

STATE OF MICHIGAN  
IN THE MICHIGAN COURT OF APPEALS

TOWNSHIP OF CASCO, TOWNSHIP OF  
COLUMBUS, and TOWNSHIP OF LENOX  
Petitioners/ Appellants,

Court of Appeals Docket  
No. 217621

v

St. Clair County Circuit  
Court No. K98-000866-AA

MICHIGAN STATE BOUNDARY COMMISSION,  
An Agency of the State of Michigan,  
Respondent/ Appellee,

**MICHIGAN MUNICIPAL LEAGUE'S  
AMICUS CURIAE BRIEF**

and

CITY OF RICHMOND, a Michigan Municipal  
Corporation, and WALTER K. WINKLE and  
PATRICIA A. WINKLE,  
Intervening Respondents/ Appellees.

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## **INTRODUCTION**

The Michigan Municipal League is a nonprofit corporation formed for the purpose of improving municipal government and administration through cooperative effort. The League is comprised of 512 Michigan cities and villages. Some 380 cities and villages are members of the Michigan Municipal League Legal Defense Fund, which is operated by the League through a Board of Directors. Acting through the Legal Defense Fund, the Michigan Municipal League represents the collective interests of Michigan cities and villages in selected cases involving municipal legal issues of statewide significance. The most frequently utilized method of participation by the League is that of preparing and filing an amicus curiae brief.

## **STATEMENT OF JURISDICTION**

The statement of jurisdiction submitted by Appellants is accurate, and is accepted by the Michigan Municipal League.

## **COUNTERSTATEMENT OF QUESTIONS PRESENTED**

**DOES THE BOUNDARY COMMISSION HAVE JURISDICTION  
OVER THE EFFECT OF ACT 425 AGREEMENTS ON PETITIONS  
FOR ANNEXATION?**

Appellants say	NO
Appellee says	YES
Intervenors say	YES
Amicus MTA says	NO
Amicus MML says	YES
Amicus Richmond Township says	NO

**SHOULD THE BOUNDARY COMMISSION'S CONSTRUCTION  
AND APPLICATION OF ACT 425, MCL 124.29; MSA 5.4087(29)  
BE UPHOLD AS GIVING EFFECT TO THE INTENT OF THE  
LEGISLATURE?**

Appellants say	NO
Appellee says	YES
Intervenors say	YES
Amicus MTA says	NO
Amicus MML says	YES
Amicus Richmond Township says	NO

**DOES THE PLAIN LANGUAGE OF ACT 425, MCL 124.29; MSA 5.4087(29) SUPPORT THE DECISION OF THE BOUNDARY COMMISSION?**

Appellants say	NO
Appellee says	YES
Intervenors say	NO
Amicus MTA says	NO
Amicus MML says	YES
Amicus Richmond Township says	NO

**SHOULD THE DECISION OF THE BOUNDARY COMMISSION BE AFFIRMED ON APPEAL?**

Appellants say	NO
Appellee says	YES
Intervenors say	YES
Amicus MTA says	NO
Amicus MML says	YES
Amicus Richmond Township says	NO

**STANDARD OF REVIEW**

The standard of review identified by the Boundary Commission is correct.

## **STATEMENT OF FACTS**

The counterstatement of facts submitted by the Boundary Commission is accurate and complete. The extra-record assertions of fact submitted by Appellants and the County of St. Clair should not be considered part of this appeal, which is limited by law to the record developed before the Boundary Commission.

## **ARGUMENT**

### **THE BOUNDARY COMMISSION HAS JURISDICTION OVER THE EFFECTS OF ACT 425 AGREEMENTS ON PETITIONS FOR ANNEXATION**

The legislature's grant of jurisdiction to the Boundary Commission is very plain and direct:

The commission shall have jurisdiction over petitions or resolutions for annexation as provided in section 9 of Act No. 279 of the Public Acts of 1909, as amended.

MCL 123.1011a; MSA 5.2242(11a). The reference to "section 9" is to MCL 117.9; MSA 5.2088, from which it is clear the Boundary Commission is the entity charged by the legislature with the task of "determining the validity of the petition or resolution" for annexation. In addition, the legislature explained the "powers and duties" of the Boundary Commission.

The Commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

MCL 117.9(2); MSA 5.2088(2). The grant of jurisdiction includes the authority necessarily involved "in processing and approving, denying, or revising a petition or resolution for



annexation.” The exercise of jurisdiction urged upon the Boundary Commission by Lenox and Casco Townships during the adjudicative process, reviewing and giving statutory effect to an Act 425 agreement, is now attacked vigorously on appeal because the outcome was contrary to the desires of the townships. According to the Appellants, the Boundary Commission can exercise its jurisdiction to consider an Act 425 agreement and *deny* a petition for annexation, but it cannot exercise its jurisdiction to consider an Act 425 agreement and *grant* a petition for annexation. The argument is without merit.

A strikingly similar argument was advanced and rejected in *Shelby Charter Township v State Boundary Commission*, 425 Mich 50; 387 NW2d 647 (1982), based on a provision in the Charter Township Act that exempted charter townships from annexation. Shelby Township claimed the Boundary Commission acted outside its jurisdiction in failing to give Shelby Township the protection from annexation afforded to it under MCL 42.34(1); MSA 5.46(34)(1). Ultimately the Supreme Court concluded:

The commission therefore did not exceed its statutory authority by not applying this interpretation of the statute to this case.

*Shelby Township*, supra, p 77. Exactly the same issue is now before this court: does the Boundary Commission have jurisdiction over the interpretation and application of a statute other than the SBCA (State Boundary Commission Act) or the HRCA (Home Rules Cities Act) that on its face prohibits annexation by the Boundary Commission? The Supreme Court answered “yes” in its *Shelby Charter Township* decision. The same analysis and holding applies to the Boundary Commission’s review of an Act 425 agreement, and its determination that an agreement does, (or does not), require the denial of a petition for annexation. The briefs submitted to this court fail to distinguish the present case from the Supreme Court’s holding in

*Shelby Charter Township*. With such clear precedent for the exercise of Boundary Commission jurisdiction over the interpretation and application of a statute purporting to insulate a township from annexation, the burden is on the petitioners to identify some specific authority to the contrary. This has not been done. Petitioners ask this court to ignore clear precedent and depart from the holding of the Supreme Court, without any basis for doing so. The Court of Appeals should follow and apply the rationale and holding in *Shelby Charter Township*.

Analyzing the Boundary Commission's jurisdiction produces the same conclusion. The Supreme Court expressed its appreciation of the legislature's efforts to vest the Boundary Commission with broad powers.

We take note that since April 1968, when this petition for annexation was filed, our legislature has passed comprehensive new legislation dealing with this area of the law. The new statute, MCLA 117.9 (Stat Ann Current Material §5.2088), as amended by PA 1970, No. 219, effective April 1, 1971, now provides the only procedures by which a municipal corporation may annex territory. It establishes certain substantive standards to guarantee that future annexations will be for the general good of the areas concerned, and not merely for the private good of individual citizens. **The statute also gives broad powers concerning annexations to an independent State Boundary Commission.**

*Township of Owosso v city of Owosso*, 385 Mich 587, 590; 189 NW2d 421 (1971), emphasis added. While clearly dicta, the observations of the Supreme Court are illuminating. The legislature's broad grant of powers concerning annexation was designed to ensure the Boundary Commission, not the courts, decided issues necessarily implicated by petitions for annexation.

Administrative agencies do not operate in abstract legal vacuums. Their powers are derived from statutory grants, and are interpreted in light of their statutory purpose.

In determining whether a board or commission has a certain power the authority given should be liberally construed in light of the purposes for which it was created and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law.

*Coffman v St Bd of Examiners*, 331 Mich 582, 590; 50 NW2d 322 (1951). The Boundary Commission's power to consider and analyze Act 425 agreements in order to determine their impact on pending petitions for annexation is incidentally necessary to the process of fully adjudicating annexation cases. Any other holding would frustrate the legislature's intent in creating the Boundary Commission and charging it with the responsibility of hearing, approving, denying, or revising petitions for annexation. This effectively is what Judge Glazer held in another agency appeal in which the same jurisdictional argument was raised.

**It is my conclusion that the Boundary Commission does have the authority to review all of the facts surrounding a purported conditional transfer agreement and to make a finding as to whether those facts trigger Act 425's preemption or not.**

This is so, among other reasons, because Section 30 of Act 425 refers to the filing of a reported conditional transfer agreement as quote, prima facie evidence of the conditional transfer, close quote. By definition prima facie evidence may be rebutted.

And it is my opinion that the Boundary Commission is the administrative body before which the legislature intended [it] to be rebutted if it could be.

Ruling from the bench, *Wheatfield Township v Boundary Commission*, Ingham County Circuit Court, Case #94-78685-AA, Honorable Lawrence M. Glazer; emphasis added; transcript attached as EXHIBIT 1. Judge Glazer's opinion is sound. At the Circuit Court level in this case, the Honorable Daniel J. Kelly reached a similar conclusion.

This question has not been addressed beyond the Circuit Court level in this State. As a result, there is no binding caselaw directly on point. Accordingly, the resolution of this issue must be made by application of recognized principles of statutory construction, including consideration of the legislative history of the act. **Under such analysis, this Court finds that the Boundary Commission is authorized to consider and determine the validity of purported Act 425 Agreements when reviewing petitions for annexation.**

Opinion, page 2, EXHIBIT 2, emphasis added.

It makes no sense to bifurcate hearings and decisions between the Boundary Commission and the Circuit Court to resolve issues like those raised in this case. The resulting procedural quagmire would swallow cities, townships, and private parties alike. Even appeals would be double tracked, with Boundary Commission rulings challenged in Circuit Court, and Circuit Court rulings challenged in the Court of Appeals! The same reasoning utilized by Judge Glazer and Judge Kelly should be employed by the Court of Appeals in this case to reach the same result: the Boundary Commission has jurisdiction over the existence and impact of Act 425 agreements on petitions for annexation pending before the Boundary Commission.

### **THE PLAIN LANGUAGE OF THE STATUTE WAS APPLIED AND FOLLOWED BY THE BOUNDARY COMMISSION**

While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of the area transferred under the contract.

MCL 124.29; MSA 5.4087(29).

The plain language of the statute supports the analysis and decision of the Boundary Commission. The first phrase, "While a contract under this act is in effect," requires some

examination of the contract offered by Lenox and Casco Townships. The plain language of the statute requires the Boundary Commission to determine if a contract exists, and if the contract is "under this act." In addition, the Boundary Commission must determine if the contract "is in effect." The Boundary Commission followed the plain language of the statute. The Boundary Commission was not convinced by Lenox and Casco Townships that the contract really was "under this act" or "in effect" because of the absence of characteristics indicting an annexation or transfer had taken place.

Also following the plain language of the statute, the Boundary Commission looked for evidence of "annexation or transfer" in order to determine if "another method of annexation or transfer shall not take place." **This is a necessary part of the analysis, because the legislature limited the shield against annexation to "any portion of an area transferred under the contract."** MCL 124.29; MSA 5.4087(29).

Contrary to the arguments of the Appellants, the mere existence of an Act 425 agreement is not a complete shield against annexation. The plain language of the statute provides a shield only "for any portion of an area transferred under the contract." **If no area actually is transferred, there is no statutory shield against annexation.** The Boundary Commission's efforts to determine if a transfer occurred were based on an attempt to follow and apply the plain language of the statute cited by Appellants. The opportunity to prove the "area transferred under the contract" was available to Appellants. Their proofs of an actual transfer were scant, because the purported Act 425 Agreement did not call for an actual annexation or

transfer. The Boundary Commission followed the plain language of the statute more faithfully and completely than did Lenox and Casco Townships.

Appellants' reliance on the plain language of the statute is overstated. Indeed, it is an attempt to impart a different meaning to the statute than what is conveyed by a careful consideration of each phrase.

The Court of Appeals should recognize the careful consideration given to the statute and the facts of this case by the Boundary Commission. Depending on the facts of each case and the arguments advanced by the participants, it may be necessary for the Boundary Commission to determine

- (1) if an Act 425 contract exists,
- (2) "under this act,"
- (3) and "is in effect,"
- (4) for "an area transferred under the contract"
- (5) that is the subject of an annexation petition before the Boundary Commission.

