

because of the guarantee by the stockholder-partners of the parent corporation's loan.

You state in your third question that "repayment of the total indebtedness is to come from the parent corporation." If that fact can be established, it would of itself be justification for combining all of the loans because it would represent a line of credit extended by the bank. But, irrespective of that fact, it is my opinion you would be justified in combining the several loans for the purpose of determining whether or not the statutory limitation has been exceeded because of the cross guarantees which have been made as hereinbefore recited. It appears obvious when the transactions are viewed in their entirety that the bank has not extended credit solely to the parent corporation, solely to the subsidiary corporation and solely to the partnership. All three of these entities are involved as well as the members of the partnership, both in the partnership capacity and individually. The purpose of the statute is to govern the conduct of the bank and when the indebtedness is analyzed both from the standpoint of borrower and guarantor there can be little doubt that the bank has not extended credit solely on the basis of the three separate loans.

FRANK J. KELLEY,
Attorney General.

650 323.1

TOWNSHIPS: Fiscal year, budget hearing.

CONSTITUTIONAL LAW: Public hearings on local budgets.

The fiscal year of a regular township ends on the second Tuesday next preceding the annual township meeting.

A township may not change its fiscal year.

Act 43, P.A. 1963, 2nd Ex. Sess., does not provide conforming implementation to Article VII, Section 32 of the Michigan Constitution of 1963.

No. 4392

March 23, 1965.

Hon. John T. Bowman
State Senator
The Capitol
Lansing, Michigan

By letter you have sought my opinion with regard to certain aspects of the fiscal affairs of a township.

Specifically you have asked:

- "1. Can a township change its fiscal year?
- "2. For what fiscal period are the required budget hearings to be applicable, i.e. the current fiscal period or the next fiscal period following the budget hearings?
- "3. If the budget hearings are applicable to the current fiscal period and the township cannot change its fiscal year what is the status of expenditures which have been made in the approximately ninety (90)

day period after the start of the fiscal year but prior to the budget hearing, if the budget hearing is applicable to the current fiscal period?

"4. If the township can change its fiscal period what then are the requirements for a Report of Cash Receipts and Disbursements at the annual township meeting?"

It would be well at the outset to point out that this opinion is concerned with "regular" townships as distinguished from charter townships whose fiscal affairs are fully set forth in the Charter Township Act.¹

"Regular" townships in this state may be said to fall into three categories with reference to their fiscal affairs. Some townships still hold their annual meeting and some of them have abolished said meeting pursuant to statute.² Also there are some townships which, pursuant to the Property Tax Limitation Act,³ prepare and submit a budget each year to the county tax allocation board in order that said board might allocate millage to them.

Before proceeding to answer each question, I would like to briefly outline the statutory scheme relating to the fiscal affairs of a township.

The township annual meeting takes place "on the Saturday immediately preceding the first Monday in April."⁴ Prior to the annual meeting three events occur.

On the second Tuesday next preceding the annual township meeting, commonly called "settlement day," the township board holds its annual meeting. One of the purposes of this meeting is the auditing and settling of all claims against the township.⁵

Immediately upon the settlement by the township board, an itemized financial statement is made. Six copies of the statement must be posted and another six copies must be distributed at least 10 days prior to the annual township meeting.⁶

On the Tuesday next preceding the annual township meeting the township treasurer meets with the township board to account with the board for all moneys received or disbursed by him.⁷

Following the annual township meeting, those townships which seek a millage allocation must file their proposed budgets with the county tax allocation board on or before the third Monday in April of each year.⁸ Section 9 of the statute specifically provides that:

"Such budget shall cover that fiscal year of the local unit, the ex-

¹ Act 359, P.A. 1947, being C.L. 1948 and C.L.S. 1961 § 42.1 et seq.; M.S.A. 1961 Rev. and 1963 Cum. Supp. § 5.46(1) et seq.

² Sec. 361 of Act 116, P.A. 1954, as amended by Act 133, P.A. 1963; M.S.A. 1963 Cum. Supp. § 6.1361.

