

Final Minutes

Legislative Commission on Statutory Mandates Meeting

12:00 noon • Tuesday, September 30, 2008

Oakland County Executive Office Building

Executive Conference Room

2100 Pontiac Lake Road, Building 41-West • Waterford, Michigan

Members Present:

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

Members Excused:

None

I. Call to Order

The Chair called the meeting to order at 12:00 noon and the clerk took the roll. A quorum was present.

II. Approval of the Agenda

The Chair asked for approval of the agenda. **Mr. Pollard moved, supported by Mr. Winegarden, to approve the September 30, 2008 agenda as proposed. There was no further discussion. The agenda was unanimously approved.**

III. Approval of Minutes – August 26, 2008 Meeting

The Chair asked for a motion to approve the minutes of the last Legislative Commission on Statutory Mandates meeting. **Ms. Van Dusen moved, seconded by Mr. Pollard, to approve the minutes of the August 26, 2008 meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Welcome to Commissioner Schimmel

The Chair introduced and welcomed Commissioner Louis H. Schimmel who was recently appointed to the Commission.

V. Reports from Associations

The Chair shared that it is unlikely representatives from MAC, MML, and MTA would be present at today's meeting due to the property tax cap issue in Lansing. Mr. David Bertram from MTA arrived shortly after the Chair's comments and was able to participate in today's meeting.

a) Update on MAC issues

The Chair and Mr. Dan Villaire quickly went through the top 10 mandates submitted by MAC and discussed at the last LCSM meeting. The Chair reported that there are four areas—Friend of the Court, child care, public health, and community mental health—where research is still being done.

b) Analysis of Michigan Municipal League (MML) issues

The Chair shared that he and Mr. Villaire had a conference call with Summer Minnick to discuss the analysis of the MML mandates. A copy of the analysis memo is attached to these minutes. The Chair and Mr. Villaire then proceeded to summarize the findings as follows:

#1 Binding Arbitration for Police and Fire: Not a Headlee mandate.

#2 National Pollutant Discharge Elimination System/Michigan Permitting: The Chair will review a report prepared by the Oakland County Drain Commissioner and prepare a summary of the appropriate points that he will share at the next LCSM meeting.

#3 Segregation of Major/Local Streets: Determined not to fall into the context of a mandate, but will be added to the list of other things to report on. The Chair noted that the Citizens Research Council prepared a report on this issue which can be found on the crcmich.org website.

#4 School Elections: Determined to be a mandate, but questions about how the State is managing the reimbursements were discussed.

#5 Optical Scanning Machines: The cost to operate and maintain the optical scan machines represents a new unfunded activity service. MML will gather additional cost information.

#6 Requiring Certified Mail for Public Hearing: MCL 8.11 is not a mandate, but Mr. Villaire will review other statutes that have been identified by MML.

#7 Compost Permitting: Not a mandate. Local governments are not required to operate a composting facility. Mr. Bertram from MTA presented information about a recent situation where the State acknowledged that an existing composting facility did not have to pay the permit fee.

#8 Requiring Electronic Fingerprinting: Determined to be a unfunded mandate. Mr. Daddow and MML will gather additional information regarding the costs incurred to perform this service.

#9 Requiring Quarterly Reports to Local Boards/Councils: Determined to be an unfunded mandate. MML will gather additional cost information.

#10 Requiring Local Units of Government to Share Master Plans: Not a mandate, but Mr. Villaire will examine the issue further to determine if the State requires local units to create a planning connection.

The Chair asked for a motion to receive and file the memo prepared by Mr. Pollard and Mr. Villaire. **Ms. Van Dusen moved, supported by Mr. Winegarden, to receive and file the memo regarding the Michigan Municipal League List of the Top 10 Mandates prepared by Commissioner Pollard and Mr. Villaire. There was no objection and the motion was unanimously adopted.**

c) Analysis of Michigan Township Association (MTA) issues

The Chair noted some of the issues identified on the MTA list are similar to the ones identified by MML. A copy of the MTA analysis memo is attached to these minutes. The Chair and Mr. Villaire then proceeded to summarize the findings as follows:

#1 Summer Tax Collections: Determined to be a partially funded new mandate. Mr. Bertram from MTA will gather additional information as to the type and amount of costs incurred in excess of the fees collected.

