

Michigan Township Focus

DECEMBER 2016

OFFICIAL PUBLICATION OF THE MICHIGAN TOWNSHIPS ASSOCIATION

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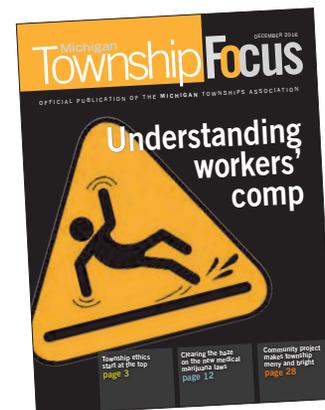
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mission statement

The Michigan Townships Association advances local democracy by fostering township leadership and public policy essential for a strong and vibrant Michigan.



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Understanding workers' comp

Your township's liability when it comes to workplace injuries isn't always clear-cut. And while your township isn't responsible for determining if it is liable for an employee's injury, officials *do* need to know the facts about Michigan's workers' compensation law, and how the system works.

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Township ethics start at the top

While Michigan has been cited as having among the weakest ethical laws of any state, personal relationships between elected township leaders and community members, as well as township transparency practices, create trust that township officials will always act in the public interest. Rare are incidents where this trust has proven misplaced, but broken moral compasses can lead to serious ethical lapses, including actions considered criminal. Allegations leading to convictions leave honest officials wondering how they could be so wrong in trusting a wayward township colleague, second-guessing how it could have been prevented, and feeling responsible for letting the community down.



Ethicists identify three ingredients of public corruption:

- **Motivation**—personal money problems stemming from gambling or drug addictions; a need to maintain an image of personal wealth; crushing debts or other family financial crisis.
- **Rationalization**—the perception that misconduct is the norm; that no one cares or is harmed; a belief of being underpaid, underappreciated or being passed over for promotion; strong sense of duty to favor family and friends.
- **Opportunity**—low odds of being caught or punished due to weak corruption detection procedures, such as poor internal controls; big ticket township purchases and lucrative service contracts combined with a vendor perception that kick-backs and bribes are just the cost of doing business in the public sector.

As no public entity has figured out how to totally prevent all unethical practices, township boards should do whatever they can to foster a culture of ethical behavior. Township board policies and practices, and the conduct of the township’s highest elected and appointed officials need to send a clear and consistent message that the public interest is paramount in all actions and decisions. Townships that are ethical by design begin with the township board adopting a guiding document such as an ethical conduct code, ordinance or policy that clearly lays out expected conduct of all officials and employees. Topics addressed include township officials doing business with the township, nepotism, accepting gifts and favors, political activity and outside employment, treatment of confidential information, respect for professional

judgment, and other aspects of public behavior to establish formal guidelines for ethical behavior and help cut down on the ambiguity that can compromise perceptions of ethical rights and wrongs.¹

Other actions township boards can take to maintain an ethical culture that serves the public interest are:

- Check potential employees’ backgrounds.
- Protect whistleblowers and require reporting of suspected ethical lapses to appropriate oversight or criminal justice agencies.
- Charge the township auditor, clerk and treasurer to implement comprehensive internal control procedures.
- Review all expenditures to assure a public purpose is served.
- Implement procedures to prevent manipulation of procurement decisions, including limiting individual township board member involvement that could lead to inappropriate advancement of self-interest.
- Periodic training in ethical conduct for all officials and employees.
- Involve the township board in developing contractual performance standards, including boilerplate ethical contractual obligations, reviewing major procurements for policy compliance, and appointment of an accountable official as the township’s purchasing agent.

Township officials who want to keep themselves out of trouble merely need to never do these four things:

- 1) Benefit financially from your position.
- 2) Receive special benefits by virtue of your position.
- 3) Practice secrecy in decision-making.
- 4) Allow favoritism and bias to cloud your actions.

Sound easy? Unfortunately, public service is fraught with temptations, ambiguities and ethical dilemmas. Self-awareness and the capacity to honestly assess one’s intentions and motivations are core competencies of a township official who wants to always act with integrity.

Or as William Shakespeare wrote: “... to thine own self be true, and it must follow, as the night the day, thou cannot then be false to any man.”

¹ 9 Lyman, Theodore, Fletcher, Thomas, and Gardiner, John, *Prevention, Detection and Correction of Corruption in Local Government* (Washington, DC: National Institute of Law Enforcement and Criminal Justice, 1978).

SAVE THE DATE

New filing deadlines for W-2s, 1099s

The deadline for employers—including townships—to file copies of employees' Forms W-2, and 1099-MISC for independent contractors, with the Social Security Administration has been moved up to Jan. 31. The earlier filing deadline is part of the Protecting Americans from Tax Hikes (PATH) Act, enacted last December, which seeks to make it easier for the Internal Revenue Service to detect and prevent refund fraud.

The forms can be filed electronically or by paper. The previous deadline for townships to file the forms with the SSA was the end of February if filing on paper, or end of March if filing electronically.

There are also changes in requesting an extension to file the forms. Only one 30-day extension is available, and the extension is not automatic. If an extension is necessary, a Form 8809, *Application for Extension of Time to File Information Returns*, must be filed no later than Jan. 31.

The deadline for employers to give employees copies of Form W-2 remains Jan. 31.



OATH OF OFFICE

All officials elected in November must take oath of office no later than Jan. 1

Reminder: Every person elected in November to a township office must take the oath of office before assuming the office in the new term, including persons re-elected to office.

The earliest that an official could assume office was with the beginning of the new township term of office at noon on Nov. 20, 2016. Based on an MTA Legal Counsel determination, the following is a revision of the interpretation of MCL 168.362, regarding when the oath must be taken by a township board member. If a person who is elected or re-elected to the township board does not qualify for office by taking the oath on or before **Jan. 1, 2017**, then that position is vacant on **Jan. 2**, and the township board has 45 calendar days to appoint to fill the vacancy.

The board may choose to appoint the person who was elected but failed to take the oath in time. A person appointed to fill a vacancy created by failure to take the oath serves the remainder of the term, without having to run in the mid-term election.

BOARD OF REVIEW MEMBERS

BOR appointments due Jan. 1

The General Property Tax Act (MCL 211.28(1)) requires township boards to appoint members to the township's three-, six- or nine-member board of review (BOR). BOR members serve for two years, beginning at noon on Jan. 1 of each odd-numbered year. Each BOR member must take the oath of office within 10 days after his or her appointment. **The appointments must be made and the oath taken no later than Jan. 10.** The oath is kept on file by the township clerk.



