

STATE OF MICHIGAN  
IN THE SUPREME COURT

CITY OF SOUTH HAVEN, a Michigan  
Home Rule City,

Plaintiff-Appellee,

v

VAN BUREN COUNTY BOARD  
OF COUNTY COMMISSIONERS  
and KAREN MAKAY,

Defendants-Appellants,

and

VAN BUREN COUNTY BOARD  
OF COUNTY ROAD COMMISSIONERS

Defendant-Appellee.

SUPREME COURT: 131011  
COA: 264269  
Van Buren CC: 04-52-643 CZ

**AMICUS CURIAE MICHIGAN TOWNSHIPS  
ASSOCIATION BRIEF IN SUPPORT OF  
VAN BUREN COUNTY BOARD OF  
COUNTY COMMISSIONERS AND KAREN  
MAKAY**

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Michael J. Roth (P51795)  
Law, Weathers & Richardson, P.C.  
Attorneys for Plaintiff-Appellee  
333 Bridge Street, N.W., Suite 800  
Grand Rapids, MI 49504-5360  
(616) 459-1171

Kelly L. Page (P24787)  
Attorney for Bd of County Rd Commissioners  
203 S. Niles Street  
Paw Paw, MI 49079  
(269) 657-5591

Eric J. Guerin (P46142)  
Varnum, Riddering, Schmidt & Howlett LLP  
Co-Counsel for Board of Co Rd Commissioners  
251 N. Rose Street, 4<sup>th</sup> Floor  
Kalamazoo, MI 49007  
(269) 382-2300

Harold Schuitmaker (P20087)  
Schuitmaker, Cooper & Schuitmaker, P.C.  
Attys for Defs Van Buren County & Makay  
181 W. Michigan Avenue, Suite 1  
Paw Paw, MI 49079  
(269) 657-3177

John H. Bauckham (P10544)  
Bauckham, Sparks, Rolfe,  
Lohrstorfer & Thall, P.C.  
Attorneys for Amicus Curiae Michigan  
Townships Association  
458 W. South Street  
Kalamazoo, MI 49007  
(269) 382-4500

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**STATEMENT OF QUESTIONS INVOLVED**  
**AS REQUESTED BY THE MICHIGAN SUPREME COURT**

1. Were the millage questions submitted to the Van Buren County electors at 6 annual general elections commencing in 1978 for various consecutive annual periods for the purpose of “maintenance, repair and reconstruction of primary county roads and local county roads in Van Buren County” a violation of MCL 224.20b(4)?

Plaintiff-Appellee answers “Yes.”

Defendant-Appellee answers “No.”

Defendants-Appellants answers “No.”

The Circuit Court held “No.”

The Court of Appeals held “Yes.”

Amicus Curiae Michigan Townships Association answers “No.”

2. If the county road millage questions submitted to the electors of Van Buren County at six general elections commencing in 1978 were in violation of MCL 224.20b(2) and (4) because of the lack of a prior allocation agreement, were they and the allocation of the taxes received, validated by their continued renewal at six elections conducted within the cities and villages of Van Buren County as well as in the unincorporated portions of said county and the subsequent yearly tax allocations to the Defendant-Appellee Board of County Road Commissioners without Plaintiff-Appellee’s objection until 2004?

Plaintiff-Appellee answered “No.”

Defendants-Appellants answered “Yes.”

Defendant-Appellee Road Commissioners answered “Yes.”

The Circuit Court held “Yes.”

Court of Appeals held “No.”

Amicus Curiae Michigan Townships Association answers “Yes.”