#2 Election Consolidation/School Elections: Same issue raised by MML.

#3 Defending Utility Property Tax Appeals: Not a Headlee mandate.

#4 New Assessing Requirements: Mr. Daddow and MTA will gather additional information on specific requirements that are new or are an increased activity or service including costs. Mr. Bertram will also gather information on new services imposed by Qualified Forest Property Program.

#5 Binding Arbitration for Police and Fire: Same issue raised by MML. Not a Headlee mandate.

#6 Publication of Notices in Newspapers: Mandate that existed prior to Headlee Amendment.

#7 Storm Water Phase II: Mr. Daddow and MTA will gather additional information regarding the requirements imposed by the State and potential costs imposed.

#8 Maintenance Costs Related to New Voting Equipment: Same issue raised by MML. Mr. Bertram will gather additional costs information.

#9 New Auditing Standards: Determined to be a new mandate. Mr. Daddow will gather additional information regarding accounting requirements compared to new requirements and the amount of State funding that is provided.

#10 Requirements to Share Master Plans: Same issue raised by MML. Not a mandate, but Mr. Villaire will examine the issue further to determine if the State requires local units to create a planning connection.

The Chair asked for a motion to receive and file the memo prepared by Mr. Pollard and Mr. Villaire. **Mr. Winegarden moved, supported by Mr. Schimmel, to receive and file the memo regarding the Michigan Townships Association List of the Top 10 Mandates prepared by Commissioner Pollard and Mr. Villaire. There was no objection and the motion was unanimously adopted.**

VI. Status of Citizens Research Council (CRC) Project on Other States' Mandate Processes

Mr. Eric Lupher from CRC had no news to report, but he expects he will have more time to devote to the project.

VII. Other Business

Mr. Pollard asked members to review the draft of a report he proposed could be used as a starting point for the Commission's interim report due in December. He proceeded with a brief synopsis of the proposed draft. The Chair suggested members be given the opportunity to review the draft more thoroughly so that it can be discussed at the next meeting. Ms. Van Dusen also suggested the LCSM co-chairs meet with the legislative leadership to provide them with an update on the Commission activities.

VIII. 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 **October 28, 2008, at 12:00 noon** at the Oakland County Executive Office Building in Waterford, Michigan.

IX. Public Comments

The Chair asked for public comment. There were none.

X. Adjournment

Having no further business, Mr. Winegarden moved, supported by Ms. Van Dusen, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 2:25 p.m.

(Minutes approved at the October 28, 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 Municipal League List of the Top 10 Mandates

DATE:

The Michigan Municipal League (“MML”) submitted a report of the Top 10 most burdensome mandates being placed on municipalities. After a preliminary review of the reported mandates it appears some are not mandates, some are mandates that existed prior to the effective date of the Headlee Amendment, December 23, 1978, some are mandates that existed before December 23, 1978 but require an unfunded increase in activities provided by municipalities or a decrease in funding for existing activities, and some are new mandates imposed after December 23, 1978. As indicated below, additional information is needed to properly evaluate several of the identified mandates.

This preliminary report was submitted to the MML for its review and the opportunity to provide additional information regarding the mandates identified in its report. On September 26, 2008, Mr. Robert Daddow, Mrs. Summer Minnick, and Mr. Daniel L. Villaire convened via telephone to discuss this preliminary report. As indicated below, each individual is currently gathering additional information, where necessary, to complete the evaluation of the identified mandates.

1. Binding Arbitration for Police and Fire – MCL § 423.231.

This is a mandate. However, local units of government were required to participate in binding arbitration for police and fire prior to December 23, 1978, the effective date of the Headlee Amendment.