Reminder: Alternate BOR members may be appointed

Under MCL 211.28, township boards may appoint not more than two alternate members for the same term as regular members of the board of review. An alternate member may be called to perform the duties of a regular BOR member in the absence of a regular member, or for the purpose of reaching a decision in issues protested in which a regular member has abstained for reasons of conflict of interest.

Turn to page 24 to learn more about MTA's *Board of Review Training* workshops, coming to 13 locations around the state in February. Order a copy of MTA's *Board of Review Manual* online at www.michigantownships.org, or by calling (517) 321-6467.

RECORD RETENTION

Updated Elections Records retention schedule approved

The State of Michigan has numerous schedules that detail the retention and disposition of township records. The *Michigan Township Record Retention Schedule No. 10* is the official township record retention schedule. Several sections of the *General Schedule No. 10* have been revised and adopted as separate general schedules based on program areas, such as law enforcement, fire/ambulance departments, libraries, elections, clerks and treasurers.

One of these schedules, *General Election Schedule No. 23—Election Records*, has been approved and amended by the State Administrative Board.

For a copy of the schedules, log into the members-only section of www.michigantownships.org (search for "Record Retention"), or call MTA Member Information Services at (517) 321-6467.



ATTENTION TREASURERS

Reminder for tax collection office hours

The township treasurer must be in his or her office from 9 a.m. to 5 p.m. to receive tax payments on the last day taxes are due and payable before being returned as delinquent under MCL 211.55. (MCL 211.44(2)(b)) MCL 211.55 refers to the last day of February as the last day that taxes are due and payable before being returned as delinquent to the county treasurer, and provides for the unpaid taxes to be returned as delinquent to the county treasurer the next day.

In addition, the treasurer must be in his or her office from 9 a.m. to 5 p.m. one day between Dec. 25 and Jan. 1. However, the requirement to hold hours in December is waived if the township has an agreement with a local financial institution to collect taxes on behalf of the township, and the township provides timely notification to the taxpayers of their ability to pay their taxes at this financial institution.

For 2016, the available days for required December office hours are **Monday, Dec. 26 through Friday, Dec. 30**. Treasurers **must** choose one day (unless a bank assists in collection). (MCL 211.44(2))

The last day to pay 2016 property taxes without incurring any interest or penalty is **Tuesday, Feb. 14, 2017**. Treasurers **may** choose to hold office hours.

The last day to pay 2016 property taxes before they are returned as delinquent is **Monday, Feb. 28, 2017** (the last day of February). (MCL 211.45) Treasurers **must** hold office hours.

The township treasurer **must** also be in his or her office from 9 a.m. to 5 p.m. to receive tax payments for the collection of a summer tax levy, on **Sept. 14**, (the last day taxes are due and payable before interest is added under MCL 211.44a(5). (MCL 211.44(2)(c))

In memoriam

Arlan Hossink, Holland Charter Township (Ottawa Co.) trustee for 28 years, planning commissioner for 24 years.

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IN THE KNOW

Federal overtime rule may be nullified

Just prior to *Township Focus* press time, it was announced by the National Association of Towns and Townships that there are efforts in Congress to recess by Dec. 9, which would allow the House and Senate to vote next year to nullify the Department of Labor's (DOL) new overtime rule. The final rule was to be effective Dec. 1, 2016.

Under the Congressional Review Act, any regulation finalized in the last 60 days of a legislative session can be revisited in the next session. The overtime rule was finalized on May 23, so if the House or the Senate adjourns by Dec. 9, then the 115th Congress can send a legislation nullifying the rule to President Trump who would likely sign the bill into law (unlike a certain veto from President Obama).

Although employees must meet both a wage and duties test to be exempt, the final rule focuses primarily on updating salary and compensation levels needed for executive, administrative and professional workers to be exempt from overtime pay.

Watch MTA publications and our website, www.michigantownships.org, for updates as they become available. Information on this, and other employment-related topics, are available on our "Employment Issues" Web page on the members-only section of www.michigantownships.org (access via the "Index of Topics" under the "Answer Center" tab after logging in).



Reminder: Under the Workforce Opportunity Wage Act, the Michigan minimum wage will increase to \$8.90, on Jan. 1, 2017, and to \$9.25, on Jan. 1, 2018. Afterward, the state treasurer shall annually index the minimum wage based on the consumer price index for the Midwest region for the most recent five-year period.

LOCAL UPDATES FROM ACROSS MICHIGAN

Township happenings

Belvidere Township (Montcalm Co.) has created a roadside park and accessible fishing dock at First Lake, funded through grants.

Bloomfield Township (Oakland Co.) held an open house, complete with food and various departments holding demonstrations. The K-9 unit showed its skills, the fire department allowed kids to use a fire hose and a helicopter landed next to the cable TV building. The new Bloomfield Hills High School held an open house in conjunction with the township activities to allow residents to meet staff, tour the building and check out a petting zoo set up on school grounds. The township also recently hosted a Hazardous Waste Day where 782 cars dropped off a variety of household chemicals, weed killer, paint and other hazardous waste.

DeWitt Charter Township (Clinton Co.) Trustee **Steve Musselman** was recently honored by the Lansing Chapter of the Daughters of the American Revolution for his service in Vietnam.

Email YOUR Township Happenings to jenn@michigantownships.org. Add MTA to your newsletter mailing list! Mail to MTA, Attn. Jenn Fiedler, PO Box 80078, Lansing, MI 48908-0078, or email to jenn@michigantownships.org.

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Townships holding unclaimed property are required to comply by providing the Michigan

Department of Treasury's Unclaimed Property Division with complete and accurate information on an annual unclaimed property report.

Even townships may be owed unclaimed property! A quick search of the Unclaimed Property online database for "Twp" and "Township" shows that more than 1,000 townships have unclaimed money waiting for them. Is your township one of them?

Visit the Unclaimed Property Division's Web page to learn how to report or claim unclaimed property. Go to www.michigan.gov/treasury and click on "Unclaimed Property."



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MTA Life Member Don Thall retires after five decades of service to township

After a career spanning 53 years of service as clerk and trustee with **Kalamazoo Charter Township** (Kalamazoo Co.), MTA Life Member and 1997 Association President **Don Thall** has retired from public office.

Thall first dipped his toe into township politics when his neighborhood was rezoned. Unhappy about the change, Thall and his neighbors moved forward with a referendum to undo the rezoning. Thall was elected president of the Westwood Citizens League because of his ability as a speaker. When they were successful, his group pushed him to run for township trustee. His wife, Elisabeth, was his campaign manager and his family helped him put out signs and place ads. He was 31 years old when he was elected in 1963—the youngest elected official in the county at the time.



