STATE OF MICHIGAN
IN THE COURT OF APPEALS

VILLAGE OF STEVENSVILLE,
A Michigan municipal corporation,
Plaintiff-Appellant,

Court of Appeals No. 287114

Trial Court No. 07-0332-CZ-T

v

SOUTHWEST MICHIGAN REGIONAL
SANITARY SEWER AND WATER AUTHORITY,
A Michigan municipal authority,
Defendant-Appellee.

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AMICUS CURIAE BRIEF OF THE MICHIGAN MUNICIPAL LEAGUE IN SUPPORT OF THE PLAINTIFF-APPELLANT VILLAGE OF STEVENSVILLE

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STATEMENT OF THE BASIS OF JURISDICTION

The statement of the basis of jurisdiction provided by the Village of Stevensville is complete and correct.

STATEMENT OF QUESTIONS PRESENTED

I. MAY SOME OF THE CONSTITUENT MUNICIPALITIES OF AN AUTHORITY CREATED PURSUANT TO PUBLIC ACT 233 OF 1955 (MCL 124.281 *ET SEQ*) TO PROVIDE SEWER AND WATER SERVICES TO AN AREA SUBSEQUENTLY CREATE A NEW AUTHORITY TO PROVIDE THOSE SERVICES TO THE AREA, PARTICULARLY WHERE THE APPARENT PURPOSE OF CREATING THE NEW AUTHORITY IS TO DENY VOTING RIGHTS TO A MUNICIPALITY WHICH IS A CONSTITUENT OF THE ORIGINAL AUTHORITY BUT WAS EXCLUDED FROM THE NEW AUTHORITY?

The Trial Court said	Yes
Plaintiff-Appellant says	No
Defendant-Appellee says	Yes
Amicus MML says	No

II. DOES THE CREATION OF AN AUTHORITY UNDER PUBLIC ACT 233 OF 1955 TO PROVIDE SEWER AND WATER SERVICES TO AN AREA IMPAIR THE AGREEMENT BY WHICH THOSE MUNICIPALITIES AND OTHER MUNICIPALITIES EARLIER CREATED AN AUTHORITY TO PROVIDE THOSE SERVICES?

The Trial Court said	No
Plaintiff-Appellant says	Yes
Defendant-Appellee says	No
Amicus MML says	Yes

III. DOES A CONTRACT BETWEEN AN ORIGINAL AND A NEW AUTHORITY UNDER PUBLIC ACT 233 OF 1955 BY WHICH THE NEW AUTHORITY AGREES TO OPERATE THE WATER AND SEWER SYSTEMS OF THE ORIGINAL AUTHORITY IMPAIR AN EXISTING AGREEMENT BY WHICH THE ORIGINAL AUTHORITY HAS CONTRACTED WITH A NONCONSTITUENT CITY TO OPERATE THE WATER SYSTEM?

The Trial Court raised, but did not answer this question.

Plaintiff-Appellant says Yes

Defendant-Appellee says No

Amicus MML says Yes

IV. IF A VILLAGE PERMITS A WATER SYSTEM FINANCED BY ITS RESIDENTS TO BE INCORPORATED INTO THE WATER SYSTEM OF AN AUTHORITY UNDER PUBLIC ACT 233 OF 1955 OF WHICH THE VILLAGE IS A CONSTITUENT MUNICIPALITY, AND OTHER CONSTITUENT MUNICIPALITIES CREATE A NEW AUTHORITY TO OPERATE THE SYSTEM, HAS PROPERTY OF THE VILLAGE UNLAWFULLY BEEN TAKEN?

The Trial Court said No

Plaintiff-Appellant says Yes

Defendant-Appellee says No

Amicus MML says Yes

STATEMENT OF FACTS

The statement of facts presented by the Village of Stevensville is complete and correct.

ARGUMENT

Introduction

The Michigan Municipal League (MML) is a nonprofit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership consists of 521 units of local government, of which 450 are members of the MML Legal Defense Fund. The MML operates its Legal Defense Fund through a board of directors for the purpose of representing the interests of member cities and villages in litigation involving municipal legal issues of statewide significance.

The MML and the Legal Defense Fund Board authorized and directed Eric D. Williams to file this Amicus Curiae brief in support of the Village of Stevensville's claims that the formation of the second (Southwest) authority without the consent of the Village of Stevensville was illegal and contrary to the statute, which is MCL 124.281 *et seq*. The precise issue presented by the facts of this case is a matter of first impression with statewide significance.

The Amicus Curiae brief of the MML will explain the larger issues implicated by this particular case, and the ramifications of a decision adverse to the Village of Stevensville.

The primary issue presented by this case is the illegal action of forming a second authority without the consent and voluntary participation of the Village of Stevensville, thereby depriving Stevensville of its vote as a constituent municipality, and thereafter exercising control over Stevensville's water and sewer infrastructure without its consent, contrary to the purpose and terms of the statute.

It is important to the jurisprudence of Michigan to develop clear appellate authority on the application and interpretation of MCL 124.281 *et seq*, so municipalities can employ the statutory framework for creating and joining a cooperative authority without the risk of losing local jurisdiction and control over water and sewer infrastructure. There are several statutes authorizing the formation of authorities by multiple municipalities that could be misconstrued and undermined by the trial court's erroneous ruling.

Although somewhat blurred by procedural maneuverings in the trial court, the central issue of whether or not the statute allows multiple municipalities to form a legislatively prescribed authority to provide sewer and water services ***without*** the consent of one of those municipalities, is squarely presented and ripe for resolution.

I. THE FORMATION OF THE SECOND (SOUTHWEST) AUTHORITY WITHOUT THE CONSENT OF THE VILLAGE OF STEVENSVILLE WAS ILLEGAL AND AN INVALID EXERCISE OF CONTROL OVER STEVENSVILLE'S WATER AND SEWER INFRASTRUCTURE.

Summary of Argument

The second (Southwest) authority was formed without the consent or participation of the Village of Stevensville, contrary to MCL 124.282, which renders the incorporation invalid as to the Village of Stevensville. The entire statute is attached in the Appendix.

Standard of Review

The interpretation and application of a statutory provision is a question of law that is reviewed de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155; 645 NW2d 643 (2002). "The decision to grant or deny summary disposition is a question of law that is reviewed de novo." *Veenstra, supra*, page 159.

Statutory Interpretation

In statutory interpretation, the appellate court's "main goal … is to give effect to the intent of the Legislature." *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008). "The meaning according to undefined terms is determined in part by their placement in the statute and their purpose in the statutory scheme." *Kuznar*, p 176. "[W]e start by reviewing the text of the statute, and, if it is unambiguous, we will

enforce the statute as written because the Legislature is presumed to have intended the meaning expressed." *Casco Township v Secretary of State*, 472 Mich 415, 429; 615 NW2d 691 (2000). Whenever possible, every word of a statute should be given meaning, and no word should be treated as surplusage or made nugatory. *Apsey v Memorial Hospital*, 477 Mich 120, 127; 730 NW2d 695 (2007). It is well settled that statutes that relate to the same subject or share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates. *McNeil v Charlevoix County*, 275 Mich App 686, 701; 741 NW2d 27 (2007).

The Statute: MCL 124.282

> **Any 2 or more municipalities may incorporate an authority** for the purpose of acquiring, owning, improving, enlarging, extending, and operating a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems **by the adoption of articles of incorporation by the legislative body of each of the municipalities.**

In 1964 the Village of Stevensville joined in the formation of the first authority, known as the Lake Michigan Shoreline Water and Sewage Treatment Authority, or "Shoreline." This was accomplished by adoption of the articles of incorporation by the Village Board, and endorsement by the Village President and Clerk. Stevensville was a constituent municipality of the first (Shoreline) authority. Amendments to the articles of incorporation were approved by each constituent municipality as recently as 1999. EXHIBIT 1. The procedure for amendment is spelled out in MCL 124.286: "other

amendments may be made to the articles of incorporation if adopted by the legislative body of each municipality of which the authority is composed."

Rather than seek an amendment to its articles of incorporation to resolve operating issues with the Village of Stevensville, the three township constituent members of the first authority, Shoreline, formed a second authority, "Southwest," without the statutorily prescribed formal consent of the Village of Stevensville or the Village of Shoreham. EXHIBIT 2. This was challenged by the Village of Stevensville in compliance with the act: "The validity of the incorporation [of the authority] shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the filing of the certified copies with the Secretary of State and the county clerk." MCL 124.282(2). In an unprecedented and brazen step, Royalton Township, Lincoln Charter Township, and St. Joseph Township approved a second (Southwest) authority and a second set of articles of incorporation, with the same purpose as the first (Shoreline) authority. EXHIBIT 2.

> ARTICLE III
>
> The purpose of this Authority is to acquire, own, improve, enlarge, extend and operate a water supply system and/or a sewage disposal system in accordance with the authorization of Act 233 of the Public Acts of Michigan of 1955, as amended.

EXHIBIT 1, (amended) articles of incorporation of the first (Shoreline) authority.

> ARTICLE III
>
> The purpose of the AUTHORITY is to, in whole or in part, acquire, own, improve, enlarge, extend, improve and

> operate, or to cause, in whole or in part, the acquisition, ownership, enlargement, extension, improvement and operation by other parties under a contract with the AUTHORITY sewage disposal systems and water supply systems in accordance with the authorization of Act 233.

EXHIBIT 2. Articles of incorporation of the second (Southwest) authority. Membership in the first (Shoreline) authority included St. Joseph Charter Township, Lincoln Charter Township, the Village of Stevensville, the Village of Shoreham, and Royalton Township, all of which were designated as constituent municipalities. EXHIBIT 1. Membership in the second authority, the Southwest Michigan Regional Sanitary Sewer and Water Authority, (Southwest), was comprised of the three townships.

> ARTICLE II – INCORPORATING MUNICIPALITIES
> The incorporating municipalities creating the AUTHORITY are Lincoln Charter Township, Royalton Township, and St. Joseph Charter Township, which are all located in the County of Berrien, State of Michigan, and which are hereby designated as CONSTITUENT MUNICIPALITIES.

EXHIBIT 2. The first authority, (Shoreline), described its area of operations.

> ARTICLE IV
> Its limits shall include all of the territory embraced within the corporate boundaries of its constituent municipalities.

EXHIBIT 1. The second authority, (Southwest), described its area of operations.