2. National Pollutant Discharge Elimination System/Michigan Permitting – MCL §§ 324.3103-3133 and 324.4101-4113.

Additional information is needed to evaluate this alleged mandate. The MML identifies numerous statutes in support of its position that the permitting process for storm water and associated reporting requirements are unfunded mandates. However, most of the statutes identified by the MML provide requirements for the Department of Environmental Quality or set forth functions of the Department of Environmental Quality.

Mr. Daddow and Mrs. Minnick are gathering additional information regarding the requirements the state has placed on cities and villages with respect to permitting process and the reporting of data. They are also seeking information as to whether or not these requirements represent a new or increased activity or service and the costs associated with these requirements.

3. Segregation of Major/Local Streets (Funds) – MCL § 247.663.

MCL § 247.663 does not appear to be a mandate. It does not require an activity or service but rather sets forth parameters for use of funding and transfer of dollars between the major and local street fund. However, if the statute is a mandate, segregation of major and local street funds and limitations on the amount of funds that may be transferred between the major fund and the local fund existed prior to December 23, 1978, the effective date of the Headlee Amendment. In fact, it appears prior to 1978 the amount that could be transferred was less than it is today with or without an asset management process. MCL § 247.663.

Mrs. Minnick is gathering additional information to support MML's position that this is a mandate. However, it appears that any mandate with respect to major and local road funds pre-dates the Headlee Amendment.

4. School Elections – MCL § 168.315.

MCL § 168.315 is a mandate imposed after December 23, 1978, the effective date of the Headlee Amendment. However, it appears to be a funded mandate. The MML contends that the Legislature recently began to require local municipalities to hold school elections on four (4) particular dates. The MML concedes that school districts, by statute, must reimburse the local municipality for the "actual" costs of the election. The MML contends but that does not cover the real costs.

According to the language of the statute, school districts must pay 100% of the actual additional costs attributable to conducting a school district's regular or special election and 100% of the actual costs of the regular or special election if it is not held in conjunction with a local municipality's election. According to the Secretary of State, all costs are reimbursable except compensation to regular employees or officials (unless it is overtime and/or additional compensation which is reimbursable), equipment, and costs of reusable supplies.

Mrs. Minnick clarified that it is her understanding that local units of government are not being reimbursed for the work performed by their employees in connection with elections held solely for schools. Government employees perform the work necessary for the school election during their normal work hours but do not incur overtime. She believes local units have been denied reimbursement in these circumstances. She is gathering additional information in this regard.

5. Requiring Optical Scan Machines for Voting Equipment – MCL § 8.24j.

The State, through the Secretary of State mandates the use of optical scan machines. The State imposed this requirement after December 23, 1978, the effective date of the Headlee Amendment. However, MCL § 168.24j is not a mandate. MCL § 168.24j provides that ballot containers, including optical scan ballots, must be resistant to tempering and capable of being sealed with a metal seal. It also requires the containers to be approved by the Secretary of State.

As indicated by the MML, optical scan machines were initially provided by the State at the State's expense (Federal funding actually paid the cost). This would represent new unfunded activity service or an unfunded increase in activity of service to the extent the costs to operate and maintain the machines exceeds State funding and are in addition to the costs imposed on municipalities to maintain prior election equipment.

Mrs. Minnick is gathering additional information as the additional costs incurred by local units of government as a result of this new requirement.

6. Requiring Certified Mail for Public Hearing – MCL § 8.11

MCL 8.11 is not a mandate. It provides that whenever a statute uses the term “registered mail” or “registered mail, return receipt,” those terms shall include the terms “certified mail” or “certified mail, return receipt requested.” The statute also provides that in the case of certified mail, the receipt of mailing shall be postmarked.