Thall

Nine years later, when the clerk retired, Thall decided to run for the position. He was successful and he held the position continuously since 1972. He later attended Michigan State University and became a certified municipal clerk.

When Thall became clerk, the township kept two sets of books “by hand.” Thall introduced the first computers used in the township. A history and political science major in college, Thall was well-suited to the job of preserving old minute books. He had them transcribed and placed on the township website and later turned the minutes over to the archives at Western Michigan University where they are preserved today.

Before becoming clerk, Thall worked with his father in a paper and metal recycling business. He and Trustee **Richard Stohrer** were instrumental in setting up a township recycling program for about \$5 per household per year. This program was the first in the county, and other communities later adopted similar programs.

More recently, Thall and his staff, including **Monica Kalupa, Tammy Durian** and **Molly Cole**, were trained as passport agents, providing a service to the community and additional revenue to the township. Thall has had the ability to move with the times, keeping the township a vibrant and modern township with the help of his fellow board members, always working in a spirit of fellowship and good will.

Thall will be best remembered for his ability to bring people together to accomplish those things that are best for his community. For five decades, he enjoyed coming to work and interacting with the public and employees of the township in a friendly, kind manner. Asked when he will retire, he said, “When I can’t do it anymore.” Well, that time has finally come at age 84; now Thall is ready for a more leisurely lifestyle. He has had a fine career, and served his community with integrity and dedication.

profile



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Advertorial

Reminder: MTA needs updated information on new and returning officials

MTA is seeking updated information on all new and veteran officials in your township to update our database. A mailing was sent following the Nov. 8 election, asking clerks to confirm the names, addresses, telephone numbers and email addresses of all current officials, and to provide this information for any new officials elected in the November election.

If your township has not already done so, please review the information, make corrections as needed and provide changes to MTA as quickly as possible so that all newly elected officials in your township receive correspondence from MTA—including information on workshops, publications and other resources to acquaint them with their new roles and responsibilities.

Keeping up-to-date information—including email addresses—on file with MTA is critical to ensure all officials are getting the most out of their Association membership. If we have the incorrect email address, officials are missing out on valuable legislative updates and information in our e-newsletters, *Township Insights* and *Township Voice*, as well as notices about educational seminars and other opportunities for today's township officials. Your email address also serves as your username to access the members-only portion of MTA's website, featuring hundreds of pages of resources, samples and information—exclusively for MTA member officials.

Questions? Contact MTA at (517) 321-6467.

MTA welcomes new Allied Service Provider



Please join MTA in welcoming **Northern Concrete Pipe, Inc.**, of Charlotte to the Allied Service Provider program at the Keystone Club level.

For more on the Allied Service Provider program, turn to page 2 or visit www.michigantownships.org/asp.asp.

mta events | December

- | | |
|----|---|
| 13 | <i>New Officials Training, Part 1: Getting Started Right</i> workshop, Port Huron |
| 14 | <i>New Officials Training, Part 1: Getting Started Right</i> workshop, Frankenmuth |
| 15 | <i>New Officials Training, Part 1: Getting Started Right</i> workshop, Mt. Pleasant |
| 16 | <i>New Officials Training, Part 1: Getting Started Right</i> workshop, Lansing |

FOR SALE

PUMPER TANKER TRUCK—Albion Township (Calhoun Co.) is selling a 1990 4900 International with E-One body pumper tanker truck. In excellent condition, the truck is equipped with a 1,250-gallon poly tank, 1,250-gallons-per-minute hale pump, and a ladder rack with a 36-foot three-fly ladder and a rear dump. The engine has 32,000 actual miles. Numerous equipment is included. Available Dec. 1, 2016. Contact Albion Township at (517) 629-2289 for more information.



MTA's Political Action Committee thanks members who have donated to PAC in 2016. Your contribution makes a difference helping to elect legislators who support local democracy and who will fight for townships in Lansing.

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Municipal Insurance & Related Services

DECEMBER

By 1

On or before Dec. 1, county treasurer delivers to township supervisor a signed statement of approval of the bond and the township supervisor delivers the tax roll to the township treasurer.

2016 taxes due and payable to local unit treasurer are a lien on real property. (MCL 211.40)

Deadline for foreclosing governmental units to transfer list of unsold 2016 tax foreclosure parcels to the clerk of the municipality in which the parcels are located. (MCL 211.78m(6))

By 8

Post-general campaign statements filed. Books closed Nov. 28.

13

Tuesday after the second Monday in December. Special board of review meeting may be convened by assessing officer to correct qualified errors. (MCL 211.53b(7))

An owner who owned and occupied a principal residence on May 1 for taxes levied before Jan. 1, 2012, for which the exemption was not on the tax roll may file an appeal with the December board of review in the year for which the exemption was claimed or

the immediately succeeding three years. For taxes levied after Dec. 31, 2011, an owner who owned and occupied a principal residence on June 1 or Nov. 1 for which the exemption was not on the tax roll may file an appeal with the December board of review in the year for which the exemption was claimed or the immediately succeeding three years. (MCL 211.7cc(19))

An owner of a property that is qualified agricultural property on May 1 may appeal to the December BOR for the current year and the immediately preceding year if the exemption was not on the tax roll. (MCL 211.7ee(6))

December BOR to hear appeals for current year poverty exemptions only, but not poverty exemptions denied by the March BOR. (MCL 211.7u, STC Bulletin 5 of 2012)

Form 600/L-4016, Supplemental Special Assessment Report, due to the STC.

By 15

Charter townships operating on a calendar year budget cycle shall hold a public hearing on the proposed budget not later than Dec. 15 and adopt the budget not later than Dec. 31, in the year preceding the calendar year covered by the budget.

29

Deadline for an owner who had claimed a conditional rescission of a PRE to verify to the assessor that the property still meets the requirements for the conditional rescission through a second and third year annual verification of a Conditional Rescission of PRE. (Form 4640) (MCL 211.7cc(5))

Deadline for a land contract vendor, bank, credit union or other lending institution that had claimed a foreclosure entity conditional rescission of a PRE to verify to the assessor that the property still meets the requirements for the conditional rescission through the filing of an annual verification of a foreclosure entity. (MCL 211.7cc(5))

A rescission affidavit (Form 5277) shall be filed with the assessor of the township in which the personal property is located, no later than Dec. 31 of the year in which the exempted property is no longer eligible for the eligible manufacturing personal property tax exemption.