Any one of these determinations may involve controversies over specific factual issues that must be resolved on a case by case basis.

It may be that no Act 425 contract between townships will provide the sought after statutory shield against annexation, because no actual transfer will occur between the contracting townships. Mere agreements to coordinate services, share waste hauling services, or promote economic development, should not suffice. This would not deviate from the course charted by the legislature. Act 425 agreements were designed and intended to provide a means by which cities and townships could contract for annexation of township territory to a city

without enduring Boundary Commission hearings and rulings. That legislative purpose will be furthered by affirming the decision of the Boundary Commission.

**THE BOUNDARY COMMISSION'S CONSTRUCTION  
AND APPLICATION OF ACT 425, MCL 124.29; MSA 5.4087(29)  
SHOULD BE UPHELD AS GIVING EFFECT TO THE  
INTENT OF THE LEGISLATURE**

The specific problem the legislature sought to solve in adopting Act 425 is revealed in the House Legislative Analysis, EXHIBIT 3. All of the participants in the case agree on this. In response to a request by General Motors to expand a plant within the City of Flint, with no vacant land on which to situate the facility, the City and Genesee Township worked out

**a contractual arrangement whereby the township would transfer the land to the city in exchange for a share in the tax revenue.** Although many persons agreed that this unique cooperative approach to the transfer of property between local units of government was laudable, some questioned the legality of such an arrangement and believed the agreement could have been challenged in court on the grounds that the agreement skirted the authority of the State Boundary Commission, which has statutory jurisdiction over matters pertaining to municipal boundary adjustments, and also because [the] statute does not specifically provide authority for such arrangements between local units.

EXHIBIT 3, emphasis added. The Michigan Municipal League, the Michigan Townships Association, and the State Boundary Commission supported the proposed legislation. The support of these three entities was garnered because of the "win-win" anticipated effects of the

legislation. A city and township could fashion their own contractual arrangement for annexation, while preserving the township's tax base.<sup>1</sup>

The "no annexation" provision of Act 425, MCL 124.29; MSA 5.4087(29), was a shield provided to townships in return for their willingness to enter into contractual arrangements for annexation. Otherwise, once induced to enter into a 425 agreement, complete with tax sharing terms, a township could be victimized by a petition or resolution seeking annexation through the Boundary Commission. The city could prove it was providing services to the area covered by the contract, and the township would be without a defense within the criteria of the SBCA. The Boundary Commission's order of annexation could wipe out the preservation of the township's tax base otherwise preserved or protected by the Act 425 agreement. This scenario was unworkable. The legislature recognized the risks associated with the potential use of Act 425 agreements as annexation weapons, and a complete statutory shield was statutorily provided to townships in order to induce them to enter these new contractual annexations.

Some years after the enactment of Act 425, townships began entering Act 425 agreements for the purpose of obtaining the statutory shield against annexation petitions and proceedings before the Boundary Commission. Of course, the ultimate effect of these agreements was not known, because the contracting parties had not entered into an arrangement for annexation for which the statutory shield was provided. Nevertheless, townships seized upon the specific language of MCL 124.29; MSA 5.4087(29) as absolute evidence of the state legislature's intent to shield all townships from annexation proceedings before the Boundary Commission, based on

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<sup>1</sup> The Boundary Commission cannot order annexation with a tax base preservation clause or condition.



interlocking 425 agreements between neighboring townships. This is a peculiar misconstruction of the statute, which thwarts the legislature's intent and purpose in enacting the legislation in the first place.

There is nothing wrong with proponents of township government arguing for a misconstruction of Act 425 agreements in order to acquire a complete shield against all annexation efforts by citizens like Walter and Patricia Winkle. However, the Court of Appeals should recognize the arguments for exactly what they are: an attempt to obtain an unintended result that frustrates the intent of the legislature.

All three pieces of legislation (Act 425, the SBCA, and the HRCA) can be harmonized without forgetting or thwarting the intent of the legislature. The Boundary Commission is on the right track. An Act 425 agreement involving two townships that does not produce the type of contractual annexation envisioned by the legislature between the City of Flint and Genesee Township does not give townships the complete statutory shield against annexation ordered by the Boundary Commission. This is not a startling or irrational approach. Indeed, the Boundary Commission is advancing the intent of the legislature by declining to shield townships from annexation in the absence of a contractual agreement for annexation. It is the decision of the Boundary Commission in this case that will drive townships to consider and adopt Act 425 agreements with cities!

Reversing the Boundary Commission's decision will encourage townships not to enter Act 425 agreements with cities, because the complete statutory shield against annexation will be available by way of interlocking township agreements, without the clearly identified legislative goal of contractual annexations between cities and townships. This would be a mistake of immense proportions, because it would defeat the purpose in adopting Act 425, and it would allow the filing of pro forma Act 425 agreements between townships around every city in the state as a means of barring all petitions or resolutions for annexation before the Boundary Commission. Heralding this as the ultimate intent of the legislature based on the alleged "plain language" of MCL 124.29; MSA 5.4087(29) is utter nonsense.

The critical statutory language is:

While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract.

MCL 124.29; MSA 5.4087(29). Words left unexplained by the townships are "another method of". The Boundary Commission finds in these words a requirement that an "annexation or transfer" occur under Act 425 before "another annexation or transfer" is barred. In the absence of a contractual annexation according to Act 425 as envisioned by the legislature, there is no reason, legal or otherwise, to bar "another method of annexation or transfer".

All of the parties agree the word "annexation" is undefined within the text of Act 425, the SBCA, and the HRCA. The MTA argued in the Circuit Court for a definition limited to annexation of township territory to a city. This was curious, because the annexation in this case alleged to have occurred under an Act 425 contract barring "another method of annexation" by

the Boundary Commission was the annexation of township territory by another township! Annexation of township territory by another township truly is rare. It occurs under MCL 46.14; MSA 5.337, by way of a decision of the county board of commissioners.<sup>2</sup> The basic consequences are described in MCL 41.104; MSA 5.153.

If a township's boundary is altered by annexing a part of its territory to 1 or more townships, the township board of the township from which the territory is to be taken and the township board of the township or townships to which the territory is to be annexed shall jointly meet as soon as possible after the **annexation** and shall possess the powers provided in subsection (2).

MCL 41.104(3); MSA 5.153(3), emphasis added. If "annexation" in MCL 124.29; MSA 5.4087(29) only refers to annexation of township territory by a city, and does not include annexation of township territory by another township, then the complete statutory shield against annexation by a city in a proceeding before the Boundary Commission is not available to townships in this case. The MTA's arguments were modified for presentation to the Court of Appeals, to correct this logical inconsistency.

The townships read the "plain language" of MCL 124.29; MSA 5.4087(29) as a bar to the Boundary Commission order annexing township territory to the City of Richmond. The Boundary Commission reads the "plain language" of MCL 124.29; MSA 5.4087(29) as barring annexation when an Act 425 contract actually achieves a contractual annexation or transfer. The precise question not yet reached and answered by the Boundary Commission is whether or not an Act 425 agreement between two townships can provide the complete statutory shield against annexation of township territory to a city under any circumstance.

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<sup>2</sup> The Boundary Commission has no jurisdiction over the annexation of township territory by another township.

The Court of Appeals has offered a concise statement of the rules of statutory construction:

(1) when a statute is unambiguous, further construction is to be avoided; (2) if an ambiguity exists, the intent of the Legislature must be given effect; (3) a construction which best accomplishes the statutes' purpose is favored; (4) statutes are to be interpreted as a whole and construed so as to give effect to each provision; (5) specific words in a statute are given their ordinary meaning unless a different interpretation is indicated; and (6) respectful consideration is to be given to the construction of a statute used by those charged with its application.

Moreover, unless the construction of a statute by the body charged with administering it is clearly wrong or another construction is plainly required, this Court will accord deference to that construction.

*Citizens Disposal, Inc. v DNR*, 172 Mich App 541, 550-551; 432 NW2d 315 (1988). Undoubtedly MCL 124.29; MSA 5.4087(29) is susceptible to multiple interpretations, as demonstrated by the arguments in this agency appeal. The phrase "another method of annexation" implies that a contract under the act will involve or produce the annexation of territory. But what happens if the contract does not involve or produce annexation of territory in the first instance? **Does the absence of the implied condition, the contractual annexation of territory, prevent the otherwise automatic bar of "another method of annexation"?** And does the contractual transfer of territory between two townships constitute annexation by contract that precludes "another method of annexation" ordered by the Boundary Commission?

There is no answer to these questions that is plainly apparent from the language of the statute. This is traceable to the multiple connotations of the word "annexation" derived from the various contexts in which the word appears. It is a generic reference that can apply to the alteration of city, village, township, county, or school district boundaries by a variety of

procedures. The meaning most commonly ascribed to the word is the annexation of township territory to a city, but there is no definition in the SBCA, HRCA, or Act 425 to guide the Boundary Commission, the parties, and the Court of Appeals.

This is where it is helpful to ascertain the intent of the legislature and give effect to it. The House Legislative Analysis indicates the legislature was trying to solve a very specific problem. The legislature sought to provide authority and encouragement to cities and townships to negotiate their own contractual arrangement by which township territory could be annexed to a city, thereby avoiding Boundary Commission proceedings and preserving a portion of the tax base for the township. Absolute protection from petitions or resolutions for annexation submitted to the Boundary Commission was granted to townships to encourage them to enter Act 425 contracts that produced the arrangement worked out between Flint and Genesee Township.

Remembering the specific problem the legislature attempted to solve in enacting Act 425, it is perfectly clear

(1) annexation by contract must occur before another method of annexation is barred, and

(2) a contract between two (or more) townships that does not produce annexation of territory to a city, also does not bar another method of annexation by the Boundary Commission.

This construction of MCL 124.29; MSA 5.4087(29) gives effect to the intent of the legislature, and is consistent with the text of the statute. Cities and townships remain encouraged to work together to arrive at a contractual arrangement for annexation of territory to a city. Townships are discouraged from entering Act 425 agreements for the purpose of blocking all methods of

annexation of township territory to a city. Act 425 agreements between townships can be utilized for the purpose of economic development, but the complete shield from annexation ordered by the Boundary Commission is not available. To obtain that shield, the objective sought by the legislature must be achieved: the contractual annexation of township territory to a city.

This is the direction in which the Boundary Commission is headed. Unless the construction is clearly wrong, or another construction is plainly required, the Court of Appeals should accord deference to the Boundary Commission's construction of the statute.

Despite the argument by the townships for a literal construction of MCL 124.29; MSA 5.4087(29), this court should not interpret the statute literally where the interpretation would lead to a result clearly contrary to the legislature's intent.

It has long been the rule in Michigan that a literal construction of the words of a statute will not be given when contrary to the apparent intention of the legislature.

In ascertaining the intent of the lawmakers, where the language of a statute is of doubtful meaning, we may examine the conditions and circumstances surrounding its enactment.

*State Treasurer v Wilson*. 423 Mich 138, 144-145; 377 NW2d 703 (1985). Examining the conditions and circumstances surrounding the enactment of Act 425, and MCL 124.29; MSA 5.4087(29) in particular, there is overwhelming evidence of the legislature's intent to authorize annexation of township territory to a city by contract, and to protect the contracting township from another method of annexation ordered by the Boundary Commission. The statute should be construed and applied accordingly. The construction and application urged upon the Court of Appeals by

- the townships would frustrate the intent of the legislature in adopting Act 425, by encouraging townships to enter contracts effectively prohibiting annexation of township territory under Act 425 and the SBCA. This would be an absurd result, exacerbating the problem intended to be solved by the legislature!