On September 26, 2008, MML identified specific statutes that require municipalities to provide notice and/or mailings by certified or registered mail. Mr. Villaire is reviewing the statutes to determine if they are mandates, if the State first imposed any these requirements after December 23, 1978, and whether or not there is any State funding for these activities.

7. Compost Permitting – MCL § 324.11502

Requiring local units of government to pay a Six Hundred (\$600.00) Dollar permit fee to qualify as a registered composting facility is not a mandate. MCL §§ 324.11521(4), 1102. Local units of government are not *required* to operate a composting facility.

8. Requiring Electronic Fingerprinting – MCL § 28.161.

Requiring electronic fingerprinting is a mandate that became effective after December 23, 1978. The State, at least partially, funded this mandate by providing the necessary equipment to counties.

The MML contends this requirement is an unfunded mandate due to the costs for municipalities to transport individuals to sites that have the State provided equipment. This would be an unfunded mandate *to the extent* municipalities can demonstrate that transporting individuals is a new activity or service over that which were required to perform as of December 23, 1978, and that they incur costs in excess of their costs to fingerprint prior to December 23, 1978.

Mrs. Minnick is gathering additional information regarding the costs incurred to perform this service, and if this represents an increase over the cost to fingerprint prior to December 23, 1978 and prior to electronic fingerprinting. Mr. Daddow also will gather information available to him regarding this mandate.

The MML also asserts that some municipalities decided to obtain the electronic fingerprinting equipment at their expense to eliminate the cost of transporting individuals to sites with state provided fingerprinting machines. Since the municipalities were not required to obtain the machines, it is unlikely this would constitute a mandate requiring funding pursuant to the Headlee Amendment.

9. Requirement Quarterly Reports Treasurer to Local Board/Councils – MCL § 129.96.

MCL 129.96(3), which requires an investment officer to provide quarterly written reports to governing bodies concerning the investment of funds, is a mandate and represents an increased activity or service over that which was required as of December 23, 1978, the effective date of the Headlee Amendment. MCL § 129.96(3) was amended in 1997 to increase the reporting obligation from annually to quarterly. This would be a new unfunded mandate to the extent municipalities incur additional costs for the additional reporting requirements.

Mrs. Minnick is gathering information regarding any additional costs incurred as a result of the additional reporting obligations.

10. Requiring Local Units of Government to Share Master Plans – MCL § 125.3811.

According to language in MCL § 125.3811, the requirement to share master plans is not a mandate. According to the statute, local unit of government may, but is not required to, create a planning commission. MCL § 125.3811. If a local unit of government creates a planning commission it must adopt and share a master plan. MCL §§ 125.3839, 3841.

Mr. Villaire is examining this requirement to determine if the State requires local units to create a planning connection despite language in the statute that appears to make it optional.



- MEMORANDUM-

TO: Legislative Commission on Statutory Mandates

FROM: Dennis R. Pollard, Esq. and Daniel L. Villaire, Jr., Esq.

RE: Michigan Townships Association ("MTA") List of the Top 10 Mandates

DATE:

The Michigan Townships Association ("MTA") submitted a report of the Top 10 most burdensome mandates being placed on township governments. After a preliminary review of the reported mandates it appears some are not mandates, some are mandates that existed prior to the effective date of the Headlee Amendment, December 23, 1978, some are mandates that existed before December 23, 1978 but require an unfunded increase in activities provided by townships or a decrease in funding for existing activities, and some are new mandates imposed after December 23, 1978. As indicated below, additional information is needed to properly evaluate several of the identified mandates.

This preliminary report was submitted to the MTA for its review and the opportunity to provide additional information regarding the mandates identified in its report. On September 24, 2008, Mr. Robert Daddow, Mr. David Bertram, and Mr. Daniel L. Villaire convened via telephone to discuss this preliminary report. As indicated below, each individual is currently gathering additional information, where necessary, to complete the evaluation of the identified mandates.

