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OF COUNSEL

August 26, 2014

Clerk of the Court
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa
Lansing, MI 48909

Re: Supreme Court Case No. 148617
Court of Appeals No. 306684
Lower court Case No. 11-600857-CZ

Dear Clerk:

Enclosed for filing in the above-captioned matter find the original and 23 copies of the following documents:

1. Correspondence to Michigan Supreme Court Justices;
2. Amicus Brief In Support Of Appellants' Application For Leave To Appeal.
3. Proof of Service.

Sincerely,

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

Robert E. Thall
Attorney for Michigan Townships Association
And Michigan Municipal League

RET/ser
Enc.

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August 26, 2014

Michigan Supreme Court Justices
Attn: Corbin R. Davis, Clerk
Michigan Hall of Justice
925 W. Ottawa Avenue
Lansing, Michigan 48909

Re: Supreme Court Case No. 148617
Court of Appeals No. 306684
Lower court Case No. 11-600857-CZ
Leave to Appeal and Order for Supplemental Briefs

Honorable Supreme Court Justices:

The Michigan Townships Association and the Michigan Municipal League have authorized and directed this firm to file an amici curiae brief in support of the Appellants' Application for Leave to Appeal and Appellants' Supplemental Brief.

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amicus curiae basis in a large number of state and federal cases presenting issues of statewide significance to Michigan townships.

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 524 Michigan local governments, of which 478 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates its Legal Defense Fund through a board of directors. The purpose of this Legal Defense Fund is to represent the member local governments in litigation of statewide significance. This brief amici curiae is authorized by the Legal Defense Fund's Board of Directors.[1]

---

1 The Board of Directors' membership includes: the President and Executive Director of the Michigan Municipal League and the officers and directors of the Michigan Association of Municipal Attorneys; Lori Grigg Bluhm, City Attorney, Troy; Clyde J. Robinson, City Attorney, Kalamazoo; Randall L. Brown, City Attorney, Portage; Catherine M. Mish, City Attorney, Grand Rapids; Eric D. Williams, City Attorney, Big Rapids; James O. Branson, III, City Attorney, Midland; James J. Murray, City Attorney, Boyne City and Petoskey; Robert J. Jamo, City Attorney, Menominee; John C. Schrier, City Attorney, Muskegon; Thomas R. Schultz, City Attorney, Farmington and Novi; and William C. Mathewson, General Counsel, Michigan Municipal League.

Amici Curiae, Michigan Townships Association and Michigan Municipal League submit this Brief in support of the Appellants' Application for Leave to Appeal and in response to this Honorable Court's June 11, 2014 Order in consideration of the Application for Leave to Appeal. In the June 11, 2014 Order, the parties were required to submit supplemental briefs to address "whether MCL 15.271(4) authorizes an award of attorney fees and costs to a plaintiff who obtains declaratory relief regarding claimed violations of the Open Meetings Act (MCL 15.261 et seq.), or whether the plaintiff must obtain injunctive relief as a necessary condition of recovering attorney fees and costs under MCL 15.271(4)." Amicus Curiae briefs were also invited.

Amici Curiae strongly believe that the within appeal presents issues of major statewide significance to Michigan municipalities by impacting the scope of their potential liability for an award of attorney fees and costs for a violation of the Open Meetings Act (MCL 15.261 et seq.). Amici Curiae contend that a plaintiff must obtain injunctive relief as a necessary condition to recover attorney fees and costs pursuant to the plain language in MCL 15.271(4). Jurisprudence in Michigan regarding an award of attorney fees and costs for Open Meetings Act violations has, however, progressively sailed off course by following a line of flawed case law beginning with *Ridenour v Board of Education* 111 Mich App 798 (1981). With little to no analysis, this line of cases has gone so far off course as to now hold that any declared violation of the Open Meetings Act mandates an award of attorney fees and costs under MCL 15.271(4). This improperly expanded liability creates the possibility of enormous public costs to taxpayers and municipal budgets in the form of attorney fee awards for even minor unintentional violations of the Open Meetings Act. Such liability was never intended as evidenced by the language and structure of the Open Meetings Act. There is a clear disconnect between the language used in the Open Meetings Act and this flawed line of case law.

Pursuant to Michigan Court Rule 7.306, the Michigan Townships Association and the Michigan Municipal League consist of "an association representing a political subdivision" and accordingly authorized to file the afore-mentioned amici curiae brief in support of the Appellants.

Attached please find the Amici Curiae Brief of the Michigan Townships Association and the Michigan Municipal League. The undersigned respectfully requests that this Honorable Court grant Leave to Appeal as requested by the Appellants or in the alternative grant peremptory reversal as requested by the Appellants.

Sincerely,

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

Robert E. Thall

RET/ser
Enclosure
cc: Mary Massaron, Hilary A. Ballentine & Robert A. Callahan
Robert W. Smith
William C. Mathewson, General Counsel MML
G. Lawrence Merrill, Executive Director MTA
w/enc.

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal From the Michigan Court of Appeals

KENNETH J. SPEICHER,

Plaintiff-Appellee,

V

COLUMBIA TOWNSHIP BOARD
OF TRUSTEES and COLUMBIA TOWNSHIP
PLANNING COMMISSION,

Defendant-Appellant.

Supreme Court: 148617
Court of Appeals: 306684
Van Buren CC: 11-600857-CZ

AMICI CURIAE BRIEF OF THE MICHIGAN TOWNSHIPS ASSOCIATION AND THE MICHIGAN MUNICIPAL LEAGUE IN SUPPORT OF APPELLANTS APPLICATION FOR LEAVE TO APPEAL IN THE SUPREME COURT

Dated: August 26, 2014

Robert E. Thall (P46421)
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STATEMENT OF INTEREST OF AMICI CURIAE

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amicus curiae basis in a large number of state and federal cases presenting issues of statewide significance to Michigan townships.