### **THE DECISION OF THE BOUNDARY COMMISSION SHOULD BE AFFIRMED ON APPEAL**

Although highlighted by the issue of statutory construction presented by this case, the basic nature of this agency appeal remains defined by MCL 24.306(1); MSA 3.560(206)(1):

[T]he court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any one of the following:

- (a) In violation of the constitution or a statute.
- (b) In excess of the statutory authority or jurisdiction of the agency.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Not supported by competent, material and substantial evidence on the whole record.
- (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

The appeal focuses on the Boundary Commission's construction and application of MCL 124.29; MSA 5.4087(29), which is entitled to respectful consideration and deference by this court. At most, appellants can argue their construction of the statute is more accurate than the Boundary Commission's, because the plain language of MCL 124.29; MSA 5.4087(29) is the only evidence

of legislative intent to be considered. However, the argument collapses under its own weight when the plain language of the statute is given its full effect, and the intent of the legislature is determined by examining the actual problem the legislature attempted to correct. Therefore, the townships cannot demonstrate that the Boundary Commission's construction and application of MCL 124.29; MSA 5.4087(29) amounts to a "violation" of the statute requiring reversal. Even the existence of equally plausible interpretations of the statute is not a basis for reversing the Boundary Commission's decision under MCL 24.306(1)(a); MSA 3.560(206)(1)(a).

The jurisdiction of the Boundary Commission necessarily involves and includes the power to review and analyze Act 425 agreements within the procedural framework of adjudicating petitions or resolutions for annexation. Reversal under MCL 24.306(1)(b); MSA 3.560(206)(1)(b) would not be appropriate for the reasons explained at length in the first section of this brief.

Petitioners offer no significant claim or argument of "unlawful procedure" by the Boundary Commission, other than the protest over the refusal to deny the petition for annexation based on the Act 425 contracts. There is no reason to reverse under MCL 24.306(1)(c); MSA 3.560(206)(1)(c).

Appellants have not challenged the decision of the Boundary Commission because of an alleged absence of "competent, material and substantial evidence on the whole record," MCL 24.306(1)(d); MSA 3.560(206)(1)(d). The brief filed on behalf of the Boundary Commission



describes and quotes numerous facts in support of the Boundary Commissions' findings and decision. There is no reason to reverse under MCL 24.306(1)(d); MSA 3.560(206)(1)(d).

Although not specifically briefed as an abuse of discretion, or an unwarranted exercise of discretion, the petitioners' attack on the Boundary Commission's decision could be construed as a request for reversal pursuant to MCL 24.306(1)(e); MSA 3.560(206)(1)(e). Nevertheless, reversal is not warranted. The Boundary Commission's construction and application of MCL 124.29; MSA 5.4087(29) on the specific facts of this case fall well within the parameters of its powers as an administrative agency. An exercise in statutory construction by the administrative agency charged with the responsibility of hearing and deciding cases involving the statute should not be reviewed or reversed under MCL 24.306 (1)(e); MSA 2.560(206)(e).

Finally, there is no "other substantial and material error of law" warranting reversal under MCL 24.306(1)(f); MSA 3.560(206)(1)(f). The townships claim the Boundary Commission decision impairs, diminishes or destroys vested contract rights. Petitioners' primary complaint is that the Boundary Commission refused to find the townships protected by the complete statutory shield against annexation afforded by the application of MCL 124.29; MSA 5.4087(29). The statutory shield is not a term or condition of the Act 425 contract. Petitioners cannot contract for the receipt of a perceived legal benefit of a statute, and then bind an agency, tribunal or court to deliver the specific legal result. The collective ability or capacity to enforce the Act 425 contract(s) between the townships has not been diminished or impaired by the decision of the Boundary Commission.

The ultimate consequences of the order of annexation are not before this court, but some explanation is warranted. The townships argue that the Boundary Commission paid insufficient attention to the plans, goals, contracts, obligations and responsibilities of their units of local government, one aspect of which was the Act 425 agreement(s). All of these topics are embodied in the statutorily prescribed criteria to be considered by the Boundary Commission, MCL 123.1009; MSA 5.2242(9)m as quoted and described in the Boundary Commission brief, p 9. There is no indication, in the record or otherwise, that the Boundary Commission disregarded the statutorily prescribed criteria. Petitioners really are attempting to drag the Court of Appeals into a mass of political questions which are not within the standard of appellate review.

Resolution of a controverted annexation unavoidably involves political considerations and the exercise of a large measure of discretion. Evaluation of the record and of the commission's balancing of the criteria and determination of reasonableness implicates the merits of the proposed annexation and poses considerable risk of drawing the judiciary into the resolution of what continues to be - despite the adoption of the administrative format - essentially a political question.

No vested right or legally protected interest being involved, the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.

*Avon Township v Boundary Commission*, 96 Mich App 736, 748-749; 293 NW2d 691 (1980), quoting from *Midland Township v State Boundary Commission*, 410 Mich 641; 259 NW2d 326 (1977). In the *Avon Township* opinion, the Court of Appeals rejected the type of protests now being raised about the complications caused by a change in boundaries.

**[N]o person or township has any vested right or legally protected interest in the boundaries of governmental units, irrespective of inconvenience and burdens that may attend change in those boundaries.**

*Avon Township*, supra, p 751. The inconveniences and burdens visited upon the townships as a consequence of the change in boundaries are legally insufficient to prevent the order of annexation. This is not new law.

While there are elaborate statutory guidelines for dealing with the consequences of annexation, MCL 117.14; MSA 5.2093, and detachment, MCL 123.1 et seq; MSA 5.2221, et seq, the legislature has stated in unequivocal terms that:

The provisions of section 14 [MCL 117.14] shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

MCL 117.9(9); MSA 5.2088. The legislature has determined that the contractual rights and obligations of units of local government, such as those involved in providing municipal services, are not deserving of formal adjustment by the Boundary Commission in the course of approving a petition or resolution for annexation, in the absence of "outstanding bonds or other evidence of indebtedness". This categorization by the legislature of the rights or obligations of local units of government that require recognition and adjustment by the Boundary Commission forecloses further consideration of this issue by the court. If petitioners were of the belief the Act 425 agreements required some special adjustment by the Boundary Commission due to outstanding bonds or contracted indebtedness, then information on that point should have been submitted to the Boundary Commission. In the absence of such proof, the issues were not preserved for appellate review. In any event, the legislature's determination of how to deal with the consequences of an order of annexation by the Boundary Commission is conclusive, and not subject to attack in this appeal.

## CONCLUSION

The Boundary Commission properly exercised its jurisdiction and authority over petitions for annexation in construing MCL 124.29; MSA 5.4087(29) and applying the statute to the facts of this case, and determining the Act 425 agreements between Casco, Lenox and Columbus Townships were not an absolute bar to annexation ordered by the Boundary Commission.

The Boundary Commission's findings, determinations, and decision are supported by competent, material and substantial evidence on the whole record.

## RELIEF REQUESTED

The decision and order of the Boundary Commission should be affirmed.

Dated: 12/14/1999

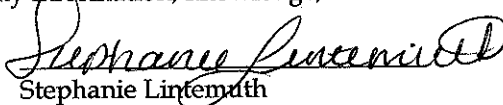


Eric D. Williams P33359  
Attorney for Amicus Curiae  
Michigan Municipal League

### PROOF OF SERVICE

On the date below I served by first class mail a copy of the Michigan Municipal League's Amicus Curiae Brief upon all parties of record herein at their respective addresses disclosed on the pleadings on 12/14/99. I declare the statements above are true to the best of my information, knowledge, and belief.

Date: 12/14/99



Stephanie Lintemuth

Wheatfield Township vs.  
Mich State Boundary Commission

June 6, 1995, Oral Argument

Before Judge Glazer

Accurate Reporting

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EXHIBIT

"A"

Wheatfield Township vs.  
Mich State Boundary Commission

Multi-Page™

June 9, 1995, Oral Argument  
Before Judge Glazer

Page 1

1 STATE OF MICHIGAN  
2 IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM  
3 Wheatfield Township, Circuit Court File  
4 No. 94-78685-AA  
5 Petitioner, HON. LAWRENCE M. GLAZER  
6 Michigan State Boundary Commission  
7 Respondent, Boundary Commission  
Docket No. 93-AP-1  
8  
9  
10 THE HONORABLE LAWRENCE M. GLAZER, CIRCUIT JUDGE  
11 ORAL ARGUMENT  
12 Lansing, Michigan - Friday, June 9, 1995  
13 APPEARANCES:  
14 Robert E. McCarthy and Associates ES  
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Township  
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On Behalf of the Intervenor-Respondent  
City of Williamston

Page 3

1 Lansing, Michigan.  
2 Friday, June 9, 1995.  
3 1:30 p.m.  
4 \* \* \*  
5 JUDGE GLAZER: Have you all agreed on how  
6 you are going to divide up the 45 minutes or do I need  
7 to do it?  
8 MR. WILLIAMS: We've divided it up.  
9 JUDGE GLAZER: You've all agreed, okay.  
10 You have to forgive me, this is the first time I've  
11 brought the computer in the courtroom and I'm trying to  
12 take my notes electronically today for the first time,  
13 so please bear with me when I have to delay. This case  
14 is -- what is the file number? I don't have my calendar  
15 here.  
16 MR. BAUCKHAM: The file number, Your  
17 Honor, is 94-78685-AA.  
18 JUDGE GLAZER: 78685-AA?  
19 MR. BAUCKHAM: 78685-AA.  
20 JUDGE GLAZER: Okay. And who will be  
21 arguing on behalf of the petitioners?  
22 MR. GOODENOUGH: Brian Goodenough on  
23 behalf of Wheatfield Township, Your Honor.  
24 MR. BAUCKHAM: I'm John Bauckham on  
25 behalf of Amicus Curiae, Your Honor, for the Michigan

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1 APPEARANCES CONTINUED:  
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3 Municipal & Military Division  
4 BY: GEORGE M. ELWORTH, ESQUIRE (723979)  
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9 State Boundary Commission  
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15 Association  
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20 On Behalf of Amicus Curiae Michigan Municipal  
21 League  
22  
23  
24  
25

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1 Township Association.  
2 JUDGE GLAZER: Thank you.  
3 MR. MCCARTHY: Robert McCarthy on behalf  
4 of Bonanza Development Company.  
5 MR. COX: Joseph Cox on behalf of the  
6 City.  
7 MR. ELWORTH: George Elworth on behalf of  
8 the Boundary Commission.  
9 JUDGE GLAZER: Thank you. I had most of  
10 you in here at least once before, some of you many times  
11 before, but I would appreciate it if you also will state  
12 your name when you get up to argue.  
13 Could you also tell me as you get up to  
14 argue how much time you've agreed that that person will  
15 be allocated. Who is going to argue first?  
16 MR. GOODENOUGH: I'm going to, Your  
17 Honor.  
18 JUDGE GLAZER: Mr. Goodenough, how much  
19 time have you been allotted?  
20 MR. GOODENOUGH: I'm going to attempt to  
21 complete in about 12 minutes, Your Honor.  
22 JUDGE GLAZER: Okay. Go ahead.  
23 MR. GOODENOUGH: Thank you, Your Honor.  
24 Brian Goodenough on behalf of Wheatfield Township. With  
25 me today is Mr. John Bauckham on behalf of the Michigan

1 Township Association.

2 This matter is before the court today  
3 pursuant to Wheatfield Township's petition for review of  
4 the state Boundary Commission's September 21st, 1994,  
5 order approving annexation of approximately 124 acres  
6 from Wheatfield Township to the City of Williamston.

7 Wheatfield Township asserts that the  
8 Commission's decision to approve annexation in this case  
9 is erroneous and should be reversed as a matter of law  
10 on the grounds that, number one, the State Boundary  
11 Commission is an administrative agency, it has exceeded  
12 its limited jurisdiction and then elected to review and  
13 rule on the validity of the Act 425 agreement between  
14 Wheatfield Township and Williamstown Township.

15 Number two, the Commission's findings and  
16 order are in direct violation of Act 425 which prevents  
17 the Commission from approving any annexation or transfer  
18 of property subject to a conditional transfer  
19 agreement.

20 Number three, the conditional transfer  
21 agreement in this case was valid and there was no  
22 competent material or substantial evidence on the record  
23 for this Commission to declare the agreement invalid.  
24 It's on these grounds that Wheatfield Township has  
25 requested a review of this court.