> ARTICLE IV – GENERAL POWERS
> Its limits shall include all of the territory embraced within the boundaries of the CONSTITUENT MUNICIPALITIES ***including any villages located within the CONSTITUENT MUNICIPALITIES.***

EXHIBIT 2, emphasis added. Here is the rub. This bold assertion of power over any village located within the three townships is completely without legal support, and

contrary to the plain language of MCL 124.282: "Any 2 or more municipalities may incorporate an authority … by the adoption of articles of incorporation by the legislative body of ***each*** of the municipalities." If the Village of Stevensville were to be included in the second (Southwest) authority, the only way to achieve that inclusion was to follow the statute and have the legislative body of the Village adopt the articles of incorporation. There is no alternative in or to MCL 124.282 by which townships are authorized to wield power over villages and force villages into an authority without village approval. This fundamental defect in the incorporation of the second (Southwest) authority was overlooked or misunderstood by the trial court, and must be corrected on appeal.

The Village of Stevensville argues on appeal that the opening sentence of MCL 124.282 limits municipalities to the formation of "an authority" for the purposes enumerated in that section. The MML joins Stevensville in the argument, pointing out there is no good reason to have more than one authority formed for the same purpose, without creating conflicts between the two. In this case, the real gravamen of Stevensville's complaint is that it was included in the second authority (Southwest) without its consent, without any vote or voice in the operation of the second authority (Southwest), and without control of its own water and sewer infrastructure, contrary to the plain language of MCL 124.282.

The townships and the second authority, "Southwest," will argue that MCL 124.282(2) authorizes township control over villages: "The authority shall be comprised of territory lying within incorporating municipalities." But that sentence is more consistent with an interpretation that the territory of the second (Southwest) authority does ***not*** include the villages of Stevensville and Shoreham, because they are ***not*** incorporating municipalities of "Southwest". If the townships wanted the Village of Stevensville to be included within the second (Southwest) authority, the townships had to obtain Stevensville's participation as a constituent municipality as described in MCL 124.282. There is no hint in MCL 124.282(2) that the Legislature intended the description of the territory of an authority to modify the procedure in MCL 124.282(1) for the formation of an authority by carving out an exception for villages situated within incorporating townships. If the Legislature intended that result, it would have provided an exception for townships the same as it did for counties in the latter portion of MCL 124.282(2), while granting constituent status to any municipality (city or village) located within the incorporating townships. The trial court misconstrued the specific exception in the case of counties to find a similar, but nonexistent, exception for townships, without preserving the status of a constituent municipality for the villages and cities! This is an egregious error with far reaching negative consequences for cities and villages.

MCL 124.281 *et seq* is not a priority statute by which one unit of local government is given priority over another unit of local government involving a particular subject matter, like the County Commissioner's Act, MCL 46.1 *et seq*. See *Herman v County of Berrien*, 481 Mich 352; 750 NW2d 570 (2008). There are other statutory blueprints for the formation of authorities by units of local government, with a common theme of constituent municipalities. See MCL 124.252 relating to municipal water supply systems, and MCL 123.1135 relating to recreational authorities, as well as MCL 124.454 – 124.457, regarding the formation of public transportation authorities. None of these statutes provides for the outcome reached or achieved by the three townships in this case. See also MCL 123.1061 *et seq*, and MCL 123.1063 specifically, regarding the formation of community swimming pool authorities. The more recent enactments provide more details about membership, MCL 123.1601(g), territory subject to the authority, MCL 123.1063(3), and withdrawal of a participating municipality, MCL 123.1077. See MCL 124.601 *et seq*, regarding municipal emergency services by an authority. An incorporating municipality is defined, MCL 124.601(c), and "[a]n authority is created by the adoption of articles of incorporation by the legislative body of each incorporating municipality." MCL 124.602(2). Amendments must be approved "by the legislative body of each city, village or township of which the authority is composed." MCL 124.603(2). The "authority's jurisdiction shall be comprised of the total territory within the incorporating municipalities." MCL 124.602(3). None of the statutes on municipal authorities provides or authorizes townships or any other municipality to take over the governmental operations or facilities of another, except by

way of formal consent of each municipality. These statutes should be read together as one law, *in pari materia*, preserving the requirement that each municipality affirmatively consents to inclusion in an authority according to the statutory procedure for forming or joining an authority, except where specifically provided to the contrary.

The Urban Cooperation Act provides that "[t]wo or more political subdivisions are authorized to enter into a contract with each other providing for the transfer of functions or responsibilities to one another or any combination thereof upon the consent of each political subdivision thereof." MCL 124.532. This is an illustration of the far reaching effect of Const 1963 art 7 § 28 on the Legislature's efforts to adopt general laws for the combination of local units of government to promote governmental efficiency without losing local control. While the present case involves a different statute, the concept of allowing local units of government to combine resources and work together is a common theme, predicated on the formal consent of each municipality except where specifically stated otherwise in the authorizing statute.

The definitional provision in MCL 124.281(d) weighs in favor of the arguments of the Village of Stevensville and the MML:

> (d) "Municipality," includes ***each*** county, township, city or village.

Emphasis added. Certainly both a township and a village are defined as municipalities in MCL 124.281(d). There is no hierarchy established in the statute by which a

township necessarily includes a village situated within it. The definition lists the forms of municipalities equally, with no heightened power or status assigned to any of them. The use of the word "each" in the definition connotes singular importance and distinction to each municipality, rather than some vague power of one municipality over another by reason of geographic location. Because a village is defined as a municipality on equal legal footing with a county, township and city within the structure of the statute, the plain language of MCL 124.282(1) requires that the Village of Stevensville join in an authority by adopting the articles of incorporation, and MCL 124.282(2) limits the territory of an authority to that "lying within the ***incorporating*** municipalities." Emphasis added. Because the Village of Stevensville was not an incorporating municipality of the second (Southwest) authority, the territory of the Village of Stevensville is not included within the territory of the second (Southwest) authority. Focusing on the geographic location of a village (or city) within a township boundary offers a facile and inadequate analysis of the statutory framework. As a result, the assertion of jurisdiction and power under the statute by the second (Southwest) authority over the Villages of Stevensville and Shoreham was illegal, invalid, and of no effect. The circuit court erred in failing to reach this result, reciting erroneous conclusions and misconstructions of the statute.

> The Act simply mandates that the authority "shall be comprised of the territory lying within the incorporating municipalities." MCL 124.282(2). For example, Plaintiff Village of Stevensville is territory lying within the incorporating municipality of St. Joseph Charter Township. Therefore, any authority incorporated by St. Joseph Township, (e.g. the Southwest Authority) must include

> Plaintiff within its territorial boundaries, but Plaintiff need not be a constituent municipality in order to be so included. As Defendant points out, Act 233 only imposes a constituency requirement where an authority is incorporated by two or more counties, which is not at issue in the case at bar.[1]

Opinion and Order, page 9, EXHIBIT 3. According to the trial court's interpretation of the statute, two or three townships could form an authority and assume control over the sewer and water infrastructure of any city or village situated within the township boundaries! This is an absurd result not contemplated or intended by the Legislature in enacting MCL 124.281 *et seq*. The trial court's misconstruction of MCL 124.282(1) and MCL 124.281(4) vitiates the plain intention of the Legislature to require that ***each*** municipality necessarily consent to the exercise of authority powers over its sewer and water systems. The geographic location of a city or village within one or more townships is no grant of actual or implied authority to the townships to form an authority and exercise control over city and village water and sewer utility systems.

The trial court also misinterpreted MCL 124.281(e):

> "Constituent municipality" or "constituent municipalities" includes all of the municipalities which signed or became signatories of articles of incorporation of any authority incorporated under this act, except if the authority is incorporated by 2 or more counties, in which event each

[1] The trial court even misconstrued the purpose of the exception in MCL 124.281(2), which bestowed upon each municipality within the incorporating counties the status of a constituent municipality without requiring each city, township, and village within those counties to adopt the articles of incorporation as otherwise necessitated by MCL 124.282(1). The exception prevents the outcome reached by the trial court, in which a municipality is subjected to the power of an authority without adopting the articles of incorporation, or being included as a constituent municipality, or contracting with the authority pursuant to MCL 124.290.

> municipality within the respective territorial limits of the counties as are either original incorporators or subsequently become a constituent part of the authorities under section 6, shall be considered to be a constituent municipality for the purposes of this act.

The plain language of the statute defines constituent municipalities of an authority as those municipalities that sign the articles of incorporation. This means what it says: each municipality that signs the articles of incorporation becomes a constituent municipality of the authority. The Village of Stevensville approved and signed the articles of incorporation of the first (Shoreline) authority, and is a constituent municipality of that authority. The Village of Stevensville did not approve or sign the articles of incorporation of the second (Southwest) authority, so the Village of Stevensville is not a constituent municipality of that authority. However, Stevensville's absence (as a constituent municipality) from the second (Southwest) authority does absolutely nothing to grant power to the incorporating township municipalities and the second (Southwest) authority to use and control Stevensville's water and sewer infrastructure. The trial court mistakenly relied upon the exception to the first clause in MCL 124.281(e), which does not apply to this case, as a basis for concluding that the Village of Stevensville does not have to consent to being included within an authority. This is a colossal misinterpretation of the statute that cannot be allowed to stand.

Examining the two definitions together is helpful. MCL 124.281 defines "municipality" without limitation to any municipality that has, or has not, joined an authority. MCL 124.282 defines "constituent municipality" as one that has signed the articles of incorporation and its territory is included within the authority.

> (d) "Municipality," includes each county, township, city, or village.
>
> (e) "Constituent municipality" or "constituent municipalities" includes all of the municipalities which signed or became signatories of articles of incorporation of any authority incorporated under this act, except if the authority is incorporated by 2 or more counties, in which event each municipality within the respective territorial limits of the counties as are either original incorporators or subsequently become a constituent part of the authorities under section 6, shall be considered to be a constituent municipality for the purposes of this act.

