

760622.1

**ELECTIONS:** Rescission of bond issue previously approved by electors  
**SCHOOL BONDS:** Rescission of school bonds previously approved by electors

In the absence of statutory authority, the question of whether to rescind a previously approved bond issue may not be submitted to the voters at a special election.

Opinion No. 5057

June 22, 1976.

Honorable J. Michael Busch  
State Representative  
The Capitol  
Lansing, Michigan

You have requested my opinion on a question which may be stated as follows:

May electors rescind a previously approved bond issue?

You have provided me with additional information indicating that the Board of Education of New Lothrop School District, a fourth class district, received a petition bearing the names of 870 electors requesting that a special election be called on the rescission of a bond issue approved October 14, 1975, for the construction of a new high school.

The School Code of 1955, § 73; MCLA 340.73; MSA 15.3073, provides in pertinent part:

"Special elections may be called by the board, and the board shall call special elections on the written request of 5% of the school electors of the district, but not less than 25 electors. . . . but no special election shall be called unless the questions to be voted upon are *within the lawful authority of the electors.* . . ." (emphasis added)

The School Code of 1955, § 77a; MCLA 340.77a; MSA 15.3077(1), and § 681; MCLA 340.681, MSA 15.3681, authorizes a fourth class district to issue bonds for the purpose of school construction, with the approval of a majority of the electors. However, there is no statutory authority for the rescission of a bond issue by the electors once it has been approved.

While there is no Michigan reported decision directly on all fours, a related question was addressed in OAG, 1963-1964, No 4123, p 55 (March 22, 1963). This opinion concerned the submission to the electors of the question of transfer of proceeds from a bond issue to the district's general fund, and it was concluded that, absent statutory authority authorizing such a transfer, the use of proceeds of the bond issue was limited to the specific purpose for which the bonds were issued. Thus, the transfer was held not to be a proper subject for submission to the electors.

In a letter opinion to Representative Ostling, dated August 22, 1974, the question was raised as to the proper wording of a referendum to rescind the approval of a consolidation by school electors. That opinion held that although voters could petition to place the questions on the ballot, those questions must be within the lawful authority of the

electors to decide, and there was no authority to rescind approval of a consolidation.

Courts in other jurisdictions have reached the same result concerning the rescission of approval of bond issues. In *Orr v Marks*, 47 SW2d 440, 442, 443 (1932), the Texas Court stated:

“ . . . The statute had expressly provided that a bond issue shall be authorized by expression of the popular will of the taxpaying voters given only by an election, as prescribed by law, and duly called for the purpose. By its terms this method of proceeding to obtain a bond issue is exclusive. And having once expressed their will as provided by law in assent of a bond issue, the taxpaying voters are not clothed with authority of any statutory provision to rescind that vote and annul the bond issue, although the bonds be not certified nor contracted to be sold. Neither is there any provision of law for taking such action by petition signed by the taxpaying voters. After the will of the voters shall have been expressed and ascertained as provided by the law by an election, nothing remains, under the terms of the statute, but to carry it into effect. It is fundamental that voters of a district can only exercise such powers as are conferred by statute, either expressly or by implication. All powers not expressly or by implication conferred are excluded. The power to rescind the former vote for the bond issue not being expressly given by the statute, it may not be, it is believed, reasonably implied. The power to vote on a bond issue implies the power to vote against it, but not to vote to rescind it after it has been regularly authorized. . . .

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“ . . . The Legislature alone can confer authority to the people of the district to revoke the bond issue. The bonds cannot be revoked or canceled by any agency unless the power to do so is conferred by legislative authority, and any doubt as to the existence of such power is, under well-established principles, resolved against its existence. . . .”

The Texas decision was followed in *Schmiedeskamp v Board of Trustees of School District No. 24*, 128 Mont 493; 278 P2d 584 (1955).

It may be noted that the fact that a bond issue has been approved does not require a board of education to issue the bonds. OAG, 1912, p 380 held that the power to make such a decision resides in the board. In *Schumacher v City of Flint*, 252 Mich 1, 3; 232 NW 406 (1930), the Court stated:

“The function of the electors in the issuance of municipal bonds is not to do, direct, or superintend the administrative acts by putting them into circulation, but it is to authorize them, to grant the power under which the administrative officers may execute and deliver them.” (emphasis added)

In summary, in the absence of statutory authority allowing the rescission of a prior approval of a bond issue, the question of rescission of the previously approved bond issue may not be submitted to the voters in a special election.

FRANK J. KELLEY,  
Attorney General.

760624.2

TOWNSHIPS: Millage elections to finance public transportation systems  
CONSTITUTION OF MICHIGAN: Art 9, § 6

Chartered or unchartered townships may establish public transportation systems either independently or through a joint entity created pursuant to the Urban Cooperation Act of 1967, and may finance such systems by revenue bonds, special assessments, ad valorem taxation, or a combination thereof.

An unchartered township may expend the sum allocated to it by the county tax allocation board and, in addition, may vote for an increase. Chartered townships are not subject to the 15-mill constitutional limitation, but are subject to a statutory limitation which provides that a levy shall not exceed one-half of one percent of the assessed valuation, except where the electors vote to increase that limitation, not to exceed a total of one percent.

Opinion No. 5043

June 24, 1976.

Mr. John P. Woodford, Director  
Michigan Department of State  
Highways and Transportation  
State Highway Building  
Lansing, Michigan 48933

You advise that the Cities of Port Huron and Marysville, and the Townships of Port Huron and Fort Gratiot, are in the process of completing an inter-local agreement pursuant to the provisions of the Urban Cooperation Act of 1967, 1967 PA 7, Ex Sess, MCLA 124.501, *et seq*; MSA 5.4088 (1) *et seq*, for the purpose of forming a commission to operate a public transportation system to be funded for the first year solely by the State. You further advise that the four participating governmental units intend to finance the operation of the system beyond the one-year demonstration period either by levying ad valorem taxes or issuing revenue bonds pursuant to the Revenue Bond Act of 1933, 1933 PA 94, MCLA 141.101, *et seq*; MSA 5.2731, *et seq*, or a combination of both. In this connection you request my opinion on the following questions:

- "1. Can townships use a millage election for the purpose of supporting a transportation system?
- "2. Can townships have an election to approve millage over and above the basic millage level?"

The Urban Cooperation Act of 1967, *supra*, authorizes public agencies, including townships, to jointly exercise their powers through the creation of a separate public entity or body corporate. Section 4 of the Act provides in pertinent part that such an entity shall have:

"... any power, privilege or authority which such agencies share in common and which each might exercise separately."

Since it appears clear that the powers of the public body thus created are limited to the powers possessed by the individual participating govern-