1 Your Honor, before we get into the actual  
2 facts of the case, I'd like to brief the court on the  
3 makeup of the Boundary Commission. In this case the  
4 Boundary Commission was composed of five laymen. Unlike  
5 most administrative agencies there are no administrative  
6 law judges that act as members of the Boundary  
7 Commission. Three of the five commissioners are  
8 appointed by the governor and sit on each Boundary  
9 Commission case decided in this state. The remaining  
10 two commissioners are appointed from the county in which  
11 the annexation proceeding is being requested. One of  
12 the members is from a city within the county, the other  
13 member is from a township within the county. These two  
14 members change on each proceeding, and we never have the  
15 same set of five people sitting on two occasions. The  
16 Commission is the administrative agency. It holds only  
17 that authority specifically granted by the state  
18 legislature or the constitution.

19 There are two statutes under which the  
20 Boundary Commission operates. The first statute, the  
21 State Boundary Commission Act, is the statute that  
22 created the Commission and empowered it with the right  
23 to approve or deny annexation in a Boundary Commission  
24 proceeding.

25 Under the State Boundary Commission Act

1 decisions made by the commissioners over whether to  
2 approve or deny annexation must be made in accordance  
3 with very specific criteria defined within that Act.  
4 The criteria are contained in Section 9 of the Act and  
5 deal with such items as population, anticipated future  
6 growth, et cetera. It is only after applying this  
7 criteria to the facts of the case that the Commission  
8 can make a decision.

9 The second and more specific statute that  
10 governs the Boundary Commission is known as Act 425 of  
11 1984. Under Act 425 two local units of government are  
12 allowed to enter into a conditional transfer agreement  
13 to assign jurisdiction either in whole or in part  
14 amongst themselves. The statute requirements for an Act  
15 425 agreement are contained within Act 425 itself.

16 Act 425 goes on to state that once two or  
17 more local units of government enter into a conditional  
18 transfer agreement, no other means of annexation or  
19 transfer can take place.

20 In this case, Your Honor, a petition was  
21 filed with the State Boundary Commission in March of  
22 1993. Before any decision was made upon that annexation  
23 petition, Wheatfield Township and Williamstown Township  
24 entered into a conditional transfer agreement under Act  
25 425. The Commission was made aware of the existence of

1 the conditional transfer agreement not only by  
2 Wheatfield Township but also by the Michigan Secretary  
3 of State Office of the Great Seal.

4 Rather than stopping annexation  
5 proceedings like they were required to do under Act 425,  
6 the Commission elected instead to take it upon itself to  
7 review the contents of the conditional transfer  
8 agreement and rule upon its validity and  
9 enforceability. Wheatfield Township contends that this  
10 is the first error of law in this case.

11 After reviewing the agreement, the  
12 Commission stated in its findings without any  
13 explanation whatsoever that the joint agreement for  
14 conditional transfer between Wheatfield Township and  
15 Williamstown Township is not within the scope of the  
16 annexation exemption of Section 9.

17 The Commission also stated, again without  
18 any explanation, the joint agreement for conditional  
19 transfer of property between Wheatfield Township and  
20 Williamstown Township is not of the character and  
21 quality to restrict the Boundary Commission's  
22 authority. Again, no explanation as to what character  
23 or quality means. Wheatfield Township asserts that this  
24 is the second error of law in this case.

25 Finally, Your Honor, the Commission

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1 declared the agreement invalid and approved annexation  
2 despite, plain if you are reading in Section 9, which  
3 prohibits them from doing so once this type of agreement  
4 is found to exist.

5 Addressing each of the arguments in  
6 order, Your Honor, the township asserts that it is an  
7 administrative agency, the State Boundary Commission  
8 does not have the authority to rule upon the validity or  
9 enforceability of a contract.

10 The agency has only that authority  
11 specifically granted to it by the legislature or by the  
12 constitution. Neither the constitution or the  
13 legislature in this case gives the Boundary Commission  
14 any authority to interpret contracts. This Commission  
15 is an administrative agency, it has no implied powers to  
16 interpret contracts.

17 As we set forth in our brief, Your Honor,  
18 Michigan case law has consistently held that authority  
19 to interpret contracts and adjudicate contractual rights  
20 must be left to courts of law or equity. In the absence  
21 of an expressed legislative conferral of authority on an  
22 administrative agency, the agency will generally lack  
23 the powers of court on equity.

24 JUDGE GLAZER: Well, what if someone  
25 files a paper and says this paper is called Section --

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1 Act, I'm sorry, Act 425 agreement, but the paper is  
2 blank, does the Commission have the authority to say  
3 wait a minute, this is blank, this is not a contract?

4 MR. GOODENOUGH: Your Honor, it's our  
5 position that any challenge from the Act 425 agreement  
6 would have to be brought to the circuit court. If the  
7 Commission were to attempt to rule on the enforceability  
8 of such a contract, then we believe it would have to  
9 look to the very specific criteria contained within Act  
10 425. Act 425 says that a contract only requires four  
11 provisions to be placed within it. Once the four  
12 provisions are in the contract, everything else is  
13 entirely permissible and negotiable between the two.

14 JUDGE GLAZER: So your answer is if it  
15 was blank they could look at that and they could say,  
16 yeah, that's blank so the four provisions aren't in it?

17 MR. GOODENOUGH: Correct.

18 JUDGE GLAZER: But if the four provisions  
19 are in it --

20 MR. GOODENOUGH: Then at that point --

21 JUDGE GLAZER: By definition --

22 MR. GOODENOUGH: At that point by  
23 definition, the 425, it's met the mandatory criteria.

24 JUDGE GLAZER: Now if there are four  
25 paragraphs in the contract and someone says to the

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1 Commission, well, these are the four provisions, can the  
2 Commission look beyond that person's conclusion to  
3 satisfy itself whether those are in fact the four  
4 provisions that must be entered?

5 MR. GOODENOUGH: Your Honor, we don't  
6 believe that this Commission has any authority --

7 JUDGE GLAZER: So your answer is no?

8 MR. GOODENOUGH: -- to construe a  
9 contract.

10 JUDGE GLAZER: So your answer is no?

11 MR. GOODENOUGH: Correct.

12 JUDGE GLAZER: So if I present them with  
13 a paper with four paragraphs in it and say this is an  
14 Act 425 agreement, see, it has four paragraphs, that's  
15 it, and it's been registered with the Secretary of  
16 State, that's it, they can't look beyond that?

17 MR. GOODENOUGH: That's our position.

18 JUDGE GLAZER: But I can, I can do it in  
19 this case, is your position?

20 MR. GOODENOUGH: Your Honor, this case,  
21 we believe that in order for this to have been  
22 challenged, it's a proceeding that could have been  
23 recognized by the petitioner for the city through the  
24 circuit courts itself. There is no indication in the  
25 record that this contract was ever disputed on any of

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1 those grounds or under the requirements of Act 425.

2 JUDGE GLAZER: So your answer is that I  
3 can't do it?

4 MR. GOODENOUGH: That it's not contained  
5 within the record of this case to show that this  
6 contract was materially available.

7 Your Honor, once the conditional transfer  
8 agreement has been filed with the Ingham County Clerk's  
9 office and the Secretary of State, the statute of 425  
10 says it is deemed prima facie evidence of its  
11 existence. There is absolutely no evidence on the  
12 record in this case --

13 JUDGE GLAZER: Excuse me, let me just  
14 back you up there.

15 MR. GOODENOUGH: Sure.

16 JUDGE GLAZER: Your position is that the  
17 Commission cannot construe a contract or look at the  
18 actual contents of a so-called agreement but that a  
19 court can in a proper case procedurally?

20 MR. GOODENOUGH: I believe so, Your  
21 Honor.

22 JUDGE GLAZER: So how do we get to a  
23 situation in your argument where a court can do that?

24 MR. GOODENOUGH: Your Honor, I believe  
25 that in the event that a 425 agreement was found to be



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1 on the record, the State Boundary Commission at this  
2 point has to stop all proceedings. If the petitioner or  
3 the city disputes the validity of that contract, then  
4 it's the petitioner's or the city's duty to bring that  
5 contract to this court; have the contract declared  
6 invalid.

7 JUDGE GLAZER: How do they do that?

8 MR. GOODENOUGH: The could file an action  
9 as possibly as a third-party beneficiary that suffered  
10 some detrimental effect due to the existence of this  
11 contract or on similar contract grounds or even simply a  
12 request for review by this court as to the validity.

13 But unless they commence their own  
14 proceedings, Your Honor, we don't believe the Boundary  
15 Commission can get to the point where it reviews a  
16 contract or interprets its validity.

17 JUDGE GLAZER: Go ahead.

18 MR. GOODENOUGH: Your Honor, Section 10  
19 of Act 425 says that once it's filed and certified, it  
20 is deemed prima facie evidence of its existence. To  
21 allow this Commission to interpret and rule on the  
22 validity of that agreement clearly would exceed the  
23 power of the administrative agency. Even if the  
24 administrative agency had the power to review these  
25 types of agreements, the state legislature has

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1 recognized that it needs to draw a line somewhere as to  
2 an administrative agency's powers. And in this case  
3 what the state legislature says is if it's filed it's  
4 deemed prima facie evidence that it's valid. Only in  
5 our opinion in extremely gross cases would the  
6 Commission be in a position to declare it invalid. In  
7 this case there's no such evidence on the record to even  
8 rise to that level. It clearly met all of the  
9 requirements contained within Act 425, and anything else  
10 after that was impermissible on the part of these  
11 particular parties.

12 Even if the Commission does have the  
13 authority to review the contract in this case, Your  
14 Honor, it's our opinion that there was no competent  
15 material or substantial evidence on the record made  
16 before this commission to declare it invalid.

17 The statutory requirements for Act 425  
18 are four and they are contained in the agreement. In  
19 Act 425 itself the agreement has to be for purposes of  
20 an economic development project. In this case the  
21 economic development project between Wheatfield Township  
22 and Williamstown Township is to provide for the  
23 protection of pollution against either surface water or  
24 ground water through the use of the sanitary sewer  
25 system.

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1 Williamstown Township has a sanitary  
2 sewer system in the ground. It's an operating system.  
3 Once the conditional transfer agreement went into effect  
4 the property transferred from Wheatfield Township to  
5 Williamstown Township. At that point it's part of  
6 Williamstown Township and they can connect their  
7 existing system and serve this piece of property as if  
8 they would any other portion within their township.

9 The Williamstown Township purchases its  
10 capacity from the City of Williamston. But it has  
11 purchased capacity and it has excess capacity, and  
12 Williamstown Township is in the position to use its  
13 excess capacity in any matter that it deems  
14 appropriate.

15 The location for the sewer hookup in this  
16 case, whether it be Williamstown Township or the City of  
17 Williamston, would be at the exact same place. So there  
18 is no detriment to the property owner in this case as to  
19 the cost of providing these services. The services are  
20 available and Williamstown Township has indicated its  
21 willingness to provide those services to this area.

22 JUDGE GLAZER: You got about a half a  
23 minute left, sir.

24 MR. GOODENOUGH: Your Honor, fortunately  
25 Act 425 is not as flexible as the petitioners in this

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1 case contend. Act 425 was passed out of fear by the  
2 legislature that cities weren't using annexation  
3 procedures as a means of merely gobbling up township  
4 property, that's the reason that it was passed. It  
5 offered townships an opportunity to plan for an orderly  
6 development without having to adhere to the ad hoc needs  
7 of individual property owners to the detriment of  
8 everyone else in their community.

9 Your Honor, there's simply no competent  
10 material substantial evidence on the record to support  
11 the allegation that this agreement is invalid. The  
12 Commission's September 21st, 1994, decision proving  
13 annexation was in direct violation of Public Act 425 of  
14 1994, the Commission failed to recognize the presumption  
15 of the validity of the agreement once it was certified,  
16 there was no competent evidence submitted at the time of  
17 hearing to rebut that presumption.

18 JUDGE GLAZER: Time is up, sir. Thank  
19 you.

20 MR. BAUCKHAM: May it please the court,  
21 John Bauckham for Amicus Curiae, Michigan Township  
22 Association.

23 JUDGE GLAZER: And how much --

24 MR. BAUCKHAM: I hope I can accomplish it  
25 in ten minutes. We would like to have a little bit of

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1 time for rebuttal to rebut what --

2 JUDGE GLAZER: You want to save some of  
3 your ten minutes for rebuttal, sir, that's fine, but I'm  
4 not going to expand everybody's time, I've got another  
5 matter that I have to hear today.