31

Tax day for 2017 property taxes. (MCL 211.2(2))

All taxes due and liens are cancelled for otherwise unsold 2016 foreclosure

parcels purchased by the state or transferred to the local unit or the Michigan Land Bank Fast Track Authority. (MCLs 211.78m(12) and 211.78m(13))

JANUARY

By 10

No later than Jan. 10. Except as otherwise provided in Section 9m (bank or trust), 9n (farm products) or 9o (sugar beets from sugar), assessors and/or supervisors are required to annually send a personal property statement to any taxpayer they believe has personal property in their possession in their township.

Form 632—*Personal Property Statements* must be sent or delivered. (MCL 211.19)

24

Local units with a state equalized value of \$15 million or less must distribute taxes collected through Jan. 10, within 10 business days of Jan. 10. All other local units must disburse taxes collected within 10 business days after the 1st and 15th of each month, except during March. (MCL 211.43)

By 31

Annual campaign statements filed. Books closed Dec. 31, 2016.



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Do election workers receive W-2s or 1099 forms?

Election workers do not receive 1099s—they are township employees, and 1099 forms are issued to independent contractors. Election workers are a very special class of employee under federal tax law:

- Payments to election workers are generally exempt from federal and state income tax withholdings. (IRC Section 3401(a))
- Election workers earning less than \$1,700 per year in 2016 are exempt from Social Security and Medicare taxes (FICA taxes)—even if the employment is covered by a 218 Agreement. “Modification 975,” effective Jan. 1, 2004, made this change to the state’s master agreement with the Social Security Administration.

If the above exemptions apply—no federal income, Social Security or Medicare taxes are withheld—federal tax law does not require employers paying election workers less than \$600 to issue W-2s.



For Social Security and Medicare tax exemption purposes, what services are considered performed by ‘election workers’?

According to the IRS, election workers are individuals hired by government entities (including townships) to perform services at polling places in connection with national, state and local elections. An election worker may be referred to by other titles, for example, poll worker, moderator, machine tender, checker, ballot clerk, voting official, polling place manager, absentee ballot counter or deputy head moderator. These workers may be employed by the township exclusively for election work, or may work in other capacities as well.



What if the annual pay for the election worker exceeds the \$1,700 threshold?

FICA taxes apply from the first dollar paid if an election worker is paid the \$1,700 federal threshold amount or more. For example, when payments made to an election worker in 2016 meet the federal threshold amount—\$1,700—all amounts paid to the worker are subject to FICA taxes, including the first \$1,699.

If it’s anticipated that an election worker may earn the federal threshold amount or more in a calendar year, the township may choose to begin withholding FICA taxes on the first dollar earned. If the worker then earns less than the federal threshold amount in the calendar year, the worker

would be entitled to a refund of the withheld FICA taxes. If the employer chooses not to begin withholding until after the worker earns the federal threshold amount, then the employer would be liable for the total amount of FICA taxes due.



What if one of our employees also performs services as an election worker?

The services are bifurcated—the services as an election worker, if under the threshold, are exempt from federal and state withholding, as well as Social Security and Medicare taxes. The other services to the township would be generally subject to income, Social Security and Medicare taxes (assuming that there is a 218 Agreement in place, or the township doesn’t have a 218 Agreement nor does it have a “public retirement system” in place). For example:

Township A pays Worker Y \$100 in 2016 for election worker services, and also employs Worker Y in another capacity in which Worker Y earns \$1,000. The services of Election Worker Y are excluded from the 218 Agreement (State of Michigan Modification 975), but non-election services are included. The \$1,000 payment is subject to income tax and FICA withholding, but the \$100 payment is not. Because it made payments in 2016 to Worker Y equal to \$600 or more, the township must report all payments as wages (Box 1) on Form W-2. Separate Forms W-2 may be used for the two types of payments.

It is recommended that townships give all election workers W-2s regardless of the amounts paid, as a means of informing the election workers the amount they were paid, annually, as these amounts are taxable to the election worker, even though they are exempt from income tax withholding.

Additionally, according to the State of Michigan, election worker pay is reportable on quarterly unemployment forms, as they are considered part-time temporary employees.

Information provided in *Financial Forum* should not be considered legal advice, and readers are encouraged to contact their township auditor and/or attorney for advice specific to their situation.



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Q Has marijuana been legalized?

No. Marijuana has not been legalized in Michigan. It is still an illegal drug under federal and state law.

The Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421, *et seq.*, allows qualified patients and registered caregivers identified with those patients to use marijuana for specified medical conditions. That law did not legalize marijuana, but it prohibits prosecuting or penalizing qualified patients and registered caregivers who use marijuana for those purposes as long as they comply with the MMMA.

Subsequent court opinions clarified that only persons who were qualified patients and registered caregivers (and persons who met the requirements of Section 8 of the MMMA, even if not registered with the state) could exchange or use medical marijuana. A third party—a person providing or selling marijuana to a qualified patient who is not that person's registered caregiver—does not have the protection from prosecution under the MMMA. Any arrangement outside of the patient-caregiver relationship, including “dispensaries,” does not comply with the MMMA and is illegal.

Q What is legal today?

Only a patient-caregiver relationship conducted in compliance with the MMMA is legal today. PA 283 of 2016 amended the MMMA to include certain marijuana-infused products, or “edibles,” and clarify what plants and parts of plants are allowed within the limits imposed by the act.

Q So how come we see medical marijuana dispensaries all over?

Because the local jurisdiction has chosen to not enforce state or federal laws that make marijuana illegal outside of the patient-caregiver relationship protected by the MMMA. In most cases, the city, village or township has “decriminalized” certain uses of marijuana and/or chosen to not utilize enforcement resources for small amounts or certain levels of activity. But that is a forbearance, not legalization.

Q Wait a minute—didn't a law just get passed that makes marijuana dispensaries legal?

No. Marijuana “dispensaries” or grow operations or any other activity involved with marijuana that does not comply with the Michigan Medical Marihuana Act are still unlawful.

Q No, it did—the Medical Marijuana Facilities Licensing Act. The governor signed it!

Yes. But the Medical Marijuana Facilities Licensing Act (MMFLA), PA 281 of 2016, MCL 333.27101, *et seq.*, does not take effect until Dec. 20, 2016.

Under the MMFLA, one or more of the following types of medical marijuana facilities may be allowed by a township ordinance: Class A, B, or C grower; processor; provisioning center; secure transporter; and safety compliance facility.