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Amici Curiae, Michigan Townships Association and Michigan Municipal League submit this Brief in support of the Appellants' Application for Leave to Appeal and in response to this

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[1] The Board of Directors' membership includes: the President and Executive Director of the Michigan Municipal League and the officers and directors of the Michigan Association of Municipal Attorneys; Lori Grigg Bluhm, City Attorney, Troy; Clyde J. Robinson, City Attorney, Kalamazoo; Randall L. Brown, City Attorney, Portage; Catherine M. Mish, City Attorney, Grand Rapids; Eric D. Williams, City Attorney, Big Rapids; James O. Branson, III, City Attorney, Midland; James J. Murray, City Attorney, Boyne City and Petoskey; Robert J. Jamo, City Attorney, Menominee; John C. Schrier, City Attorney, Muskegon; Thomas R. Schultz, City Attorney, Farmington and Novi; and William C. Mathewson, General Counsel, Michigan Municipal League.

Honorable Court's June 11, 2014 Order in consideration of the Application for Leave to Appeal[2]. In the June 11, 2014 Order, the parties were required to submit supplemental briefs to address "whether MCL 15.271(4) authorizes an award of attorney fees and costs to a plaintiff who obtains declaratory relief regarding claimed violations of the Open Meetings Act (MCL 15.261 et seq.), or whether the plaintiff must obtain injunctive relief as a necessary condition of recovering attorney fees and costs under MCL 15.271(4)." Amicus Curiae briefs were also invited.

Amici Curiae strongly believe that the within appeal presents issues of major statewide significance to Michigan municipalities by impacting the scope of their potential liability for an award of attorney fees and costs for a violation of the Open Meetings Act (MCL 15.261 et seq.). Amici Curiae contend that a plaintiff must obtain injunctive relief as a necessary condition to recover attorney fees and costs pursuant to the plain language in MCL 15.271(4). Jurisprudence in Michigan regarding an award of attorney fees and costs for Open Meetings Act violations has, however, progressively sailed off course by following a line of flawed case law beginning with *Ridenour v Board of Education*, infra. With little to no analysis, this line of cases has gone so far off course as to now hold that any declared violation of the Open Meetings Act mandates an award of attorney fees and costs under MCL 15.271(4). This improperly expanded liability creates the possibility of enormous public costs to taxpayers and municipal budgets in the form of attorney fee awards for even minor unintentional violations of the Open Meetings Act. Such liability was never intended as evidenced by the language and structure of the Open Meetings Act. There is a clear disconnect between the language used in the Open Meetings Act and this

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[2] Appeal is being sought with regard to the Michigan Court of Appeals published opinion in *Speicher v Columbia Township Board of Trustees* (On Reconsideration), 303 Mich App 475; 843 NW2d 770 (2013).

flawed line of case law. Amici Curiae is confident that when this Honorable Court reviews the relevant statutory language, jurisprudence on this issue will be set right. The legal significance of this case will be further apparent from the argument within this brief.

STATEMENT OF QUESTION PRESENTED

WHETHER DECLARATORY RELIEF REGARDING A VIOLATION OF THE OPEN MEETINGS ACT (MCL 15.261 ET SEQ) IS INSUFFICIENT TO PERMIT RECOVERY OF ATTORNEY FEES AND COSTS UNDER MCL 15.271(4) BECAUSE A PLAINTIFF MUST OBTAIN INJUNCTIVE RELIEF AS A NECESSARY CONDITION TO RECOVERING ATTORNEY FEES AND COSTS UNDER MCL 15.271(4).

Amici Curiae Michigan Townships Association
And Michigan Municipal League answer: "Yes".

Appellants answer: "Yes".

Appellee answers: "No".

Michigan Court of Appeals would have
answered "yes" however, pursuant to
MCR 7.215(J)(1) was compelled to find otherwise
and answered: "No".

Trial Court did not answer.

STATEMENT OF FACTS

Amici Curiae, Michigan Townships Association and Michigan Municipal League, concur with and hereby adopt the Appellants' Statement of Facts and Proceedings contained in Appellants' Application for Leave to Appeal and Appellants' Supplemental Brief.

ARGUMENT

1. DECLARATORY RELIEF REGARDING A VIOLATION OF THE OPEN MEETINGS ACT (MCL 15.261 ET SEQ) IS INSUFFICIENT TO PERMIT RECOVERY OF ATTORNEY FEES AND COSTS UNDER MCL 15.271(4) BECAUSE A PLAINTIFF MUST OBTAIN INJUNCTIVE RELIEF AS A NECESSARY CONDITION TO RECOVERING ATTORNEY FEES AND COSTS UNDER MCL 15.271(4).

A. INTRODUCTION

A determination of the question presented by this Honorable Court is of major importance to Michigan cities, villages, townships, other public bodies, and jurisprudence in the State. The Open Meetings Act[3] is a sunshine law intended to provide for openness in government by shedding light on governmental decisions. This intended openness is accomplished through numerous detailed OMA requirements imposed upon meetings, deliberations, and decisions of every public body in the State.[4] The basics of the OMA require that all meetings of a public body must be open to the public; all decisions must be made at meetings open to the public; and deliberations between a quorum of the public body members must occur at open meetings except when otherwise allowed in the OMA (i.e., certain closed meeting deliberations are permitted pursuant to MCL 15.268).[5] The OMA then goes into much more detailed regulations stemming from these basics. These regulations cover such items as: meeting notice content, time and procedures for providing notice for regular and special meetings, rules for public comment at meetings, authorized purposes and procedures for deliberations in a closed meeting, meeting minutes, and the subject of this appeal, i.e., being the

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[3] MCL 15.261 et. seq., attached as Exhibit 1; also referred to herein as the "OMA".
[4] See attached OMA definitions of "public body" in MCL 15.262(a); "meeting" in MCL 15.262(b); and "decision" in MCL 15.262(d). These definitions highlight the encompassing nature of the OMA.
[5] MCL 15.263 (1), (2), & (3) respectively.

different types of relief allowed for violations. These OMA requirements impact the operation of public bodies on a daily basis and are sometimes complex in application.

As a whole, public bodies do their best to ensure compliance but the rigors of daily compliance affect both large and small public bodies. Small townships, cities and villages do their best to comply with limited personnel, financial and legal resources. Larger municipalities do their best to comply while dealing with an umbrella of multiple public bodies and intricate issues. Unintentional OMA violations can happen to the best of them. Many questions can arise in the administration of the OMA.[6] The intricacies in administering the OMA are further evidenced by the 86 Attorney General Opinions that reference the "Open Meetings Act" and the 209 Michigan appellate cases that show up on a Westlaw search of the same. Beyond complex issues, even a routine public meeting notice can accidently contain an error (i.e. municipality mistakenly omitted its address in the meeting notice as required by MCL 15.264(a)). The OMA provides three distinct types of civil actions for violations.[7] Claimed errors in administration of the OMA have led to numerous court cases which have a profound effect on the operations of public bodies.