6 MR. BAUCKHAM: Well, Your Honor, Michigan  
7 Township Association believes that this case is a  
8 landmark case because of the issue of municipal  
9 cooperation to accomplish development projects as  
10 opposed to forced annexation which has caused a lot of  
11 anxiety and aggravation in the past.

12 It's interesting that the tables have  
13 somewhat turned in this case from historical positions  
14 of the parties in the past. And I'm looking at the  
15 Midland Township versus Boundary Commission case wherein  
16 the township in that case argued that the Boundary  
17 Commission Act was unconstitutional because of the title  
18 object provisions of the Michigan Constitution. And  
19 that the motive of the city in gerrymandering the  
20 boundaries to avoid a referendum by having multiple  
21 annexation petitions all under 100, and when you are  
22 under 100 there's no referendum. When all of them  
23 together were over 100, it was again a bad motive which  
24 made the contestable proceedings.

25 Today we have just the opposite. The

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1 cities are claiming the Act 425 is unconstitutional  
2 because of title object provisions and that the motive  
3 of the township somehow or other is bad and should be  
4 struck down because of the -- the contract should be  
5 struck down because of that motive. Well, in Midland I  
6 think those issues have been resolved.

7 For the convenience of the court I did  
8 prepare copies of the decisions from the Midland case  
9 and I have underlined or marked the provisions that I  
10 think are pertinent. Basically what the case is saying  
11 is that boundary adjustments are legislative matters.  
12 They are -- there's no vested rights or interest in  
13 remaining in one municipality over another and that  
14 there's no legally protected interest of people or  
15 municipalities with regard to their boundaries. That  
16 these matters are matters of state legislation and they  
17 can do as they will. They can eliminate municipalities  
18 if they wish to and they can adjust their boundaries  
19 according to their rules as they choose.

20 Well, they have done it in the case of  
21 Act 425. And they have provided a method of resolving  
22 economic development through cooperative conditional  
23 transfers as opposed to antagonistic annexation  
24 matters. And I realize the cities don't like this act.  
25 We didn't like the other act where they could

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1 gerrymander and avoid a referendum. But nevertheless,  
2 the remedy is not before the Boundary Commission, it's  
3 before the legislature to get the act amended.

4 The Michigan Municipal League was  
5 involved in the creating of this Act 425, as was the  
6 Michigan Township Association. That's shown in the  
7 briefs that have been submitted.

8 If there was some problem with the  
9 language of Act 425, it should have been handled in the  
10 legislature and not in a later date when the townships  
11 are utilizing that act in accordance with its  
12 terminology.

13 The Boundary Commission has indicated the  
14 character or quality of the agreement is not sufficient  
15 to eliminate their authority over annexation. I don't  
16 know what character and quality means. I don't know  
17 what that term is. It's not got a legal significance to  
18 me. They say that it is not within the scope of the  
19 annexation exemption of Section 9. This is their  
20 finding. I don't know what that means. That's a very  
21 generalized statement.

22 We think that the act complies fully with  
23 these -- the contract complies fully with the 425  
24 agreement. The opposing counsel may argue on the basis  
25 of the Shelby case against the Boundary Commission. In

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1 that case the issue was whether or not the township  
2 furnished adequate water and/or sewer service to the  
3 area involved which would allow them to be exempt from  
4 annexation under the Charter Township Act. That's  
5 another act that bears on annexation.

6 In that case there were a series of  
7 criteria that had to be met by a charter township in  
8 order to qualify for immunity. I think there certainly  
9 the Boundary Commission has the chance and opportunity  
10 and authority to look at those qualifications and see  
11 whether they are met or not. That's a factual issue.

12 In this case, Your Honor, 425 is a  
13 jurisdictional issue. They don't have any authority  
14 here to look at the qualifications of a contract. If  
15 there's a contract there that transfers conditionally  
16 territory from one municipality to another, their  
17 jurisdiction is eliminated. The end of the game.  
18 There's no discretionary authority in 425 as there was  
19 in the Shelby Township case and so I think that's very  
20 distinguishable from the case before the court today.

21 Certainly, there are many acts that bear  
22 upon annexation, not just the Boundary Commission Act.  
23 There's the Charter Township Act which has methods of  
24 annexation completely devoid of the Boundary Commission  
25 proceeding. There's Village Acts that have annexation

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proceedings without regard to Boundary Commission.

There's a Summer Resort Association Act which says you can't annex parts of the summer resort without the approval of two-thirds of the membership of that summer resort association, an inroad into the Boundary Commission's authority. There's detachment. Detachment is in effect annexation from a city to a township. That does not go through the Boundary Commission. There's nothing magic about the fact that Act 425 is such that it removes jurisdiction from the Boundary Commission. It's been done many times before as I mentioned and certainly has been done here.

We believe that the 425 Act has been a major step towards cooperative functioning of municipalities for the betterment of the individuals and property owners within the area and to avoid, as I say, the anxiety and the aggravation that's involved with annexation.

For that reason we think that the Boundary Commission in this case did not have jurisdiction, that if there is subsequent actions to contest that contract because it doesn't comply with the statute, that's not within the expertise of the Boundary Commission. They are laymen. The Boundary Commission are laymen, there's no magistrate, there's no legal

of the parcel. The owner indicated that the plans were not at all firm but that there was an intent to pursue the possibility of commercial or industrial development. That there was an industrial center adjacent to this parcel and the approval of the Boundary Commission was sought in this proceeding under the statutes that provided for the establishment of the Boundary Commission.

Based on the record that was presented to the Boundary Commission the annexation was approved by the Boundary Commission. We would ask that the court affirm that annexation decision and reject the challenges that have been made to it. As I understand the challenges, the challenges are basically based on Act 425 of 1984 as being a bar to this decision.

We would indicate to the court that there are two critical elements that are missing from the argument that has been made by the township. The first element that is missing and these both refer to Section 9 of Act 425, and with the court's indulgence I'll quote Section 9. It says that while a contract under this act is in effect, another method of annexation or transfer shall not take over any portion of an area transferred under the contract.

We would indicate to the court as we have

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lawyer on that Boundary Commission, they are laymen. And their authority in the Boundary Commission Act does not extend to legal decisions of this nature. And we ask that their jurisdiction be removed from this decision.

JUDGE GLAZER: Thank you, sir.

You have two minutes left, Mr. Elworth.

MR. ELWORTH: Thank you, Your Honor, my name is George Elworth, I'm appearing on behalf of the State Boundary Commission. I would indicate to the court that I plan to present an argument for approximately eight minutes and the balance of the time would be handled by the other counsel present.

We indicate to you that this is an annexation that was sought here by the owners of approximately 124 acres of land in the Williamston - in Wheatfield Township at the northwest quadrant of the I-96 interchange directly south of the City of Williamston. They are seeking to be annexed to the city. That annexation was sought to obtain services, particularly water from the city and sewer disposal services. And they were sought in spite of the higher tax levels that would be present in the city.

The owner indicated that in its view these services were necessary for the proper development

in our briefs that there are two elements that are missing from that. Number one, there is not in existence a contract under this act. And number two, no land has been transferred under a contract pursuant to this act.

As to the first point, whether there is a contract in effect under this act. This act requires that the transfer must involve a transfer of property for a period of time for the purpose of an economic development project. An economic development project is specifically defined in Section 1 A of the act and it is a definition of land and it's used in conjunction with existing or planned improvements suitable for use by an industrial or commercial enterprise, housing development, or for the protection of the environment.

We indicate to the court that while land was obviously there, there were no existing or planned improvements that could be reasonably determined on the basis of this record.

And to put this in focus, in preparing this argument I reviewed the brief of the township which said in their brief of December 20th, 1994, that this agreement, quote, Specifically provides for the construction and operation of sewer and water facilities to the area proposed for annexation.

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We submit to the court if you review the Act 425 -- the agreement between these two townships -- if you review that agreement you will find no requirement for the construction of water and sewer facilities. You will find no obligation on the part of any entity to construct those facilities. And the closest that the agreement comes is that it says that this agreement has the, quote, Potential to provide encouragement and assistance to economic development projects. But the agreement in and of itself requires no one to do anything with respect to the provision of water or sewer. For that reason it is clear that no land has transferred pursuant to this agreement.

JUDGE GLAZER: Let me ask a question, Mr. Elworth, to make sure I understand the facts. From what I've heard so far the owner of the land wants that land annexed to the City of Williamston?

MR. ELWORTH: That's correct.

JUDGE GLAZER: And the City of Williamston is willing to do that?

MR. ELWORTH: That is correct.

JUDGE GLAZER: But the two townships, the one in which the land has been situated and the adjacent township, have filed what they say is a contract, which obviously is opposed by the City of Williamston and the

evidence simply means that it creates a rebuttal presumption of a transfer of land.

And we think it's clear from the record that's established in this case that there has been no transfer of any land or of any jurisdiction because there is no water or sewer facility in that area either in existence or in any way demonstrably planned.

JUDGE GLAZER: So the act says that the filing of agreement or a paper called an agreement is prima facie evidence?

MR. ELWORTH: That's correct.

JUDGE GLAZER: And your argument is that the Boundary Commission can review the actual factual situation, including what it says on that piece of paper?

MR. ELWORTH: Absolutely. And for the reason that the act goes on to say in Section 9 that where there is a conditional transfer that no annexation shall take place. The Boundary Commission is charged with the duty of approving annexation and so it of necessity has to review the contract and determine whether or not a transfer has taken place and that review is done on a factual basis based on the record and the record here shows that no transfer has taken place.

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owner of the land, right?

MR. ELWORTH: That the contract is opposed?

JUDGE GLAZER: Right.

MR. ELWORTH: Well, the City of Williamston and as part of its participation in the proceedings indicated that it did not believe that this contract was a contract under Act 425 because it did not believe that it was for the purpose of --

JUDGE GLAZER: The City of Williamston is on your side of this case?

MR. ELWORTH: That's correct.

JUDGE GLAZER: And the owner is on your side of this case?

MR. ELWORTH: That's correct.

JUDGE GLAZER: That's all I wanted to know. Thank you.

MR. ELWORTH: Okay. The townships have argued that the filing of this agreement should have some special weight in this court and with the Boundary Commission because of the statement in Section 10 of Act 425 that the contract or a certified copy of the contract is facie evidence, that term is in the statute, of a conditional transfer. But as the court knows and the cases we've cited in our briefs, prima facie

In the Shelby Township case it was a very similar analogy. We believed in the Charter Township Act if a township organized as a Charter Township Act of 1978 meets certain criteria in connection with furnishing of water and sewer services and other types of services --

JUDGE GLAZER: One minute.

MR. ELWORTH: Thank you. -- then no annexation is to take place in that charter township. There is no reference in the Charter Township Act to any role of the Boundary Commission, but yet the Boundary Commission since 1978 has consistently taken on the responsibility of reviewing those situations and then determining whether or not the criteria were met. The courts have reviewed those determinations. The most recent example of that is the landmark decision in the Shelby Township case approving the annexation in Shelby Township.

We have indicated a number of other arguments in our brief, but I think that unless the court has questions that sums up the essence of our position.

JUDGE GLAZER: Thank you.

MR. MCCARTHY: Your Honor, Robert McCarthy, I represent the property owner, Bonanza

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1 Development Company, which is a Michigan copartnership.  
2 That copartnership has owned this property located at  
3 the Williamston exit --

4 JUDGE GLAZER: Excuse me, sorry, to  
5 interrupt, but I need to know how long you are  
6 allocated?

7 MR. MCCARTHY: Five minutes, Your Honor,  
8 and I hope to finish before that.

9 JUDGE GLAZER: Okay.

10 MR. MCCARTHY: They do own 124 acres near  
11 the corner of I-96 and Williamston Road. It's zoned for  
12 agricultural purposes and currently used for  
13 agricultural purposes. They rented to a farmer who  
14 plants corn on that farm. The rent they receive from  
15 that does not even cover the taxes that they currently  
16 pay to Wheatfield Township. We have a piece of property  
17 which is, for all practical purposes, a dinosaur unless  
18 and until we can have services such as sewer and water.

