

Final Minutes

Legislative Commission on Statutory Mandates Meeting

12:00 noon • Tuesday, October 28, 2008
Oakland County Executive Office Building
East Oakland Room/Conference Center
2100 Pontiac Lake Road, Building 41-West • Waterford, Michigan

Members Present:

Amanda Van Dusen, Chair
Robert Daddow, Co-Chair
Dennis Pollard
Louis H. Schimmel

Members Excused:

J. Dallas Winegarden, Jr.

I. Call to Order

The Chair called the meeting to order at 12:21 p.m. and the clerk took the roll. A quorum was present. The Chair requested Mr. Winegarden's absence be excused. There was no objection.

II. Approval of the Agenda

The Chair asked for approval of the agenda. **Mr. Pollard moved, supported by Mr. Schimmel, to approve the October 28, 2008 agenda as proposed. There was no further discussion. The agenda was unanimously approved.**

III. Approval of Minutes – September 30, 2008 Meeting

The Chair asked for a motion to approve the minutes of the last Legislative Commission on Statutory Mandates meeting. **Mr. Daddow moved, seconded by Mr. Pollard, to approve the minutes of the September 30, 2008 meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Public Statements by Commissioners

Although the Chair acknowledged that members cannot control what is presented in the media, she asked members to remember that unless a member is specifically authorized by resolution to speak on behalf of the Commission it is important that the member make it very clear when speaking to the press that the opinions being expressed are those as an individual as opposed to the Commission as a whole. Mr. Pollard assured members that with regard to an article that was published after last month's meeting, he had informed the reporter from the Macomb Daily that the interim report was a draft and had not even been discussed by the Commission. The issues of clearly labeling documents and exchanging documents via email were also discussed.

V. Approach to Commission Preliminary Report

The Chair opened a discussion to revisit the approach previously agreed upon to pursue the Committee's charge prospectively and practically due to the magnitude of the Commission's task. She reported the co-chairs met with leadership last week to brief them on the Commission's progress. She noted the need for changes to the scope of the Commission charge and possible extensions to the reporting requirement deadlines in the Commission's creating statute were also raised at the meeting. A discussion of possible draft language that could be used to reflect the needed statutory changes followed. Commissioner Pollard noted that his firm is putting in a substantial amount of time in pulling the information together that will be used in preparing the Commission's report and asked if there is a possibility that there could be some reimbursement for the cost associated with their efforts. The Chair noted that they expect to talk to leadership again and will mention this at that time. An outline of an initial report including how to include the historical perspective and context was also discussed. The Chair raised one other element of the report which would include items similar to the zoning issue identified in Dave Bertrand's email whereby townships are not mandated, but have requirements to follow if they zone.

VI. Status of Top Ten Analysis

Mr. Villaire reported that he has put all the mandates identified by the various groups in a chart to distinguish which category each of the alleged mandates fall into.

a) Analysis of County Road Association of Michigan (CRAM) Issues

Mr. Villaire detailed the findings of his analysis of the most significant mandates identified by the County Road Association of Michigan. A copy of the memo prepared by Commissioner Pollard and Mr. Dan Villaire is attached to these minutes.

b) Analysis of Michigan Community College Association (MCCA) Issues

Mr. Villaire continued with an explanation of the findings of his analysis of the Michigan Community College Association mandates. A copy of the memo prepared by Commissioner Pollard and Mr. Villaire is also attached to these minutes.

VII. Citizens Research Council (CRC) Analysis

Mr. Eric Lupher from CRC was present and provided an update on the progress of his research which included looking at when a fiscal analysis of a bill that creates a new mandate should be conducted, the creation of an independent body that would determine the costs of a new mandate, and how an assessment should be done.

VIII. Other Business

There was no other business to discuss.

IX. Public Comments

The Chair asked for public comment. There was none.

