

May 13, 2005

David Trent, Clerk
Salem Township
P. O. Box 75002
Salem, Michigan 48175

Re: ***Referendum Petition Filed Under Authority of MCL 41.95(3)***

Dear Board Members:

This will confirm the receipt of your correspondence dated ***May 10, 2005*** (sent via facsimile) in which you requested a legal opinion regarding whether the referendum petition submitted to the Township under authority of MCL 41.95(3) is valid.

Your ***May 10*** correspondence, along with our telephone conversations, provides the factual backdrop against which this opinion is offered and includes the following:

A. Facts Presented:

On March 8, 2005, the Salem Township Board of Trustees approved a resolution increasing the salaries of the Township Board members, and Township appointed officials. On April 7, 2005, a petition for a public referendum on the decision to increase "**new salaries, compensation and fringe benefits for elected and appointed officials**," was filed with the Township. Attached to the petition was a letter from Mr. Richard D. Connors. In his letter Mr. Connors stated:

This petition has been prepared, and is being submitted, under the authority granted the residents of Salem Township by Michigan Compiled Laws Section 41.95(3).

According to Mr. Connors, the petition submitted contains at least 10% of the qualified electors of Salem Township. He requests that the petition be certified and the question of salary increases for elected and appointed officials be "**placed on the next election ballot.**"

The legal questions presented by the petition are as follows:

B. Questions Presented:

- 1. Does MCL 41.95(3) authorize a referendum on Township appointed official's salaries?**
- 2. Is the statutory authority for a referendum filed pursuant to MCL 41.95(3), limited to the narrow question of salaries, or does it extend to questions regarding other forms of compensation such as fringe benefits?**
- 3. When a petition includes issues and terminology authorized (Township Board members salaries) and unauthorized (Township appointees' salaries, compensation and fringe benefits) is the petition valid?**
- 4. Does the Township have authority to redact, alter, or rewrite the petition when it contains questions and terminology beyond the scope of MCL 41.95(3)?**

**C. MCL 41.95(3) Statutory Authority—
Compensation of Township Officers:**

In order to answer the questions presented a clear understanding of the enabling statute is necessary.

MCL 41.95(3) is a statutory provision which pertains to township board member salaries. The statute provides, “...**the salary for officers composing the township board shall be determined by the township board.**”

MCL 41.95(3) further provides for the right of a public referendum on resolutions establishing increases in township board salaries. The statute requires that a petition signed by at least 10% of the qualified electors be filed within 30 days after a salary increase is approved by the township board. The board is required to hold a special election on the question of the board's increase in salary.

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In this case, the Township Board passed the resolution increasing salaries on March 8, 2005. Therefore, a referendum petition must be filed by April 7, 2005, in order to be timely. When a petition is filed in conformity with MCL 41.95(3), the township board is required to hold a special election pursuant to the consolidated elections legislation, which went into effect this year. However, election dates must conform to the requirements set forth within the new election law on the question of the board's increase in salary.

If a petition is filed within 30 days after the township board votes the salary signed by 10% of the qualified electors of the township requesting that the question be submitted to the electorate, the township board shall call a special election and submit the question of salary to the electors.

The statute requires that the special election ballot conform substantially to the following format:

Vote on proposition of approving a resolution of the township board providing a salary of ...dollars, per annum, to the, in place of all per diem charges for services.

Make a cross in the appropriate square.
To approve the resolution. Yes []
To approve the resolution. No []

If a majority of the voters approve the salary increase, the township board's vote to increase a member's salary is effective. If a majority of the voters disapprove the salary increase, the member's salary reverts to the salaries in effect prior to the adoption of the resolution to increase salary. The salary reversion takes effect on the date the election results are certified by the Board of Canvassers.