The Legislature allowed for what the trial court did not. Two townships could form an authority, and be constituent members of the authority, while several cities and villages within those townships would not be constituent members of the authority, and would not be subject to the jurisdiction and power of the authority. No municipality could be compelled to join.[2] Each city and village not joining the authority would still be a municipality as defined in MCL 124.281(d), but each would not be a constituent municipality as defined in MCL 124.282(e). The absence of status as a constituent municipality in the authority would not grant any control by the authority over the sewer and water utility systems of nonconstituent cities and villages. And the absence

[2] Other than by way of the exception stated in MCL 124.281(2), which grants constituent municipality status to cities, villages and townships within the counties incorporating the authority.

of status as a constituent municipality would not grant **more** control to an authority over the sewer and water utility systems of a nonconstituent municipality than the status of being a constituent municipality. But this is the enormous misconstruction of MCL 124.282 reached by the trial court based on its mistaken interpretation of MCL 124.281(e). If the trial court's misconstruction of the statute is affirmed, all cities and villages in the State of Michigan could lose control of their water and sewer utility systems by way of an authority incorporated by two or more townships in which the cities and villages are located, without the consent and approval of the legislative bodies of those cities and villages! This outcome is not authorized or permitted by the plain language of MCL 124.282, and it is contrary to the overall statutory scheme of encouraging and allowing the voluntary combination of municipalities in authorities.

There is a constitutional provision that militates in favor of construing MCL 124.282 as argued here by the MML; Const 1963 art 7 § 28:

> **The legislature by general law shall authorize two or more counties, townships, cities, villages or districts**, or any combination thereof among other things **to: enter into contractual undertakings or agreements with one another** or with the state **or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately**; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; **transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved;** cooperate with one another and with state government; lend their credit to one another or any

> combination thereof as provided by law in connection with any authorized publicly owned undertaking.

The constitutional language specifically directs the Legislature to provide by general law for two or more municipalities to enter contracts or agreements for the joint administration of local governmental business, but the transfer of local governmental functions of responsibilities should occur "upon the consent of each unit involved." The trial court construed MCL 124.282 as allowing the transfer of Stevensville's water and sewer utilities to the second (Southwest) authority without the consent of Stevensville. This was error that must be corrected. The constitutional call for cooperative efforts between units of local government expressed in Const 1963 art 7 § 28 should not be ignored in construing MCL 124.282 *et seq* as authority for townships to seize control over the water and sewer utility systems of cities and villages situated within the township boundaries. The trial court's conclusion is diametrically opposed to the broad purpose of cooperative endeavors of local units of government outlined in Const 1963 art 7 § 28 and MCL 124.281 *et seq*.

The prior constitutional provision of Const 1908 art 8 § 31 contained an even stronger restriction against the unilateral transfer of the functions or responsibilities of local government:

> Provided, that no city, village or township shall surrender any such rights, obligations, or property without the approval thereof by a majority vote of the electors thereof voting on such question.

The same legal principle of municipal consent is evident, demonstrating that general law enactments for the combination of local units of government, or the joint efforts of local units of government, should not produce the transfer or surrender of functions, responsibilities, rights, or property without the consent of the unit involved.

If the trial court's construction of MCL 124.281 *et seq* is accurate, then why was the first (Shoreline) authority formed with the Village of Stevensville as a constituent municipality, complete with articles of incorporation approved by the Village? The MML asserts that MCL 124.281 *et seq* never before has been interpreted or applied as a legal mechanism by which townships can band together as an authority and seize control over the sewer and water utilities of cities and villages within their township boundaries. While this particular case suggests that members of an authority formed pursuant to MCL 124.281 might need more ways to deal with an obstinate constituent municipality, that is not a reason to misconstrue the statute and permit the forced unilateral transfer of one municipality's sewer and water utility to an authority composed of other units of local government. If anything, the articles of incorporation should be amended to address the problems experienced by the first (Shoreline) authority, maintaining the independent choice of each constituent member to participate or not.

Any suggestion that the second (Southwest) authority can exert control over the water and sewer infrastructure of the Village of Stevensville, without the consent of the Village, is contradicted by Const 1963 art 7 § 29:

> **No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any** county, township, city or **village for** wires, poles, **pipes**, tracks, **conduits or other utility facilities, without the consent of the duly constituted authority of the** county, township, city or **village**; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

Emphasis added. Just because the second (Southwest) authority purportedly operates a public water and sewer utility does not give it the unrestricted use and control of the infrastructure within the Village of Stevensville. The consent of the Village of Stevensville is required. The trial court's misconstruction of MCL 124.281 *et seq* would wipe out the cherished protection afforded to the Village of Stevensville and other Michigan municipalities by Const 1963 art 7 § 29. There is no cogent explanation of how the trial court reached the conclusion that MCL 124.281 *et seq* empowers three townships to form an authority that assumes control over the water and sewer utilities and infrastructure of the Village of Stevensville, without the consent of Stevensville. The consent given by the Village of Stevensville to the first (Shoreline) authority is limited to the terms and conditions of the amended articles of incorporation adopted by Stevensville.

A review of various sections of the statute supports the construction and interpretation offered by the Village of Stevensville and the MML. The recitation of powers in MCL 124.284 does not indicate that an authority can impose its jurisdiction and power over any municipality that did **not** adopt the articles of incorporation as required by MCL 124.282, or was **not** granted the status of a constituent municipality by incorporating counties pursuant to the exception in MCL 124.282(2).

Rules and regulations can be adopted by an authority "with concurrence by resolution of constituent municipalities." MCL 124.284a. This provides a check on the power of the authority to impose rules and regulations, which would not be available to the Village of Stevensville under the second (Southwest) authority. It makes no sense that rules and regulations of the authority could be imposed and enforced in nonconstituent municipalities that never joined the authority.

The authority can "acquire property for a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems by purchase, construction, lease, gift, or devise." MCL 124.285. However, this statutory section does **not** authorize an authority to acquire water and sewer infrastructure by formation of the authority and inclusion of a municipality without its consent. "The authority and any of its **constituent** municipalities may enter into a contract … operation, and financing of a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems. " MCL 124.287. Emphasis

added. The Village of Stevensville was a constituent municipality in the first (Shoreline) authority, but was reduced to an unwilling object of the second (Southwest) authority's control.

While the Village of Stevensville could still contract with the second (Southwest) authority pursuant to MCL 124.290 as a nonconstituent municipality, there is nothing in the statute to suggest the second (Southwest) authority has any jurisdiction or power over the water and sewer utility systems of the Village of Stevensville. Any consent by the Village under the terms of the articles of incorporation of the first (Shoreline) authority does not extend or transfer through the statutorily mandated procedure for the formation of the second (Southwest) authority, because the consent is obtained through the adoption of the articles of incorporation. MCL 124.282(1).

Reading the statute in its entirety, the statutory scheme grants jurisdiction and power to an authority over constituent municipalities according to articles of incorporation adopted by a local legislative body pursuant to MCL 124.282, and contractual powers over nonconstituent municipalities to the extent granted by a contract formed pursuant to MCL 124.290. Both mechanisms are founded on the clear consent of the municipality to participate in the operations of the authority. The trial court's misconstruction of MCL 124.282(2) violates the statutory scheme of authorizing municipalities to join together voluntarily to accomplish governmental business, like

providing water and sewer service through a combination of municipalities, premised on the consent of each municipality.[3]

Perhaps the trial court failed to appreciate the municipal powers of the Village of Stevensville. The "village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof." Const 1963 art 7 § 24. The Village "may sell and deliver water and provide sewage disposal services outside of its corporate limits in such amount as may be determined by the legislative body." Const 1963 art 7 § 24. The Legislature described the broad powers of a village. MCL 67.1a[1].

> (1) Unless otherwise provided or limited in this chapter, the village is vested with all powers and immunities, expressed or implied, that villages are, or hereafter may be, permitted to exercise under the constitution and laws of the state of Michigan. The enumeration of particular powers or immunities in this act is not exclusive.
>
> (2) The village may do all of the following:
>
> (a) Exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government whether such powers are expressly enumerated or not.
> (b) Do any act to advance the interests, good government, and prosperity of the village.
> (c) Through its regularly constituted authority, pass and enforce all laws, ordinances, resolutions, and rules relating

[3] The only exception to the requirement of consent of each unit involved is the circumstance of multiple counties forming an authority, in which each township, city and village is designated a constituent municipality, which is not the fact pattern presented by this case. MCL 124.282(2).

> to its municipal concerns subject to the constitution and laws of the state.
>
> (3) The powers of the village under this act shall be liberally construed in favor of the village and shall include those fairly implied and not prohibited by law or constitution.
>
> (4) The specific powers listed in section 1 of this chapter shall not be construed as limiting the general powers set forth in subsections (1), (2), and (3).

The Village "may establish, construct and maintain sewers, drains, and watercourses," which "improvements shall be of such dimensions and materials, and under such regulations as the council considers proper." MCL 67.24. The Village can levy taxes or impose special assessments to pay for these expenses. MCL 67.25. The Village "council may enact ordinances necessary for the protection and control of the public sanitary sewers, drains, ditches, storm water systems, water supply systems, and watercourses, and to carry into effect the powers conferred in this chapter in respect to the drainage of the village." MCL 67.34. **"Any village may purchase or construct and may maintain water works to provide the village with pure water."** MCL 71.1. Emphasis added.

> "The village may acquire, purchase, erect, and maintain the reservoirs, canals, aqueducts, sluices, buildings, engines, water wheels, pumps, hydraulic machines, distributing pipes, and other apparatus, appurtenances, and machinery, and may acquire, purchase, appropriate, and own such grounds, real estate, rights, and privileges that are necessary and proper for securing, constructing, rebuilding, repairing, extending, and maintenance of those water works or filtration plants."

MCL 71.2. "The council may enact such ordinances, and adopt such resolutions, as may be necessary for the care, protection, preservation, and control of the water works, and

all the fixtures, appurtenances, apparatus, buildings, and machinery connected therewith or belonging thereto, and to carry into effect the provisions of this chapter, and the powers herein conferred in respect to the construction, management and control of such water works." MCL 71.7. There is even specific power to "purchase or construct and … maintain a water works beyond the corporate limits of the village." MCL 71.8. "In such case the council may enforce beyond the corporate limits of the village, have control over the buildings, machinery, and other property belonging to and connected with the water works, in the same manner and to the same extent as if located within the village, and adopt and enforce ordinances and police regulations as may be necessary for the care, protection, preservation, management, and control of the water works." MCL 71.8. "For the purpose of operating or constructing and maintaining such water works, the village may, after obtaining appropriate rights as provided by law, use the ground or soil under any street, highway, or road for the purpose of introducing water into and through any and all portions of the village, and repairing and relaying water pipes." MCL 71.9.

