

Final Minutes

Legislative Commission on Statutory Mandates Meeting

12:00 noon • Tuesday, August 26, 2008
Oakland County Executive Office Building
Conference Center ▪ West Oakland Room
2100 Pontiac Lake Road, Building 41-West • Waterford, Michigan

Members Present:

Amanda Van Dusen, Chair
Robert Daddow, Co-Chair
Dennis Pollard
J. Dallas Winegarden, Jr.

Members Excused:

None

I. Call to Order

The Chair called the meeting to order at 12:05 p.m. and the clerk took the roll. A quorum was present.

II. Approval of the Agenda

The Chair requested an additional item be added to today's agenda to recognize and thank Skip Maccarone. There were no other additions. **Mr. Pollard moved, supported by Mr. Winegarden, to approve the August 26, 2008 agenda as amended. There was no further discussion. The agenda was unanimously approved.**

III. Approval of Minutes – July 23, 2008 Meeting

The Chair asked for a motion to approve the minutes of the last Legislative Commission on Statutory Mandates meeting. **Mr. Winegarden moved, seconded by Mr. Pollard, to approve the minutes of the July 23, 2008 meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Recognition of Commissioner Maccarone

The Chair proposed that the Commission thank Commissioner Skip Maccarone for his dedication and the passion he brought to the Commission's efforts over the last seven months and invite his continued support of the Commission. **Mr. Winegarden moved, seconded by Mr. Pollard, that the Commission prepare and issue a special commemoration and recognition of Ralph "Skip" Maccarone's contribution to the Commission.** The Office of the Legislative Council Administrator will prepare a resolution for the Commission.

V. Status of Subcommittee Efforts in Categorizing Mandates

The Chair called on Commissioner Pollard to discuss a memorandum that he submitted to the Commission regarding a review of the Michigan Association of Counties' List of Top 10 Mandates. The memorandum is attached to these minutes. Commissioner Pollard began with an overview of the memo and provided an update on what has been accomplished so far in the efforts to categorize the mandates. He noted that they focused on the one unit of government as an initial point to determine if they are on the right track as to how to classify the mandates submitted by the various local units of government. A discussion of the Commission's role in making a judgment on whether a mandate is good or bad followed. Commissioner Pollard then asked Mr. Daniel Villaire, who is with the Thrun Law Firm and completed much of the legwork for the analysis, to provide a detailed review of the mandates identified by the Michigan Association of Counties. Bringing people from the associations who are knowledgeable into the discussions as the work to sort the mandates into categories continues was also discussed. Commissioner Daddow offered to make contact with MAC representatives to obtain the information needed to finalize the Counties' mandates list so that it can be turned over to Michigan State University to begin their cost analysis. **Commissioner Daddow moved, supported by Mr. Winegarden, to receive and file the August 26, 2008 document prepared by Commissioner Pollard and Mr. Villaire. There was no objection and the motion was unanimously adopted.**

VI. Next Meeting Date

A discussion of the date and location of the next meeting followed. The Chair announced that the next meeting will be held on **September 30, 2008, at 12:00 noon** at the Oakland County Executive Office Building in Waterford, Michigan.

VII. Public Comments

The Chair asked for public comment. There were none.

VIII. Adjournment

Having no further business, Mr. Winegarden moved, supported by Mr. Pollard, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 2:50 p.m.

(Approved at the September 30, 2008 Legislative Commission on Statutory Mandates Meeting.)



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- MEMORANDUM-

TO: Legislative Commission on Statutory Mandates
FROM: Dennis R. Pollard, Esq. and Daniel L. Villaire, Jr., Esq.
RE: Michigan Association of Counties List of Top 10 Mandates
DATE: August 26, 2008

The Michigan Association of Counties (“MAC”) submitted a report titled “List of Top County State Mandated Services.” After a preliminary review of the alleged mandates it appears some are not mandates, some are mandates that existed prior to the effective date of the Headlee Amendment, November 7, 1978, and some are mandates to the extent they require an unfunded increase in activities provided by counties or a decrease in funding for existing activities. None of the alleged mandates identified by MAC were completely new mandates subsequent to the Headlee Amendment.

1. Court Funding Pursuant – MCL § 600.591, Employee, Compensation, Control.

Circuit and district court funding, including MCL § 600.519, is likely not an unfunded mandate requiring new or increase services over that which counties were required to provide, and fund, prior to the effective date of the Headlee Amendment, November 7, 1978.