X. Next Meeting Date

A discussion of the date and location of the next two meetings followed. The Chair announced that the next meeting will be held on **November 18, 2008** and the meeting after that tentatively set for **December 18, 2008**. Both meetings will begin at **12:00 noon** at the Oakland County Executive Office Building in Waterford, Michigan.

XI. Adjournment

Having no further business, Mr. Daddow moved, supported by Mr. Schimmel, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 2:40 p.m.

(Approved at the November 18, 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: County Road Association of Michigan ("CRAM")
DATE: October 27, 2008

CRAM submitted a list of the most significant mandates it alleges the State has imposed on its members. After a preliminary review of the alleged mandates it appears some may not be mandates, some are mandates that existed prior to the effective date of the Headlee Amendment, December 23, 1978, some are mandates that existed prior to December 23, 1978 but changes require an unfunded increase in activities provided by county road commissions or a decrease in funding for existing activities, contrary to the Headlee Amendment, and some are new mandates imposed after December 23, 1978, which if unfunded, would violate the Headlee Amendment. Some of the alleged mandates may violate the Headlee Amendment because they are funded. Additional information from CRAM, as identified below, is necessary to evaluate some of the alleged mandates.

On October 24, 2008, Mr. Robert Daddow, Mr. John Niemela and Mr. Daniel Villaire discussed this preliminary report. Mr. Niemela will work with the various road commissions to gather additional information.

1. Municipal Finance Qualifying Statement – MCL § 141.2303.

MCL § 141.2303 is a mandate. The State requires local units of government to file an annual "qualifying statement" with its annual audit report. It appears that the State first required qualifying statements after December 23, 1978, the effective date of the Headlee Amendment. However, the State has long required municipalities to provide various financial reports and information to the State. See, for example, 2 PA 1968. Nonetheless, qualifying statements would constitute a Headlee violation to the extent the State requires local units to provide new or additional information in the qualifying statements that it did not require prior to December 23, 1978 and, as a result, local units must perform new/increased activities and have incurred new/increased costs.

CRAM will attempt to identify new or additional information the State requires local units to include in qualifying statements over that which it required prior to December 23, 1978. CRAM

will also identify the new/increased activities and the associated increased costs, if any, incurred to complete the qualifying statements.

2. Uniform Budgeting Act – 621 PA 1978 – MCL § 141.421 *et seq.*

The budget requirements of 621 PA 1978 (MCL § 141.434 – 436) are State mandates and were imposed after December 23, 1978, the effective date of the Headlee Amendment. CRAM states that the State imposed budgetary requirements upon road commissions, though 621 PA 1978. 621 PA 1978 amended 2 PA 1968. 2 PA 1968 established a uniform chart of accounts and reports for local units. The 1968 Act did not include budgetary requirements. Those requirements were added by 621 PA 1978. The budgetary sections of 621 PA 1978 became effective, April 1, 1980. There is no provision in 61 PA 1978 to provide funding to local units for the new requirements. Thus, if road commissions are required to perform new or increased activities resulting in increased costs, the budget requirements would violate the Headlee Amendment.

CRAM will attempt to provide examples of the activities road commissions perform and the costs incurred to comply with budget requirements of 61 PA 1978. CRAM will also verify that it does not receive State funding to pay the costs of those activities.

3. MDEQ Permits

It is unknown at this time whether or not MDEQ permit requirements referred to by CRAM are mandates. It is also unknown whether or not the State imposed those requirements, if at all, prior to December 23, 1978, the effective date of the Headlee Amendment. CRAM will attempt to provide additional information identifying the specific permit requirements to which it refers, the State source of the requirement, when the State/MDEQ first imposed the requirements, and the costs incurred as a result of each requirement. It appears that the State has imposed new requirements upon local road commissions with respect to permits.

4. Asset Management

CRAM claims that the State requires county road commissions to complete investment reporting on infrastructure. Additional information regarding this alleged requirement is needed to determine if it is a State mandate. CRAM will attempt to identify this specific report, and the source of the State requirement.