³ Act 62, P.A. 1933, being C.L. 1948 & C.L.S. 1961 § 211.201 et seq.; M.S.A. 1960 Rev. Vol. & 1963 Cum. Supp. § 7.61 et seq.

⁴ C.L.S. 1961 § 41.8; M.S.A. 1961 Rev. Vol. § 5.8.

⁵ C.L. 1948 § 41.72; M.S.A. 1961 Rev. Vol. § 5.64.

⁶ C.L. 1948 § 41.171; M.S.A. 1961 Rev. Vol. § 5.111.

⁷ C.L. 1948 § 41.79; M.S.A. 1961 Rev. Vol. § 5.71.

⁸ Sec. 10 of Act 62 P.A. 1933, as last amended by Act 278 P.A. 1964; M.S.A. Current Material § 7.70.

penditures of which year are to be met wholly or partly from the next tax levy.”

On the third Monday in May the county tax allocation board makes a preliminary order approving a maximum tax rate for each township.⁹ Following the period given by the county tax allocation board for objections to its preliminary order, but not later than the first Monday in June, said board makes a final order approving a maximum tax rate for each township.

Article VII, Section 32 of the Michigan Constitution of 1963 provides:

“Any county, township, city, village, authority or school district empowered by the legislature or by this constitution to prepare budgets of estimated expenditures and revenues shall adopt such budgets only after a public hearing in a manner prescribed by law.”

By statute¹⁰ the inhabitants of any township have the power to vote sums of money not exceeding certain statutory amounts to defray all proper charges and expenses arising in the township. The statute goes on to provide:

“No board, officer or officers shall create any debt or liability against the township, or issue any warrant, certificate or order for the payment of money, except when the creation of such debt or liability or the payment of such money has been authorized by such vote or by the provisions of law.”

It is clear from the above that the townships in Michigan have the power to prepare budgets. Indeed, this has long been recognized by both our Supreme Court¹¹ and various texts¹² as a power possessed by a township.

The dates on which the fiscal year of a regular township begins and ends are not set forth in the statutes. Specific provision is made for the fiscal year of a charter township.¹³

It is my view, however, that the fiscal year of a township ends on the second Tuesday next preceding the annual township meeting—the day provided for the settling and auditing of all claims against the township. In reaching this conclusion I have taken into consideration both the long standing practice of most Michigan townships and the sequence of events provided for by statute and outlined above. I also believe that to conclude otherwise would make useless the purpose of having the township treasurer account and the itemized financial statement issued prior to the annual meeting.

⁹ Sec. 15 of Act 62 P.A. 1933, as last amended by Act 149 P.A. 1962; M.S.A. 1963 Cum. Supp. § 7.75.

¹⁰ Sec. 3 of Chapter 16 of the Revised Statutes of 1846, as last amended by Act 72 P.A. 1964; M.S.A. Current Material § 5.3.

¹¹ *Rubatt v. Township of Wakefield*, 239 Mich. 536.

¹² Parisi, *A Manual for Township Officials*, p. 92 (1963); J. and M. Blawie, *The Michigan Township Board*, p. 26 (1957).

¹³ C.L. 1948 § 42.25; M.S.A. 1961 Rev. Vol. § 5.46(25).

I find support for this conclusion in *Ewauna Box Co. et al. v. Weyhaeuser Timber Co.*, 255 P 2d 121, 198 Oregon 360, where the court held that "fiscal year" is the year by or for which accounts are reckoned or the year between one annual time of settlement or balancing of accounts and another.

I will now answer your questions.

"1. Can a township change its fiscal year?"

As discussed above, the fiscal year of a township ends as of the day set by statute for the auditing and settling of all claims against the township—"settlement day." This day is fixed by statute¹⁴ as the second Tuesday next preceding the annual township meeting. A township, thus, cannot change its fiscal year.

"2. For what fiscal period are the required budget hearings to be applicable, i.e. the current fiscal period or the next fiscal period following the budget hearings?"