19 And my client, even though he would pay  
20 more taxes by moving his property to the City of  
21 Williamston, wants to have his property located in the  
22 City of Williamston because Bonanza Development Company  
23 believes that's the only realistic chance of having  
24 sewer and water services made available is through the  
25 annexation which has been approved by the Boundary

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1 Commission.

2 I'd like to discuss the 425 Act --

3 JUDGE GLAZER: Excuse me, just a second.  
4 I'm just interested in that last statement. Why does as  
5 far as the record is -- if it's already been decided in  
6 the record you can, why does the owner believe that  
7 there's a better chance for a sewer and water hookup in  
8 the near future with the city than with either  
9 township?

10 MR. MCCARTHY: All right. I have -- this  
11 is part of the record and perhaps it's not easy to see  
12 from where the judge is sitting. But Grand River Avenue  
13 runs this blue line here which is also the water line.  
14 And Williamston Road is this corridor on the right-hand  
15 side of the map that I'm showing to the court and I-96  
16 is down here.

17 My client's property is located there at  
18 the intersection of I-96 and Williamston Road which is  
19 the main north-south thoroughfare through Williamston.  
20 Linn Road runs parallel to Grand River Avenue.

21 The City of Williamston has sewer and  
22 water services indicated by the blue and red lines part  
23 of the way up Williamston Road to my client's property  
24 and has plans which are located, which are shown in pink  
25 here, sewer services that would serve my client's

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1 property, has estimates for those plans and is ready to  
2 start construction, as I believe Mr. Cox will talk about  
3 shortly, for these services. The plans are developed  
4 and part of the record.

5 This distance between where the current  
6 services end and where my client's property starts is  
7 significantly less than the distance from Williamstown  
8 Township which is where services currently exist which  
9 Mr. Goodenough was talking about and my client's  
10 property for Williamstown Township's currently existing  
11 services to service my client's property it would --  
12 their lines would have to come down Corwin Road and  
13 across Linn Road. And the reason that that's important  
14 is that the Corwin/Linn Road access for those services  
15 to my client's property is in excess of two miles and it  
16 covers a thoroughly agricultural area. None of those  
17 farmers are going to want to hook up to the sewer and  
18 water services to allow the access of those sewer and  
19 water lines to my client's property. It's virtually  
20 impossible for those lines to service my client's  
21 property.

22 JUDGE GLAZER: You've answered my  
23 question. Thank you.

24 MR. MCCARTHY: Okay. And that dovetails  
25 into the only other point that I want to make which is

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1 under Act 425, which is MCL 125.21 A, that act permits  
2 two or more local units to enter into -- I'm sorry, to  
3 transfer property for purposes of an economic  
4 development project. And it defines what an economic  
5 development project is. And it says that it means land  
6 in existing or planned improvements suitable for use for  
7 industrial or commercial or housing projects.

8 Mr. Elworth said that based on reading  
9 the contract there's no requirement for planned  
10 improvements and I agree with that. Mr. Goodenough may  
11 come back and try to say that there's an existing sewer  
12 and water line, which is suitable for development of  
13 this big particular piece of property. But as I've  
14 shown you, the only existing lines are virtually  
15 impossible to hook up to my client's property in any  
16 realistic time frame. There would have to be  
17 development of the Linn/Corwin Road corridor and that  
18 just isn't likely to occur in any realistic time frame.

19 So the decision of the State Boundary  
20 Commission that this 425 agreement isn't of the type or  
21 character required to terminate the jurisdiction of the  
22 State Boundary Commission is, in fact, exactly what the  
23 facts show and exactly what the facts were that were  
24 presented.

25 JUDGE GLAZER: Thank you. Off the

1 record.

2 (Discussion had off the record.)

3 JUDGE GLAZER: How much time have you  
4 been allotted?

5 MR. COX: About five minutes. I don't  
6 intend on taking up that much time. Joseph K. Cox on  
7 behalf of the City of Williamston. As indicated, the  
8 City of Williamston is on the side of the Boundary  
9 Commission, although we did not ask to have this  
10 property annexed. We just support the Commission's  
11 request to do so. The city, of course, does that  
12 because, number one, they would like the property of the  
13 city. Number two, they are the entity most logical and  
14 most likely to be able to provide the services that the  
15 property owner wants. And they don't want to make  
16 sense.

17 Now the city's argument is pretty simple,  
18 I laid it out in my brief. We think this is not so much  
19 the blank paper but the sham. We think this agreement  
20 is nothing. And we base that upon a number of factors,  
21 and I've outlined those and specified them in my brief.

22 And I think that, Judge, what you need to  
23 look at is the circumstances in which and how the  
24 agreement was negotiated, the background of the  
25 negotiations, when it was presented to the Commission,

1 about Williamstown?

2 MR. COX: Williamstown.

3 JUDGE GLAZER: Not Wheatfield?

4 MR. COX: Yes. There is no agreement  
5 between the city of Wheatfield at all. Williamstown  
6 Township agreement as Mr. --

7 JUDGE GLAZER: Williamstown is the entity  
8 to which this property is to be transferred under the  
9 proposed agreement, under the agreement they say they've  
10 entered into?

11 MR. COX: Well, what they've  
12 transferred. The only thing they've transferred was the  
13 jurisdiction to put water and the sewer, but yes, that's  
14 correct.

15 JUDGE GLAZER: That's what I mean.

16 MR. COX: What they say is we're going to  
17 provide water and sewer by extending the agreement we  
18 have with the city for sewer and they don't say anything  
19 about water but that's what the agreement says, by  
20 taking our water line down here and running it down to  
21 service this property.

22 And as pointed out in the briefs, in  
23 order to do that, number one, they have to have ability  
24 under the contract to provide that service. The city  
25 maintains, and I think we are correct, that in order to

1 and the totality of the circumstances. It has been  
2 really emphasized here, probably most importantly you  
3 have to really look at the substance of it which is  
4 exactly what the Boundary Commission did because they  
5 have a right to look at the contract. They could look  
6 at it to determine whether or not -- in fact, they are  
7 divested jurisdiction. And that's what we've all done.  
8 We took a look at it and it says it's supposed to  
9 provide water and sewer.

10 Now, the township's attorney only  
11 mentioned in his argument that it's possible for  
12 Williamstown Township to provide sewer. He said nothing  
13 about water because they don't own the water system.  
14 They have none. The city has the water tower, it's got  
15 a water line almost to this property. And significantly  
16 the only planned method, the only method in which they  
17 could deliver planned sewer would be to somehow stretch,  
18 and I mean really stretch the agreement that the  
19 township, Williamstown Township, not Wheatfield,  
20 Williamstown Township to the north there has with the  
21 city for sewer.

22 Now the record has evidence indicating  
23 the city's position with regard to the capacity of  
24 available sewer to the township under that agreement.

25 JUDGE GLAZER: Sorry, you are talking

1 do that they would have to have the consent of the  
2 city. The city is not going to consent to the extension  
3 of their sewer system in that new method.

4 Number two, they don't really have the  
5 capacity available to service the George property or any  
6 of that property. There's evidence in the record to  
7 indicate that.

8 Furthermore, as Mr. McCarthy pointed out,  
9 they would have to bring the line so far away we don't  
10 think really the planned improvement they have is real.  
11 It's a sham itself. There is no real present ability  
12 for those two governments through Williamstown Township  
13 to do that.

14 So what it all boils down to is it's  
15 nothing more than the ability to block any annexation  
16 whatsoever of any of that property to the city, under  
17 any method whatsoever. And that's the only purpose of  
18 the agreement and that's what the Boundary Commission  
19 saw and that's why they ruled in favor of the property  
20 owner for annexation of the city. Thank you.

21 JUDGE GLAZER: Thank you. Now, I think  
22 Mr. Bauckham reserved a couple minutes for rebuttal.

23 MR. WILLIAMS: Judge, although I guess  
24 people didn't leave me much time on behalf of the  
25 League. I'd like maybe one minute on the statute.

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1 JUDGE GLAZER: All right. I thought I  
2 only saw five hands go up.  
3 MR. WILLIAMS: No. They were going to  
4 try and give me whatever time was left.  
5 JUDGE GLAZER: All right. And your name,  
6 sir?

7 MR. WILLIAMS: Eric Williams on behalf of  
8 the Michigan Municipal League.

9 JUDGE GLAZER: Go ahead, sir.

10 MR. WILLIAMS: Judge, going back to the  
11 statute, I think the crux of the whole case is right  
12 there in subsection 9, and I'm just going to address  
13 that for a moment.

14 What we're talking about in theory, when  
15 one contract is in place it achieves annexation, there  
16 isn't any other method of annexation. Now I've inserted  
17 the word achieves annexation, a phrase in there.

18 You've got a city and an adjoining  
19 township. Under the MTA's construction of this act what  
20 they want to be able to tell you and what they are  
21 trying to tell you is if these two townships enter into  
22 a 425 agreement for handling a recycle program for this  
23 area and that area, they can do reciprocal ones any way  
24 they want to do it. So they can handle from both jugs.

25 Under that analysis if people in this

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1 area of the township need to get annexed to the  
2 adjoining city, assume this is a city for a moment,  
3 because they can't get sewer and water, they can't get  
4 anything else, they are precluded, completely barred,  
5 annexation cannot occur. That's what they are telling  
6 me Act 425 means. Any kind of economic development  
7 project under Act 425 between two townships adjoining a  
8 city is an absolute bar to the annexation. That's their  
9 analysis.

10 Judge, that takes the whole history of  
11 the statute, turns it on its head. They attacked my  
12 brief with some vitality, I guess they are certainly  
13 entitled to do that because they have sort of made light  
14 of the way I do talk about the two words, or transfer.

15 There is another type of transfer  
16 envisioned there that that Act is designed and that  
17 language is designed to prohibit it. This is township  
18 one, this is township two, this is township three.  
19 Township one and two have entered into a 425 agreement  
20 taking this piece, township one, putting it under the  
21 jurisdiction of township two. Township two goes to  
22 township three, transfers jurisdiction to township three  
23 without township one. That's barred.

24 That's the other transfer. They didn't  
25 want to tell you about it. It's probably never going to

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1 occur, it's not a big issue. They put the burden on me  
2 to try and explain to you what the words "or  
3 transferred" could mean, it could be barred under the  
4 statute, prohibiting a transfer.

5 You can't overlay those things.

6 Especially you can't overlay them in a way that's going  
7 to deprive jurisdiction if there is no township or  
8 entity over to a third one or one up here or another  
9 city. That's what that language means.

10 Why is it that it shouldn't be  
11 interpreted that way? You have to remember that the  
12 legislature looked for a win-win in the 425. They said  
13 we got a city over here, a township over here, they want  
14 to take some township territory and put it in the city.  
15 Wonderful. Formal annexation deprives the township of  
16 any portion of this tax base.

17 Act 425 allows them to contract part of  
18 the tax base will stay there. Good incentive for the  
19 township.

20 How do we protect the township from  
21 turning around three years later and having the city  
22 file an annexation petition and say we already provide  
23 all the services to that area under this agreement? We  
24 give them a shield.

25 When you do a 425 between the township

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1 and the city and the city tries to provide the services  
2 under the agreement, the city's then precluded, barred  
3 from using that 425 agreement as ammunition to go to the  
4 Boundary Commission and achieve annexation five or ten  
5 or fifteen years later after they provided services and  
6 after the township has thought it was going to be a part  
7 of its tax base back. You can't have the city go and do  
8 that and use it against the townships.

9 JUDGE GLAZER: All right. Sir, your time  
10 is up. Thank you.

11 I don't know if you reserved any time.  
12 You've got two minutes, three minutes.

13 MR. BAUCKHAM: Your Honor, in response to  
14 the arguments that were made, the bottom line is that  
15 this is a valid 425 agreement. It does provide for an  
16 economic development project as defined under Section 1  
17 of Act 425. It provides for the protection of the  
18 ground water and surface water and the avoidance of  
19 pollution.

20 We do have the means of providing the  
21 type of system that we explained. In contrary to the  
22 arguments made by counsel, we don't need to follow this  
23 long pattern which they've suggested in this case.