Unfortunately, a line of flawed Court of Appeals cases have applied a specious interpretation of the OMA allowing for the recovery of attorney fees and costs under MCL

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[6] For example: do the hiring subcommittees constitute a constructive quorum; were the interviews to hire the fire chief conducted properly; was the road committee advisory only; did a quorum of the planning commission deliberate when attending a seminar together; how should email between board members be handled; was a closed meeting to discuss litigation properly authorized; was the special zoning board of appeals meeting noticed properly; does the municipality maintain a webpage requiring notice; was the time allowed for each public comment at the commission meeting handled appropriately; did the meeting minutes properly reflect the roll call vote to go into closed session; were the meeting minutes properly approved; ect.

[7] MCL 15.270 addresses invalidation of certain decisions; MCL 15.271 addresses injunctive actions to compel compliance or enjoin further noncompliance; and MCL 15.273 addresses intentional violations by public officials.

15.271(4) even where injunctive relief is not obtained.[8] Started by a ruling that the equivalent of an injunction was good enough, these flawed cases have gone so far off course as to now allow for the recovery of attorney fees and costs under MCL 15.271(4) for any declared violation of the OMA. These cases fail to provide a proper textual analysis of MCL 15.271(4) itself and in context with the statutory scheme established in the OMA.[9] Analysis of the OMA clearly demonstrates that attorney fees and costs are distinctly intended to be awarded when injunctive relief is obtained (MCL 15.271(4)), or when a violation by a public official is intentional (MCL 15.273)[10]. By statute, attorney fee awards are only appropriate for these egregious or extraordinary circumstances rather than every unintentional violation of the OMA where a declaratory judgment is sought.

There is absolutely no intent evidenced in the language of the OMA to provide that every violation of the OMA by a public body should give rise to declaratory relief[11] and subsequent attorney fee awards under MCL 15.271(4). If the legislature intended such attorney fee awards, it could have easily and clearly provided language establishing such remedy for every violation of the OMA. These improper attorney fee awards come at great expense to the taxpayers of this State and limited municipal budgets. This is especially true since these awards are being applied to non-extraordinary or unintentional violations which can happen much more frequently. This issue is having such a large impact on local municipalities that some insured municipalities are

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[8] These cases begin with *Ridenour v Board of Education*, 111 Mich App 798; 314 NW2d 760 (1981) and then continue to sail further off course with its error perpetuating progeny. See later analysis, Argument G.

[9] See statutory organization principles in *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012).

[10] MCL 15.270 allows for invalidation of certain decisions but does not provide for an award of attorney fees and costs.

[11] Declaratory relief stems from an equitable declaratory action pursuant to MCR 2.605. This is separate and distinct from an injunctive action under MCL 15.271 and MCR 3.310.

losing coverage for such awards altogether or the cost of such policies is becoming prohibitively expensive. Local municipalities and other public bodies can no longer wrongfully bear the burden of increased liability for attorney fees and costs where mere declaratory judgment is entered with regard to an unintentional OMA violation. The core question as identified in the Supreme Court Order dated June 11, 2014, desperately needs to be addressed.

The following analysis of the relevant statutory provisions of the OMA, in light of the proper rules of statutory interpretation, lead to the inescapable conclusion that declaratory relief is insufficient and that a plaintiff must obtain injunctive relief as a necessary element to be awarded attorney fees and costs under MCL 15.271(4).

B. STANDARD OF REVIEW

The case at bar raises questions of statutory interpretation which are reviewed de novo.[12]

C. GENERAL RULES OF STATUTORY INTERPRETATION

The issue before this Honorable Court turns on statutory interpretation. "The primary goal of statutory interpretation is to give effect to the intent of the Legislature."[13] "The first step in that determination is to review the language of the statute itself."[14] "If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed and judicial construction is neither required nor permissible."[15] Courts "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render

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[12] *Hillsdale County Senior Services, et_al v County of Hillsdale, 494* Mich 46, 51; 832 NW2d 728 (2013).
[13] *In re: MCI Telecommunications*, 460 Mich 396, at 411; 596 NW2d 164 (1999).
[14] *In re: MCI Telecommunications, supra*, 411.
[15] *In re: MCI Telecommunications, supra*, 411.

any part of the statute surplusage or nugatory."[16] Courts "interpret th[e] words in [the statute in] light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole."[17] "[I]n seeking meaning, words and clauses will not be divorced from those which precede and those which follow."[18] "Statutory interpretation requires courts to consider the *placement* of the critical language in the statutory scheme."[19]

"All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning".[20]

This Honorable Court has articulated a contextual principle regarding ambiguity as follows:

> "A word is not rendered ambiguous, however, merely because a dictionary defines it in a variety of ways. (Citation omitted). Rather, the doctrine of *noscitur a sociis* requires that the term 'liquidation' be viewed in light of the words surrounding it. (Citation omitted). "Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: '[i]t is known from its associates,' see Black's Law Dictionary (6th ed.), p. 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." *Brown v Genesee Co. Bd. of Comm'rs* (After Remand), 464 Mich 430, 437, 628 NW2d 471 (2001), quoting *Tyler v Livonia Schs*, 459 Mich 382, 390-391, 590 NW2d 560 (1999)[21].

In addressing the threshold question of ambiguity, this Honorable Court has held that:

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[16] *Johnson, supra*,177 citing *State Farm Fire & Cas. Co. v. Old Republic Ins. Co.*, 466 Mich. 142, 146; 644 N.W.2d 715 (2002).
[17] *Johnson, supra*, 177 citing *People v. Peltola*, 489 Mich. 174, 181; 803 N.W.2d 140 (2011).
[18] *Sanchick v. State Bd. of Optometry*, 342 Mich. 555, 559; 70 N.W.2d 757 (1955).
[19] *Johnson, supra*, 177 citing *United States Fidelity & Guaranty Co. v. Mich. Catastrophic Claims Ass'n* (On Rehearing), 484 Mich. 1, 12; 795 N.W.2d 101 (2009).
[20] *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 485 Mich 69, 77, 780 NW2d 753 (2010), citing MCL 8.3a;
[21] *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 317-318; 645 NW2d 34 (2002).

