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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-

mental agencies, reference must be had to any independently delegated authority of townships to undertake and finance the operation of public transportation systems.

Const 1963, art 7, § 17, states that each organized township is a body corporate with powers and immunities as provided by the legislature and Const 1963, art 7, § 34, directs that any power so conferred upon townships shall be liberally construed in their favor to include powers fairly implied and not expressly prohibited by the constitution.

With respect to the question of taxation, Const 1963, art 9, § 6, sets a 15-mill limitation upon general ad valorem taxes imposed in any one year, and directs the legislature to enact measures permitting a majority of the electors of counties, townships, and school districts to vote increases in the millage not to exceed an aggregate of 50 mills. It should be noted that this millage limitation does not apply to taxes imposed for the payment of principal and interest on bonds (including revenue bonds) or for the payment of assessments or contract obligations in anticipation of which bonds are issued, *Butcher v Grosse Ile Township*, 387 Mich 42, 194 NW2d 845 (1970), and does not apply to a charter township, the tax limitations of which are provided by charter or by general law.

With the foregoing constitutional guidelines in mind, we may now examine the statutory authority of townships to undertake the operation of a transportation system and the financing alternatives available.

The statutory authority of townships to undertake the establishment and operation of public transportation systems is found in two acts, the Township and Village Public Improvement Act, 1923 PA 116, MCLA 41.411, *et seq*; MSA 5.2411, *et seq*, and the Revenue Bond Act of 1933, *supra*. Section 1 of the Township and Village Public Improvement Act, *supra*, provides in pertinent part:

"In any township lands, the township board or common council or board of trustees of an incorporated village shall have the authority to make improvements and provide public service by constructing bridges over natural or artificial waterways, grading, paving, curbing, stoning, graveling, macadamizing or cinderizing streets, or to treat the streets with chloride or other suitable dust laying process or material, laying storm sewers to care for surface water in such streets, destroying weeds, providing street markers and lighting, contracting for *public transportation facilities*, . . ." (emphasis added)

Similarly, Section 4 of the Revenue Bond Act of 1933, *supra*, authorizes public corporations, including townships, to undertake public improvements. 1933 PA 94, § 3(b) provides:

"The term 'public improvements' is hereby defined as and limited to the following improvements: Housing facilities; garbage disposal plants; rubbish disposal plants; incinerators; *transportation systems (including all plants, works, instrumentalities and properties used or useful in connection therewith)* . . ." (emphasis added)

In addition to authorizing the operation of transportation systems, both acts provide townships with several financing alternatives. Section 1 of the

Township and Village Public Improvement Act, *supra*, authorizes townships:

“ . . . to levy and collect special assessments to pay the cost thereof and to issue bonds in anticipation of the collection of said special assessments . . . ”

Similarly, Sections 7(1) and (2) of the Revenue Bond Act of 1933, *supra*, authorize the issuance of revenue bonds to defray the whole or a part of the cost of the public improvement which bonds shall be retired:

“ . . . except as hereinafter provided, solely from the net revenues derived from the operation of the public improvement . . . ”

This section further provides that the public corporation, under certain circumstances and in the event of revenue deficiencies, may levy property taxes not to exceed an amount necessary to make payment which shall be reimbursed from net revenues subsequently received by the public improvement.

In *National Steel Corp v Bates Township*, 374 Mich 58, 130 NW 882 (1964) the court examined the Township and Village Public Improvement Act, *supra*, and the Revenue Bond Act of 1933, *supra*, in considering an unchartered township's authority to undertake and finance analogous public improvements, concluding at page 64, as follows:

“ . . . The first authorizes financing the cost thereof by special assessment while the latter authorizes, but does not require (see CLS 1961, § 141.104 [Stat Ann 1958 Rev § 5.2734]), that the cost be defrayed by issuance of revenue bonds. We have held previously, in *Morley Brothers v. Township of Carrollton*, 305 Mich 285, that such a project undertaken pursuant to the revenue bond act could be financed in part by revenue bonds and the balance from other funds of the township including money raised by taxation and not otherwise restricted as to use. See, also, 1 OAG, 1957, No 3100, pp 429, 430, and 2 OAG, 1960, No 3492, question 1, pp.115-117. Thus, the township electors at an annual town meeting may vote to raise by ad valorem taxation an aggregate sum sufficient for the township's ordinary expenses and its contingent expenses, including in such sum an amount sufficient to acquire, or to operate, repair, and extend its sewer and water systems, within the limitations specified in CL 1948, § 41.3 (Stat Ann 1961 Rev § 5.3). Then, if the county tax allocation board allocates to township purposes a tax rate sufficient therefor—either the 1-mill minimum tax rate for townships or that plus what the board determines to allocate to the township in addition from the balance available within the 15-mill constitutional tax rate limitation as provided in CLS 1961, § 211.211 (Stat Ann 1960 Rev § 7.71)—the township can levy, collect, and use such ad valorem taxes for such purposes.”

The court, after observing that a township board's independent taxing powers were severely limited, being always subject to county tax board allocations within the 15-mill limitation, noted that the electors could vote to raise that limitation pursuant to Section 3 of the Property Tax Limitation Act (designed to carry into effect the provision of Const 1963, art 9, § 6,

authorizing an increase over 15 mills by election). In this connection the court stated at page 68, as follows:

“. . . In the event of a favorable vote of a township's electors to increase the constitutional tax rate limitation, as permitted by the Constitution and by CL 1948, § 211.203, ad valorem taxes in excess of 15 mills can be levied at a town meeting without being subject to the county tax allocation board's approval. See subparagraph (f) of CLS 1961, § 211.211, quoted above in the margin. Such elector authorization to tax above the 15-mill limitation may, *but need not*, be restricted for a specified township purpose. See subparagraph (c) of CL 1948, § 211.203, also quoted above in the margin. If it is not, taxes levied and collected pursuant to such authorization are subject to no statutory limitation upon use any more than are other unrestricted taxes in a township's general fund. If the electors' authorization to exceed such constitutional tax limit is restricted (as it was in the case at bar), taxes levied and collected above 15 mills and within the increased tax rate limitation must, of course, be used only for the restricted purpose.”

Consequently, it is my opinion that a chartered or unchartered township may undertake to establish, operate, and finance public transportation systems either independently or through a joint entity created pursuant to the provisions of the Urban Cooperation Act of 1967, *supra*. Furthermore, a township, whether chartered or unchartered, may avail itself of the financing alternatives available under the Township and Village Public Improvement Act, *supra* (special assessments and special assessment bonds) and the Revenue Bond Act of 1933, *supra* (revenue bonds). In addition, unchartered townships, under the Property Tax Limitation Act, *supra*, have available whatever the county tax allocation board allocates from the 15-mill constitutional limitation and the option of voting an increase in the 15-mill limitation without being subject to the county tax allocation board's approval. Chartered townships, on the other hand, while not being subject to the constitutional 15-mill limitation and county allocation process are subject to their statutory charter limitations contained in Section 27 of 1947 PA 359, MCLA 42.1, *et seq*; MSA 5.46(1), *et seq*, which provides that any levy shall not exceed $\frac{1}{2}$ of one percent (5 mills) of the assessed valuation of all real and personal property subject to taxation in the township, except that the electors may vote to increase such tax levy limitation not to exceed a total of one percent (10 mills).

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