24 Williamstown Township has the ability  
25 under its contract to book into the city's system at any

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1 location adjacent to the township. Your Honor, we would  
2 hook into the City's system at the exact place that the  
3 city would hook into its system. The only difference  
4 being that we would come down the west side of the road  
5 which is Williamstown Township and the city would go  
6 down the east side of the road which is the City of  
7 Williamston. That's the only difference as far as  
8 location of the system. Your Honor.

9 JUDGE GLAZER: Do you agree that you have  
10 to have the city's permission to extend this?

11 MR. BAUCKHAM: No, Your Honor, we do not  
12 agree. The city has contracted with Williamstown  
13 Township for a certain amount of capacity. Once this  
14 conditional transfer agreement went into effect, this  
15 property became Williamstown Township. Williamstown  
16 Township can provide those city services up to its  
17 capacity to any portion within its jurisdiction.

18 JUDGE GLAZER: You are talking about  
19 sewer here, right?

20 MR. BAUCKHAM: I am talking about sewer,  
21 Your Honor. We do have a contract with the city as well  
22 for water. We are not currently using that.

23 JUDGE GLAZER: You don't have your own  
24 water?

25 MR. BAUCKHAM: That's correct, Your

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1 Honor. We have a contract with the city just like we do  
2 with the sewer. At this point we are not providing  
3 water. However, the contract as far as water is  
4 concerned would operate in the same fashion as it would  
5 with regard to the sewer. We are just not utilizing  
6 that at this point.

7 We do have access capacity in this  
8 system. Counsel for the city admitted that in the  
9 Boundary Commission proceedings wherein he indicated  
10 that they have 25 percent access capacity in our  
11 existing system. We can use that capacity anywhere  
12 within Williamstown Township that we choose, Your  
13 Honor. And once this conditional transfer agreement  
14 went into effect, that property became Williamstown  
15 Township property.

16 The agreement in this case meets the four  
17 statutory criteria. Everything from that point forward  
18 is merely permissible on the part of the communities.  
19 They can contract for as much jurisdiction or as little  
20 jurisdiction as they want. There is no substantial  
21 evidence on the record in this case to rebut the  
22 statutory presumption that the contract is deemed to be  
23 prima facie invalid, and we assert that it is a valid  
24 contract and whether this might be something to be  
25 reviewed or not, it's still valid.

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1 JUDGE GLAZER: Thank you. I want to take  
2 a few minutes in chambers and come back out and give you  
3 a decision. I hope within 15 minutes at the most.

4 (A short recess was taken.)

5 JUDGE GLAZER: It is my conclusion that  
6 the Boundary Commission does have the authority to  
7 review all of the facts surrounding a purported  
8 conditional transfer agreement and to make a finding as  
9 to whether those facts trigger Act 425's presumption or  
10 not.

11 This is so, among other reasons, because  
12 Section 30 of Act 425 refers to the filing of a reported  
13 conditional transfer agreement as quote, Prima facie  
14 evidence of the conditional transfer, close quote. By  
15 definition prima facie evidence may be rebutted.

16 And it's my opinion that the Boundary  
17 Commission is the administrative body before which the  
18 legislature intended to be rebutted if it could be. In  
19 this case the Commission determined that that prima  
20 facie evidence was rebutted. And I cannot say that on  
21 the evidence and the documents before them that I would  
22 have reached a conclusion.

23 They concluded that the purported  
24 conditional transfer was a sham designed to deprive the  
25 Boundary Commission of the jurisdiction. And it appears

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1 to the court that it was indeed a sham, as there was no,  
2 quote, existing or planned improvements, close quote,  
3 described or contemplated specifically in the purported  
4 agreement; therefore, the Boundary Commission prevails  
5 in this administrative appeal.

6 Who will volunteer to draft the order?

7 MR. MCCARTHY: I will, Your Honor.

8 JUDGE GLAZER: Thank you for the good  
9 advocacy all the way around.

10 MR. MCCARTHY: Thank you, Your Honor.  
11 (Proceedings concluded at 2:40 p.m.)  
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## STATE OF MICHIGAN

## IN THE 31ST CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

TOWNSHIP OF CASCO,  
TOWNSHIP OF COLUMBUS, and  
TOWNSHIP OF LENOX, all being  
Michigan Municipal Corporations,

Petitioners,

v.

File No. K98-000886-AA  
HON. DANIEL J KELLY

MICHIGAN STATE BOUNDARY COMMISSION,  
Respondent,

and

CITY OF RICHMOND, a Michigan Municipal  
Corporation, and WALTER K. WINKLE, and  
PATRICIA A. WINKLE,  
Intervening Respondents.

## OPINION

This case comes before the Court on appeal from the decision of the Michigan State Boundary Commission approving the petition of the owners of approximately 157 acres of land to be annexed to the City of Richmond from portions of Lenox Township in Macomb County and the townships of Columbus and Casco in St. Clair County.

At issue is the effect of an agreement between the townships under Act 425 of 1984 (MCL 124.21 et seq.; MSA 5 4087(21) et seq.) upon the jurisdictional authority of the Boundary Commission.

The townships, as petitioners before this Court, argue that once an Act 425 Agreement is in place, the Boundary Commission is divested of jurisdiction and may not consider a request for annexation. This position is supported by the Michigan Township Association, which appears *amicus curie*. The Boundary Commission, together with the intervening respondents, the City of Richmond and landowners Walter and Patricia Winkle, assert that the filing of an Act 425 Agreement is only *prima facie* evidence of compliance with the statute. Because it is not conclusive as to the issue, the Boundary Commission, as a legislative agency, has the inherent authority to consider evidence rebutting that presumption before concluding that a filing has preempted its jurisdiction over the petition. This position is supported by the Michigan Municipal League, which also appears in this action *amicus curie*.

This question has not been addressed beyond the Circuit Court level in this State. As a result, there is no binding caselaw directly on point. Accordingly, the resolution of this issue must be made by application of recognized principles of statutory construction, including consideration of the legislative history of the act. Under such analysis, this Court finds that the Boundary Commission is authorized to consider and determine the validity of purported Act 425 Agreements when reviewing petitions for annexation.

The next issue becomes the adequacy of the conclusions reached by the Boundary Commission in deciding that the Act 425 Agreement between these townships was insufficient to bar annexation proceedings. In this case, the Boundary Commission conducted extensive hearings and made detailed findings leading to the conclusion that the Act 425 Agreement in this case was insufficient and contrary to statutory intent. As a result, it determined that its jurisdiction was not preempted by the purported agreement. Upon review of the record, this

Court finds that the Boundary Commission's determination in this regard is supported by competent, substantial and material evidence. Therefore, the orders promulgated in furtherance of that decision should be affirmed.

The rationale for these determinations by this Court will be discussed, in detail, beginning with a brief statement of the factual background of the case.

### Factual Background

On November 22, 1995, Columbus and Lenox Townships filed their Act 425 Agreement with the St. Clair County Clerk and, on January 10, 1996, Casco and Lenox Townships filed a copy of their Act 425 Agreement with the St. Clair County Clerk in accordance with MCL 124.40; MSA 5.40879(30). The identical documents were also filed with the Macomb County Clerk and the State of Michigan, Secretary of State, Office of the Great Seal. Thereafter, Walter and Patricia Winkle as well as other owners of land in Casco and Columbus Townships filed a petition with the Boundary Commission on July 24, 1996 seeking annexation of 157 acres of land into the City of Richmond pursuant to the State Boundary Commission Act, 1968 PA 191, MCL 123.1001 et seq; MSA 5.2242(1) et seq. On August 8, 1996, the annexation petition was found to be legally sufficient by the Boundary Commission. After the appropriate public and adjudicative hearings were held, the Boundary Commission approved its Findings of Fact on November 25, 1997 wherein it found that the Act 425 Agreements were not a bar to the annexation petition. On March 4, 1998, the Director of the Department of Consumer and Industry Services signed an Order approving the annexation. The three townships appealed the Boundary Commission's decision.

### Conclusions of Law made by the State Boundary Commission

The townships submit that section 9, MCL 124.29, MSA 5.4087(29), precludes any annexation to occur while a valid Act 425 Agreement is in effect. This section states that: "While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract." MCL 124.29, MSA 5.4087(29). The townships argue that this wording unambiguously disallows the City of Richmond from annexing any portion of the land which is subject to the Act 425 Agreements.

The respondents in this appeal point to the next paragraph in the Act, MCL 124.30; MSA 5.4087(30) which states that "the contract or a copy of the contract certified by that county clerk or by the secretary of state is prima facie evidence of the conditional transfer." It is argued that contrary evidence can be offered to rebut the conclusion that a contract under this act is an "actual" transfer. If no actual transfer akin to annexation has occurred, then the Act 425 Agreement should not bar annexation. To hold otherwise, it is submitted, would be contrary to the purpose of the legislation itself. To understand this argument, it is necessary to consider the legislative history of this act.

Act 425 was initiated in the 1984 legislative session as House Bill 4995. An understanding of the intent of this act can be gained from a review of H.B. 4995, Substitute H-3, first analysis, June 11, 1984. The circumstances which prompted this legislation occurred in 1979 when officials at the General Motors plant in Flint wanted to expand their plant. Since there was no vacant land in the city of Flint, General Motors pursued an option of obtaining a vacant industrial park in Genesee Township. The city and the township developed a contractual arrangement whereby the township would transfer the land to the city in exchange for a share in

the tax revenue. See House Bill 4995. Although this arrangement never took effect because of the recession, this situation presented an opportunity for a law to emerge.

The intent behind the statute was to create a method in which "two or more local units of government could, by mutual agreement, authorize the conditional transfer of property for the purpose of an economic development project in the unit to which the property is to be transferred." House Bill 4995. The economic development project was for land or existing or planned improvements to be used by an industrial or commercial enterprise. The agreement had to be in writing and could not exceed 50 years, however, the terms could be renewed. The arguments in support of the bill demonstrate that annexation is normally problematic, "with townships often feeling prey to cities seeking to expand their tax bases." House Bill 4995

The Court determines that the legislature intended 1984 PA 425 to advance agreements primarily between cities and townships. Furthermore, section 9 was added to the statute in order to protect townships from cities taking more land than agreed upon by annexation through petition to the Boundary Commission. The legislature was aware that this could occur, causing more risks to the townships, and therefore determined that section 9 was necessary to induce townships to enter into these agreements without strong hesitation.

Notwithstanding this fact, more townships have been entering into Act 425 Agreements with each other than with cities. While it is not always the case, oftentimes, townships have used section 9 simply to shield them from annexation petitions of the cities. This position does not advance the legislature's intent. The effect of interpreting section 9 to preclude all annexations would be to encourage townships to enter into these agreements to effectively "keep out" annexing cities. Clearly, the intent of the legislature was to encourage local units to enter into

contracts which promote "economic development projects," not use the agreements as weapons against annexation by cities.

In fact, arguments presented during this appeal demonstrate that such a hidden agenda may have been part of the reason why these townships entered into their Act 425 Agreement. Although efforts were painstakingly made to avert being seen as an overt sham, the real motivation may have been disclosed by the following comments from an attorney representing one of the townships.

However, since the Boundary Commission knows why Lenox Township cannot commit to a specific timetable for sewers, it is wrong for the Boundary Commission to deny that the agreement is a valid Act 425 Agreement on that basis. If that were the case, then no two townships could ever enter into an Act 425 Agreement in an attempt to keep a nearby municipality from annexing their property.

Township of Lenox Supplemental Brief, p. 8 (Emphasis added). Unfortunately, this statement demonstrates to the Court that, in this particular instance, the townships indeed may have utilized the Act 425 Agreements as a type of "shark repellent" in order to ward off any attempts by municipalities to annex a portion of the Townships. This purpose is clearly contrary to the intent of a statute designed to promote "economic development projects."

A collateral issue on this point is the authority of the Boundary Commission to make the determination as to whether or not a purported agreement divests it of jurisdiction to proceed to annexation. A court ruling had not been sought in advance and the issue is jurisdictional. In order to analyze this issue, the role and purpose of the Boundary Commission needs to be addressed.

The State Boundary Commission Act, 1968 PA 191; MCL 123.1001 et seq; MSA 5.2242(1) et seq., provides the procedural background for the Boundary Commission functions.