"A term is ambiguous 'when it is *equally* susceptible to more than a single meaning,' *Lansing Mayor v Pub. Service Comm.*, 470 Mich 154, 166, 680 NW2d 840 (2004), not when reasonable minds can disagree regarding its meaning."[22] Further, "ambiguity is a finding of last resort".[23]

Armed with the above rules of statutory interpretation, the following textual analysis of the relevant statutory language in the OMA and in particular MCL 15.271(4) will show that the statute is not ambiguous and, that it in fact provides plain direction regarding when attorney fees and costs are to be awarded. If all pertinent statutory provisions are read in context, and in harmony with one another, this Honorable Court will clearly see that "[a] plaintiff can recover attorney fees and costs under MCL 15.271(4) only when a public body violates the OMA, the plaintiff requests injunctive relief, and the plaintiff received injunctive relief."[24]

This case involves analysis of the scope of attorney fee and cost awards under MCL 15.271(4) in determining whether declaratory relief alone is sufficient to trigger such awards. In properly addressing this issue the following will look at the historical backdrop of the OMA, review the language in MCL 15.271(4), provide context by looking at other OMA enforcement provisions, and then review the case on appeal, *Speicher (On Reconsideration), supra*, and the spurious line of cases cited therein.

D. HISTORICAL BACKDROP OF OMA ENFORCEMENT PROVISIONS

In review of the historical backdrop of the OMA, this Honorable Court has previously indicated that:

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[22] *Toll Northville Ltd., v Township of Northville*, 480 Mich 6, 15 fn 2; 743 NW2d 902 (2008).
[23] *Lansing Mayor*, supra at 165, citing *Klapp v Limited Insurance*, 468 Mich 459, 474; 663 NW2d 447 (2003).
[24] *Speicher (On Recon) , supra, 479.*

"During the late 1960s, Michigan's Constitution and a patchwork of statutes required accountability and openness in government. (Footnote omitted). In 1968, the legislature directly addressed this issue by enacting an open meetings statute applicable to most public bodies. 1968 P.A. 261. The statute required only that public entities conduct final votes on certain subjects at meetings open to the public. Consequently, all other decisions and deliberations by public bodies could lawfully be held in closed sessions. Most importantly, because the 1968 statute failed to impose an enforcement mechanism and penalties to deter noncompliance, nothing prevented the wholesale evasion of the act's provisions. . . (Citations omitted).

* * *

To rectify the ineffectiveness of the 1968 statute, legislators introduced bills to comprehensively revise and substantially improve the law. The current Open Meetings Act results from these legislative efforts."[25]

As indicated, to improve the effectiveness and prevent wholesale evasion of the OMA by public bodies and public officials, certain enforcement mechanisms and penalties were introduced in the OMA. These carefully crafted enforcement mechanisms provide a more powerful shield to protect the public from governmental abuse but are not intended to be an offensive sword to attack public bodies for every unintentional technical violation.[26] Instead, the OMA provides for 3 main distinct types of civil actions for enforcement.[27] [28] First, a civil action is provided to invalidate public body decisions stemming from only certain violations of the OMA.[29] Second, a civil injunctive action is provided for exceptional circumstances where injunctive relief is necessary to compel compliance or enjoin further noncompliance.[30] Third, a civil action is allowed where public officials intentionally violate the OMA.[31] Of note, the OMA

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[25] *Booth Newspapers, Inc. v University of Michigan Bd of Regents,* 444 Mich 211,221-222; 507 NW2d 422 (1993).

[26] *Willis v Deerfield Township* 257 Mich App 541,556-557; 669 NW2d 279 (2003).

[27] MCL 15.270, MCL 15.271 and MCL 15.273. See also *Leemreis v Sherman Township*, 273 Mich App 691, 700; 731 NW2d 287 (2007).

[28] It should be noted that there are a couple other enforcement provisions in the OMA being MCL 15.272 which provides a criminal penalty for intentional violations and MCL 15.273a which provides a penalty for violating the process of selecting a president of an institution of higher education.

[29] MCL 15.270. This type of action does not provide for attorney fee awards.

[30] MCL15.271(4). This type of action provides for attorney fee awards.

[31] MCL 15.273. This type of action provides for attorney fee awards.

does not provide an enforcement mechanism and penalty for every violation of the OMA (i.e. unintentional inconsequential violation), let alone provide that declaratory relief for any OMA violation entitles the party to attorney fees and costs. The plain language of the OMA allows for attorney fee awards only for intentional violations and injunctive relief. This limitation is consistent with moving from no statutory enforcement provisions to enforcement provisions intended to shield the public from abuse and wholesale evasion. An unintentional technical violation causes neither. An unintentional mistake such as leaving off a municipality's address from a meeting notice in violation of the OMA should not create liability for an attorney fee award. There is no basis to convert the OMA into an offensive weapon to be used by some to punish the taxpayers and public bodies for every unintentional technical violation. This will be further demonstrated by the following analysis of the specific language used in the OMA.

E. ANALYSIS OF ENFORCEMENT LANGUAGE USED IN MCL 15.271.

Consistent with the OMA providing for separate and distinct forms of actions, MCL 15.271 addresses the process for pursuing an action for injunctive relief [32] by providing that:

> "(1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.
> (2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

[32] It should be noted that 15.271 does not just address an injunctive action but also provides for a mandamus action to be brought in the Court of Appeals (MCL 15.271(3)). No award of attorney fees is provided for under this mandamus provision evidencing further that such an award is not justified with all OMA relief.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.
(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action." (Emphasis added).

In applying the above referenced rules of statutory interpretation to the question in this case we should start to determine legislative intent by looking at the plain language of MCL 15.271(4).[33] The whole sentence must be looked at rather than just looking at a word or two removed from the context, otherwise, a contextually specious interpretation may occur.[34] The doctrine of *noscitur a sociis* gives meaning to the words in question by the words around them.[35] On its face, the language used in MCL 15.271(4) seems to be very clear and plainly deals with only injunctive actions to compel compliance or enjoin noncompliance. Extending the plain language beyond injunctive relief can only be accomplished by unintended contortions rendering the contextual language nugatory.