The trial court disregarded the municipal identity and power of the Village of Stevensville, and engaged in flawed reasoning in its opinion, Order and Opinion, p 9, EXHIBIT 3.

> Therefore, any authority incorporated by St. Joseph Charter Township, (e.g. the Southwest Authority) must include Plaintiff within its territorial boundaries, but Plaintiff need not be a constituent municipality in order to be so included.

The statute does not contain any statement or provision by which an authority "must include" a village within the "territorial boundaries" of an authority. Nor does the statute provide that a village or any other municipality "need not be a constituent municipality to be so included." Instead, the statute provides that "[a]ny 2 or more municipalities may incorporate an authority" and "[t]he authority shall be comprised of the territory lying within the incorporating municipalities." MCL 124.282. ""Municipality" includes ***each*** county, township, city or village." MCL 124.281(e), emphasis added. The plain language of the statute requires each municipality to incorporate an authority in order for the territory of each municipality to be part of the territory of the authority.

There is no statutory basis for the trial court's conclusion that "Plaintiff need not be a constituent municipality to be so included." Order and Opinion, p 9, EXHIBIT 3. A "constituent municipality" is defined as "all of the municipalities which signed or became signatures of articles of incorporation of any authority incorporated under this act." MCL 124.281(e). There is no definition in the act of a "nonconstituent municipality." The only reference within the statute to a nonconstituent municipality is in MCL 124.290: "The authority and any constituent or nonconstituent municipality of the authority may contract for the furnishing of water, sewage disposal, or waste management services … by the authority to the municipality." In the same section it says "[t]he charges or rates to a nonconstituent municipality may be greater than those to constituent municipalities." MCL 124.290. This section authorizes contracts with

two classes of municipalities: constituent or nonconstituent municipalities. The phrase "of the authority" modifies both classes of municipalities, but it does not contradict or change the classes. Breaking it apart makes it easier to read and understand. An authority is capable of contracting with a constituent municipality of the authority, or a nonconstituent municipality of the authority. A constituent municipality of the authority is a member of the authority, and its territory is within the territory of the authority. A nonconstituent municipality of the authority is not a member of the authority, and its territory is not within the territory of the authority.

The trial court apparently placed undue significance on the phrase "of the authority" in MCL 124.290 in concluding that the Village of Stevensville "need not be a constituent member to be so included." Opinion and Order, p 9. EXHIBIT 3. All municipalities with which an authority can contract are either constituent municipalities or nonconstituent municipalities of the authority. MCL 124.290 is a broad statement of the contracting power of an authority, not a definition or an alternative basis by which a municipality can be a (nonconstituent) member of an authority and subject to the jurisdiction and control of the authority.

Although the Legislature defined "constituent municipality" in the statute, it did not define "nonconstituent municipality," "constituent," or "nonconstituent."

When used as an adjective, constituent means "necessary in the formation of the whole; forming, composing, or making as an essential part; component; elementary: as, oxygen and hydrogen are constituent parts of water. 2. that can or does appoint or vote for a representative; 3. authorized to make or revise a political constitution: as a constituent assembly. *Webster's New Twentieth Century Dictionary, Second Edition.*

When used as a noun, constituent means "a necessary part or element, a component. 2. one who elects or assists in electing another as his representative in a deliberative or administrative assembly; as, the representative took up the claims of his constituents; 3. one who empowers another to transact business for him; one who appoints another as his agent; a principal; as, the agent said he could do nothing till he consulted his constituent. *Webster's New Twentieth Century Dictionary, Second Edition.*

These definitions match the Legislature's definition of a "constituent municipality," with each being necessary in the formation of the whole authority, and each forming or composing an essential part or component of the authority. Even more telling is the third definition, identifying a constituent (municipality) as one that is authorized to make or revise the political constitution of an authority. All of these definitions define a constituent municipality is an essential part of the formation of the

authority, which composes or forms the authority, and appoints the authority to act for it. The word "nonconstituent" is not recognized in the dictionaries as a word that is defined separately from "constituent." However, there is a dictionary explanation of "non":

> [from L. non, not.] a prefix meaning not, used to give a negative force, especially to nouns, adjectives, and adverbs, as in nonresident; non – is less emphatic than in – and un -, which often give a word an opposite meaning (e.g. non-American, un-American); a hyphen may be used after non – and is generally used when the base word begins with a capital letter. The list below includes some of the more common compounds formed with non – that do not have special meanings; they will be understood if not is used before the meaning of the base word.

Webster's New Twentieth Century Dictionary. Applying this to "nonconstituent municipality" as used in MCL 124.290, it is clear that an authority is empowered to contract with constituent municipalities and non-constituent municipalities. A municipality that is **not** a constituent municipality is **not** necessary for the formation of the authority, has **not** formed or composed the authority, is **not** an essential part or component of the authority, and has **not** authorized the authority to make or revise its political constitution (or articles of incorporation).

Although the dictionary indicates **non** is less emphatic than **in** and **an**, which mean the opposite, "inconstituent" and "unconstituent" are such awkward word forms that the Legislature may very well have used "nonconstituent" as the opposite of constituent. The basic juxtaposition of constituent municipality and nonconstituent

municipality in MCL 124.290 would fit the "opposite" construction of the two words, making it even more clear that a nonconstituent municipality is not a part of the authority at all, and did not appoint the authority to make or revise the political constitution of the authority (or articles of incorporation). Stated most succinctly, a nonconstituent municipality is a municipality that is not a member or part of an authority formed according to MCL 124.281 *et seq*.

And in the words of some notorious television infomercials, there is more:

> "constituent n. 1. one who authorizes another to act as agent; 2. a **member** of a constituency; 3. an essential part: component, element; 4. a structural unit of a definable syntactic, semantic, or phonological category that consists of one or more linguistic elements (as words, morphemes, or features) and that can occur as a component of a larger construction.
>
> constituent a. 1. serving to form, compose, or make up a unit or whole: component <constituent parts>; 2. having the power to create a government or frame or amend a constitution <a constituent assembly>.

Merriam-Webster's Online Dictionary. If "constituent" was used by the Legislature as a synonym for "member," then a constituent municipality is a member of an authority, and a nonconstituent municipality is a nonmember of an authority. This meaning fits the construction of the sentence in MCL 124.290 with simple elegance. "The authority and any [member] or [nonmember] municipality of the authority may contract for the furnishing of water, sewage disposal, or waste management services." When considered in this light, MCL 124.290 does not stand for the proposition that a

nonconstituent municipality is or can be included within an authority and subjected to the jurisdiction and control of the authority, other than to the extent provided in a contract. If "constituent" was used by the Legislature to designate a municipality that authorized the authority to act as its agent, then a "nonconstituent" municipality would be a municipality that did **not** form the authority and **did not** appoint the authority to act as its agent, and did not submit its territory to the jurisdiction of the authority.

Viewing the statute in its entirety, the plain language requires enforcement by the Court of Appeals of the requirement that each municipality join in the incorporation of an authority in order for the authority to exercise jurisdiction and control over each incorporating municipality and the territory within it.

II. THE FORMATION OF THE SECOND (SOUTHWEST) AUTHORITY BY THE THREE TOWNSHIPS IMPAIRED THE OBLIGATION OF CONTRACT IN THE FIRST (SHORELINE) AUTHORITY.

Summary of Argument

The incorporation of the second (Southwest) authority impaired the contract between the Village of Stevensville and the other constituent members of the First (Shoreline) authority, contrary to Const 1963 art 1 § 10.

Standard of Review

"The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza LLC*, 273 Mich App 449,452; 733 NW2d 766 (2006). Constitutional issues are reviewed de novo. *Wayne County v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004).

Contract and Impairment

The essential elements of a valid contract are the following: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). "No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted." Const 1963 art 1 § 10.

Undoubtedly a township is empowered "to make contracts necessary and convenient for the exercise of their corporate powers." MCL 41.2(1)(b). "[T]he village may…contract and be contracted with." MCL 61.12. The subject matter of their contract is authorized explicitly in MCL 124.282(1):

> (1) Any 2 or more municipalities may incorporate an authority for the purpose of acquiring, owning, improving, enlarging, extending, and operating a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems by the adoption of articles of incorporation by the legislative body of each of the municipalities.

"Where the contract consists of mutual promises there is an obligation on each party to perform his own promise and to accept performance of the other's promise." *Wood v Potter*, 291 Mich 203, 209; 289 NW 131 (1939). "A valuable consideration, in a legal sense, may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, loss or responsibility given, suffered or undertaken by the others. *Wood v Potter*, 209.

The (second amended) articles of incorporation of the first (Shoreline) authority outline the relationship between the constituent municipalities that formed it according to 233 PA 1955. EXHIBIT 1. The governing body included one voting representative from the Village of Stevensville. EXHIBIT 1, Article VII, page 2. The purpose of the authority was "to acquire, own, improve, enlarge, extend and operate a water supply system and/or a sewage disposal system in accordance with" 233 PA 1955. EXHIBIT 1, Article III, pp 1-2. The territorial limits were described to "include all of the territory embraced within the corporate boundaries of its constituent municipalities." EXHIBIT 1, Article IV, p 2. The authority would "posses such powers as are granted by these Articles and as may be agreed upon from time to time by contract between the Authority and the municipal corporations creating this Authority." EXHIBIT 1, Article IV, page 2. The authority was to "continue in existence perpetually or until dissolved by act of the parties or by law." EXHIBIT 1, Article V, p 2. But the "Authority shall not be dissolved if such dissolution could operate as an impairment of any of its contracts."

EXHIBIT 1, Article V, p 2.[4] "The governing body of this Authority shall be a Board of Trustees, … which shall be made up of three representatives from St. Joseph Charter Township, three representatives from Lincoln Charter Township, one representative from the Village of Stevensville, one representative from the Village of Shoreham and one representative from Royalton Township." EXHIBIT 1, Article VI, pp 2-3. "For all contracts providing for the furnishing of water or sewer service or any amendment to such contracts, the Board shall have the prior approval of each municipality member and majority vote of the members of the Board." EXHIBIT 1, Article IX, p 4. Payment terms were outlined.