**STATEMENT OF FACTS**

Amicus Curiae Michigan Townships Association accepts the Statement of Facts and material proceedings contained in Defendant-Appellant Board of County Commissioners and Karen Makay’s Application for Leave to Appeal to this Honorable Court with the following additions:

The ballot proposition submitted to the electors throughout the county (including electors within the City of South Haven) during elections in 1978, 1980, 1984, 1988, 1994 and 1998 read in 1988 as follows:

**PROPOSAL TO INCREASE CHARTER MILLAGE**

Shall there be a renewal of the 0.9269 mill (\$0.9269) per \$1,000 dollars of the taxable value on taxable property in Van Buren County, for the next five (5) years (1998 – 2003), specifically for the purpose of maintenance, repair and reconstruction of primary county roads and local county roads in Van Buren County? It is estimated that the revenue generated on this proposal will be \$1,340,532.00 in the first year of the levy.

YES [ ]  
NO [ ]

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Printed by Authority of the County Election Commission

Although the foregoing was the ballot utilized in 1998, with minor changes in figures to reflect required millage rollbacks, dates and expected revenue to be derived in the first year of the voted levy, the same language was used for all of the previous years.

The finances of the Van Buren County Road Commission and the City of South Haven were audited by the State of Michigan annually as required by statute which audit

never questioned the millage receipts or their utilization solely by the county road commission. (MCL 224.26; MCL 224.27 and MCL 141.426.)

Further, the electors and the city officials knew, or should have known, the meaning of the term of art “county primary and county local roads” in their election ballots as they knew the money was being allocated to the county road commission for county roads and not to the city for city roads and approved this usage without any objections over the 28 year period.

### **ARGUMENT I**

#### **WERE THE MILLAGE QUESTIONS SUBMITTED TO THE VAN BUREN COUNTY ELECTORS AT 6 ANNUAL GENERAL ELECTIONS COMMENCING IN 1978 FOR VARIOUS CONSECUTIVE ANNUAL PERIODS FOR THE PURPOSE OF “MAINTENANCE, REPAIR AND RECONSTRUCTION OF PRIMARY COUNTY ROADS AND LOCAL COUNTY ROADS IN VAN BUREN COUNTY” A VIOLATION OF MCL 224.20b(4)?**

The millage ballots and allocation of funds therefrom to the Van Buren County Road Commission by the County Treasurer were valid and in compliance with MCL 224.20b for the following reasons:

A. MCL 224.20b at (1) provides in pertinent part:

“Notwithstanding any other provision of this act, the board of commissioners of any county by proper resolution may submit to the electorate of the county at any general or special election the question of a tax levy... for one or more specific highway, road or street purposes, including but not limited to bridges, as may be specified by the board.” (Emphasis added.)

Where one or more specific highways, roads or streets are specified for improvement by the county board of commissioners in a county road millage ballot, it is obvious that no allocation of tax monies received from such millage could be allocated and

expended for different purposes. Any such allocation would clearly be contrary to the statute and the vote of the electors.

Certainly the statutory language specifying the raising of a road tax for a designated county road or roads, which are not located within any City or Village, could not be interpreted, by virtue of other subsections, to require the tax receipts to be divided with and expended on city and village roads in the cities and villages. Such an interpretation would be both illogical and a misrepresentation of the issue to the voting electorate.

As stated by the Court of Appeals in footnote 4 of its opinion,

“We do not disagree with defendants’ argument that using revenues approved by the voters for a specific purpose for some other purpose would be unlawful.”

MCL 224.20b at (4) does not alter this conclusion. It prohibits a ballot question submission “of a tax levy for any highway, road or street purpose” unless the proceeds are allocated “from a tax-levy authorized by this section.” As previously submitted, where the tax receipts are for specified one or more specific highway, road or street purposes, the allocation remains exclusively for that designated purpose. The word “any”, as defined in *Blacks Law Dictionary, Revised 4<sup>th</sup> Edition* (1968), means “an indefinite number” ... “and is given the full force of ‘every’ or ‘all’.” Accordingly, the only time an agreement is required between the board of county road commissioners and the governing bodies of the cities and villages as provided in MCL 224.20b(2) and (4) is when all highways, roads and streets within the county are proposed to be improved by the voted tax.

B. The millage ballot proposition submitted to the electorate of the county specified its use for the statutory limitation of “one or more specific highway, road or street purposes” when it consistently designated the use of the tax funds “for the purpose of maintenance,

repair and reconstruction of primary county roads and local county roads in Van Buren County”.