MCL 15.271(4) begins with the word "If"; therefore, this sentence is conditional. The conditions and the consequence are all contained in one sentence, and must logically be understood to be in reference to one another. In this single sentence, MCL 15.271(4) provides three required conditions to recover attorney fees and costs.

First, it must be established that the "public body is not complying with the act". This part simply requires that there is a present noncompliance by a public body with the OMA.

Second, the plaintiff must commence "a civil action against the public body for injunctive relief to compel compliance or enjoin further noncompliance with the act". This part

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[33] *In re: MCI Telecommunications, supra*, 411.
[34] *Johnson, supra*, 177; *Sanchick, supra*, 559.
[35] *Koontz, supra*, 317-318.

specifically requires that the action be for injunctive relief to compel compliance or enjoin further noncompliance. No other type of action and relief is stated or contemplated. If the legislature had intended to include declaratory relief, it could have easily stated that the action could be for declaratory relief or injunctive relief. Declaratory relief is not synonymous with injunctive relief.[36] The extraordinary nature of injunctive relief gives rise to it being a separate and distinct OMA enforcement mechanism.

The third condition requires that the plaintiff "succeeds in obtaining relief in the action". This phrase, as part of the conditional sentence, directly derives its meaning from the preceding words in the sentence.[37] The "relief" referenced is in direct association with, and derives its meaning from, the preceding words in the sentence being "injunctive relief". The relief being sought in the sentence is injunctive relief and there are no other types of relief expressed in the sentence. Further, "the action" referenced is in direct association with, and derives its meaning from, the preceding words in the sentence establishing that the action is to seek "injunctive relief to compel compliance or enjoin future noncompliance". No other type of action is addressed in this sentence. It would have been redundant if the third condition had to state "in obtaining injunctive relief in the injunctive action" as these terms ("relief" and "the action") were already bound by the context of the sentence. To otherwise find that the third condition refers to any relief in any action is clearly faulty. The words would be completely ambiguous in trying to understand what "relief" and, what "action". To allow declaratory relief as a trigger under MCL 15.271(4) would improperly expand attorney fee awards to any declared violation of the OMA.

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[36] In an attempt to not be repetitious, Amici agree with and incorporate the distinctions between declaratory relief and injunctive relief as addressed in Appellants' Supplemental Brief. Further, MCR 2.605 provides for a separate and distinct equitable declaratory judgment from an OMA injunctive action which is established pursuant to MCL 15.271 and MCR 3.310.

[37] The contextual doctrine of *noscitur a sociis* is also applicable.

This interpretation is not supported by the context of the language used in the sentence or the OMA statutory scheme. A complaint can contain multiple causes of action stemming from a decision made by a public body.[38] This does not make MCL 15.271(4) applicable to all the causes of action. MCL 15.271(4) would only apply to the action for injunctive relief.

In analyzing the language from the third condition in MCL 15.271(4), *Felice v Cheboygan Co. Zoning Commission*, 103 Mich App 742, 746; 304 NW2d 1 (1981) provided as follows:

> "Where possible, effect must be given to each word and phrase when interpreting a statute. Some meaning must be attributed to the phrase "relief in the action". The legislature did not use the phrase "because of the action", nor did they simply require that a party be successful in "obtaining relief". In choosing the words "in the action", the legislature intended to restrict the circumstances under which a plaintiff would be entitled to costs and attorney fees."

Taking this textual analysis further, the Court in *Speicher* got it right in reaching the following conclusions:

> "Reading the OMA as a whole, it appears that these sections, and the distinct kinds of relief that they provide, stand alone." *Leemreis*, 273 Mich.App. at 701, 731 N.W.2d 787. Accordingly, we conclude that the phrase "obtaining relief in the action" contained in MCL 15.271(4) refers not to a plaintiff's success in obtaining any relief, including declaratory relief, but instead commands the award of costs and attorney fees only when the plaintiff has obtained injunctive relief.[39]

This interpretation is consistent with the contextual plain meaning of MCL 15.271(4).

Declaratory relief is not a subset of injunctive relief. Attorney fees under MCL 15.271(4) are clearly reserved for extraordinary egregious circumstances where injunctive relief must enter. A violation of the OMA by a public body does not automatically mean that an injunction must

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[38] For example, a property owner could file a complaint against a township planning commission for injunctive relief under MCL 15.271(4) to enjoin further meetings without website notice, to invalidate the decision made in violation of the OMA under MCL 15.270, to declare a violation of the OMA occurred, and to find that the planning commission conditions were unreasonable.

[39] *Speicher (On Recon), supra* 479.

issue to prevent future violations.[40] In *Esperance* the Court of Appeals held that the trial court erred by not granting declaratory relief when the public body violated the Open Meetings Act. The court in *Esperance* further denied the action to invalidate the public body's decision and injunctive relief. The Court in *Esperance* indicated that where a public body does not act in bad faith, there is no real imminent danger of irreparable injury requiring issuance of an injunction.[41] It is instructive that in *Esperance*, although the court awarded declaratory relief and at the same time denied injunctive relief, it did not award attorney fees to the plaintiff under MCL 15.271(4). The statute was properly applied at that time.

In *Wilkins v Gagliardi*, 219 Mich App 260, 276; 556 NW2d 171 (1976), the Court of Appeals addressed injunctive relief and indicated that:

> "Injunctive relief should be granted only when justice requires it, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable harm." (Citation omitted).

As recognized, "[a]n injunction represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity."[42] As can be seen, injunctive relief is a special action in and of itself and a violation of the OMA that justifies injunctive relief also carries with it an award for attorney fees pursuant to MCL 15.271(4). MCL 15.271(4) does not encompass other types of relief such as declaratory relief, relief to invalidate a decision, mandamus or any other claims that could be joined in an action. They are all separate and distinct. This is consistent with the overall scheme established in the OMA.

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[40] *Esperance v Chesterfield Township of Macomb County*, 89 Mich App 456, 464; 280 NW2d 559 (1979).
[41] *Esperance, supra*, at 465.
[42] *Senior Accountants, Analysts and Appraisers Ass'n v Detroit*, 218 Mich App 263, 269; 553 NW2d 679 (1996).