> "The sums to be contributed by each member municipality, excluding the Village of Shoreham and the Village of Stevensville, shall be an amount that corresponds with the water consumption of that municipal entity for the preceding fiscal year, exclusive of fire runs, and each of the member Townships agree that they will contribute such amounts to the Authority as their water consumption bears to the total water consumption of the Authority and they further agree that any necessary expansion or repairs to the system required to be performed by the Authority, including expansion of the storage facility, shall be paid for on the basis that the quantity of water consumption of that municipality bears to the total water consumption of the Authority members, except in the case of repair or replacement of water mains in those instances where a specific contract provides otherwise, then such contract shall control."

EXHIBIT 1, Article XI, p 6. "The Authority may, subject to the approval of its constituent municipalities, enter into and amend contracts providing for furnishing of a water supply system and/or a sewage disposal system as authorized" by 233 PA 1955.

[4] This probably is why the three townships chose to form the second (Southwest) authority.

EXHIBIT 1, Article XIII, p 7. "The Authority may, subject to prior approval of its member municipalities, enter into contracts with any **non-member**[5] city, village or township for the furnishing of sewer treatment services and/or water supply in conformance with any contracts the Authority may have for the furnishing of such service." EXHIBIT 1, Article XIII, p 7, "Neither the Authority nor any of its constituent municipalities shall have the authority to extend services beyond its corporate limits without prior approval of all the constituent municipalities." EXHIBIT 1, Article XIV, p 8.

All of the quoted provisions are indications of the consideration supporting a finding of the existence of a contract between the constituent municipalities to form and operate an authority to deliver water and sewer services to the constituent municipalities, with an agreement on how to pay for the services.

There must be mutuality of agreement, which is satisfied by the formal approval by each constituent municipality of the original and amended articles of incorporation, as required by MCL 124.282(1) and MCL 124.286.

[5] The use of the word "non-member" indicates the authority believed that a nonconstituent municipality was synonymous with a non-member of the authority prior to this litigation.

The articles of incorporation are replete with evidence of mutuality of obligation, even though "mutuality of obligation is not an essential element in every contract," *Lawrence v Ingham County Health Dept*, 160 Mich App 420, 424; 408 NW2d 461 (1987).

The trial court erred in failing to find a contract between the Village of Stevensville and the other constituent members of the first (Shoreline) authority. The second (Southwest) authority was formed by the approval and adoption of articles of authority by three constituent township members of the first (Shoreline) authority, on terms in derogation of those of the first (Shoreline) authority, to the disadvantage of the Village of Stevensville. The Village of Stevensville lost its constituent status in the process, and its Board seat, and the right to vote on contracts and approve the budget. More importantly, the Village of Stevensville lost control over its own water and sewer utility systems, which was preserved in the First (Shoreline) authority and assumed by the three townships in the second (Southwest) authority. All of this occurred in response to Stevensville's contractually specified right to approve (or disapprove) the budget of the first (Shoreline) authority.

Clearly the articles of incorporation of the second (Southwest) authority contravene the terms of the first (Shoreline) authority and impair, diminish, or eliminate the rights of the Village of Stevensville as a constituent member, while purporting to assume control by the second (Southwest) authority of the water and sewer systems of the Village of Stevensville. This results in an impairment of the contract embodied in

the second amended articles of incorporation of the first (Shoreline) authority, at the expense or loss of the Village of Stevensville, and necessarily renders the incorporation of the second (Southwest) authority illegal and invalid.

Unlike the situation in *Studier v Michigan Public Schools Retirement Board*, 472 Mich 645; 698 NW2d 350 (2005), here the three townships acted through their respective legislative bodies to approve the second amended articles of incorporation of the first (Shoreline) authority, and the articles of incorporation of the second (Southwest) authority, effectively altering and impairing the contractual obligations of the three townships to the Village of Stevensville. The townships legislatively approved a second contract that avoided or eliminated legal obligations to Stevensville under the first contract. In this case the proof of what the three townships bound themselves to in the first (Shoreline) authority is irrefutable, because it is plainly stated in the second amended articles of incorporation. EXHIBIT 1. And the proof of the impairment is irrefutable as revealed by the terms of the articles of incorporation of the second (Southwest) authority, by which the Village of Stevensville lost its status as a constituent member, lost its seat on the Board, lost its right to approve or disapprove the budget, lost its right to approve or disapprove contracts with other municipalities, and lost control over its water and sewer utilities. EXHIBIT 2. The townships altered their contractual relationship with the Village of Stevensville under the guise of forming a second (Southwest) authority. The action by the three townships, which was the formation of the second (Southwest) authority, was illegal and invalid with respect to

the Village of Stevensville. The circuit court should have made that ruling, but it did not.

The statute itself speaks to impairment of a contract, MCL 124.291:

> **A change in the jurisdiction over territory in a municipality which has contracted with the authority** for the acquisition, construction, and financing of a sewage disposal system, water supply system, solid waste management system, or a combination of systems under this act, or has contracted with the authority for sewage disposal, water, or solid waste management services, or a combination of services **shall not impair the obligations of the contract.**

Here the second (Southwest) authority asserted and assumed jurisdiction over the Village of Stevensville without Stevensville's consent, which is a change in the jurisdiction over territory in a municipality for the purposes of the authority formed under MCL 124.281 *et seq*. The statute prohibits the impairment of the obligations of any contract that the first (Shoreline) authority has with Stevensville. If the articles of incorporation forming the first (Shoreline) authority are a contract with the constituent municipalities and the authority, then MCL 124.291 prohibits the incorporation of the second (Southwest) authority on terms that impair the obligations to Stevensville under the first articles of incorporation. Although not squarely on point, the Legislature may have provided a simple solution to the problems facing the various municipalities in this case, in the second sentence of ML 124.291.[6]

[6] This section on "change in the jurisdiction" probably was intended to apply to boundary changes associated with annexation and detachment of territory among cities, villages, townships and counties, but it is not so limited by the text.

> **In event of a change in jurisdiction over territory, the contract shall be carried out insofar as the territory is concerned by the authority and the municipality** as shall have jurisdiction to furnish water, sewage disposal, or solid waste management services, or a combination of services to the territory, **unless that requirement would operate to impair a contract obligation, in which case the contracting municipality shall retain jurisdiction over the territory for the purpose of carrying out its contractual obligations. A change in municipal jurisdiction over territory within an authority shall not in any manner affect the authority or its boundaries.**

This indicates the first contractual arrangement with Stevensville and the first (Shoreline) authority must be carried out, performed and fulfilled, regardless of the change in jurisdiction over sewer and water utilities occasioned by the formation of the second (Southwest) authority. Even if this performance could not be accomplished without impairing another contract obligation, then the Village of Stevensville "shall retain jurisdiction over the territory for the purpose of carrying out its contractual obligations." This would negate the assertion of jurisdiction by the second (Southwest) authority over the Village of Stevensville, and leave all of the contractual undertakings and obligations of the first (Shoreline) authority in place with regard to the Village of Stevensville.

III. THE CONTRACT BETWEEN THE FIRST (SHORELINE) AUTHORITY AND THE SECOND (SOUTHWEST) AUTHORITY IS INVALID.

Summary of Argument

If the incorporation of the second (Southwest) authority is illegal and invalid as to the Village of Stevensville, then the contract entered by the second (Southwest) authority is invalid as to the Village of Stevensville.

Standard of Review

"The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza LLC*, supra.

Contract is Invalid

Although somewhat obscured by procedural machinations in the trial court, this issue necessarily depends on the Court's resolution of the challenge to the legality of the formation of the second (Southwest) authority and its purported exercise of jurisdiction and control over the territory and water and sewer infrastructure within the Village of Stevensville and the Village of Shoreham.

For all of the reasons submitted in the arguments on the first and second questions presented, the incorporation of the second (Southwest) authority should be found illegal and invalid as to the Village of Stevensville. As a consequence, any

contract entered by the second (Southwest) authority regarding the Village of Stevensville would be void from its inception.

IV. DEPRIVAL OF STEVENSVILLE'S PROPERTY WITHOUT DUE PROCESS OF LAW.

Summary of Argument

The formation of the second (Southwest) authority by the three townships that were constituent municipalities with the Village of Stevensville and the Village of Shoreham deprived the Village of Stevensville over the control of its own water and sewer utilities, without the consent of Stevensville in violation of the applicable statute, MCL 124.281 *et seq*, and Const 1963 art 1 § 17.

Standard of Review

Constitutional issues are reviewed de novo. *Wayne County v Hathcock*, supra.

Taking

The second (Southwest) authority unlawfully asserted control over the water and sewer infrastructure of the Village of Stevensville as explained earlier in this brief. EXHIBIT 2. This was done without the consent of the Village of Stevensville, and contrary to the statutory template in MCL 124.281 *et seq*. The nature, extent, and details of the taking are not clear from the limited record developed in the trial court.

If the formation of the second (Southwest) authority is found to be illegal and invalid with respect to the Village of Stevensville for the reasons articulated in the arguments submitted on the first and second questions presented, then the takings claim of Stevensville will be moot.

The takings claim and the arguments of the Village of Stevensville in support of it bolster the other arguments advanced against the illegal incorporation of the second (Southwest) authority and its assertion of jurisdiction and control over the villages within the boundaries of the three incorporating townships in the context of MCL 124.281 *et seq*. The statutorily defined process was not followed by which the Village of Stevensville could have become a constituent municipality, MCL 124.282(1), or a nonconstituent municipality with a contract with the second (Southwest) authority, MCL 124.290. Therefore, the takings claim by the Village of Stevensville is another reason the Court of Appeals should find the exercise of jurisdiction and control by the second (Southwest) authority over the Village of Stevensville illegal and invalid.

RELIEF

The MML requests that the Court of Appeals reverse the trial court and hold that the incorporation of the second (Southwest) authority was illegal as to the Village of Stevensville, and any assertion of jurisdiction or control over the Village of Stevensville is void and of no effect, because MCL 124.281 *et seq* requires each municipality to form an authority as described in MCL 124.282, or otherwise consent to the exercise of

jurisdiction by an authority by way of MCL 124.286, or a contract entered pursuant to MCL 124.290.

Dated: December 1, 2008

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APPENDIX

Const 1963 art 1 § 10

Sec. 10. No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

Const 1963 art 1 § 17

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Const 1963 art 7 § 24

Sec. 24. Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.

Services outside corporate limits

Any city or village may sell and deliver heat, power or light without its corporate limits in an amount not exceeding 25 percent of that furnished by it within the corporate limits, except as greater amounts may be permitted by law; may sell and deliver water and provide sewage disposal services outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines outside the municipality within such limits as may be prescribed by law.