“Primary county roads and local county roads” are terms of art and not to be confused with the general terms in MCL 224.20b “for highway, road and street purposes”. MCL 247.669, which is part of the Michigan Highway law system located in 1951 PA 51 provides with respect to “county roads” as follows:

“The board of county road commissioners in each of the several counties shall, within 1 year from the effective date of this act, complete the taking over as county roads of all roads, streets and alleys heretofore required to be taken over as county roads by the provisions of Act No. 130 of the Public Acts of 1931, as amended, being sections 247.1 to 247.13, inclusive, of the Compiled Laws of 1948. Said board of county road commissioners in each of the several counties shall take over as county roads all streets and alleys lying outside the limits of incorporated cities and villages and dedicated to the public in recorded plats approved by said board of county road commissioners, within 30 days after the recording of the plat or the effective date of this act, whichever may be the later. Such dedicated streets and alleys, when taken over by the county road commission, shall be county roads in all respects and for all purposes and shall be classified as county primary roads or county local roads pursuant to the provisions of this act.”

This county road designation is further confirmed by MCL 247.652 pertaining to certification of the same to the State Transportation Department now known as Michigan Department of Transportation (MDOT) which provides as follows:

“By December 1, 1951, a tentative system of county primary roads shall be selected by the board of county road commissioners in each county and certified to the state transportation department for its approval. Such tentative system of county primary roads shall be selected on the basis of greatest general importance to the county and shall include any such county roads then legally established and existing as such within the limits of incorporated cities and villages. Each such tentative system of county primary roads certified to the state transportation department shall be checked and reviewed under its direction. Within 6 months after receipt by the department of each such certification, the state transportation department shall approve such part of that tentative system of county primary roads as the department determines is appropriate and shall certify to that board of county road commissioners the approved portion of the tentative system and any deletions therefrom. So much of the tentative system of county primary roads of any county



as is approved by the state transportation department shall constitute the county primary road system of that county for all purposes and shall be officially known as the county primary road system of that county. (Emphasis added.)

MCL 224.18 further emphasizes this “term of art” applicable to “county roads” when it requires the board of county road commissioners to file a map with MDOT showing the location of the proposed system of county roads for the state’s approval. The pertinent provision of this statute is as follows:

“If state reward is to be applied for, the board of county road commissioners shall file with the state transportation commission, for its approval, a map of the county showing the location of the proposed system of county roads. This proposed system may be changed, if approved, by the state transportation commission. All state rewarded roads composing a part of this system shall be taken over as county roads by the board of county road commissioners and any road or part of a road previously laid out shall become a county road if the board of county road commissioners shall at any time so determine....”

Public Act 51 of 1951 was preceded by the McNitt Act which required the county to take over all township roads in 1931. As explained by the Supreme Court in *Petition of Wernicke*, 331 Mich 91 (1951) at page 95,

“All township roads became county roads under the McNitt Act, C.L. 1948, seq, 247.1 et seq., stat ann. sec. 9.141 et seq., and, according to its provisions came under the control of the country board of road commissioners. Such taking of control was deferred for obvious administrative reasons, spread over a five-year period at the rate of 1/5th each year. This act became effective September 18, 1931, and all township roads had become county roads by April 1, 1936, which was prior to the filing of the petition herein.

“Act No. 52, Public Acts 1943, C.L. 1948, sec 224.18, stat ann 1949 cum supp seq, 9.118 gives to the county board of road commissioners ‘sole and exclusive jurisdiction and control’ over county roads.”

The Supreme Court held in this case that the circuit court did not have jurisdiction to vacate Sheridan Drive as the county road commission had exclusive jurisdiction over the

road and had not been given proper notice of the circuit court proceedings for the circuit court's jurisdiction to vacate the road.

