

state assumes no financial responsibility in connection with a civil suit arising from the actions of local peace officers.

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760917.2

**TAX ASSESSMENTS:** Levy for purposes of collecting and disposing of garbage.

Tax revenues realized from a levy pursuant to a statute authorizing a city or village to levy a tax for the purpose of collecting and disposing of garbage may not be used for any other purpose.

Opinion No. 5075

September 17, 1976.

Honorable Gilbert J. DiNello  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion upon the following restated question:

"Can the City of East Detroit put the monies collected under Public Act 298 of 1917, as amended, into the General Budget or must it be used to establish and maintain garbage systems or plans for the collection and disposal of garbage?"

1917 PA 298, as last amended by 1976 PA 127, MCLA 123.261; MSA 5.2681, provides:

"An act to authorize cities and villages to levy a tax *for the purpose of collecting and disposing of garbage*; and providing for the issuance of bonds therefor.

"Sec. 1. *The city council* of a city, whether organized under the general law or special charter, or the president and board of trustees of a village *may establish and maintain garbage systems or plants* for the collection and disposal of garbage in the city or village, and *may levy a tax* not to exceed 3 mills on the dollar on all taxable property in the city or village according to the valuation of the same, as made for the purpose of state and county taxation by the last assessment in the city or village *for these purposes*. The annual garbage tax shall be in addition to the amount authorized to be levied for general purposes by the general law or special charter under which the city or village is incorporated. *All cities or villages may, for the construction of a garbage disposal plant or system, issue bonds* in a sum not to exceed 3 mills on the dollar on all taxable property in the city or village according to the valuation of the same, as made for the purpose of state and county taxation by the last assessment in the city or village, and may make the bonds run for a period of not to exceed 5 years and to bear interest at a rate not to exceed the maximum rate permitted by

Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2 of the Michigan Compiled Laws.

"As used in this act "garbage" means any putrescible and non-putrescible solid wastes, except body wastes, and includes ashes, incinerator ash, incinerator residue, street cleanings, solid market wastes, solid industrial wastes, and also rubbish including such items as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, and litter of any kind." [emphasis added]

This act authorizes a city or village to raise funds for garbage disposal plants or systems by levying a tax and by the issuance of bonds. Regarding taxation, 1976 PA 127, *supra*, expressly provided that such municipalities

" . . . may establish and maintain garbage systems or plans for the collection and disposal of garbage, . . . and may levy a tax not to exceed 3 mills . . . for these purposes. . . ." [emphasis added]

The clause "for these purposes" confines the use of such tax revenues to the purposes expressed in the act, and they may not be diverted to other municipal uses or purposes. See *Freeland v City of Sturgis*, 248 Mich 190 (1929), and *Menendez v City of Detroit*, 337 Mich 476 (1953). Compare Chapter 110, § 22 of the Fourth Class Cities Act, MCLA 110.22; MSA 5.1951. Also, 1976 PA 127 provides:

" . . . The annual garbage tax shall be in addition to the amount authorized to be levied for general purposes by the general law or special charter under which the city or village is incorporated. . . ."

Consistent with Const 1963, art 7, § 21, the millage limitation for the special purposes contained in 1976 PA 127 is distinguishable from millage limitations for general purposes contained in general laws and charters under which municipalities are incorporated. See § 3(g) of the Home Rule Cities Act, 1909 PA 279, MCLA 117.3; MSA 5.2073; Chapter 69, § 1, 1895 PA 3, MCLA 69.1; MSA 5.1371; and Chapter 78, 1909 PA 278, MCLA 78.26; MSA 5.1536, the Village Incorporation Act.

The purposes are recited in the title of said Act, and § 1 expressly provides:

" . . . All cities or villages may, for the construction of a garbage disposal plant or system, issue bonds in a sum not to exceed 3 mills. . . ." [emphasis added]

The issuance of bonds is confined by 1976 PA 127 to the purpose of constructing a garbage disposal plant or system. The Municipal Finance Act, 1943 PA 202, MCLA 131.1 *et seq*; MSA 5.3188(1) *et seq*., cited in 1976 PA 127, contains express provisions prohibiting the diversion of proceeds from the purposes for which the obligations are issued, requiring that such funds be kept separate from all other funds or monies of the municipality, and that such funds shall be used only to meet operating and maintenance expenses and to retire the indebtedness for which the obligations have been

issued. See Chapter IV, § 2,<sup>1</sup> § 3,<sup>2</sup> § 3a,<sup>3</sup> § 4;<sup>4</sup> Chapter VI, § 8,<sup>5</sup> Chapter VII, § 1b,<sup>6</sup> and § 2,<sup>7</sup> *inter alia*. Provisions are also contained in 1943 PA 202, controlling the disposition of revenues, as compared to bond proceeds, of such public improvements. See also §§ 15 and 16 of the Revenue Bond Act of 1933, 1933 PA 94, respectively MCLA 141.115; MSA 5.2745 and MCLA 141.116; MSA 5.2746, imposing similar requirements.

Therefore, it is my opinion that tax revenues, realized from a levy pursuant to 1976 PA 127 and monies realized from the issuance of bonds pursuant thereto, must be used for the special purposes expressed in the Act.

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760923.1

**SCHOOLS AND SCHOOL DISTRICTS:** Removal of unauthorized visitors.

**SHERIFFS:** Authority to remove unauthorized visitors from school district premises.

County law enforcement officers may remove unauthorized visitors from the buildings or grounds of a school district.

Opinion No. 5039

September 23, 1976.

Honorable Francis Spaniola  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion on the following question:

"Can a county law enforcement agency act to resolve the problem of unwanted and disruptive visitors on the campus or in the buildings of a K-12 school district?"

Const 1963, art 7, § 4 provides that each organized county shall elect a sheriff whose powers and duties are prescribed by law. 1919 PA 237, § 7; MCLA 45.407; MSA 5.917 provides that the sheriff shall perform "all reasonable services within the jurisdiction of their offices for which the county may be liable. . . ." The duties of a sheriff have been construed to include the ". . . preservation of peace; the arrest and detention of persons charged with the commission of a public offense. . . ." *White v East Saginaw*, 43 Mich 567, 570; 6 NW 86, 87 (1880).

<sup>1</sup> MCLA 134.2; MSA 5.3188(14)

<sup>2</sup> MCLA 134.3; MSA 5.3199(15)

<sup>3</sup> MCLA 134:3a; MSA 5.3188(15a)

<sup>4</sup> MCLA 134.4; MSA 5.3188(16)

<sup>5</sup> MCLA 136.8; MSA 5.3188(35)

<sup>6</sup> MCLA 137.1b; MSA 5.3188(45b)

<sup>7</sup> MCLA 137.2; MSA 5.3188(46)