Const 1963 art 7 § 28

Sec. 28. The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform

separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

Officers, eligibility

Any other provision of this constitution notwithstanding, an officer or employee of the state or any such unit of government or subdivision or agency thereof, except members of the legislature, may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service.

Const 1963 art 7 §29

Sec. 29. No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

MCL 41.2 Inhabitants of township as body corporate; powers and duties generally; acquisition of property for public purposes; suits, acts, or proceedings by or against township; supervisor as township agent.

Sec. 2. (1) The inhabitants of an organized township are a body corporate and have, in addition to other powers that are conferred, all of the following powers and duties:

(a) To sue and be sued and appoint necessary agents and attorneys for that purpose.

(b) To make contracts necessary and convenient for the exercise of their corporate powers.

(2) In addition to other powers that are conferred, the township board may investigate any matter that is under the jurisdiction of the township and the authority vested in the township or an officer under this act. The supervisor or the township board by majority consent of the township board members serving may serve upon a person a subpoena that has been authorized by a court of proper jurisdiction in the county in which the

township is situated compelling the person to appear before the board or a committee of the board to be examined under oath or to produce a document or object for inspection or copying. If a person objects to or otherwise fails to comply with the subpoena served upon him or her, the supervisor or the township board by majority consent of the township board members may file in that court an action to enforce the notice. The court may issue an order requiring the person to appear to be examined or to produce a document or object for inspection or copying. Failure to obey the order of the court is punishable by the court as a contempt.

(3) By resolution of the township board, a majority of the members serving may acquire property for public purposes by purchase, gift, condemnation, lease, construction, or otherwise and may convey or lease that property or part of that property not needed for public purposes.

(4) A suit, act, or proceeding, by or against a township, in its corporate capacity, shall be in the name of the township. The supervisor of each township shall be the agent for his or her township for the transaction of legal business, by whom a suit may be brought and defended, and upon whom process against the township shall be served.

MCL 46.1 County board of commissioners; meetings.

Sec. 1. (1) The commissioners of each county shall meet annually in that county for the transaction of business as a county board of commissioners. The county board of commissioners may also hold special meetings, when necessary, at the times and places it finds convenient, and may adjourn from time to time as it considers necessary. The annual meetings of the county boards of commissioners shall be held each year after September 14, but before October 16. When the term, October session, or other term used to designate the annual meeting, is used, it shall be construed to mean the annual meeting required by this section. The annual meetings of a county board of commissioners shall be held at a place in the county which the county clerk appoints with approval of the county board of commissioners, or at the place where regular meetings of the county board of commissioners are held.

(2) The business which a county board of commissioners may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(3) The county board of commissioners may hold closed sessions as authorized by section 8 of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws.

(4) Public notice of the time, date, and place of meetings of the county board of commissioners shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

MCL 61.12 Nature of incorporated villages, bodies politic; powers.

Sec. 12. A village incorporated under this act is a body politic and corporate under the name designated for it upon incorporation. By that name, the village may sue and be sued, contract and be contracted with, acquire and hold real and personal property for the purposes for which it was incorporated, have a common seal, change the common seal at pleasure, and exercise all the powers under this act.

MCL 67.1a[1] Powers and immunities; effect of enumeration; construction generally; construction of section with § 67.1.

Sec. 1a. (1) Unless otherwise provided or limited in this chapter, the village is vested with all powers and immunities, expressed or implied, that villages are, or hereafter may be, permitted to exercise under the constitution and laws of the state of Michigan. The enumeration of particular powers or immunities in this act is not exclusive.

(2) The village may do all of the following:

(a) Exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government whether such powers are expressly enumerated or not.

(b) Do any act to advance the interests, good government, and prosperity of the village.

(c) Through its regularly constituted authority, pass and enforce all laws, ordinances, resolutions, and rules relating to its municipal concerns subject to the constitution and laws of the state.

(3) The powers of the village under this act shall be liberally construed in favor of the village and shall include those fairly implied and not prohibited by law or constitution.

(4) The specific powers listed in section 1 of this chapter shall not be construed as limiting the general powers set forth in subsections (1), (2), and (3).

MCL 67.24 Sewers, drains, and water-courses; construction; condemnation.

Sec. 24. The council of any village may establish, construct, and maintain sewers, drains, and watercourses whenever and wherever necessary. These improvements shall be of such dimensions and materials, and under such regulations as the council considers proper for the drainage of the village. Private property may be taken therefor in the manner provided by this act for taking private property for public use. But in all cases where the council shall consider it practicable, such sewer, drain, and watercourses shall be constructed in the public streets and grounds.

MCL 67.25. Sewers, drains, and water-courses; expenses of construction, methods of payment.

Sec. 25. The expense of constructing sewers, drains, and watercourses may be paid by general tax upon the taxable property in the village; or the expenses may be defrayed by special assessment upon the lands and premises benefited in proportion to the benefits resulting to each lot or parcel of land respectively; or such part of the expense as the council shall determine may be defrayed by special assessment, and the remainder may be paid by general tax.

MCL 67.34. Public sewers, drains, ditches, water systems, and water-courses; ordinances.

Sec. 34. The council may enact ordinances necessary for the protection and control of the public sanitary sewers, drains, ditches, storm water systems, water supply systems, and watercourses, and to carry into effect the powers conferred in this chapter in respect to the drainage of the village.

MCL 71.1. Water works; establishment, maintenance.

Sec. 1. Any village may purchase or construct and may maintain water works to provide the village with pure water.

MCL 71.2 Reservoirs, canals, buildings, equipment, etc.; acquisition, construction, maintenance.

Sec. 2. The village may acquire, purchase, erect, and maintain the reservoirs, canals, aqueducts, sluices, buildings, engines, water wheels, pumps, hydraulic machines,

distributing pipes, and other apparatus, appurtenances, and machinery, and may acquire, purchase, appropriate, and own such grounds, real estate, rights, and privileges that are necessary and proper for securing, constructing, rebuilding, repairing, extending, and maintenance of those water works or filtration plants.

MCL 71.7 Ordinances and resolutions for construction, management and control of water works and fixtures, buildings, machinery, etc.

Sec. 7. The council may enact such ordinances, and adopt such resolutions, as may be necessary for the care, protection, preservation, and control of the water works, and all the fixtures, appurtenances, apparatus, buildings, and machinery connected therewith or belonging thereto, and to carry into effect the provisions of this chapter, and the powers herein conferred in respect to the construction, management and control of such water works.

MCL 71.8 Location outside corporate limits; control by council.

Sec. 8. If the council considers it in the public interest, the village may purchase or construct and may maintain a water works beyond the corporate limits of the village. In such case the council may enforce beyond the corporate limits of the village, have control over the buildings, machinery, and other property belonging to and connected with the water works, in the same manner and to the same extent as if located within the village, and adopt and enforce ordinances and police regulations as may be necessary for the care, protection, preservation, management, and control of the water works. However, nothing in this section prohibits another local governmental unit from enforcing its ordinances within its limits.

MCL 71.9 Use of streets or highways.

Sec. 9. For the purpose of operating or constructing and maintaining such water works, the village may, after obtaining appropriate rights as provided by law, use the ground or soil under any street, highway, or road for the purpose of introducing water into and through any and all portions of the village, and repairing and relaying water pipes.

MCL 123.1061 Definitions.

Sec. 1. As used in this act:

(a) "Articles" means the articles of incorporation of an authority.

(b) "Authority" means a community swimming pool authority created under section 3.

(c) "Board" means the board of directors of the authority.

(d) "Community swimming pool" means an artificial body of water owned or operated by an authority or a district that is used collectively by a number of individuals primarily for the purpose of swimming, wading, recreation, or instruction and includes related equipment, structures, areas, and enclosures intended for the use of individuals using or operating the swimming pool such as equipment, dressing, locker, shower, and toilet rooms.

(e) "District" means a school district that serves a municipality whose population is not less than 15,000 and whose territory is located in not less than 2 counties, each of which has at least 15% of the municipality's population.

(f) "Municipality" means a city, village, or township.

(g) "Participating municipality" means a municipality that has adopted a resolution providing for the establishment of and the municipality's participation in an authority.

(h) "Superintendent" means the superintendent of the board of education of a district.

MCL 123.1063 Establishment, requirements; territory subject to taxation; public corporate body; exercise of powers.

Sec. 3. (1) Two or more municipalities may jointly establish a community swimming pool authority if the following requirements are met:

(a) There is a single district in which all or part of the territory of each municipality is located.

(b) The legislative body of each municipality adopts a resolution providing for the establishment of and participation in the authority pursuant to this act.

(2) The resolution required under subsection (1) shall provide that only that portion of the municipality's territory located within the district is subject to the levy and collection of the tax authorized in section 13.

(3) A community swimming pool authority established pursuant to this act is a public corporate body and is an authority under section 6 of article IX of the state constitution of 1963.

(4) An authority shall exercise its powers as an autonomous entity.

MCL 123.1077 Withdrawal of municipality from authority; requirements; duration of tax levy and receipt of services; amendment of articles of incorporation.

Sec. 17. (1) A participating municipality in which the tax authorized by section 13 is in effect may withdraw from an authority if all of the following requirements are satisfied:

(a) Not less than 2 months before the next regularly scheduled election of the municipality, the legislative body of the municipality adopts a resolution to withdraw from the authority on a date specified in the resolution. The date specified shall be not less than 6 months after the next regularly scheduled election of the municipality.

(b) Notice of an election on the resolution is published in a newspaper of general circulation in the municipality not less than 10 days before the next regularly scheduled election of the municipality following adoption of the resolution.

(c) The resolution is approved by a majority of the electors of the municipality that reside within the district voting on the resolution at the next regularly scheduled election of the municipality following adoption of the resolution.

(d) After approval of the resolution by the electors, the clerk of the municipality files with the secretary of state a copy of the official canvass statement and a certified copy of the resolution and files with the board a copy of the official canvass statement and a number of certified copies of the resolution sufficient for distribution to the legislative body of each of the participating municipalities.

(e) Payment or the provision for payment to the authority or its creditors of all obligations of the municipality seeking to withdraw is made.