CRAM reported that road commissions are reimbursed for at least a portion of the costs associated with this requirement. CRAM will report on the amount of funding it receives and the difference between the funding and actual costs, if any. If local road commissions are reimbursed for costs associated with this activity, even if it is a new mandate, it would not violate the Headlee Amendment.

5. Annual Audit – MCL § 141.42, 141.425

Annual audits and annual financial reporting to State Treasury are State mandates. Annual audits may be an increased activity for some local units over that which the State required them to perform as of December 23, 1978, the effective date of the Headlee Amendment. Annual financial

reporting also could be an increased activity for local units over that which they were required to perform as of December 23, 1978, the effective date of the Headlee Amendment.

The State has required local units to conduct annual or biannual audits since at least 1968. 2 PA 1968. Prior to December 23, 1978, the State required local units with a population of less than 1,000,000 to have an annual audit and local units with a population less than 2,000 to have a biannual audit. The State required local units with a population greater than 1,000,000 to obtain an annual audit unless its internal audit procedures met certain requirements. If the local unit met the requirements, the State required an audit only every five (5) years.

The State currently requires local units with a population of greater than 4,000 to obtain an audit annually. The State requires a local unit with a population under 4,000 to obtain an audit biannually.

Accordingly, the State requires local units with populations between 4,000 and 1,000,000 to complete the same number of audits now as it did prior to December 23, 1978. Audit requirements changed only for local units with populations greater than 1,000,000. These local units must now obtain audits every year instead of every fifth year. This would represent an increased activity over that which they performed as of December 23, 1978, the effective date of the Headlee Amendment. However, additional information is necessary to determine if the costs have increased.

Annual financial reports implicate the Headlee Amendment to the extent there is a new or increase in activity local units perform under the current requirements compared to requirements prior to December 23, 1978. It appears that the State currently requires more information from the local units than did prior to December 23, 1978.

CRAM will attempt to identify the additional activities and costs incurred to meet the current audit and financial reporting requirements, if any.

6. Michigan Manual of Uniform Traffic Control Devices – 2F.05

Additional information is necessary to evaluate this alleged mandate. CRAM indicates that letter size requirements for signs on freeways and road/ramps have resulted in a significant increase in cost to road commissions. CRAM will attempt to identify how and why this change results in additional costs to county road commissions. CRAM will also attempt to identify the specific requirements the State is imposing on county road commissions.

MDOT indicates no such requirement has been imposed on local units. In fact, MDOT acknowledges that even though lettering size requirements exist, many are suggestive and not required. MDOT also stated that it does not enforce actual requirements. MDOT did indicate that local units receiving federal funding for road projects are expected to comply with federal standards.

7. Limit on Negotiated Construction Work

CRAM alleges that State limits the amount of road work road commissions can perform with their own crews (\$100,000.00). Any work exceeding the limit must be bid out to contractors.

CRAM reports that it is more expensive to use the outside contractors and local road commissions are able to perform the work. CRAM reports these requirements were imposed after December 23, 1978, the effective date of the Headlee Amendment.

The requirement for road commissions to bid out work once the \$100,000.00 is met is a State mandate. On one hand, this appears to be an increased activity that results in significant cost. On the other hand, the increased cost does not result from the required activity of bidding out work exceeding the \$100,000.00 cap. However, the increase cost clearly results from the State mandated cap and bidding requirements. Accordingly, depending on one's view this may, or may not, be a violation of the Headlee Amendment.

CRAM will attempt to gather additional information regarding this requirement and resulting costs.

8. Schedule C Equivalent Data

CRAM identifies "Preparation of Equivalent Gain/Loss Required by MDOT for Trunkline Maintenance" as a State mandate. CRAM indicates that activities associated with the Schedule C reporting requirements arise from a contractual agreement between road commissions and the state for maintenance of State trucklines. Since the obligation results from an agreement, the requirement is not a State mandate. Rather, it is a contractual issue related to services the local units contracted, i.e., agreed, to perform.