The terms "primary county roads and local county roads in Van Buren County" contained in the millage election ballot clearly indicates the "specific highway road or street purposes" to be the subject for improvements under the voted millage. As the record of the case at bar discloses, it is undisputed that such roads did not exist within the City of South Haven. To allocate the funds for city streets or village streets would completely thwart the vote of the electorate as well as the intentions of MCL 224.20b.

For the city to argue that allocation of such millage funds to the county road commission would be inequitable to city voters is inappropriate. County roads are equally used by city motorists as by township motorists. Cities are islands or enclaves within a county which requires city residents to utilize county roads to travel anywhere beyond the city's limited boundaries. Accordingly, city citizens voting in favor of the millage ballot applicable to county roads are voting for their own convenience and safety of travel. They know or should know that voting for millage for the improvement of county primary and county local roads is not voting for millage for the improvement of city roads. Their tax bills are broken down into city, school and county taxes and the county taxes are not levied for city improvements.

The foregoing analysis of county road law and the corresponding authority of county road commissions and county commissions is further supported by MCL 224.20 which provides in pertinent part:

"Before the first day of October of each year, said board of county road commissioners shall cause preliminary surveys, general plans, specifications and estimates of roads, bridges and culverts to be made by the county highway

engineer, whose qualifications shall be approved by the state highway commissioner in case it is intended by the commissioners to apply for said reward. Based upon the above estimates, said board of county road commissioners shall determine upon the amount of tax which in its judgment should be raised for such year in said county for the purposes foresaid, specifying and itemizing the roads or parts of roads upon which such monies are to be expended, stating the amount asked for each of such roads, and shall cause such determination to be entered upon its records.... If the determination of the board of county road commissioners shall not meet with the approval of a majority of the board of supervisors, then said board of supervisors shall proceed to decide upon the amount of tax to be raised for such year in such county for the purposes foresaid, and may allow or reject in whole or in part any or all of the items for the sections of roads thus submitted for its consideration; and it shall not be lawful for such county road commissioners without the consent of such board of supervisors to spend any such monies upon any other roads than as thus specified. It shall be the duty of the board of supervisors to raise a sufficient tax to keep any county roads or bridges already built in reasonable repair, and in condition reasonably safe and fit for public travel.... The county treasurer shall keep a separate account of the taxes collected and monies received under this act and shall pay the same out only upon the order of such board of county road commissioners and upon warrants signed by the chairman and countersigned by the clerk of the board.... All monies raised under the provisions of this act shall be expended by such board of county road commissioners exclusively for the purposes herein-mentioned.”

These provisions emphasize the authority of the county board of commissioners in establishing a tax for county road improvement purposes designated by the county road commissioners. It further emphasizes the use of those funds “only upon the order of such board of county road commissioners” and finally, that such tax monies “shall be expended by such board of county road commissioners exclusively for the purposes herein-mentioned.” Such purposes do not include sharing of those funds with cities and villages for the improvement of city and village roads. They further emphasize that the taxes levied are based upon improvement of the roads identified by the county road commission which again, do not include city and village streets.

The millage questions “specifically for the purpose of maintenance, repair and reconstruction of primary county roads and local county roads in Van Buren County” were

not in violation of MCL 224.20b nor any subsection thereof as the questions were limited to county roads and did not pertain to all roads within the county.

## **ARGUMENT II**

**IF THE COUNTY ROAD MILLAGE SUBMITTED AT SIX SEPARATE ELECTIONS FROM 1978 THROUGH 2004 ARE DETERMINED BY THIS HONORABLE COURT TO HAVE VIOLATED MCL 224.20b(2) AND (4) FOR LACK OF PRIOR ALLOCATION AGREEMENTS BETWEEN THE BOARD OF COUNTY ROAD COMMISSIONERS AND CITIES AND VILLAGES WITHIN THE COUNTY, WERE SAID SIX MILLAGE BALLOTS AND THE SUBSEQUENT USE OF THESE TAX MONIES ON COUNTY ROADS VALIDATED BY THE PLAINTIFF-APPELLEE CITY OF SOUTH HAVEN AND THE OTHER ELEVEN CITIES AND VILLAGES IN VAN BUREN COUNTY ACCEPTING SUCH MILLAGE VOTE AND THE USE OF SUCH MILLAGE FUNDS WITHOUT COMPLAINT OR OBJECTION UNTIL 2004**