1. Summer Tax Collection - MCL § 211.905b (2-5).

Summer Tax Collection pursuant to MCL § 211.905b is a mandate imposed on local units of government after December 23, 1978, the effective date of the Headlee Amendment. However, the statute provides that the local unit may retain a fee to cover the cost of the tax collection. Thus, it is, at a minimum, a partially funded new mandate. If the fee covers the entire cost it is a fully funded mandate and would not violate the Headlee Amendment. If the fee does not cover the cost, as indicated by the MTA, it would violate the Headlee Amendment.

Mr. Bertram is gathering additional information as to the type and amount of costs incurred as well as the amount of costs incurred in excess of the fees collected.

2. Election Consolidation/School Elections - MCL § 168.315.

MCL § 168.315 is a new mandate imposed on local units of government after December 23, 1978, the effective date of the Headlee Amendment. It appears to be a fully funded mandate. The MTA contends that the Legislature recently began to require local municipalities to hold school elections on four (4) particular dates. The MTA concedes that school districts, by statute, must reimburse the local municipality for the "actual" costs of the election. However, MTA contends that this does not cover the "real" costs.

According to the language of the statute, school districts must pay 100% of the actual additional costs attributable to conducting a school district's regular or special election and 100% of the actual costs of the regular or special election if it is not held in conjunction with a local municipality's election.

According to the Secretary of State, all costs are reimbursable except compensation to regular employees or officials (unless it is overtime and/or additional compensation which is reimbursable), equipment, and costs of reusable supplies.

Mr. Bertram is gathering additional information regarding the costs for which local units of government are not receiving reimbursement.

3. Defending Utility Property Tax Appeals - MCL § 211.34a and MCL § 211.34c.

MCL § 211.34a and MCL § 211.34c are not mandates with respect to defending utility tax appeals. MCL § 211.34a requires the equalization director of each county to prepare a tabular statement each year, by the several cities and townships of the county, showing the tentative recommended equalization ratios and estimated multipliers necessary to compute individual state equalized valuation of real property and personal property. The statute further provides for requirements associated with publication of the tabulation and notices for boards of review meetings. The statute also provides for a specific appeal procedure for the year 1986 only.

MCL § 211.34c requires the assessor to classify every item of assessable property according to definitions contained in the statute. It also requires the assessor to tabulate the total number of items and the valuations as provided by the board of review for each classification and for the totals of real and personal property in the local tax collecting unit. The statute identifies the classifications of real and personal property and addresses property falling in more than one classification.

MCL § 211.34c does permit an owner of assessable property, which would include certain utility property, to protest the assigned classification of assessable property. There is no appeal right or process identified in MCL 211.34c regarding the validity of the uniform procedures and valuation tables.

Nonetheless, it appears that the State does require local units of government to defend against challenges by utilities to assessments completed by the local governments using a multiplier formula set by the State. Utilities do not challenge the local units assessment amount. Rather, utilities attack the formula set by the State.

Mr. Daddow has confirmed that the multiplier approach has been used since the 1960's. Therefore, even if this were to qualify as a mandate, it does not implicate the Headlee Amendment. The requirement to defend property tax appeals also predates the Headlee Amendment. Thus, the Headlee Amendment is not implicated even if the State requires local units of government to defend utility appeals and pay the associated costs.

4. New Assessing Requirements - MCL § 211.7cc

The State imposed assessing requirements in MCL § 211.7cc constitutes a mandate. Although the State required local units of government to meet assessing requirement prior to December 23, 1978, the effective date of the Headlee Amendment, (MCL § 211.7c, repealed) statutory amendments subsequent to that time have imposed new or increased activities or services upon local units of government. Many of these new or increased requirements resulted from passage of Proposal A in 1994. As a result of Proposal A, local units must track new information, for example, homestead exemption affidavits.

Mr. Bertram and Mr. Daddow are gathering additional information with respect to the specific requirements that are new or are an increased activity or service. They will also gather information regarding costs incurred by the local units of government, in excess of funding from the State, if any.

