

Mich 468 (1891); *Fyfe v Kent County Clerk*, 149 Mich 349 (1907); and *Lodge v Wayne County Clerk*, 155 Mich 426 (1909).

Therefore, it is my opinion that the legislators would be precluded from membership on the board of directors and the project citizens district council of the economic development corporation during the term to which they were elected to the legislature.

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PUBLIC MEETINGS: County road commission budget.

COUNTY ROAD COMMISSIONERS: Public hearings on adoption of budget.

COUNTY COMMISSIONERS: Adoption of budget.

BUDGET: Adoption of budget.

A county road commission is a public board within the meaning of the public meeting act and therefore its deliberations concerning the receipt, borrowing or disbursement of funds must be open to the public.

Inasmuch as the term "local unit" is defined by the budget act, 1963 2nd Ex Sess PA 43, to refer to a county, township, city, village, authority or school district, a county road commission is not subject to the provisions thereof. Consent of the county board of commissioners is required before a county road commission may spend tax moneys on county roads.

The annual meeting at which a proposed budget is adopted by a county board of commissioners is required to be a public meeting.

Opinion No. 4985

June 15, 1976.

Honorable Edgar A. Geerlings
Michigan House of Representatives
The Capitol
Lansing, Michigan

You have requested my opinion on the following questions:

1. Are county road commissions required by law to have a public hearing on the road commission budget?
2. If the road commissions are considered to be an integral part of the county governmental unit, then what manner of "public hearing" is specifically prescribed by law?

As noted in your opinion request, Const 1963, art 7, § 32 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."

The implementing legislation for this constitutional provision, 1963 2nd Ex Sess PA 43; MCLA 141.411-415; MSA 5.3328(1)-(5), requires every "local unit" of government to hold a public hearing on its proposed budget prior to final adoption. "Local unit" as defined in the statute, refers to a county, township, city, village, authority or school district empowered by the constitution or law to prepare budgets of estimated expenditures and revenues. 1963 2nd Ex Sess PA 43, § 1, *supra*.

Resolution of this inquiry focuses initially on whether county road commissions as prescribed by law meet the definitional requirements of "local units" as stated in 1963 2nd Ex Sess PA 43, *supra*, making public hearings mandatory prior to adoption of a budget.

As denoted in the enabling act, the board of county road commissioners constitutes a corporate body. 1909 PA 283, C4 § 9; MCLA 224.9; MSA 9.109. The board of county road commissioners acts as an administrative board with the limited function of formulating policy and performing official duties imposed by law and delegated by the county board of commissioners. 1909 PA 283, C4 § 9, *supra*. Due to the legislative circumscription attached to its authority, it becomes apparent that county road commissions do not meet the statutory scheme necessary to constitute "local units" as defined by 1963 2nd Ex Sess PA, § 1, *supra*.

However, the failure of county road commissions in meeting the definitional requirements of 1963 2nd Ex Sess PA 43, *supra*, does not automatically exempt such bodies from the scope of the statute providing for public meetings. 1968 PA 261; MCLA 15.251, *et seq*; MSA 4.1800(1) *et seq*. Reference is made initially to the legislatively prescribed formula for approval by the board of commissioners of the outlay of road funds raised by local taxation.

1909 PA 283, § 20; MCLA 224.20; MSA 9.120 requires county road commissions to provide an estimate of the amount of tax which in its judgment, should be earmarked for county road improvement in the upcoming year. At the annual meeting of the county board of commissioners, the county clerk presents the road commissions' determination to the board of commissioners. The board of commissioners votes on the budget proposal and, depending upon the outcome of the commissioners' vote, the budget proposal is either accepted, modified or rejected. 1909 PA 283, § 20, *supra*. Thus, in order for the county road commission to spend tax monies on county roads, the prior consent of the county board of commissioners is necessary.

In view of the fact that the procedural mechanism established places approval of the proposed budget in the hands of the county board of commissioners at their annual meeting, which is required by law to be a public meeting, MCLA 46.3; MSA 5.323, the appropriate characterization mandated here is that by legislative prerogative, necessity for an independent public hearing on the road commission budget has been deferred in favor of an advisory budget recommendation by the road commission to the board of commissioners, who by law exercise the authority to approve, disapprove

or modify such recommendation. At least three weeks prior to the intended date of the annual meeting, public notice must be given through newspaper publication of the matters to be discussed at the meeting. 1851 PA 156, § 1; MCLA 46.1; MSA 5.321. Additionally, explicit provision requiring open doors for public attendance at such meeting is provided. 1851 PA 156, § 3; MCLA 46.3; MSA 5.323.

Attention is again directed to the public meeting act, 1968 PA 261, *supra*, which requires that "public boards" give notice of their meetings so that members of the public can have the opportunity of being present to observe the manner in which such boards transact public business. *Haven v City of Troy*, 39 Mich App 219; 197 NW2d 496 (1972). Obviously a county road commission is a "public board", being a commission created by law which has for its purpose the performance of an essential governmental function. Therefore, any official deliberations or discussion which concerns the receipt, borrowing or disbursement of funds must be open to the public. This necessarily requires sufficient public notice of the scheduled location and time of such meetings, as prescribed in 1968 PA 261, § 3, *supra*.

Before addressing your second question, it should be noted that there is a distinction between a "public meeting" and a "public hearing". As noted in *Haven v City of Troy*, *supra*, at p 224:

"A public body might hold a hearing coincidentally with one of its meetings, but a meeting is not necessarily a hearing. The right to a hearing imports an opportunity to be heard. Implicit in that right is the companion right to reasonable notice not only of the time and place of a meeting of the public body required to conduct the hearing but also notice that a particular meeting of that body a particular question will be considered and those interested in that question will be given an opportunity to be heard."

Thus, a clear distinction exists between those privileges attached to a "public meeting" versus a "public hearing". A public meeting only allows for public attendance, with no demonstrable right to participate in the proceedings of the public body. Therefore, even in those situations where members of the public must be allowed to be present, there is no legal requirement that county road commissions provide for public debate and discussion with reference to budgetary considerations. All that is legally required is that county road commissions provide proper facilities for a public meeting.

Where a county board of commissioners must approve proposed tax levies, suggested by the county road commission at the annual meeting, 1909 PA 283, § 20, *supra*, the appropriate statutory provision calls for the county board of commissioners to establish rules and regulations, ". . . in reference to the mode of proceeding before such board. . .". 1851 PA 156, § 1; MCLA 46.11; MSA 5.321. Currently it is obligatory on all "local units" to give notice by publication of the time and place of the hearing as well as the location where a copy of the proposed budget may be reviewed. 1963 PA 43, § 2, *supra*.

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