The MMFLA also includes an additional delay in implementation of 360 days to enable the Michigan Department of Licensing and Regulatory Affairs (LARA) to establish the licensing system required by the act. ***A person cannot apply to the state for a license of any kind under the MMFLA until Dec. 15, 2017.***

And no one can apply to the state for a license of any kind under the MMFLA UNLESS the township has already adopted an ordinance that authorizes that type of facility.

So even after Dec. 15, 2017, any marijuana provisioning center or other activity involving marijuana that does not comply with the MMMA will still be illegal, unless that township has adopted an ordinance that authorizes that type of facility under the MMFLA.

(*Note:* While the word “dispensary” has been commonly used to refer to a variety of medical marijuana activities, the new laws do not refer to “dispensaries.” Under the MMFLA, “provisioning centers” are what many people would describe as a “dispensary.”)

Q What if an applicant comes to our meeting now and demands that we adopt an ordinance or approve their license?

If a township is approached by an applicant stating that the board must adopt an ordinance, then that applicant has misunderstood the law. A township cannot be required to adopt an ordinance to allow facilities authorized under the MMFLA now or at any time.

If a township is approached by an applicant demanding that the township consider their application or stating that the board must authorize their facility:

- Before Dec. 15, 2017, no township can be required to consider an application. Even if a township adopts an ordinance to allow the facilities authorized by the MMFLA, the licensing system is not in place, and no applications will be considered by LARA until Dec. 15, 2017.

- After Dec. 15, 2017, if a township has not adopted an ordinance allowing any of the facilities authorized by the MMFLA, then the township is not required to consider any applications for MMFLA licenses, because no licenses will be approved by LARA.
- After Dec. 15, 2017, if a township has adopted an ordinance allowing any of the facilities authorized by the MMFLA, and the application involves one of the type(s) of facilities that the township allows in its ordinance, and the cap on the number of that type of facility imposed by the township's ordinance has not been reached, then the township will be asked to provide information to LARA as part of the licensing approval process.



What do we need to do if we do NOT want any of these medical marijuana facilities in our township?

Do nothing. Literally. Do. Nothing. Period.

You do not need to adopt an ordinance to prohibit the types of facilities authorized under the MMFLA. They are already prohibited by state and federal law, unless the township adopts an ordinance to allow them (“opt in”) under the MMFLA.

You would only adopt an ordinance dealing with the types of facilities authorized under the MMFLA if the township WANTS to allow one or more type of facilities authorized under the MMFLA.

You do not have to consider any application for any facilities currently because no application will be considered by the state until Dec. 15, 2017. And even after that date, if the township has not adopted an ordinance allowing that type of facility, that application will not be considered by the state.

Note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.



What do we need to do if we DO want any of these facilities in our township?

Any time before Dec. 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township could adopt an ordinance allowing one or more of the specific types of facilities authorized by the new MMFLA. Note that adopting such an ordinance before Dec. 15, 2017, does NOT make a facility lawful!

Dec. 15, 2017, is the earliest an applicant may submit an application to the Medical Marijuana Licensing Board (MMLB) for consideration.

Any time after Dec. 15, 2017, a township that wants to allow medical marijuana facilities to operate within the

township would adopt an ordinance allowing one or more of the specific types of facilities authorized by the MMFLA.

The ordinance should specify which type(s) of facilities—and how many of each type—the township is choosing to allow. If a township “opts in” with an ordinance that does not specify a cap on the type(s) or number of each, applications for any of the types and any number of a type within the township will be considered by LARA.

But a license from the state is still required before a specific facility is authorized to legally operate under the MMFLA. The township board's adoption of the ordinance allowing medical marijuana facilities does not automatically make all facilities lawful.



Why would a township consider allowing these facilities?

Some communities accept medical marijuana use for compassionate reasons, and believe that the Medical Marijuana Facilities Licensing Act will better facilitate the spirit and the actual practice of the patient-caregiver relationship authorized by the statewide initiative that created the Medical Marijuana Act in 2008.

Other communities may be responding to a real demand or broad support locally for providing medical marijuana facilities and business opportunities. And it may be a revenue source:

- **Annual administrative fee:** Once a township adopts an ordinance allowing one or more of the types of facilities authorized by the MMFLA, the township may in that ordinance require “an annual, nonrefundable fee of not more than \$5,000.00 on a licensee to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the municipality.”
- **Property tax revenues:** These facilities are businesses and may actually be quite profitable. And in some communities, medical marijuana facilities will utilize commercial properties that are currently vacant or even off the tax roll due to foreclosure.
- **State shared revenues, as appropriated:** A state tax will be imposed on each provisioning center at the rate of 3 percent of the provisioning center's gross retail receipts, which will go to the state Medical Marijuana Excise Fund. The money in the fund will be allocated, upon appropriation, to the state, counties and municipalities in which a marijuana facility is located, with “25 percent to municipalities in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the municipality.”

Member townships can visit MTA's “Medical Marijuana Act” Web page for a complete *Medical Marijuana Laws Q&A*, which will be updated as the law is implemented.

Hello, MTA ... ? provides general information on typical questions asked by township officials. Readers are encouraged to contact an attorney when specific legal guidance is needed. Member township officials and personnel may contact MTA Member Information Services with questions or requests from 8 a.m. to 5 p.m., weekdays, at (517) 321-6467 or fax (517) 321-8908.

Autonomous vehicle bills receive final passage

Should your community be a pilot test area for driverless vehicles, your township may not be notified before they are on the roads in your jurisdiction.

Senate Bills 995-998, under lead sponsor Sen. Mike Kowall (R-White Lake Chtr. Twp.), were recently enrolled by the Senate and are expected to be signed by Gov. Rick Snyder. Together, they would update guidelines for autonomous vehicle research in an effort to secure Michigan's spot as a leader in the industry. MTA did not take a position on these bills, but worked with legislators and administrative staff to make adjustments and address concerns.

Under the bills, the Michigan Vehicle Code will include new sections that define terms relevant to the use of autonomous vehicles. The new sections also set parameters for the use of such vehicles, allowing them on certain roads. The package of bills would allow an on-demand automated motor vehicle network to be operated on a Michigan highway, road or street. They would also allow the Willow Run manufacturing complex in **Ypsilanti Charter Township** (Washtenaw Co.) to be used as a test facility.

No language in the final version would require any type of notification to local units before the vehicles were tested on roads in your township. Local units also could not impose a local fee, registration, franchise or regulation on such a network until after Dec. 31, 2022. However, the bills stipulate that this does not limit local or state authority over roads and rights-of-way with respect to communication networks or facilities. Local units would also be represented on the new Michigan Council on Future Mobility, which would include 11 voting members appointed by the governor.