Mr. Bertram is also gathering information regarding new or increased services the State has imposed regarding the Qualified Forest Property Program. He will also gather information regarding the cost incurred by the local units and the amount of funding, if any, received from the State regarding this program.

5. Binding Arbitration for Police and Fire – MCL § 423.231.

This is a mandate. However local units of government were required to participate in binding arbitration for police and fire prior to December 23, 1978, the effective date of the Headlee Amendment.

6. Publication of Notices in Newspapers - MCL § 41.72a.

a. Township Board, Publication of Regular and Special Meetings - MCL § 41.72a

MCL § 41.72a is a mandate that existed prior to December 23, 1978, the effective date of the Headlee Amendment. The statute requires a township with a taxable value of a specific amount or more, which is adjusted annually, to publish proceedings of meetings in a newspaper of general circulation in the township.

b. Charter Township Board Monthly Publication of Proceeding - MCL § 42.8

MCL § 42.8 is a mandate that existed prior to December 23, 1978, the effective date of the Headlee Amendment. The statute requires Charter Townships to publish its proceedings at least once per month.

c. Duties of Ministerial Officer of Court - MCL § 41.84.

Mr. Bertram has indicated that this MCL § 41.84 was incorrectly included in the MTA's report.

d. Township Board Meeting; Time Place - MCL § 42.7(6).

Townships were required to meet the requirements in MCL § 42.7(6) prior to December 23, 1978, the effective date of the Headlee Amendment.

7. Storm Water Phase II – 33 U.S.C. §§ 1342, 40 C.F.R. §1226.

Federal requirements alone are not State mandates and do not implicate the Headlee Amendment. Additional information is required to determine if a mandate(s) exists and if it represents a new or increased service or activity imposed by the State after December 23, 1978, the effective date of the Headlee Amendment. Mr. Daddow is gathering additional information regarding the requirements imposed by the State and potential costs imposed on local units of government. In its report, MTA refers to the burden of “the six minimum measurements” involved in the Storm Water Phase II Program. Mr. Bertram is gathering information regarding these requirements and the costs to local units of government.

8. Maintenance Costs Related to New Voting Equipment - MCL § 168.24j.

The State, through the Secretary of State, mandates use of optical scan machines. The State imposed this requirement after December 23, 1978, the effective date of the Headlee Amendment. However, MCL § 168.24j is not a mandate. MCL § 168.24j provides that ballot containers, including optical scan ballots, must be resistant to tempering and capable of being sealed with a metal seal. It also appears that the containers must be approved by the Secretary of State.

As indicated by the MTA, optical scan machines were initially provided by the State at the State's expense (Federal funding actually paid the cost). This would represent new unfunded activity service or an unfunded increase in activity of service to the extent the costs to operate and maintain the machines exceeds State funding and are in addition to the costs imposed on municipalities to maintain prior election equipment. Mr. Bertram is gathering additional information regarding the additional costs incurred by local units of government as a result of this new requirement.

9. New Auditing Standards – GASB 34, 43, 45; Statement on Auditing Standards 112 (SAS); American Institute of Certified Public Accountants (AICPA).

It appears that the State's new accounting requirements are mandates and are new or increased activities or services over that which was required as of December 23, 1978, the effective date of the Headlee Amendment. To the extent these new or increased activities are not funded, the requirements would implicate the Headlee Amendment.

Mr. Daddow is gathering additional information regarding prior accounting requirements compared to new requirements and the amount of State funding, if any, that is provided.

10. Requirements to Share Master Plans – MCL § 125.3811(2), 3812(2), 3845, 3851, 3869.

The requirement to share master plans is not a mandate. A local unit of government may, but is not required to, create a planning commission. MCL § 125.3811. If a local unit of government creates a planning commission it must adopt and share a master plan. MCL §§ 125.3839, 3841.

Mr. Villaire is examining this requirement to determine if the State requires local units to create a planning connection despite language in the statute that appears to make it optional.