F. ANALYSIS OF ENFORCEMENT LANGUAGE USED IN MCL 15.270 AND 15.273

A brief review of additional remedies to enforce the Open Meetings Act will help shed light on the proper context for interpreting MCL 15.271(4). As indicated in the rules of statutory interpretation, MCL 15.271(4) must be read harmoniously with the statute as a whole and consideration must be given to the placement of these provisions in the statutory scheme.[43] By looking at the OMA as a whole it provides a better understanding that MCL 15.271(4) is one of a number of separate and distinct enforcement mechanisms provided for in the OMA. As indicated in *Speicher (On Recon), supra*, 479, these distinct remedies are an important consideration to understanding that MCL 15.271(4) is only referring to obtaining injunctive relief in an injunctive action.

MCL 15.270 provides an OMA remedy to invalidate decisions of a public body as follows:

> "(1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.
>
> (2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.
>
> (3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:
>
> (a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

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[43] *Johnson, supra*, 177.

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment."

MCL 15.270 directly addresses decisions made by a public body and authorizes a person to commence a civil action in circuit court to challenge the validity. Its requirements and remedies are self-contained in the language set forth in MCL 15.270.

Of note, subsection (2) provides for the circumstances where a decision made by a public body may be invalidated when not in compliance with specified provisions of the OMA. It is not just any violation that can be invalidated but only those stemming from where the public body does not comply with certain meeting requirements (MCL 15.263(1), (2), (3) and MCL 15.265) and upon the court finding that noncompliance or failure has impaired the rights of the public under the OMA. An inconsequential unintended violation of the OMA would not be invalidated. This follows with the scheme set forth in the OMA that not every technical violation should lead to lawsuits to be used by plaintiffs as a offensive weapon to punish public bodies. Again, the intent of the enforcement mechanisms was to prevent abuse and wholesale evasion of compliance. This forgiving nature for unintentional violations is further evidenced by the curative provision in MCL 15.270(5).

MCL 15.270(5) allows the public body to re-enact the disputed decision in conformity with the OMA and provides that the decision shall not then be declared invalid due to the error in its original enactment. This clearly recognizes that sometimes public bodies may accidentally violate the OMA when making a decision. Not only is the public body allowed to re-enact the decision properly, but there is no provision in this cause of action that allows for attorney fees and costs to be awarded even where the public body has its decision invalidated.

The absence of language authorizing an attorney fee award under MCL 15.270, while a separate cause of action for injunctive relief in 15.271(4) specifically provides for attorney fee awards, leads to the undisputable conclusion that not all OMA violations were intended to give rise to such awards. There is no language in the OMA to suggest that declaratory relief for an OMA violation is sufficient to trigger an award of attorney fees under MCL 15.271(4).

Contrary to the leniency in MCL 15.270, public officials are severely punished for intentional violations. MCL 15.273 addresses intentional violations providing that:

"(1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11."

Once again, this is a self-contained remedy, this time, for intentional violations of the OMA by public officials. MCL 15.273(1) provides for personal liability for damages plus court

costs and actual attorney fees. We can see from the OMA statutory scheme that if violations are severe, intentional violations or violations requiring injunctive relief, then attorney fees and costs are awarded. But, attorney fee and cost awards are clearly not given for every violation of the OMA. To allow such an award for mere declaratory relief under MCL 15.271(4) would be to circumvent the OMA's clear statutory scheme and legislative intent.

G. *SPEICHER (ON RECON)* PROPERLY CONCLUDED THAT INJUNCTIVE RELIEF WAS REQUIRED FOR AN AWARD OF ATTORNEY FEES UNDER MCL 15.271(4) BUT WAS UNFORTUNATELY BOUND TO FIND OTHERWISE.

In *Speicher (On Recon), supra*, the Court provided an excellent analysis of the main types of relief in the OMA[44] and of prior Court of Appeals decisions regarding attorney fees and costs. The Court, using a textual analysis of the OMA, properly concluded that the following three-part test must be used to determine when attorney fees and costs are appropriate under MCL 15.271(4):

> "A plaintiff can recover attorney fees and costs under MCL 15.271(4) only when a public body violates the OMA, the plaintiff requests injunctive relief, and the plaintiff received injunctive relief."[45] (Emphasis added)

Although the Court in *Speicher* reached the proper conclusion, it determined instead that it was compelled to follow prior Court of Appeals decisions "that the third element of MCL 15.271(4) is satisfied as long as any relief is granted".[46] These prior Court of Appeals decisions are erroneous in that regard. The Court in *Speicher (On Recon), supra,* aptly provided a roadmap of the prior line of erroneous Court of Appeals cases and identified its disagreement with such

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[44] See relief provided for in MCL 15.270(1), invalidate a decision; MCL 15.271(1) and MCL 15.271(4), injunction; and MCL 15.273, intentional violation by public officials.
[45] *Speicher* (On Recon) , supra at 479.
[46] *Speicher* (On Recon), supra at 479-480.

decisions. The court in S*peicher (On Recon), supra,* acknowledged the following flawed line of binding case law:

1. In *Ridenour,* the Court awarded attorney fees because the plaintiff had obtained the equivalent of an injunction.[47] *Ridenour* was the genesis of the following line of cases that drifted further and further off course from the actual language in MCL 15.271(4) which requires the plaintiff to obtain injunctive relief in order to receive an attorney fee award. Its ruling provided the proverbial slippery slope. In *Ridenour*, when the trial court indicated that a permanent injunction would issue, the defense counsel stated that it was not necessary to burden the record with such injunction as the defendant would comply with the court's interpretation.[48] No injunction was then entered. The Court found that the plaintiff received the injunctive relief sought by way of the promise to comply with the decision. If not for the promise the court would have granted a permanent injunction.[49] While the Court in *Ridenour* was trying to achieve a fair result it began the deviation from the plain language of MCL 15.271(4). This deviation was made without any meaningful analysis of the statutory language.
2. In *Menominee*, the Court awarded attorney fees, even though the trial court did not issue an injunction.[50] The trial court found that the plaintiff was not seeking an injunction or other remedy therefore the case was "moot".[51] The Court of Appeals found that the case was not "moot" as the pleadings were clear that the

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[47] *Ridenour v Board of Education*, 111 Mich App 798, 806; 314 NW2d 760 (1981).
[48] *Ridenour, supra*, 801.
[49] *Ridenour, supra,* 806.
[50] *Menominee County Taxpayers v Menominee County Clerk,* 139 Mich App 814, 820; 362 NW2d 871 (1984).
[51] *Menominee, supra,* 820.