Private college police could have power to patrol off-campus

Township police departments will soon have the option of giving private college security officers certain authority to patrol property adjacent to campus.

House Bill 4588, sponsored by Rep. Kurt Heise (R-Plymouth Chtr. Twp.), was enrolled and awaits signature by Gov. Rick Snyder. This bill expands current law that already allows public college safety officers to use police powers on certain off-campus areas. HB 4588 extends similar authority to private colleges but clarifies that they can't make arrests off of campus property unless they're sworn in and fully empowered by a local chief of police or deputized by a county sheriff.

MTA achieved an amendment in the House to include townships in the legislation.

MTA's new online feature makes staying on top of all things legislative easier than ever

Want to find your lawmaker's email address? Wondering what MTA's position is on a new bill? Need to find talking points or information on an important legislative issue? MTA has you covered with a brand-new platform that puts everything you need to be an advocate in one easy-to-find spot.

The "Legislative Action Center" on MTA's website will help members stay better informed on the latest legislative happenings in Lansing, understand MTA's positions on legislation and contact their state representative or senator.

By hovering over the "Advocacy" tab on the MTA member homepage and clicking on the "Legislative Action Center" dropdown menu item, you'll find a hub of information that will make advocacy easier than ever.

This platform features Web pages on key issues that will be continually updated as new concerns arise. Currently, you'll find in-depth information on the "dark stores" assessing theory, revenue sharing and local preemption legislation. Web pages are also dedicated to each section of MTA's Legislative Policy Platform—Assessment and Taxation, Elections, Environment and Land Use, Intergovernmental Relations, Township Operations and Transportation. In addition to providing MTA's policies on those issues, each page includes a list of bills under those categories. By clicking on a bill, you'll find a detailed description of how the bill impacts townships, as well as MTA's position.

Finding your lawmaker is as simple as entering your zip code on the Legislative Action Center homepage. Once you've done so, the website will pull up photos all federal and state elected officeholders. Clicking on a photo will reveal a profile of the officeholder, contact information and links to his or her website, Facebook page and Twitter handle.

When key issues arise, MTA will send members an action alert with a link to the "Action Alert" page. With just one click, you'll land on a Web page that allows you to review MTA talking points and send a message to your legislator, all from MTA's website. You'll have the tools and information you need to contact your lawmakers with confidence.

We hope you make frequent use of this new website feature. If you have questions, please don't hesitate to contact us at legislation@michigantownships.org.



Two MTA e-newsletters help today's township officials be "in the know" on state and federal legislation impacting local government.



Township Insights, MTA's quick-read *weekly* electronic newsletter, offers timely information and updates about legislative happenings, as well as news, programs and resources that can help you better serve your community and your residents. Get the latest on what's happening in Lansing, updates on court opinions, grant opportunities—and so much more!

Each month, *Township Voice* provides comprehensive insights and background on the "what, when, where and why" of emerging issues at the Capitol. This *monthly* e-newsletter goes in-depth on pending legislation—and how it will affect townships.

Let MTA help you stay on top of legislative issues impacting your township!

Both of these Association legislative publications are distributed via email, and are sent to every MTA member with an email address in our Association database. Not receiving them? Call (517) 321-6467 or email michelle@michigantownships.org.

Making a list Checking it twice

- Become a 2016 MTA-PAC member
- Update new officials with MTA
- Check out MTA's upcoming workshops
- Introduce yourself to your newly elected state representative
- Invite legislators to township board meetings



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Rep. Brad Jacobsen (R-Oxford Chtr. Twp.)

In a world of partisan politics, Rep. Brad Jacobsen strives to be a negotiator.

The **Oxford Charter Township** (Oakland Co.) Republican isn't afraid of issues that might divide his colleagues on either side of the aisle. When it isn't easy to find a middle ground, Jacobsen knows how to rise to the occasion. "I want to be known as a great negotiator," Jacobsen said. "I believe I have the ability to appeal to each side and bring them together for a solution."

As a state representative, Jacobsen has used this ability to reach compromises and work toward his unwavering goals—government efficiency, road improvements and job growth. His commitment to working across party lines helped him accomplish workers' compensation reform during his first term, something that was a major goal when he was elected to the state House of Representatives in 2010.

This month will be his last as a state representative—term limits prevent him from running for another term. As he looks back on his years of service, both at the state and local level, he knows he did all he could to help Michigan citizens and make a difference in Lansing.

Jacobsen has deep roots in public service. With a degree in political economics and business from the James Madison College at Michigan State University, he served his home community of Oxford Charter Township for 16 years as a township trustee. Later, he was elected to the Oakland County Board of Commissioners, where he served for two terms.

"These roles shaped my job as a state official by giving me valuable insight and understanding of how local and state government can collaboratively work together and where improvements can be made," Jacobsen said.

His experience has proven to be valuable in his roles on House committees, especially as chairman of the House Government Operations Committee. It's what Jacobsen calls a "box of chocolates" committee—you never know what you're going to get, as bills cover a wide range of topics. Sometimes, the committee considers bills that might be "feel good" bills but don't actually accomplish much, especially considering their cost. Jacobsen remained committed to his goal of government efficiency and held up any bill that he believed wasn't worth the price.

"I'd rather see time and resources go toward bills that accomplish much more," he said.

As a lawmaker, Jacobsen remembers what it was like to be in the shoes of a local official. He says early communication is key any time a local official or legislator has a concern. If a concern is addressed early, the end result will be much more meaningful and beneficial.



Rep. Brad Jacobsen (R-Oxford Chtr. Twp.) served as Oxford Charter Township trustee for 16 years, before becoming a county commissioner and then running for state office six years ago. Jacobsen has strived to reach compromises and work toward his goals of government efficiency, road improvements and job growth.

One of his concerns for local government is pensions and legacy costs. The state doesn't have the money it needs to help fund local deficits, he said. In response, many communities are working to reduce spending in other areas or change their benefit plans.

Though Michigan has come a long way in his six years as a legislator, there's still work to be done to continue the state's economic rebound. Jacobsen wants to see Michigan harness innovation and empower businesses that are in emerging markets. Recent legislation that addressed autonomous vehicles will help expand Michigan's legacy as a leader in the automotive industry, he said.

"In conjunction with further eliminating the red tape for small businesses, Michigan is on the road to success," Jacobsen said.

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Rep. Anthony Forlini (R-Harrison Chtr. Twp.)

After six years as a state representative, Anthony Forlini is an even bigger believer in local control.