In *Judicial Attorneys Association, et. al. v. State of Michigan, et. al.*, 460 Mich 590, 608-609, (1999), the Michigan Supreme Court essentially found that counties and cities were required to pay the costs associated with circuit and district courts, prior to the Headlee Amendment, except a portion of judicial salaries which were paid by the state. In *Judicial Attorney Ass’n.*, the City of Detroit and Wayne County challenged portions of a 1996 court reorganization act that shifted funding responsibilities for the Third Judicial Circuit Court and the 36th District Court from the state to Wayne County and the City of Detroit. The Court held no Headlee violation existed because even though no particular statute explicitly required local units to fund trial courts, there was a history stretching back one hundred thirty (130) years, and a number of statutes addressing particular aspects of trial court operations, that clearly implied local units were to fund trial courts. *Id.* The Court stated that the court reorganization act simply required the City of Detroit and Wayne County to do “what the state required every unit to do in 1978: fund the local district or circuit court, except the portion of judicial salaries paid by the state.” *Id.*

2. Constitutional Officers at Minimum Staffing Levels.

a. Drain Commissioner – MCL § 280.28.

Counties were required to have and compensate drain commissioners prior to November 7, 1978. MCL §§ 280.21, 28.

b. Deputies and Employees of county offices – MCL § 45.41 (counties with population over 50,000) and MCL § 45.51 (counties with population over 500,000).

Counties were required to have and compensate deputies in county offices under the MCL § 45.51 and MCL § 45.51 prior to November 7, 1978. MCL §§ 45.51, 51.

c. Bond Coverage for Officers and Employees of Counties – MCL § 45.381.

MCL § 45.381 is not a mandate. It requires the surety company providing a bond for officers or employees of a county to be *approved* by the county board of commissioners. MCL § 45.381.

d. Treasurer Compensation – MCL § 48.43.

Counties were required to compensate a treasurer as “the board of supervisors” deemed reasonable prior to November 7, 1978. MCL § 48.431970. Effective December 1, 1978 “board of supervisors” was amended to “county board of commissioners.” It also added that compensation will be set by the commission for counties with a county officer’s compensation. MCL § 48.43.

e. Prosecuting Attorney Compensation – MCL § 49.159.

Counties were required to compensate a prosecuting attorney as “the board of supervisors” deemed reasonable prior to November 7, 1978. MCL § 48.431970. Effective December 1, 1978 “board of supervisors” was amended to “county board of commissioners.” It also provided that compensation will be set by the commission for counties with a county officer’s compensation. MCL § 49.159.

f. County Clerk Compensation – MCL § 50.67.

Counties were required to compensate a county clerk as “the board of supervisors” deemed reasonable prior to November 7, 1978. MCL § 48.431970. Effective December 1, 1978 “board of supervisors” was amended to “county board of commissioners.” It also provided that compensation will be set by the commission for counties with a county officer’s compensation commission. MCL § 50.67.

g. Employment of Attorney to Represent Officer – MCL § 49.73.

The requirement that counties employ an attorney to represent elected county officers in civil matter existed prior to November 7, 1978. MCL § 49.73.

3. Operation and Maintenance of a County Jail – MCL § 45.16.

The requirements for each organized county to, at its own expense, provide a suitable and sufficient jail, and keep it in good repair existed prior to November 7, 1978.¹ MCL § 45.16.

4. Youth Rehabilitation, Foster Care and Juvenile Justice

a. Cost of Public Ward's Care

1. Liability of 50% of State Ward's Case – MCL § 803.305(1).

Counties from which a public ward was committed were liable to the State for 50% of the cost of his or her care prior to November 7, 1978. MCL § 803.305(1). The statute also provides that the amount may be reduced by use of funds from the foster care grant from the State to the county. If the foster care grant has been reduced it is possible this would constitute a reduction in funding contrary to the Headlee Amendment.

In *Oakland County, et. al., v State of Michigan, et. al.*, 456 Mich 144 (1997), twenty five (25) counties sued the state alleging that amendments to the Social Welfare Act, 1980 PA 328, violated the Headlee Amendment. They claimed the state reduced the state financed proportion of the necessary costs of foster care services. The Court of Appeals determined that the state did not violate the Headlee Amendment because the alleged reduction in funding of welfare costs did not pertain to a necessary cost. The Supreme Court reversed and remanded the case to allow the court of appeals to determine if there was a reduction in state funding. It is not known at this time what occurred on remand.