Plaintiff sought to enjoin the committee from violating the OMA.[52] The Court of Appeals indicated that it "would reverse the trial court's order denying the injunction except for the fact that the intervening election drastically altered the composition of the committee".[53] Upon finding that the plaintiffs should have received injunctive relief, even though not granted, the Court awarded attorney fees and costs under MCL 15.271(4). Without any statutory analysis of MCL 15.271(4), the Court just relied on the decision in *Ridenour*, supra.[54]

3. In *Schmiedicke*, the Court stated that "[t]he legal remedy of declaratory relief is adequate" to award attorney fees under the statute.[55] Without any statutory analysis of MCL 15.271(4) the Court just relied on *Menominee, supra,* and further took this issue off course.
4. In *Manning*, the Court stated that "declaratory relief under the OMA…is sufficient to entitle plaintiffs to an award of costs and attorney fees."[56] Without any statutory analysis of MCL 15.271(4), the Court just relied on the decisions in *Schmiedicke*, *supra* and *Menominee, supra.* The error just keeps compounding.
5. In *Nicholas*, the Court stated "…defendants violated the OMA. This constitutes declaratory relief, thus entitling plaintiffs to actual attorney fees and costs despite the fact that the trial court found it unnecessary to grant an injunction given defendant's decision to amend the notice provision after plaintiffs filed the

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[52] *Menominee, supra,* 820.
[53] *Menominee, supra,* 820.
[54] *Menominee, supra,* 820.
[55] *Schmiedicke v Clare School Board*, 228 Mich App 259, 267; 577 NW2d 706 (1998).
[56] *Manning v City of East Tawas,* 234 Mich App 244, 254; 593 NW2d 649 (1999)

present suit".[57] Again no analysis occurred, the Court just relied on the prior four cases.

6. In *Morrison*, the Court stated in a footnote, "Where a trial court declares that the defendants violated the OMA, but finds it unnecessary to grant injunctive relief, the plaintiffs are entitled to actual attorney fees and costs."[58] The Court merely relied on *Nicholas, supra.* There was no statutory analysis.
7. In *Herald*, the Court found that "[t]he OMA provides that if relief is obtained in an action against a public body for violating the OMA that relief shall include 'court costs and actual attorney fees."[59] The Court further explained that "neither proof of injury nor issuance of an injunction is a prerequisite for the recovery of attorney fees under the OMA."[60] Without so much as analyzing the full sentence of MCL 15.271(4) the Court just followed *Nicholas, supra.*
8. In *Craig*, the Court did not award attorney fees because it found no violation of the Open Meetings Act, but ruled that the imposition of attorney fees is mandatory upon finding a violation.[61] No analysis was done, the Court just relied on *Herald, Supra.*

These cases have profoundly changed the law with regard to an award of attorney fees and costs under 15.271(4) without any meaningful consideration of the language used in MCL 15.271(4) let alone consideration of a broader context within the statutory scheme of the OMA.

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[57] *Nicholas v Meridian Charter Township*, 239 Mich App 525, 535; 609 NW2d 574 (2000).
[58] *Morrison v City of East Lansing*, 255 Mich App 505, 521 n. 11; 660 NW2d 395 (2003); citing *Nicholas* at 535.
[59] *Herald Company v Tax Tribunal,* 258 Mich App 78, 91-92; 669 NW2d 862 (2003)
[60] Id. at 92, citing *Nicolas,* 534-535.
[61] *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 581; 697 NW2d 529 (2005)

The Court in *Speicher (On Recon), supra* rightfully took issue with this spurious line of cases stating that:

> "Reading the OMA as a whole, it appears that these sections, and the distinct kinds of relief that they provide, stand alone." *Leemreis*, 273 Mich.App. at 701, 731 N.W.2d 787. Accordingly, we conclude that the phrase "obtaining relief in the action" contained in MCL 15.271(4) refers not to a plaintiff's success in obtaining any relief, including declaratory relief, but instead commands the award of costs and attorney fees only when the plaintiff has obtained injunctive relief."[62]

The Court in *Speicher (On Recon), supra,* however begrudgingly awarded attorney fees and costs as follows:

> "In summary, while we would hold that, because plaintiff did not succeed in obtaining injunctive relief, he cannot recover attorney fees and court costs under MCL 15.271(4), cases like *Craig, Harold Co.* and *Nicholas* are controlling, and we must follow them under MCR 7.215(J)(1), which compels a different outcome. Therefore, the trial court is to award attorney fees and costs to plaintiff on remand."[63]

While compelled to find as it did, the Court in *Speicher (On Recon), supra,* was correct in its original conclusions. It clearly set the table for this Honorable Court to properly analyze the plain language contained within the OMA and, therefore, require that a plaintiff obtain injunctive relief as a necessary condition of recovering attorney fees and costs under MCL 15.271(4). Such decision of this Honorable Court is necessary to correct the specious conclusions to the contrary that have been perpetuated by the above line of cases. As stated in *Singleton v Chrysler Corp.*, 467 Mich 144; 648 NW2nd 624 (2002) "It is particularly appropriate . . . to overrule a prior erroneous decision that has failed to apply the plain language of a statute."

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[62] *Speicher* (On Recon), *supra*, 479.
[63] *Speicher* (On Recon), *supra*, 483-484.

CONCLUSION

From the preceding analysis, it is quite evident that the line of Court of Appeals decisions, beginning with *Ridenour, supra*, have improperly expanded the basis for awarding attorney fees and costs under MCL 15.271(4). Without any real statutory analysis these cases have re-written MCL 15.271(4) and changed it from allowing attorney fee awards where injunctive relief must be obtained, to allowing attorney fee awards where relief equivalent to injunctive relief must be obtained, to now making attorney fee awards appropriate where there is any relief finding a violation of the OMA. On the other hand, review of the OMA statutory scheme and the specific language in MCL 15.271(4) leads to the correct conclusion that declaratory relief is insufficient to trigger attorney fees and costs under MCL 15.271(4) as a plaintiff must instead obtain injunctive relief as a necessary condition. Amici Curiae respectfully request that this Honorable Court peremptorily reverse the Court of Appeals or grant the application for leave to appeal in this matter.