The former **Harrison Charter Township** (Macomb Co.) supervisor came to Lansing committed to returning as much control as possible back to the hands of local units. It's a principle that's not just important to Michigan—it was important to our founding fathers.

"Our country was founded on local control," Forlini said. "King George infringed control and services upon the locals when our country was founded. Our founding fathers thought they could do it better, and they did."

As Forlini approaches the end of his time in the House, he still sees local control as one of the biggest issues that townships face. He's spent the last six years working to stop what he sees as overreaches of power by the state. He believes this philosophy is also a key to continuing Michigan's economic rebound.

"The state needs to get out of the way of over-regulating and making it more difficult for businesses to thrive and for local governments to do their job," he said.

A lifelong resident of Macomb County, Forlini has deep roots in his community, where he and his wife of more than 30 years raised their three children. There, he's a member of the St. Hubert's Knights of Columbus, the St. Hubert Catholic Church and the Macomb County Chamber of Commerce. He's proud of his Italian heritage and has served as the senior vice president of the Italian American Cultural Center. As recently as last month, he was awarded the highest honor of the Italian government—honorary knighthood.

Local government has been a passion for Forlini ever since he took the office of Harrison Charter Township supervisor in 2004. For six years, he worked to help eliminate waste and streamline government, while also taking on projects such as eliminating invasive species, preserving green space and creating a bike path.

Forlini didn't forget his local background when he came to the House. His knowledge came in especially handy as he served on the House Appropriations Local Government Subcommittee. In 2015, his experience even inspired him to sponsor what is now Public Act 88 of 2015, reducing the regulations on townships looking to hire building inspectors.

"I introduced this legislation because of the experience I had as a township supervisor as well as conversations with other township officials in my community," Forlini said.

Those conversations with local officials are crucial for making good laws, Forlini said. He's a proponent of frequent, open communication between legislators and township officials. That's the only way a legislator can truly understand exactly how the bills they pass will affect their local units of government. While he believes that responsibility starts with the state lawmakers, he also encourages township officials to start the dialogue with their representative in Lansing.



Rep. Anthony Forlini (R-Harrison Chtr. Twp.) spent six years as a township supervisor, when he worked to streamline government, preserve greenspace and eliminate invasive species. As Forlini approaches the end of his time in the state House, he still sees local control as one of the biggest issues that townships face.

Since coming to the state House, Forlini has set a new goal for himself each term. First, it was making government more streamlined and accountable. Next, it was addressing the opioid abuse problem in Macomb County and throughout Michigan. Now, in his third term, he's continuing the fight to remove burdensome regulations and find ways to help the less fortunate. So far, he's helped pass legislation that addresses each of these goals.

Due to term limits, this term in the House will be Forlini's last. Looking back on his years as a state representative, he's proud of what he's accomplished and hopes his constituents remember his hard work.

"I hope my legacy is that I've made government more effective and more accountable," he said. "I want the residents of our communities to have confidence that their government can be effective and efficient."

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Understanding workers' comp

Imagine your township clerk trips and twists an ankle while working in the township hall. Do you document the incident? Suppose an emergency medical technician has a heart attack while responding to the scene of an accident, or that a firefighter develops lung cancer after years on the job. Are these injuries your township's responsibility? And how should they be handled?

Your township's liability when it comes to workplace injuries isn't always clear-cut and easy to define. There's no tell-all guide for your township to follow because every case depends on the facts surrounding it—and the facts are almost always different, said Attorney Stephen Schultz, a partner at the Fahey Schultz Burzych Rhodes Law Firm.

Your township isn't responsible for determining whether it's liable for an employee's injury, but it *is* responsible for carefully documenting each incident—no matter how small—so that your insurance carrier can properly investigate. It's also in your township's best interest to work with your insurance provider to minimize your risk.

"There are a host of issues and a host of rules that township officials should be aware of in order to make decisions and understand the risks when a township has employees engage in certain activities," Schultz said.

In Michigan, all employers—including townships as public employers—are subject to the Workers' Disability Compensation Act (WDCA), Public Act 317 of 1969, MCL 418.101, *et seq.* The WDCA requires that employers provide compensation for loss of wages and medical, death and vocational rehabilitation benefits to employees who

suffer work-related injuries or occupational illnesses. Most townships do this by purchasing an insurance policy from a private insurance company. Some townships, however, may be granted self-insured status or may join a group fund.

Because the WDCA was designed to remedy a perceived wrong, it is administered by Michigan's Workers' Compensation Agency and interpreted by the courts in a light most favorable to the party that it was put in place to protect—your township's employees.

Administrating the provisions of the act can be complex and complicated. Townships should work closely with their insurance agent, the insurance company's adjuster and legal counsel to address their risks and ensure that they will not be subject to long-term and large monetary claims.

"The workers' compensation program has been around for a long time," Schultz said. "Township officials shouldn't be afraid to work with their insurance carrier to administer it, and they shouldn't be afraid of employees when they have claims. The claims process has been around for decades and it provides a valuable service, but you do need to know the facts and how the system works."



What it is

The WDCA is a statutory “trade-off” designed to be the employee’s exclusive and only remedy against the employer for a personal injury or occupational illness. Prior to the act, employees had no legal entitlement to benefits for work-related injury, illness or death, and had to sue their employer to try to receive any coverage, compensation or benefits.

The WDCA created a statutory requirement and administrative system for employers to provide those benefits where warranted. In addition, employers now cannot be sued for personal injury, illness or death arising out of their employment—unless there is a deliberate act of the employer with specific intent that caused the injury or illness to occur. (MCL 418.131) Not all workers’ disability compensation insurance plans cover tort liability for those situations, so townships should work with their insurance agent to make sure they are covered.

As an employer, your township has a legal obligation to know about the WDCA and understand how it works, Schultz said. Officials must work with their insurance carrier to understand the procedures and reporting requirements they must follow in the case of a possible claim.

Who is covered?

The act applies to all employees in service, under contract of hire, expressed or implied, oral or written, part-time or full-time, and volunteers of public employers, regardless of the number of employees. (MCLs 418.111 and 418.161)

Specific categories of volunteers performing services for public employers are also considered employees and are covered by the act—including volunteer firefighters.

If a township hires another company to come in and do some work for it, the second company is typically an “independent contractor,” not an employee of the township, and is *not* subject to the act. These independent contractors must provide their own workers’ compensation insurance and show a certificate of liability insurance to the township before doing any work.