2. A County Juvenile Agency Liability for the Entire Cost of a Public Ward While Committed to That Agency – MCL § 803.305(3).

MCL § 803.305(3) requires a county that is a county juvenile agency to pay the entire cost of a public ward's care while committed to the county juvenile agency. MCL § 803.305(3) was enacted after November 7, 1978. If counties are required to be a county juvenile-agency, and state funding is inadequate to pay the total expense of the public ward's care while committed to the county juvenile agency, it would be an unfunded mandate contrary to the Headlee Amendment for those counties. The issue is whether or not county juvenile agencies are *required* or *permitted*. Factual and legal research is necessary to make those determinations.

b. County Treasure as Custodian of Child are Funds, Foster Care Planning, and Records of Juvenile Justice Services and Expenditures. MCL § 400.117c.

MCL § 400.117c is substantially similar to when it became effective in April 1978. The statute designates the county treasurer as the custodian of all money provided for the use of the Family Independency Agency (and its predecessors). The statute places certain requirements upon the treasurer with respect to the location and maintenance of a child care fund. The statute also requires the county to develop an annual plan and budget for foster care services and

¹ The requirement for a suitable courthouse, fireproof offices, and all other necessary public buildings also existed prior to November 7, 1978.

submit it to the State for approval. Finally, the statute requires counties to make and preserve accurate records of its juvenile services and expenditures.

It is unclear what the alleged new or increase services are or how counties have suffered a reduction in state funding from that which existed as of November 7, 1978.

5. Friend of the Court (FOC) – MCL §§ 552.505, 505a, 511, 527, 600.2530.

The current FOC statute constitutes a required increase in the level of services required of counties over that which was required as of November 7, 1978. The Friend of the Court existed prior to November 7, 1978. MCL § 552.251-255. Initially, the FOC was a person appointed by the governor to handle matters of maintenance and support of children. MCL § 552.251. An attorney could also be appointed as the FOC or to assist the FOC. The FOC's duties were specified by statute. MCL § 552.252. Counties were required to compensate, from their general funds, the FOC and any appointed attorney. MCL §§ 552.215, 254.

In 1983 the legislature repealed the FOC statutes and enacted the legislation identified by MAC. The new legislation made significant changes to the FOC and it appears to require new and additional services over that which were required as of November 7, 1978. Factual and legal research will be necessary to determine the new or additional services imposed on counties, the increased cost to counties, and the amount, if any, of funding the counties receive from the state to pay the costs of the new or additional services.

6. Local Public Health Departments

a. Local Health Departments - MCL § 333.2433.

County Local Health Departments were required to meet all the requirements of MCL § 333.2433 prior to November 7, 1978.

b. Local Health Department Powers - MCL § 333.2435.

The items listed in MCL § 333.2433 existed prior to November 7, 1978. Additionally, MCL § 333.2435 is not a mandate as it provides that a local health department *may* engage in the listed activities.

c. Health Services Cost Sharing – MCL § 333.2472.

Counties were required to meet all the requirements of MCL § 333.2433 prior to November 7, 1978.

7. Mental Health, Financial Liability of County – MCL § 333.1302.

Counties were liable to the state for the same net cost of services (mental health) provided to a resident of that county, except for noted exclusions, prior to November 7, 1978. Amendments after November 7, 1978 expanded the individuals to which the statute does not apply.

8. Economic Development

MAC filed a separate report regarding economic development. Additional factual and legal research is required to determine Headlee Amendment implications with respect to the alleged mandates.

9. Court Reporters

a. Court Reporter Salary and Expenses – Probate. MCL § 600.835.

The requirements of MCL § 600.835 existed prior to November 7, 1978 pursuant to former §§ 701.14 and 701.14a.

b. Court Reporter Expenses - MCL § 600.1171 (Circuit Courts).

The requirements of MCL § 600.1171 existed prior to November 7, 1978.

c. Court Reporters Expense – MCL § 600.8625 (District Courts).

The requirements of MCL § 600.8625 existed prior to November 7, 1978.

d. Court Reporters Residence – MCL § 600.8626 (District Courts).

The requirements of MCL § 600.8625 existed prior to November 7, 1978.

10. Solid Waste Planning – MCL § 324.11533.

MCL § 324.11533 is not a mandate. Counties are not required to prepare a solid waste management plan. MCL § 324.11533 gives counties the option to prepare the plan. If counties choose not to file a waste management plan, municipalities in that county have the option to prepare the plan. MCL § 324.11533(4). If the municipalities choose not to file the plan, the appropriate regional solid waste planning agency may prepare the plan. MCL § 324.11533(5). If the regional agency chooses not to file a plan, the department (state) must prepare the plan for the county and that plan will be the final plan. MCL § 324.11533(6).