Dated: August 26, 2014

Respectfully submitted,

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Michigan Compiled Laws Annotated Currentness
Chapter 15. Public Officers and Employees (Refs & Annos)
➡ Open Meetings Act (Refs & Annos)

➡ 15.261. Short title; effect on related local charter provisions, ordinances, resolutions

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

➡ 15.262. Definitions

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4*o* of the home rule city act, 1909 PA 279, MCL 117.4*o*.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 4*o* of the home rule city act, 1909 PA 279, MCL 117.4*o*.

(c) "Closed session" means a meeting or part of a meeting of a public body that is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

➡ 15.263. Meetings of public bodies; attendance, nonapplication

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8. [FN1]

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the First Extra Session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

[FN1] M.C.L.A. §§ 15.267 and 15.268.

➡ 15.264. Public notice; name of public body, posting locations

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

➡ 15.265. Public notice of meetings; regular, rescheduled, special, or recessed meetings; meetings in residential dwellings; durational requirements

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting in a prominent and conspicuous place at both the public body's principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, on a portion of the website that is fully accessible to the public. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled public meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those nonregularly scheduled public meetings. The requirement of 18-hour notice does not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting.

(5) A meeting of a public body that is recessed for more than 36 hours shall be reconvened only after public notice that is equivalent to that required under subsection (4) has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applic-

able. Nothing in this section bars a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat. However, if a public body holds an emergency public meeting that does not comply with the 18-hour posted notice requirement, it shall make paper copies of the public notice for the emergency meeting available to the public at that meeting. The notice shall include an explanation of the reasons that the public body cannot comply with the 18-hour posted notice requirement. The explanation shall be specific to the circumstances that necessitated the emergency public meeting, and the use of generalized explanations such as "an imminent threat to the health of the public" or "a danger to public welfare and safety" does not meet the explanation requirements of this subsection. If the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, it shall post the public notice of the emergency meeting and its explanation on its website in the manner described for an internet posting in subsection (4). Within 48 hours after the emergency public meeting, the public body shall send official correspondence to the board of county commissioners of the county in which the public body is principally located, informing the commission that an emergency public meeting with less than 18 hours' public notice has taken place. The correspondence shall also include the public notice of the meeting with explanation and shall be sent by either the United States postal service or electronic mail. Compliance with the notice requirements for emergency meetings in this subsection does not create, and shall not be construed to create, a legal basis or defense for failure to comply with other provisions of this act and does not relieve the public body from the duty to comply with any provision of this act.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body that is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice shall be at the bottom of the display advertisement, set off in a conspicuous manner, and include the following language: "This meeting is open to all members of the public under Michigan's open meetings act".

(7) A durational requirement for posting a public notice of a meeting under this act is the time that the notice is required to be accessible to the public.

➡ 15.266. Public notice; requests for copies of notice

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).[FN1]

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and

to any radio and television station located in the state, free of charge.

[FN1] M.C.L.A. § 15.265.

15.267. Closed sessions; vote, minutes

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j).[FN1] The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. [FN2] These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

[FN1] M.C.L.A. § 15.268.

[FN2] M.C.L.A. § 15.270, 15.271, or 15.273.

15.268. Closed sessions; purposes

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open ses- sions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws , before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article viii of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(*i*) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(*ii*) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(*iii*) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

➡ 15.269. Minutes; contents, corrections, availability for public inspection, inclusion of personally identifiable information covered by federal law

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. [FN1] The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.

(3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.

(4) A public body shall not include in or with its minutes any personally identifiable information that, if released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974.

[FN1] M.C.L.A. § 15.264.

➡ 15.270. Decisions; invalidation action, venue, reenactment

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) [FN1] in making the decision or if failure to give notice in accordance with section 5 [FN2] has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assess-

ments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made a available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

[FN1] M.C.L.A. § 15.263.

[FN2] M.C.L.A. § 15.265.

➡ 15.271. Noncompliance; actions for injunctive relief and mandamus

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

➡ 15.272. Intentional violations; penalties

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than $2,000.00, or imprisoned for not more than 1 year, or both.

➡ 15.273. Intentional violations; civil actions for damages

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11. [FN1]

[FN1] M.C.L.A. § 15.271.

➡ 15.273a. Selection of institution's president; violations by governing board; civil fine

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article viii of the state constitution of 1963 violates this act with respect to the process of selecting a president of the institution at any time after the recommendation of final candidates to the governing board, as described in section 8(j), [FN1] the institution is responsible for the payment of a civil fine of not more than $500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, any payment of fines imposed under this section shall be paid from funds allocated by the institution of higher education to pay for the travel and expenses of the members of the governing board.

[FN1] M.C.L.A. § 15.268.

➡ 15.274. Repealer

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

➡ 15.275. Effective date

Sec. 15. This act shall take effect January 1, 1977.

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal From the Michigan Court of Appeals

KENNETH J. SPEICHER,

Plaintiff-Appellee,

V

COLUMBIA TOWNSHIP BOARD OF TRUSTEES and COLUMBIA TOWNSHIP PLANNING COMMISSION,

Defendant-Appellant.

Supreme Court: 148617
Court of Appeals: 306684
Van Buren CC: 11-600857-CZ

PROOF OF SERVICE

On this 26th day of August, 2014, the undersigned served by first class mail, postage fully prepaid, a copy of Amicus Curiae Brief of Michigan Townships Association and Michigan Municipal League in Support of Appellants' Application for Leave to Appeal on the following counsel or record at the addresses as shown below:

Mary Massaron, Hilary A. Ballentine, Robert A. Callahan, Plunkett Cooney, 38505 Woodward Ave., Suite 2000, Bloomfield Hills, MI 48304.

Robert W. Smith, 707 Comerica Building, 151 S. Rose Street, Kalamazoo, MI 49007-792.

Susan E. Ritchie

Subscribed to before me, a Notary Public, on this 26th day of August, 2014.

Notary Public, Constance Hicks
Van Buren County acting in
Kalamazoo County, MI
My Comm. Expires: 03/03/2015