A. Pertinent Facts. The undisputed facts disclosed that the millage ballot question continually passed at six separate elections conducted in the 12 cities and villages and 18 townships in Van Buren County with a substantial number of electors living within the cities and villages. It further discloses that the tax monies derived from these elections during the 28 year period were all utilized on the improvement of county roads within the county as distinguished from city or village roads. Notwithstanding such use, the city officials continued to conduct the road millage elections within the city and the city electors continued to vote on the millage questions for use on the improvement of county primary and county local roads as submitted by the county board of commissioners. To this date, none of the other eleven cities and villages in Van Buren County have voiced any objections, to the undersigned's knowledge, to the use of these road tax monies exclusively on county primary and county local roads nor to the ballot language itself.

Based on the foregoing as well as County Attorney Sheldon Rupert's legal opinion so approving, the county treasurer has continued to allocate all of these road monies to the

Van Buren County Road Commission which has continued for 28 years to expend these funds on its county primary and local roads for the benefit of the motoring public in the county.

B. Legal Effect of the Foregoing Facts. Amicus curiae Michigan Townships Association submits the foregoing undisputed facts support either the existence of a contract between the Van Buren County Road Commission and the cities and villages within the county or that the said cities and villages are either estopped or barred by laches from claiming any right to any portion of these road tax funds received by the county board of commissioners and utilized by the county road commission exclusively for the improvement of their county roads.

1. Existence of a Contract. On the existence of a contract for the use of these road tax monies exclusively on county primary and county local roads, amicus curiae refers this Honorable Court to the following:

In Section 29.103 of 10A McQuillin, Municipal Corporations (3d ed, revised)

, the following is stated:

“A municipality may ratify a contract by express acts or by conduct. When the ratification is of the latter kind, the element of estoppel is generally involved either as a minor or major element. That certain invalid contracts of a municipality may be ratified by it is beyond question. It is also elementary that, in appropriate circumstances, the doctrine of estoppel applies to municipal corporations.... The rule [of estoppel] is limited usually to contracts within the scope of the municipal powers, and within the scope of the powers of its agents, as to which matters the municipal corporation may be estopped upon the same grounds and under the same circumstances as private parties.... Ratification, like waiver, rests upon the doctrine of estoppel. An estoppel may arise against a municipality the same as against any other party.”

Section 29.104 of this citation further provides as follows:

“It is a general rule that whatever acts public officials may do or authorize to be done in the first instance may subsequently be adopted or ratified by them with the same effect as though properly done under previous authority. Consequently, it is well settled that contracts which are within the scope of the corporate powers but not authorized by proper action of the municipal corporation, that is, contracts not ultra vires, may be ratified by the proper corporate authorities. Or, as the rule is sometimes expressed, a municipal corporation may ratify any contract made on its behalf which is merely voidable, as distinguished from one which is ultra vires, void or illegal.”

In the current *South Haven* case, the county board of commissioners had clear authority to submit a road tax ballot to the electors within the county. If it is the interpretation of this Honorable Court that such ballot had to be preceded by an agreement with all cities and villages within the county to support allocation of the funds for county road improvement purposes and without sharing with said cities and villages for use on city and village streets, amicus curiae submits the actions of the cities and villages in approving, without objection, the use of such funds exclusively on county primary and local roads for a 28 year period constitutes a ratification of the subject agreement. Neither the county's nor the city's action was ultra vires. Both the city and county road commissioners were authorized under MCL 224.20b(2) to enter into a contract concerning the method of allocation of the monies received from the road tax millage. This authorized contract was ratified by the cities' and villages' acceptance and participation in the voting on the road millage proposition, the allocation of the funds to the county road commission and the use of such funds for the extended period exclusively on county roads.