D. MCL 41.95(3) Does Not Authorize a Referendum on Township Appointed Officials Salaries.

MCL 41.95(3) states that **Referendums** on salaries apply to the salaries of the **Township Board Members**. The provision does not contain any language which suggests that **Township Officials**, other than **Township Board Members**, are included within its scope. When a statute's language is unambiguous, it is presumed that the Legislature intended the meaning clearly expressed. No further inquiry should be made. The statute must be applied as written. *Pohutski v. City of Allen Park, 465 Mich 675, 683 (2002)*.

Absent from the statute is any direct or implied reference to "**appointed officials**." It is both fair and reasonable to conclude that if the **Legislature** had intended to include "**appointed officials**" within the purview of the statute, the phrase "**elected and appointed township officials**" would have appeared. For this reason, I conclude that the **Legislature** did not intend that the statute apply to **Appointed Officials**.

E. The authority for a referendum pursuant to MCL 41.95(3) is limited to the narrow questions of salaries, and does not extend to questions regarding other forms of compensation such as fringe benefits.

MCL 41.95(3) states that referendums are authorized on the "question of salary." The terms "**fringe benefits**" and "**compensation**" do not appear in the statute. A well established principle of law is that a statute must be given its plain and ordinary meaning. The dictionary definition of salary is "**fixed compensation for services, paid to a person on a regular basis**," *The American Heritage Dictionary, Fourth Edition* (2000).

The Legislature is presumed to have used the word salary because it intended to limit referendums to the single question: whether township board salaries should be approved. If the Legislature had intended MCL 41.95(3) to apply to other forms of compensation such as fringe benefits, it would have used different terminology. For this reason, I conclude that MCL 41.95(3) applies exclusively to salaries and not broader terms such as "**compensation**" and "**fringe benefits**."

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F. A petition filed pursuant to MCL 41.95(3), which includes issues and terminology, both authorized (township board members salary) and unauthorized (township appointees salary, compensation and fringe benefits) is invalid.

The petition filed with the Township states:

A public referendum to vote, pursuant to authority granted by Michigan Compiled Laws sec. 41.95(3), on approving the Salem Township Board's motion adopting new salaries, compensation and fringe benefits for elected and appointed officials at its March 8, 2005 Board meeting.

The question is whether a petition filed under MCL 41.95(3) which: (1) includes “**compensation and fringe benefits**” as the subject matter of the referendum; and (2) includes “**appointed officials**” as the subject matter of the referendum, is valid. As previously discussed, MCL 41.95(3) does not authorize referendums on township board members’ “**compensation and fringe benefits**” and does not authorize referendums on “**appointed officials**” salaries.

In my opinion, the mixture of issues and terminology: township board members’ salaries (clearly authorized under the statute) with township appointees’ salaries (clearly not authorized under the statute), and township board member and appointees’ compensation and fringe benefits (clearly not authorized under the statute) are fatal defects in the petition.

G. The Township does not have authority to redact, alter, or rewrite the petition when it contains questions and terminology beyond the scope of MCL 41.95(3).

There is no statutory or case law precedent which grants the township the authority to redact the portions of the petition’s language which exceeds the scope of MCL 41.95(3). Townships are municipal corporations. The powers of a municipal

corporation are limited to those expressed and reasonably implied by the Michigan Constitution and statutes.

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They can exercise no powers except such as are granted by express words, or such as are fairly implied in, or incident to those expressly granted, or such as are essential to the declared objects or purposes of the corporation. Burton Township v. Speck, Mich App 339 (1965).

Since MCL 41.95(3) provides no express or implied authority for the Township to alter a referendum petition, the Township cannot do so. Acts which are in excess of one's legal authority are "*ultra vires*" acts. In my opinion, the Township would be acting "*ultra vires*" if it excised the portions of the petition language which are not in conformity with MCL 41.95(3).

I therefore conclude that the petition is invalid and should not serve as the basis for a referendum election under MCL 41.95(3).

If after reviewing this correspondence, you have any questions or wish to discuss this legal opinion in greater detail, please let me know.

Very truly yours,

Wm. Douglas Winters

WDW/mgf

cc: Fred Roperti
Linda Hamilton
Trustees