In particular, section 11a of the Boundary Commission Act states, "The Commission shall have jurisdiction over petitions or resolution for annexation as provided in section 9 of Act No. 279 of the Public Acts of 1909, as amended." MCL 123.1011a, MSA 5.2242(11a) The reference to section 9 is to the Home Rule Cities Act, 1909 PA 279, MCL 117.9, MSA 5.2088 which provides the Boundary Commission authority for "determining the validity of the petition or resolution" for annexation. The Boundary Commission is charged with "processing and approving, denying or revising a petition or resolution for annexation." MCL 117.9(2); MSA 5.2088(2) In determining the reasonableness of a proposed annexation, the Boundary Commission considers the criteria set forth in MCL 123.1009; MSA 5.2442(9).

The caselaw further clarifies the Boundary Commission's authority with regard to annexation. The Michigan Supreme Court has held that

The annexation question is essentially political, and political consideration cannot be avoided whether the power is exercised by the Legislature itself or by an authority to which the power is delegated. The ultimate decision will be a value judgment based on the particular facts and circumstances of the annexation under consideration.

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Resolution of a controverted annexation unavoidably involves political considerations and the exercise of a large measure of discretion. Evaluation of the record and of the commission's balancing of the criteria and determination of reasonableness implicates the merits of the proposed annexation and poses considerable risk of drawing the judiciary into the resolution of what continues to be—despite the adoption of the administrative format—essentially a political question.

No vested right or legally protected interest being involved, the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.

*Midland Twp v State Boundary Comm'n*, 401 Mich 641, 673-74 (1977).

The Michigan Supreme Court has also more recently addressed the authority of the Boundary Commission. The Supreme Court concluded that the Boundary Commission did not

exceed its statutory authority when it did not interpret the Charter Township Act to read that Shelby Township was excluded from annexation because it met all the requirements of MCL 42.34(1); MSA 5.46(34)(1). *Shelby Charter Township v State Boundary Commission*, 425 Mich 50, 77 (1982).

While recognizing that the ruling of one Circuit judge is not binding upon another, it is worth noting that the only other time that this issue has been contested, it was decided that the Boundary Commission had jurisdiction to determine whether a purported Act 425 Agreement was controlling. The Honorable Lawrence M. Glazer of the Ingham County Circuit Court presided over a case that raised the same question. After hearing the arguments presented he stated, "It is my conclusion that the Boundary Commission does have the authority to review all of the facts surrounding a purported conditional transfer agreement and to make a finding as to whether those facts trigger Act 425's preemption or not." See *Wheatfield Township v Boundary Commission*, Case No. 94-78685-AA, Transcript of Oral Argument, June 6, 1995, p. 43.

Similarly, this Court has reached the same conclusion. While it true that the Boundary Commission is not a court, administrative agencies are allowed "to interpret the statutes they are bound to administer and enforce." *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 696 (1995). It is logical that the Boundary Commission should have the power to interpret the statutes in order to best serve its function. Consequently, in light of all the foregoing, the Court determines that the Boundary Commission did have jurisdiction and authority to decide whether the Act 425 Agreements were valid.



### Findings of Fact made by the State Boundary Commission

Even in light of the foregoing conclusions, the Court is required to review the Boundary Commission's decision pursuant to MCL 24.306; MSA 3.560(206). This section states.

(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

- (a) In violation of the constitution or a statute.
- (b) In excess of the statutory authority or jurisdiction of the agency.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Not supported by competent, material and substantial evidence on the whole record.
- (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

MCL 24.306(1); MSA 3.506(206)(1). After review of the record and these factors, the Court determines that the Boundary Commission's decision should be affirmed.

As discussed in the above section, the Boundary Commission has not made a ruling which is in violation of the statutes involved in this case nor has there been any exceeding of the statutory authority or jurisdiction of the Boundary Commission. MCL 24.306(1)(a) and (1)(b); MSA 3.560(206)(1)(a) and (1)(b). There has also been no showing that the Boundary Commission performed an unlawful procedure resulting in material prejudice to the Townships. MCL 24.306(1)(c); MSA 3.560(206)(1)(c).

The Court further finds that the decision of the Boundary Commission was supported by "competent, material and substantial evidence on the whole record" and was not "arbitrary,

capricious or clearly an abuse or unwarranted exercise of discretion." MCL 24.306(1)(d) and (1)(e); MSA 3 560(206)(1)(d) and (1)(e).

The Boundary Commission correctly determined that the Act 425 Agreements failed to meet the statutory requirements. First of all, the purpose of Act 425 Agreements is to provide for an "economic development project." The statute defines this as:

...land and existing or planned improvements suitable for use by an industrial or commercial enterprise, or housing development [It] includes necessary buildings, improvements, or structures suitable for and intended for or incidental to use as an industrial or commercial enterprise or housing development ..."

MCL 124.22(1)(a); MSA 5 4087(22) The Boundary Commission reviewed various documents which do not support the townships' position that an "economic development project" was planned within the Act 425 Agreements. In fact, in an advertisement soliciting petition signatures opposing the annexation, the statement, "Help us in the preservation of farmland and open space" was broadcast. See Exhibit B of Respondent Ralph and Patricia Winkle's Brief. Various letters were also submitted opposing annexation which argue for the preservation of land for agriculture. See Exhibit B of Respondent Ralph and Patricia Winkle's Brief.

In addition, MCL 124.21(a); MSA 5 4087(21) et seq. requires that a valid Act 425 Agreement must provide for improvements to the property necessary for the planned industrial, commercial or housing development. The Boundary Commission requested information from the townships by way of questionnaires regarding the provision of water and sewer services. The Columbus Township questionnaire indicated that 1) Columbus did not provide public water service; 2) Columbus did not provide sanitary sewer service, and 3) it could provide water services by the "Fall of 1997" and that "Sewers [were] under study." See Columbus Township Criteria Questionnaire for Annexation, p. 8, 9, and 12. The Casco Township questionnaire

answers stated that 1) Casco did not provide public water services or sanitary sewer services; 2) public water services could be provided by the "Fall of 1997"; 3) Casco did not provide an answer regarding when sanitary sewer services could be provided. See Casco Township Criteria Questionnaire for Annexation, p. 8, 9, and 12. The townships apparently indicated that water would be available to the Act 425 Agreement land; however, they do not indicate when water could be available to the annexed property. The City of Richmond indicated in its questionnaire that water and sewer lines can be made available immediately to the annexed land upon annexation. See City of Richmond Criteria Questionnaire for Annexation, p. 8. Thus, the information presented to the Boundary Commission for industrial, commercial, or industrial development may have been found to be more illusory than genuine.


The Boundary Commission further determined that the Act 425 Agreements were simply agreements to share services and not a true transfer of property. The Boundary Commission stated that "the parties did not provide evidence of such transfer, which minimally could have included a showing of a transfer to Lenox Township of property tax records and voting records of any residents in the Act 425 area." See Boundary Commission Summary of Proceeding, Findings of Fact and Order, Docket #96-AP-10, p. 5.

Finally, the Court determines that the Boundary Commission's decision was not "affected by other substantial or material error of law" as discussed earlier in this section. MCL 24.306(1)(f); MSA 3.560(206)(1)(f).

CONCLUSIONS

Therefore, based on all of the above sections, the Court finds that the Boundary Commission has the authority to determine the validity of the Act 425 Agreements in this case. Furthermore, the Court holds that the Boundary Commission's decision should be upheld according to MCL 24.306(1); MSA 3.560(206). An Order consistent with this opinion shall be presented for entry as provided by court rule.

January 13, 1999

  
HON DANIEL J. KELLY,  
Circuit Judge

CIRCUIT COURT FOR THE 31ST JUDICIAL CIRCUIT OF MICHIGAN



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Sponsor: Rep. Robert Emerson  
Committee: Towns and Counties

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(Title 17-U.S. Code).

### THE APPARENT PROBLEM:

In 1979, officials at the General Motors plant in Flint wanted to expand their plant, but there was no vacant land within the city to accommodate such plans. Genesee Township had a vacant industrial park about a mile from the city which was adequate to accommodate the proposed new plant, and General Motors decided to pursue the possibility of getting that land. The ensuing effort by General Motors resulted in the city and township getting together and working out a contractual arrangement whereby the township would transfer the land to the city in exchange for a share in the tax revenue. Although many persons agreed that this unique cooperative approach to the transfer of property between local units of government was laudable, some questioned the legality of such an arrangement and believed the agreement could have been challenged in court on the grounds that the agreement skirted the authority of the State Boundary Commission, which has statutory jurisdiction over matters pertaining to municipal boundary adjustments, and also because statute does not specifically provide authority for such arrangements between local units. Although these problems never materialized because the recession made it necessary for General Motors to abandon the expansion plans, some persons believe Michigan law should provide for such arrangements.

### THE CONTENT OF THE BILL:

House Bill 4995 would create a procedure whereby two or more local units of government could, by mutual agreement, authorize the conditional transfer of property for the purpose of an economic development project in the unit to which the property is to be transferred. (For purposes of this act, "local unit" is limited to cities, townships, and villages.) The economic development project could be land and existing or planned improvements suitable for use by an industrial or commercial enterprise or a housing project incidental to an industrial or commercial enterprise. The agreement would have to be in the form of a written contract; the term of the agreement could not exceed 50 years, although it could be renewed. The agreement would have to take into account such factors as population density, land use, urban growth patterns, the probable change in taxes and tax rates in the area to be transferred in relation to the benefits expected, the adequacy of government services in the area to be transferred and the probable need for such services in the future, and the ability of the unit to which land is transferred to maintain urban services in the area.

A decision to enter into the agreement would have to be made by a majority of the members serving on the legislative body of each local unit. At least one public hearing would have to be held in each unit before the agreement was made.

If applicable to the transfer, a contract could include provisions specifying the method in which the contract could be rescinded, the fixing of rates and fees, the adoption and enforcement of ordinances, the manner in which purchases would be made and contracts entered into, and any other pertinent matter agreed to by the local units. The agreement would have to provide specific authorization for the sharing of taxes and other revenues and the manner and extent to which taxes and revenues would be shared, and the method by which either of the local units could enforce the agreement if there were a breach of the agreement, including, but not limited to, return of the transferred area to the local unit from which it was transferred. The contract would also have to stipulate how long it would be in effect and which local unit had jurisdiction over the transferred property upon the expiration, termination, or nonrenewal of the contract. Unless otherwise provided in the contract, property which was transferred under this new procedure would for all purposes be under the jurisdiction of the local unit to which the property was transferred for the length of the contract. While the contract was in effect, no other method of annexation or transfer could take place with respect to any portions of an area transferred under the contract.

### FISCAL IMPLICATIONS:

No fiscal report is available at this time. (6-11-84)

### ARGUMENTS:

#### For:

Annexation has historically been a controversial issue among local units of government, with townships often feeling prey to cities seeking to expand their tax bases. In spite of the involvement in recent years of the State Boundary Commission in the annexation process, and the commission's statutory obligation to consider questions of equity and efficiency before approving a proposed annexation, townships often feel victimized by this process since an encroaching city usually succeeds in taking the valuable portions of the township's land, and the township ends up with disjointed boundaries and a reduced tax base that makes it harder than ever to supply needed services to township residents. The bill would create a new approach to the allocation of limited resources among local units of government that would avoid the problems traditionally associated with annexation, by allowing two or more local units to work out mutually agreeable contractual arrangements for the transfer of land from one unit to another, to the benefit of all parties concerned. Most importantly, the bill would allow the parties to the agreement to decide for themselves how and to what extent taxes and other revenues deriving from the transferred land would be shared.

H.B. 4995 (6-11-84)

***Against:***

Although the proponents of this legislation argue that this type of transfer is likely to involve only undeveloped land, there is at least a possibility that residents could be affected by such an arrangement. There is nothing in the bill which would allow residents caught in such a situation to have a voice in a process which could result in higher taxes for them.

***POSITIONS:***

The Michigan Municipal League supports the bill. (6-5-84)

The Michigan Townships Association supports the bill. (6-7-84)

The State Boundary Commission supports the bill. (6-7-84)