11. Veterans' Relief Fund – MCL § 35.21.

The requirements of MCL § 35.21 existed, in the same form and amount prior to November 7, 1978. MCL § 35.21 requires counties to annually levy a tax not exceeding 1/10 of a mill on each dollar, to be levied and collected as provided by law, upon the taxable property of each township and city, for the relief fund.

12. County Medical Care Facilities

a. County Medical Care Facility – MCL § 1400.58.

MCL § 400.58 is not a mandate. It provides that a county *may* supervise and be responsible for the operation of a medical care facility in, auxiliary to, or independent of the county infirmary. Further, more, the requirements of MCL § 400.58 existed prior to November 7, 1978.

b. County Medical Care Facility Payment – MCL § 400.58b.

MCL § 400.58b is not a mandate. It requires county medical care facilities to treat individuals who are unable to pay for the cost of care. Since counties are not required to operate those facilities, the requirement to treat indigent persons is not a mandate. MCL § 400.58. Furthermore, the requirements of MCL § 400.58b existed prior to November 7, 1978.

c. County Medical Care Facilities Service – MCL § 400.109.

MCL § 400.109 is not a mandate. It identifies medical services that *may* be provided.

Alleged Mandate	Not a Mandate	A Mandate That Existed Prior to November 7, 1978 (Headlee Amendment)	New Unfunded Mandate, or Decrease in Funding After November 7, 1978 (Headlee Amendment)
1. Court Funding Pursuant to MCL § 600.591		X	
2. Constitutional Officers at Minimum Staffing Levels			
a. Drain Commissioner - MCL § 280.28		X	
b. Deputies and employees of county offices - MCL § 45.41, MCL § 45.51		X	
c. Bond coverage for officers and employees of counties - MCL § 45.381	X		
d. Treasurer Compensation - MCL § 48.43		X	
e. Prosecuting Attorney Compensation - MCL § 49.159		X	
f. County Clerk Compensation - MCL § 50.67		X	
g. Employment of Attorney to Represent Officer – MCL § 49.73		X	

Alleged Mandate	Not a Mandate	A Mandate That Existed Prior to November 7, 1978 (Headlee Amendment)	New Unfunded Mandate, or Decrease in Funding After November 7, 1978 (Headlee Amendment)
3. Operation and Maintenance of a County Jail - MCL § 45.16		X	
4. Youth Rehabilitation, Foster Care and Juvenile Justice			
a. Cost of Public Ward's Care			
1. Liability of 50% of State Ward's Care - MCL § 803.305(1)			Possibly
2. A County Juvenile Agency Liability for the Entire Cost of a Public Ward While Committed to that Agency - MCL § 803.305(3).			Possibly
b. County Treasurer as Custodian of Child are Funds, Foster Care Planning, and Records of Juvenile Justice Services and Expenditures - MCL § 400.117c		X	
5. Friend of the Court (FOC) - MCL §§ 552.505, 505a, 511, 527, 600.2530			X
6. Local Public Health Departments			
a. Local Health Departments - MCL § 333.2433		X	
b. Local Health Department Powers - MCL § 333.2435	X	X	

Alleged Mandate	Not a Mandate	A Mandate That Existed Prior to November 7, 1978 (Headlee Amendment)	New Unfunded Mandate, or Decrease in Funding After November 7, 1978 (Headlee Amendment)
c. Health Services Cost Sharing - MCL § 333.2472		X	
7. Mental health, Financial Liability of County - MCL § 333.1302		X	
8. Economic Development			Possibly
9. Court Reporters			
a. Court Reporters Salary and Expenses - Probate - MCL § 600.835		X	
b. Court Reporter Expenses - MCL § 600.1171 (Circuit Courts)		X	
c. Court Reporters Expense - MCL § 600.8625 (District Court)		X	
d. Court Reporters (Residence - MCL § 600.8626 (District Court)		X	
10. Solid Waste Planning - MCL § 324.11533	X		
11. Veterans' Relief Fund - MCL § 35.21		X	
12. County Medical Care Facilities			
a. County Medical Care Facility - MCL § 1400.58	X	X	
b. County Medical Care Facility Payment - MCL § 400.58b	X	X	
c. County Medical Care Facilities Service - MCL § 400.109	X		