In considering this question it should first be pointed out that it is answered by statute as to those townships which seek a millage allocation from the county tax allocation board pursuant to the Property Tax Limitation Act, *supra*.

As mentioned above, Section 9 of said act provides:

"Such budget shall cover that fiscal year of the local unit, the expenditures of which year are to be met wholly or partly from the next tax levy."

As stated above, Article VII, Section 32 of the Michigan Constitution of 1963 requires any township empowered by law to prepare a budget to adopt such budget only after a public hearing prescribed by law.

The Address to the People states with reference to this section:

". . . This proposed section requires that units empowered to draw budgets may not adopt them until after a public hearing held in a manner prescribed by the legislature."

Official Record, Constitutional Convention 1961, Vol. II, p. 3394.

It is commonly understood and accepted that units of government which hold hearings and then adopt budgets are in their proceedings discussing the budget for the next fiscal year. Both the United States congress and our own legislature are obvious examples. In *Corpus Juris Secundum*, it is said:

". . . As applied to governments or governmental units 'budget' has been defined or employed as meaning an estimate as to the probable expenditures to be incurred during the ensuing year, and of revenues hoped for with which to pay . . ." 12 C.J.S. "Budget" p. 375.

A similar definition is given in *Collins v. City of Schenectady, et al.*, 10 N.Y.S. 2d 303, 306.

However, it has long been the practice for townships that hold an annual

¹⁴ C.L. 1948 § 41.72; M.S.A. 1961 Rev. Vol. § 5.64.

meeting to adopt a budget for the year in progress. Thus, while the fiscal year begins prior to the annual meeting day, those townships have traditionally followed a practice of not formally approving their budgets until the day of the annual meeting. In the interim they have, of course, been operating on the proposed budget prepared by the township board for presentation at the annual meeting.

Whether townships should continue this traditional practice is a matter for the legislature to determine. In connection with this question, it is my opinion that under Michigan law township boards have the responsibility of preparing a proposed tentative budget for presentation to the annual meeting.

As previously mentioned, C.L. 1948 § 41.3; M.S.A. 1961 Rev. Vol. § 5.3, provides that money may not be paid out nor a debt incurred unless approved by the township at its annual meeting or approved by law. Another statute¹⁵ provides that whenever the electors at the annual meeting neglect or refuse to vote such sums of money as are necessary to defray ordinary township expenses or meet any emergency expenses, the township board is authorized at a regular meeting to vote certain sums, limited by the statute, for that purpose.

The Supreme Court has held in *Josiah E. Harding v. John C. Bader and Daniel Douglass*, 75 Mich. 316, that this latter section may not be the basis for action by a township board unless a budget proposal was presented to the annual meeting. In that case the court at page 320 said:

"The law provides for placing before the electors the sums necessary to be raised for the ordinary expenses of the township. . . . And it also provides that, in case they shall neglect or refuse to vote the sums necessary, then the township board may do so."

Our township law provides, as previously pointed out, that if the township electors at the annual meeting fail to approve expenditures sufficient to defray ordinary township expenses, the township board at its next regular meeting may appropriate sums for that purpose.

In several cases reaching the Supreme Court, its decisions have clearly indicated that it was aware of the traditional township practice of approving at the annual meeting the budget for the year already underway.

French v. Township of South Arm, 122 Mich. 593, involved a claim for improvements made by plaintiff to township owned property. The court said at p. 594:

"* * * The board paid him . . . certain sums, leaving a balance due of \$1,000. He had a settlement with the township board a few days before the annual township meeting, showing such balance. The township treasurer, it is claimed, made a report to the electors at the annual township meeting in 1895, showing the amounts paid plaintiff and the balance remaining unpaid. This report was adopted by the electors, and a vote to raise the one-fifth of 1 per cent. for that year was passed. * * *" (Emphasis supplied)

Similar language is found in *Harding v. Bader*, supra, at p. 320, where the court said:

¹⁵ C.L. 1948 § 41.131; M.S.A. 1961 Rev. Vol. § 5.161.