(2) A tax authorized by section 13 before the adoption of the resolution to withdraw shall be levied in the municipality for its original purpose but only for the period of time originally authorized and only so long as the board continues in existence. In addition, a municipality that withdraws from an authority shall continue to receive community swimming pool services so long as the tax authorized to be levied by section 13 before the withdrawal of the municipality continues to be levied in the municipality and the community swimming pool remains in operation.

(3) A participating municipality in which no tax authorized by section 13 is in effect may withdraw from an authority if all of the following requirements are satisfied:

(a) The legislative body of the municipality adopts a resolution to withdraw from the authority on a date specified in the resolution. The withdrawal date shall follow the date of the resolution by not less than 1 year.

(b) The clerk of the municipality files with the secretary of state a certified copy of the resolution and files with the board a number of certified copies of the resolution sufficient for distribution to the legislative bodies of each of the participating municipalities.

(c) Payment or the provision for payment to the authority or its creditors of all obligations of the municipality seeking to withdraw is made.

(4) After the withdrawal of a municipality, the articles of incorporation shall be amended to reflect the withdrawal.

MCL 123.1135 Establishment; articles of incorporation.

Sec. 5. (1) Two or more municipalities or districts may establish a recreational authority. A recreational authority is an authority under section 6 of article IX of the state constitution of 1963.

(2) To initiate the establishment of an authority, articles of incorporation shall be prepared. The articles of incorporation shall include all of the following:

(a) The name of the authority.

(b) The names of the participating municipalities.

(c) A description of the territory of the authority.

(d) The size of the board of the authority, which shall be comprised of an odd number of members; the qualifications, method of selection, and terms of office of board members; and the filling of vacancies in the office of board member. If board members are elected in at-large elections by the qualified and registered electors of the participating municipalities, voting collectively, the election of board members shall be conducted pursuant to the same procedures that govern an election for a tax under sections 13 to 17.

(e) The purposes for which the authority is established, which shall be the acquisition, construction, operation, maintenance, or improvement of 1 or more of the following:

(*i*) A public swimming pool.

(*ii*) A public recreation center.

(*iii*) A public auditorium.

(*iv*) A public conference center.

(*v*) A public park.

(*vi*) A public museum.

(*vii*) A public historic farm.

(f) The procedure and requirements for a municipality or district to become a participating municipality in, and for a participating municipality to withdraw from, an existing authority or to join in the original formation of an authority. For a municipality or district to become a participating municipality in an existing authority or to join in the original formation of an authority, a majority of the electors of the municipality or district proposed to be included in the territory of the authority and voting on the question shall approve a tax that the authority has been authorized to levy by a vote of the electors of the authority under section 11. A municipality or district shall not withdraw from an authority during the period for which the authority has been authorized to levy a tax by the electors of the authority.

(g) Any other matters considered advisable.

(3) The articles shall be adopted and may be amended by an affirmative vote of a majority of the members serving on the legislative body of each participating municipality. If a participating municipality is a district, the articles shall be adopted and may be amended by an affirmative vote of a majority of the members serving on the legislative body of the entire municipality. Unless the articles provide otherwise, the requirements of this subsection do not apply to an amendment to the articles to allow a municipality or district to become a participating municipality in, or to allow a participating municipality to withdraw from, an existing authority.

(4) Before the articles or amendments to the articles are adopted, the articles or amendments to the articles shall be published not less than once in a newspaper generally circulated within the participating municipalities. The adoption of articles or amendments to the articles by a municipality or district shall be evidenced by an endorsement on the articles or amendments by the clerk of the municipality.

(5) Upon adoption of the articles or amendments to the articles by each of the participating municipalities, a printed copy of the articles or the amended articles shall

be filed with the secretary of state by the clerk of the last participating municipality to adopt the articles or amendments.

(6) The authority's articles of incorporation, or amendments to the articles, take effect upon filing with the secretary of state.

MCL 124.252 Incorporation of authority; articles of incorporation, adoption, endorsement, form, publication, filing; validity.

Sec. 2. Any 2 or more cities, villages or townships (hereinafter sometimes referred to as "municipalities") or any combination thereof, may incorporate an authority for the purpose of acquiring, owning, and/or operating a water supply system or systems, by the adoption of articles of incorporation by the legislative body of each municipality. The fact of such adoption shall be endorsed on such articles of incorporation by the mayor and clerk in case of a city, the president and clerk in case of a village, and the supervisor and clerk in case of a township, in form substantially as follows:

"The foregoing Articles of Incorporation were adopted by the ..... of the ..... of ....., ... County, Michigan, at a meeting duly held on the ..... day of ....., 19...

.....
..... of said .....
.....
..... of said ....."

The authority shall be comprised of the territory lying within such incorporating municipalities. The articles of incorporation shall be published at least once in a newspaper designated in said articles and circulating within the authority. One printed copy of such articles of incorporation certified as a true copy by the person or persons designated therefor, with the date and place of such publication, shall be filed with each, the secretary of state and the clerk of the county within which such territory or the major portion thereof is located. Such authority shall become effective at the time provided in said articles of incorporation. The validity of such incorporation shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the filing of such certified copies with the secretary of state and the county clerk.

MCL 124.281 Definitions.

Sec. 1. As used in this act:

(a) "Sewage disposal system," includes all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, or disposal of sewage or industrial wastes.

(b) "Water supply system," includes all plants, works, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, or the distribution of water.

(c) "Solid waste management system" includes all plants, works, instrumentalities, and properties used or useful in connection with the collection, transportation, processing, or disposal of discarded or waste materials of any sort, including access roads and facilities for resource recovery. "Solid waste management system" does not include the storage or disposal of toxic materials.

(d) "Municipality," includes each county, township, city, or village.

(e) "Constituent municipality" or "constituent municipalities" includes all of the municipalities which signed or became signatories of articles of incorporation of any authority incorporated under this act, except if the authority is incorporated by 2 or more counties, in which event each municipality within the respective territorial limits of the counties as are either original incorporators or subsequently become a constituent part of the authorities under section 6, shall be considered to be a constituent municipality for the purposes of this act.

MCL 124.282 Incorporation of authority; articles of incorporation, adoption, endorsement, publication, filing, effective date, presumption of validity.

Sec. 2. (1) Any 2 or more municipalities may incorporate an authority for the purpose of acquiring, owning, improving, enlarging, extending, and operating a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems by the adoption of articles of incorporation by the legislative body of each of the municipalities. The fact of the adoption shall be endorsed on such articles of incorporation by the chairperson of the county board of commissioners and the county clerk in case of a county; the mayor and clerk in case of a city; the president and clerk in case of a village; and the supervisor and clerk in case of a township, in form substantially as follows:

"The foregoing articles of incorporation were adopted by the ..... of the ..... of ..... County Michigan, at a meeting duly held on the ..... day of ....., 19....

.....
..... of said
.....
..... of said
....."

(2) The authority shall be comprised of the territory lying within the incorporating municipalities. The articles of incorporation shall be published at least once in a newspaper designated in the articles and having general circulation within the territory encompassed by the authority. One printed copy of the articles of incorporation certified as a true copy by the person or persons designated for the certification, with the date and place of the publication, shall be filed with the secretary of state and the clerk of the county within which the territory or the major portion of the territory is located. The authority shall become effective at the time provided in the articles of incorporation. The validity of the incorporation shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the filing of the certified copies with the secretary of state and the county clerk.

MCL 124.284 Authority as body corporate; powers.

Sec. 4. (1) An authority shall be a municipal authority and shall be a public body corporate with power to sue and be sued in any court of this state. It shall possess all the powers necessary to carry out the purposes of its incorporation and those incident thereto. The enumeration of any powers of this act shall not be construed as a limitation upon an authority's general powers.

(2) An authority may do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal and alter the seal at pleasure.

(c) Maintain an office at such place or places within the state as it may designate.

(d) Sue and be sued in its own name, plead and be impleaded.

(e) Determine the location of any project constructed by it under the provisions of this act, and to determine, in its discretion and without reference to any other provisions of

this act or any other law, the design, standards, and the materials of construction, and construct, maintain, repair, and operate the project. However, the functions, powers, and duties of the state department of public health and the department of natural resources in connection with any such public improvements shall remain unaffected by this act.

(f) Issue bonds of the authority for any of its corporate purposes under such means as may be provided in this act. If revenue bonds are issued under the provisions of section 12 or sections 12b and 12c, the revenue bonds shall be payable solely from the revenues pledged for their payment, as provided in this act.

(g) Adopt and promulgate rules and regulations for the use of any project constructed by it under the provisions of this act.

(h) Acquire, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act.

MCL 124.284a Rules and regulations; adoption; notice; effective date; summary.

Sec. 4a. The authority shall adopt rules and regulations by resolution of its governing body and with concurrence by resolution of constituent municipalities. After adoption of the resolution and concurrence by the constituent municipalities, a notice of adoption of the resolution and the rules and regulations, or a summary of those rules and regulations, shall be published in a newspaper of general circulation within the territory encompassed by the authority and within the territory furnished service by the authority by contract pursuant to section 10. The rules and regulations shall become effective 30 days after the date of publication of the notice and the rules and regulations or the summary of the rules and regulations. If a summary of rules and regulations is published, the summary shall be written in clear and nontechnical language and the authority shall designate in the publication the location where a full copy of the rules and regulations can be inspected or obtained.

MCL 124.285 Acquisition of property; condemnation procedure.

Sec. 5. The authority may acquire property for a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems by purchase, construction, lease, gift, or devise, either within or without its corporate limits, and may hold, manage, control, sell, exchange, or lease the property. For the purpose of condemnation, the authority may proceed under the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the

Michigan Compiled Laws, or any other statute which grants to any municipality or public body the authority to acquire private property for public use.

MCL 124.286 Subsequent addition of other municipalities to authority; amendment of articles of incorporation.

Sec. 6. Any municipality which did not join in the incorporation of an authority may become a constituent part thereof by amendment to the articles of incorporation adopted by the legislative body of such municipality and by the legislative body of each municipality of which such authority is composed. Other amendments may be made to the articles of incorporation if adopted by the legislative body of each municipality of which the authority is composed. Any such amendment shall be indorsed, published, and certified printed copies filed, in the same manner as the original articles of incorporation, except that the printed copies shall be certified and filed by the recording officer of the authority.

MCL 124.287 Contracts for acquisition, construction, operation, etc., of systems; authorization; financing of obligations; permissible contract provisions.