9. Annual Report of Certified Mileage - MCL§ 247.664(3).

MCL § 247.664(3) is a mandate. The statute requires county road commissions to submit an annual report regarding each road system under its jurisdiction.

The requirement existed prior to December 23, 1978, the effective date of the Headlee Amendment. However, it appears that the State has increased the required contents of the report over that which it required as of December 23, 1978. CRAM states that the report has increased in complexity requiring staff overtime to complete it. CRAM also indicates some funding is provided.

CRAM will attempt to identify the increased activities, related costs, and funding, if any, received by CRAM.

10. Township Reporting Requirements – MCL § 247.664

MCL § 247.665, requiring county road commissions to file a report with each township in the county showing the disposition of funds allocated for road projects in the township, is a mandate. It was first imposed on county road commissions after December 23, 1978, the effective date of the Headlee Amendment. Prior to December 23, 1978, the State required road commissions to file this report with the State. The State did not require road commissions to file this report with townships. The legislature added townships in 1999. 50 PA 1999.

CRAM indicates that county road commissions incur \$1,000.00 in costs to meet this obligation. It does not appear that the State provides any funding. Therefore, this is a new unfunded mandate contrary to the Headlee Amendment.

11. Non-Motorized Transportation Expenditure – MCL § 247.660k

MCL § 247.660k is a State mandate but does not violate the Headlee Amendment. The statute provides that of the funds allocated from the Michigan Transportation Fund (“MTF”) to the State trunkline fund, and to the counties, cities, and villages, a reasonable amount, but not less than 1% of those funds shall be expended for construction or improvement of non-motorized transportation services and facilities. The requirement that 1% of the MTF be spent on non-motorized transportation services and facilities became effective October 10, 1978. Thus, this requirement existed prior to December 23, 1978, the effective date of the Headlee Amendment.

12. Andy’s Law – MCL § 257.627(9).

MCL 257.627(9), which requires county road commissions to post certain signs in work zones, is a mandate imposed on county road commissions subsequent to December 23, 1978, the effective date of the Headlee Amendment.

CRAM estimates that labor, material, and equipment costs incurred to meet this requirement is at least \$100,000.00 per year. This would constitute a Headlee violation.

CRAM will provide specific information regarding how the sign requirements changed, the increased activities road commissions now perform and the resulting costs incurred.



- MEMORANDUM-

TO: Legislative Commission on Statutory Mandates
FROM: Dennis R. Pollard, Esq. and Daniel L. Villaire, Jr., Esq.
RE: Michigan Community College Association ("MCCA") List of Top 10 Mandates
DATE: October 21, 2008

The Michigan Community College Association ("MCCA") submitted a report listing mandates it alleges it must perform. After a preliminary review of the alleged mandates it appears some may not be mandates, some are mandates that existed prior to the effective date of the Headlee Amendment, December 23, 1978, some are mandates that existed prior to December 23, 1978 but changes require an unfunded increase in activities provided by county road commissions or a decrease in funding for existing activities, contrary to the Headlee Amendment, and some are new mandates imposed after December 23, 1978, which if funded, would violate the Headlee Amendment. As identified below additional information from MCCA is necessary to evaluate some of the alleged mandates.

1. ACS Reporting – Section 8, PA 419 of 1978.

It appears that Section 8 of PA 419 of 1978 is a mandate or resulted in a mandate that requires all community colleges to report data, including financial, enrollment, and revenue/expenditure information, to the State.

Section 8 of PA 419 of 1978 provides:

Community college program classification structure.

The department of management and budget, in cooperation with the senate fiscal agency, the house fiscal agency, the department of education, and the community colleges shall begin development of a community college program classification structure for use in documenting financial needs of community colleges. Uniform application of accounting principles shall be employed in the collection of cost data.

The Public Act was effective as of September 30, 1978. According to the above language, Section 8 itself did not create reporting obligations. Rather, Section 8 provided that a classification/reporting structure would be created. The reporting structure was created and all community colleges began to report data in 1981. These reporting requirements would likely constitute a Headlee violation to the extent they are not funded.