"On the contrary the records of the township meeting showed that the qualified voters did provide and vote \$175 for township expenses; and, for anything that appears from the records, it was sufficient to defray the ordinary expenses of the township for the *current year*." (Emphasis supplied)

In determining whether townships may continue to operate on the tentative budget approved by the township board until such time as the township has formally adopted its budget, I would suggest that the legislature consider not only the authorities cited above but also Article VII, Section 34 of the Michigan Constitution of 1963 which provides as follows:

"The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution."

A further question is raised by the problem you have presented. As previously mentioned Article VII, Section 32 of the Michigan Constitution of 1963 requires a township to hold a public hearing before it adopts its budget.

The intent of this part of the Constitution is clear. The budget is to be presented to the residents at a public hearing prior to its adoption. I believe we may safely surmise that the purpose of this provision is to afford the residents an opportunity to state their views prior to the budget's actual adoption.

Act 43, P.A. 1963, 2nd Ex. Sess., was passed to give effect to this constitutional provision. Section 3 of said act¹⁶ provides in part:

"Each local unit shall hold such public hearing prior to final adoption of its budget."

In those townships which do not request a millage allocation from the county tax allocation board, the public hearing is now held as part of the annual meeting. As was pointed out above, the fiscal year now begins prior to the adoption of the budget. As a result, such townships hold the constitutionally required public hearing after the fiscal year has started, although prior to the actual adoption of the budget.

Since only a matter of days is involved between the commencement of the fiscal year and the annual meeting, I do not feel that this practice does violence to the constitutional requirement of a public hearing prior to the adoption of the budget.

However, said Section 3 goes on to provide:

"Units which submit budgets to a county tax allocation board shall hold such hearing after its tax rate allocation has been fixed by such board."

The result in the case of a township which requests millage is that the constitutionally required public hearing may not be held until after the

¹⁶ M.S.A. Cur. Mat. § 5.3328(3) p. 61.

first Monday in June which is the final date for the county tax allocation board to make an order approving a maximum tax rate for each township.

When it is considered that many townships which request a millage allocation have abolished their annual meeting, I think that this delay and the resultant operation of the townships for more than three months on a budget which has not had the constitutionally required public hearing does do violence to the constitutional requirement of a public hearing prior to budget adoption.

It is therefore my opinion that Article VII, Section 32 of the Michigan Constitution of 1963, commands the holding of a public hearing prior to the time that a township adopts its budget. Section 3 of Act 43, P.A. 1963, 2nd Ex. Sess., supra, does not properly implement Article VII, Section 32 of the Michigan Constitution of 1963. This matter should be brought to the attention of the legislature for conforming implementation of the constitutional section.

FRANK J. KELLEY,
Attorney General.

650323.2

FIRE DEPARTMENTS: Integrated Force - Hours of Employment.

The provisions of Act 125, P.A. 1925, apply, where otherwise applicable, to those municipal employees who are engaged in fire fighting or who are subject to the hazards thereof, although the fire fighting services are incorporated into a department known by a name other than "fire department" or integrated with the police department and called a department of public safety or police-fire department.

No. 4429

March 23, 1965.

Honorable E. D. O'Brien
State Representative
The Capitol
Lansing, Michigan

You have submitted the following question for our analysis and disposition:

"Would the combination of a city fire and police departments into an integrated force under which employees (sometimes called 'public safety officers') perform the customary duties of both firemen and policemen and usually under common supervision (sometimes called a 'department of public safety' or 'police-fire department') be controlled by the provisions of Act 125, P.A. 1925, as amended [C.L. '48, § 123.841; M.S.A. 1958 Rev. Vol. § 5.3331, et seq.]"

Act 125, P.A. 1925, Sections 1 and 2, provide:

"Section 1. It shall be unlawful for any municipality, or any officer or employee thereof, in municipalities which maintain or may