “gag order” on local government entities with issues on the March 8, 2016 ballot, restricting their abilities to inform citizens about local ballot proposals. This impacted more than 100 cities, villages, townships, school districts, counties, and other entities that had ballot questions before the voters in the March election.

What action did the LDF take?

The LDF filed a co-amicus brief, joined by the Michigan Association of Counties, the Michigan Townships Association, and the Conference of Western Wayne, in U.S. district court.



ELECTION LAW – LOCAL BALLOT PROPOSALS/“GAG ORDER” CONTINUED

Robert Taylor, Mayor of Roseville, et al v Ruth Johnson and the State of Michigan et al

What was the outcome?

After granting a Preliminary Injunction preventing enforcement of the new section finding that the Plaintiffs’ had a strong likelihood of prevailing on the claim that the Act was unconstitutional, the United States District Court Judge accepted an agreement between the Secretary of State’s office and local governments and school groups, permanently stopping Secretary of State Ruth Johnson from enforcing PA 269.

What are the implications for local governments?

While the provisions of PA 269 may not be enforced by the State, the restrictions that were already in place within the Michigan Campaign Finance Act remain and must be adhered to in conveying information regarding local ballot proposals. As an additional cautionary note, municipalities should assume that the proponents of PA 269 will be especially focused on the conduct of local ballot elections and information distribution going forward.

Dos and Don’ts

Generally, public officials can issue communications to voters using public dollars if the communications contain factual information regarding the election, the proposal, and what impact either its passage or defeat will have on the public body. Moreover, the prohibition on using public monies to support or defeat a ballot proposal does not prevent certain high-level officers and employees from expressing their opinions. For example, nothing prevents a city council member or city manager from standing up at a public meeting and telling the gathering that, in his or her opinion, the city needs to ask for a millage increase and the voters need to support it.

Although there are opportunities to carefully use public time and money to further educate the electorate on a proposal, public employees and officials should also keep the following additional guidelines in mind:

1. Non-policy making staff may not take “official” time (i.e., time away from their regular jobs) to participate in campaign committee activities, as this would constitute an inappropriate expenditure of public funds. Nothing would restrict the ability of these individuals to work in any way on the campaign on their own time.
2. The public body may provide information to individuals and/or a campaign committee which is publicly available in the same manner as it would provide information to anyone else requesting the information.
3. The campaign committees may meet at public facilities only to the extent that and on the same terms as any other group could use the same facilities. If the public body incurs any expense in providing meeting space to the committee, the committee must reimburse the public for that expense.
4. The public body should not place links to campaign-related websites on its website.

In a nutshell: public officials can generally issue communications to voters using public dollars if the communications contain factual information regarding the election, the proposal, and what impact either its passage or defeat will have on the public body.

Who prepared the amicus brief?

Gary Gordon and Jason Hanselman
(Dykema Gossett PLLC)

Taylor et al v Johnson et al, No. 5:2016cv10256 -
Document 27 (E.D. Mich. 2016)

CASE LOCATIONS





michigan municipal league