In order to fully analyze this alleged mandate, additional research must be performed with respect to the actual requirements. It would be helpful if MCCA identified the State source of the reporting requirements, and any changes to the reporting activities imposed by State, and any funding received. It would also be helpful if MCCA identified costs incurred as a result of performing this activity and any increase due to changes to reporting requirements.

2. Native American Tuition Waivers - MCL § 30.1251.

MCL § 390.1251 is likely a mandate. However, Michigan Community Colleges were required to waive tuition for Native Americans prior to December 23, 1978, the effective date of the Headlee Amendment.

3. Contribution Rates to MPSERS – Act 300 of 1980.

The funding of the Michigan Public School Employees Retirement System (“MPSERS”) by Michigan community colleges is a newly mandated activity or service on local units of government in violation of § 29 of the Headlee Amendment. MPSERS was initially created by Public Act 136 of 1945, and was created as part of a fully funded state retirement system. This system changed, however, in 1980; two years after the passage of the Headlee Amendment.

Public Act 136 of 1945 was repealed in 1980 and in its stead the Legislature passed Public Act 300 of 1980. This act, codified at MCL 38.1301 *et seq.*, restructured the MPSERS and required contribution from Michigan community colleges. The act does not create a set amount that must be contributed, rather it creates a formula based on an actuarial that the state retirement board must use to determine the percentage of total payroll contribution for each local unit of government. MCL 38.1341. Due to changes in the determining of the actuarial resulting from amendments to the act since 1980 that rate has risen considerably since its initial adoption. It would be helpful if MCCA provided additional information regarding the current contribution rate or total contributions is made last year and intends to make this year.

The Legislature has not appropriated or disbursed any funds to pay for these newly mandated activities or services.

4. Financial Aid Programs

Additional information is needed to determine if any of the financial aid programs identified by the MCCA are State mandates, whether or not they are funded, or are unfunded (and if there has been any changes in funding), and whether or not they represent a new activity or service, or increase in activity or service, imposed after December 23, 1978, the effective date of the Headlee Amendment. MCCA alleges that the State requires community colleges to disclose, record, report and monitor various State-funded scholarships. The costs to the community colleges include time reconciling State award accounts and complying with reporting requirements. It would be helpful if MCCA identified the specific activities and services the State requires community colleges to perform, the source of the obligation, if the requirements existed prior to December 23, 1978, any changes to the requirements after that date, any funding community colleges receive, and such as labor, materials, etc., incurred by the community colleges to meet the State’s requirements.

5. Others

a. Audits

Additional information is needed to determine if any of the audits identified by the MCCA are State mandates, whether or not they are funded, or are unfunded (and if there has been any changes in funding), and whether or not they represent a new activity or service, or increase in activity or service, imposed after December 23, 1978, the effective date of the Headlee Amendment. The MCCA alleges the State requires community colleges to respond to excessive State audit requests and perform annual financial statement audits and developmental education audits. It would be helpful if MCCA identified the specific activities and services the State requires community colleges to provide, the source of the obligation, if the requirements existed prior to December 23, 1978, any changes to the requirements after that date, funding community colleges receive, if any, and costs, such as labor, materials, etc., incurred by the community colleges to meet the State's requirements.

b. Various Reports

Additional information is needed to determine if any of the various reports identified by the MCCA are State mandates, whether or not they are funded or are unfunded (and if there has been any changes in funding), and whether or not they represent a new activity or service, or increase in activity or service, imposed after December 23, 1978, the effective date of the Headlee Amendment. The MCCA alleges that the State requires community colleges to prepare reports including, extended financial reporting, an at-risk student success report and a tech prep enrollment report. It would be helpful if MCCA identified the specific activities and services the State requires community colleges to perform, the source of the obligation, if the requirements existed prior to December 23, 1978, any changes to the requirements after that date, any funding community colleges receive, and the costs such as labor, materials, etc., incurred by the community colleges to meet the State's requirements.