As indicated in Section 29.106 of the aforesaid McQuillin's Municipal Corporations,

“The ratification of a contract by the municipal corporation may be made by the affirmative action of the proper officials, or by any action or non-action which in the circumstances amounts to an approval of the contract.... The city may be bound by inaction....

“A wide variety of acts have been deemed to constitute ratification of a contract. It may consist of a vote of a board having authority, mere silence, acquiescence, a vote of approval by the people at an election, the approval of, or the failure to repudiate the contract at an annual town meeting, ... the performance of the contract, the acceptance and the use of property, or the acceptance of benefits”. (Supporting citations omitted.)

On the basis of the foregoing, the City of South Haven is in no position to repudiate this contract between it and the county board of road commissioners after its performance by both parties for such an extended number of years.

2. Plaintiff city of South Haven is further barred from its claims against the county by estoppel and laches.

The case of *Parker v Township of West Bloomfield*, 60 Mich App 583 (1975), is significant in support of the foregoing proposition. On page 591 of this citation, the court significantly submitted the following:

“An estoppel arises only when a party acts to induce another to believe that certain facts exist and the other rightfully relies and acts on such a belief to his detriment if the former is allowed to deny such facts.”

“Generally, estoppel may arise pursuant to the positive acts of municipal officials which induced plaintiff to act in a certain manner, and where plaintiff relied upon the official’s actions by incurring a change of position or making expenditures in reliance upon the officials’ actions. 9 McQuillin, Municipal Corporation (3<sup>rd</sup> ed) §27.56, pp.755-757. The circumstances of each case will determine whether estoppel will be applied against a local government, and:

‘If under all the circumstances, the acts of the public body have created a situation where it would be inequitable and unjust to permit it to deny what it has done or permitted to be done, the doctrine of estoppel will be applied to the municipality’. (2 Antieau, Municipal Corporation Law, §16A.01, p. 16A-6.)

“One adverse to the municipality and seeking application of the doctrine of estoppel must show a good faith reliance upon the municipality’s conduct, lack of actual knowledge or lack of the means of obtaining actual knowledge of the facts in question, and plaintiff must show a change in position to the extent that plaintiff would incur ‘a substantial loss were the local government allowed to disaffirm its previous position’.” (Antieau, supra, P.16 A-7.)

The court further states at page 593:

“Thus, it seems that Michigan falls within the general rule that while the doctrine of estoppel is inapplicable to ultra vires acts, it will be applied to bind the municipality if the act is within the municipality’s general powers, but is performed in an irregular fashion or in an unauthorized manner. (2 Antieau, Municipal Corporation Law, § 16A.04, pp. 16A-9-10.)

The case of *Village of Clawson v Van Wagoner, Drain Commissioners*, 268 Mich 148 (1934), involved a drain assessment at large levied by the drain commissioner against the plaintiff *Village of Clawson* wherein the village had not received the required legal notice of the hearing on the review of apportionment of benefits and the published notice did not refer to the village.

The contract for the construction of the drain was subsequently let by the drain commissioner and the village was assessed for its at large apportionment of the benefits. The village had not objected to the construction of the drain.

The court held the village could not avoid payment of its at large assessment as “having stood by and seen the drain constructed and the expense incurred without pursuing such remedy, it is estopped from complaining of them.”

The untimeliness of a party’s objections to municipal actions which were contrary to statutory requirements has been held by the courts to bar any complaints in this connection. In the case of *Richmond Township v Erbes*, 195 Mich App 210 (1992), the township improperly enacted a zoning ordinance without statutory required notices. The defendant, upon being sued for a violation of the ordinance, defended on the basis of the lack of proper adoption of the ordinance. The court denied the plaintiffs defense and upheld the township’s zoning ordinance on the basis of the untimeliness of the defense.