Sec. 7. (1) The authority and any of its constituent municipalities may enter into a contract or contracts providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a sewage disposal system, a water supply system, a solid waste management system, or a combination of systems, which contract or contracts shall provide for the allocation and payment of the share of the total cost to be borne by each contracting municipality in annual installments for a period of not exceeding 40 years. Each contracting municipality may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract or contracts, in which event each contracting municipality may include in its annual tax levy an amount sufficient so that the estimated collections from the tax levy will be sufficient to promptly pay when due the portion of the obligation falling due before the time of the following year's tax collection. The contract is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. If the contract or an unlimited tax pledge in support of the contract has been approved by the electors of a municipality, the tax may be in addition to any tax that the municipality may otherwise be authorized to levy and may be imposed without limitation as to rate or amount but shall not be in excess of the rate or amount necessary to pay the contractual obligation. If at the time of making the annual tax levy, there are other funds on hand earmarked for the payment of the contractual obligation, then credit for those funds may be taken upon the annual levy for the payment of the obligation. Other funds may

be raised by each contracting municipality by the use of any, or all, or any combination of the following additional methods:

(a) The levy of special assessments on property benefited by a sewage disposal system, water supply system, or a combination of systems, the procedures relative to the levying and collection of the special assessments to conform as near as is applicable to charter or statutory provisions for the levying and collection, except that a petition shall not be required from property owners.

(b) The levy and collection of rates or charges to users and beneficiaries of the service or services furnished by the sewage disposal system, water supply system, solid waste management system, or combination of systems.

(c) The exaction of connection charges to be paid by owners of land directly or indirectly connected with the sewage disposal system, water supply system, solid waste management system, or combination of systems.

(d) The receipt of money derived from the imposition of taxes by this state, except as the use of the money for the purpose is expressly prohibited by the state constitution of 1963.

(e) The receipt of other funds that may be validly used for the purpose.

(2) The contract or contracts may provide for any and all matters relating to the acquisition, construction, operation, and financing of the sewage disposal system, water supply system, solid waste management system, or combination of systems as are considered necessary, including authorization to the authority to issue bonds secured by the full faith and credit pledges of the contracting municipalities, as authorized by section 9. The contract or contracts may provide for appropriate remedy or remedies in case of default.

MCL 124.290 Contracts with municipalities for furnishing of services; charges or rates for services; contracts for furnishing of services to or use of facilities by authority; lump sum payments for uses; duration of contracts; contract as general obligation of municipality.

Sec. 10. The authority and any constituent or nonconstituent municipality of the authority may contract for the furnishing of water, sewage disposal, or waste management services, or a combination of the services by the authority to the municipality. The charges or rates specified in a contract shall be subject to change by the authority, if necessary to meet its obligations. The charges or rates to a nonconstituent municipality may be greater than those to constituent municipalities.

The authority and any other public corporation may contract for the furnishing of water, sewage disposal, or solid waste management system services, or a combination of services by the other public corporation to the authority or may contract for the use by the authority of any of the facilities of the water supply system; sewage disposal system, including sewers; solid waste management systems; or a combination of systems of the other public corporation. Any lump sum payment for those uses may be considered as a part of the cost of the authority system and may be financed the same as other capital costs are financed under this act. Each contract authorized in this section shall be for a period not exceeding 40 years. Each contract authorized in this section shall be a general obligation of the municipality.

MCL 124.291 Change in jurisdiction over territory in contracting municipality; arrangement by generator of waste for use of recyclable waste materials.

Sec. 11. (1) A change in the jurisdiction over territory in a municipality which has contracted with the authority for the acquisition, construction, and financing of a sewage disposal system, water supply system, solid waste management system, or a combination of systems under this act, or has contracted with the authority for sewage disposal, water, or solid waste management services, or a combination of services shall not impair the obligations of the contract. In event of a change in jurisdiction over territory, the contract shall be carried out insofar as the territory is concerned by the authority and the municipality as shall have jurisdiction to furnish water, sewage disposal, or solid waste management services, or a combination of services to the territory, unless that requirement would operate to impair a contract obligation, in which case the contracting municipality shall retain jurisdiction over the territory for the purpose of carrying out its contractual obligations. A change in municipal jurisdiction over territory within an authority shall not in any manner affect the authority or its boundaries.

(2) A generator of waste shall not be precluded by an ordinance, rule, regulation, policy or practice from arranging for the use of the generator's recyclable waste materials.

MCL 124.454 Formation of authority by political subdivisions; articles of incorporation, adoption.

Sec. 4. (1) A political subdivision or a combination of 2 or more political subdivisions may form a public authority under this act. A city, village, or township forming a public authority by itself or in combination with 1 or more other political subdivisions may provide that only a portion of the city, village, or township shall become part of the

public authority. The portion of the city, village, or township to become part of the public authority shall be bounded by precinct lines drawn for election purposes.

(2) Formation of a public authority pursuant to subsection (1) shall be accomplished by adoption of articles of incorporation by an affirmative vote of a majority of the members elected to and serving on the legislative body of each political subdivision.

MCL 124.455 Articles of incorporation; endorsement; publication; filing; effective date; presumption of validity.

Sec. 5. (1) The adoption of articles of incorporation under this act shall be evidenced by an endorsement on the articles of incorporation by the clerk of each respective political subdivision or by the recording officer of the incorporating authority under section 3 in a form substantially as follows:

The foregoing articles of incorporation were adopted by an affirmative vote of a majority of the members serving on the governing or legislative body of _____, _____ at a meeting duly held on the _____ day of _____, A.D., 19___.

_____

_____

_____

_____

(2) The articles of incorporation shall be published by the person or persons designated in the articles at least once in a newspaper designated in the articles and circulated within the area proposed to be served by the public authority. One printed copy of the articles of incorporation shall be filed with the secretary of state, the clerk of each county to be served by the public authority, and the director of the state transportation department by the person designated to do so by the articles. The public authority shall become operative and the articles of incorporation effective at the time provided in the articles of incorporation. The validity of the incorporation shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the publication of the articles of incorporation.

MCL 124.456 Articles of incorporation; contents.

Sec. 6. The articles of incorporation shall state the name of the public authority; the name or names of the incorporating authority or the incorporating political subdivisions; the portion of an incorporating city, village, or township to become part of the public authority, if less than the entire city, village, or township is to become part of

the public authority; the purposes for which it is formed; the power, duties, and limitations of the public authority and its officers; the composition and method of selecting its governing body and officers; the person or persons charged with the responsibility of causing the articles of incorporation to be published and the printed copies of the articles of incorporation to be filed as provided in this act; the method of amending the articles of incorporation; and any other matters which the incorporators consider advisable.

MCL 124.457 Addition of political to authority after formation; amendment of articles of incorporation.

Sec. 7. A political subdivision or a portion of a city, village, or township bounded by lines described in section 4 may become a member of a public authority after the public authority's formation under this act upon resolution adopted by a majority vote of the members elected to and serving on the legislative body of the political subdivision requesting membership for all or a portion of the political subdivision and upon resolution adopted by a 2/3 vote of the members serving on the board of the public authority approving an amendment to the articles of incorporation of the public authority adding all or a portion of the political subdivision. The amendment to the articles of incorporation shall be executed by the clerk of the political subdivision, all or a part of which is being added and shall be filed and published in the same manner as the original articles of incorporation.

MCL 124.532 Authority to contract for transfer of functions or responsibilities.

Sec. 2. Two or more political subdivisions are authorized to enter into a contract with each other providing for the transfer of functions or responsibilities to one another or any combination thereof upon the consent of each political subdivision involved.

MCL 124.601 Definitions.

Sec. 1. As used in this act:

(a) "Authority" means an authority incorporated under this act.

(b) "Emergency services" means fire protection services, emergency medical services, police protection, and any other emergency health or safety services designated in the articles of incorporation of an authority.

(c) "Incorporating municipality" means a municipality that becomes part of a new authority in the manner provided in section 2, or joins an existing authority in the manner provided in section 3.

(d) "Municipal emergency service" means an emergency service performed by a municipality, rather than by an authority.

(e) "Municipality" means a county, city, village, or township.

MCL **124.602** **Incorporation of authority by 2 or more municipalities; articles of incorporation; jurisdiction; applicable laws.**

Sec. 2. (1) Any 2 or more municipalities may incorporate an authority for the purpose of providing emergency services to the incorporating municipalities. An incorporating municipality may transfer to the authority of which it is a part any municipal emergency service.

(2) An authority is created by the adoption of articles of incorporation by the legislative body of each incorporating municipality. The adoption by an incorporating municipality shall be endorsed on the articles of incorporation in the case of a county by the county executive or chairperson of the board of commissioners of the county and the county clerk; in the case of a city by the mayor and clerk of the city; in the case of a village by the president and clerk of a village; and in the case of a township by the supervisor and clerk of a township, in a form substantially as follows:

"The foregoing articles of incorporation were adopted by the _____ of the _____ of _____, _____ county, Michigan, at a meeting duly held on the _____ day of _____, 19___ of said _____ Clerk of said _____"

(3) An authority's jurisdiction shall be comprised of the total territory within the incorporating municipalities. The articles of incorporation shall be published at least once in a newspaper designated in the articles of incorporation and circulating within the territory of the authority. A printed copy of the articles of incorporation, certified as a true copy by the person or persons designated in the articles, and containing the date and place of publication, shall be filed with the secretary of state. An authority shall become effective at the time provided in its articles of incorporation. The validity of the incorporation of an authority shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the date on which certified copies of the articles of incorporation are filed with the secretary of state.

(4) The laws of this state applying to a municipality that becomes a part of an authority also shall continue to apply to the municipality and the authority after the municipality becomes a part of the authority.

MCL 124.603 Addition of counties, cities, villages, etc.; amendment of articles of incorporation.

Sec. 3. (1) Any county, city, village, or township may become a part of an existing authority by amendment to the authority's articles of incorporation, adopted by the legislative body of the county, city, village, or township and by the legislative body of every other county, city, village, or township of which the existing authority is composed.

(2) Other amendments may be made to an authority's articles of incorporation if adopted by the legislative body of each city, village, or township of which the authority is composed. An amendment shall be endorsed and published, and certified printed copies shall be filed in the same manner as the original articles of incorporation, except that the filed printed copies shall be certified by the recording officer of the authority.