As stated by the court at page 217:



“When a zoning ordinance has been the subject of public acquiescence and reliance for a lengthy time, the reasonableness of a belated challenge is questionable.... In *Edel*, a challenge to a zoning ordinance 18 years after its enactment based on a claim that the township failed to strictly comply with the notice requirements of the enabling legislation was held to be precluded by estoppel and by overriding policy considerations.... In this case, defendants challenged the zoning ordinance 13 years after its enactment. During that time, township officials and residents acted in accordance with the ordinance, and no challenges were made with regard to the validity of its enactment. Consequently, we affirm the trial courts’ decision that defendants are estopped from challenging the ordinance as having been improperly enacted.” (Citations omitted.)

Similarly, in the case of *City of Jackson v Thompson-McCully Co LLC*, 239 Mich App 482 (2000), the court barred the school district’s zoning violation action against the defendant on the basis of laches. The court stated at 493,

“Where a zoning ordinance is not challenged until several years after its enactment, a challenge on the ground that the ordinance was improperly enacted is precluded on public policy grounds.... The rezonings in this case occurred in 1987 and 1988. Plaintiffs did not challenge the rezonings until nearly 10 years later when they filed the instant action in March of 1998. During this period, Township officials and residents acted in accordance with the rezonings. The 1987 rezoning included not only the Blackman Asphalt Plant site, but also property for a post office distribution center. The general public and those buying and selling real estate must be able to rely on the adoption of zoning amendments that remain unchallenged for a period of years....

“With respect to the interests of *Thompson-McCully*, in particular, plaintiffs zoning challenge is barred by laches. The doctrine of laches applies where the passage of time combined with a change in condition make it inequitable to enforce a claim.” (Citations omitted.)

In this case, the Jackson Public Schools were precluded from challenging the zoning on which Thompson-McCully relied because the zoning had been in effect for 10 years without objection or contest.

Relating the foregoing to the case at bar, the City of South Haven, along with the other 11 cities and villages within the County of Van Buren for a period of 28 years made no objection to the allocation and use of the road millage funds for the exclusive use of

improvement of Van Buren County primary and local county roads and continued to place the county road millage question on the ballots within their respective jurisdictions for the vote of their electors. The county treasurer, in turn, continued to allocate the sums to the Van Buren County Road Commission which continued to utilize the funds for the improvement of these county roads. No distribution of the funds were made to the 12 cities and villages within the county during this 28 year period from these successful millage proposals. All of the foregoing was accomplished openly, on the public records, with no publication of any misleading information. The millage funds were used and received for the benefit of all citizens and residents within the county and were indisputably properly accounted for by the road commission.

Under such circumstances, the Court of Appeals' decision should be reversed and the distribution and use of the road funds affirmed and validated.

### **CONCLUSION**

In conclusion, Amicus Curiae Michigan Townships Association submits the Van Buren County Treasurer's disbursement to the Van Buren County Road Commission of funds derived from the county road millage ballots covering a 28 year levy and collection period throughout the county for the specific purpose of improvement of county primary roads and county local roads, was a valid disbursement and was properly utilized exclusively for the maintenance, repair and reconstruction of said county roads for the following reasons:

1. The purpose of the 28 year millage levy complied with MCL 224.20b(1) as being designated for specific county highway, road and street purposes, as distinguished

from city street purposes, was accepted by the City of South Haven and its officials and electors during such period and required no separate agreement for validation.

2. Any agreement between the cities, villages and county road commission for such distribution and use exclusively for county roads, if such an agreement is determined to be necessary, was ratified, confirmed and established by this acknowledged distribution and use for 28 years without objection from any cities or villages and with its continued renewal by the electoral votes throughout all municipal units of the county.

3. By the City of South Haven's acceptance without protest, and with knowledge of the disbursement and use of these road millage funds for exclusive county road purposes, and with the City's continued participation in this millage renewal, the City is estopped from now demanding a portion of such millage funds which by its 28 year latches has encouraged the county to expend these funds on its county roads.

Respectfully submitted.

Dated: January 29, 2007

BAUCKHAM, SPARKS, ROLFE,  
LOHRSTORFER & THALL, P.C.

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John H. Bauckham (P10544)