Sometimes, townships *hire* a person to come in and perform a specific job. In these cases, MCL 418.161(1)(n) states that if the worker does not maintain a separate business, does not hold himself or herself out to and render service to the public, and does not employ other workers, the worker will be considered an employee of the township covered by the act.

What injuries or illnesses are covered?

The word “injury” has a specialized meaning in the WDCA. While most people think of an injury as the result of a specific event or incident (such as an accident), the act defines the term more expansively, to include disabilities resulting from chronic harmful exposures of various kinds, as well as those caused by the cumulative effects of minor traumas. Any kind of work-related injury could potentially be covered, Schultz said. That’s why it’s imperative that your township document and report all injuries so that they can be properly investigated.

“All injuries should be reported, even if township officials and the carrier determine after the fact that it wasn’t work related,” Schultz said.

Covered injuries and illnesses can range from sudden accidents—such as falling off a ladder—to injuries that happen over time—such as repetitive stress injuries like carpal tunnel syndrome and back problems. Illnesses that are the gradual result of work conditions—such as emphysema made worse by airborne chemicals—and occupational illnesses where an employee becomes sick and the nature of the employee’s job increases the employee’s chances of suffering from that disease, such as heart attacks and hernias, may constitute a workplace injury.

The act specifically states: “ ‘Personal injury’ includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. Mental disabilities and conditions of



Your township's liability when it comes to workplace injuries isn't always clear-cut and easy to define. Your township isn't responsible for determining whether it's liable for an employee's injury, but it *is* responsible for carefully documenting each incident—no matter how small.

the aging process, including but not limited to heart and cardiovascular conditions, and degenerative arthritis shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and be promptly reported to the employer." (MCL 418.401(2)(b))

The act also covers permanent disability. The claimant must meet seven categories of physical and mental impairments to be considered permanent (MCL 418.361(3)):

- Loss of sight of both eyes
- Loss of both legs or feet
- Loss of both arms or hands
- Loss of any two of the above
- Permanent paralysis of both arms or legs, or combination
- Incurable insanity or imbecility
- Permanent loss of use of both legs, both hands or both arms, or one leg and one arm

A partial disability is one that is not serious enough to keep the employee from all work, but does interfere with the employee's ability to perform their regular job and earn regular pay. An additional benefit may be payable if the disability appears on the state's schedule of permanent partial disabilities. Disabilities appearing on this list mostly involve the loss of a body part or a bodily function. (MCL 418.361)

Stress-related mental injuries can result from sudden, one-time events, such as when a firefighter or paramedic responds to a grisly murder or accident scene. Employees who witness traumatic events may be diagnosed with post-traumatic stress disorder (PTSD), which can also be covered by the act.

Illnesses or injuries that may not be covered

Although there are many other circumstances that may or may not need to be covered such as idiopathic falls (unexplained falls); intervening causes (doing something outside of work that aggravates the work injury or illness); successive injuries (an injury that starts with one employer and continues with the new employer); and partial injuries, there are also situations that may not be covered. These injuries may be a result of employee willful misconduct, voluntary participation in recreational and social activities, and going to/coming from a work site, which are not compensable unless the injury occurs on the work premises within a reasonable time before or after work.

Coverage may be denied in situations involving:

- Injuries caused by intoxication or drugs
- Self-inflicted injuries
- Injuries from a fight started by the employee
- Injuries resulting from horseplay or violation of company policy
- Injuries suffered off the job

The facts surrounding the injury will help your carrier to determine whether it's covered. Once an injury is reported to your carrier, it will handle the claim from that point forward.

Must occur in 'course of employment'

Regardless of how the injury or illness occurs, to be covered, it must arise out of and in the course of employment. (MCL 418.301)

With a few exceptions, any injury that occurs in connection with work is covered, and in the majority of cases, it will be obvious that the injury happened at work. Injuries may occur any time of the day or night. If an employee's job or assignment requires them to travel or be at an off-site location, they will be covered. For example, an assessor would be covered by the act while conducting property inspections, but not while traveling to and from work or going to a purely social lunch or dinner—unless the employee is working during lunch or dinner.

Injuries occurring to and from work are generally not covered by the act unless they occur on the township's property while parking. If the employee is required to park at a location other than on township property that causes the employee to have to walk to work, they may also be covered from the commute to and from that parking lot.

Benefits

If a worker is injured on the job or suffers from an occupational illness, the township must ensure that reasonable and necessary medical treatment and wage-loss benefits are provided promptly.

In addition to recovery of wages and medical expenses, an employee is also entitled to reasonable and necessary long-term medical care. For example, if the employee needs in-home care, family members may be paid to care for the employee. (MCL 418.381(3))

If the employee dies, burial benefits will be paid up to \$6,000. (MCL 418.345) The act also covers any vocational rehabilitation up to 52 weeks. (MCL 418.319(1))

Reporting requirements

Notice: Employees must give notice within 90 days from the day of injury or when the disability manifests itself, or from their last day of employment. (MCL 418.381(2)) This noticing period is extended to two years if they are incapacitated. (MCL 418.381(1)) Your township can, and should, adopt policies to require earlier reporting, however.

Claim: A claim for benefits (which is different than giving notice) must be made by the employee within two years from the injury or illness. Medical treatment could be considered as a claim.

All claims must be reported to the township's insurance carrier and the Michigan Workers' Compensation Agency using Form WC-100 whenever the injury results in death, a specific loss, or a disability of seven or more days. Injuries that require medical treatment but do not result in a disability of seven days or more do not need to be reported. In the case of death, a Form WC-106 must also be filed.

There is a seven-day waiting period to be eligible for wage-loss benefits. If any wage loss lasts longer than seven consecutive days (including weekends and holidays), an employee is entitled to benefits starting on the eighth day. If the wage loss continues for 14 days or longer, he or she is entitled to payment for that first week of disability. (MCL 418.801) Weekly benefits are roughly calculated at 80 percent of the employee's after-tax wages. (MCL 418.301(8))

Prompt reporting enables the insurance carrier to immediately start investigating the validity of the claim. For example, the employee may have injured themselves over the weekend, but reported it as a workplace injury due to a fall—yet nobody saw the fall. Prompt investigation may show that the fall really happened on their private time and is not a claim covered by the act.

A township cannot discharge or discriminate against an employee for filing a workers' compensation claim or exercising their rights under the act. (MCL 418.301(13))

Determining the benefit

The disability benefit is based on a loss of wage-earning ability. This loss is calculated based on the limitation of their wage-earning capacity in work suitable to their qualifications

or training that results from the personal injury or work-related illness. (MCL 418.301(4))

Benefits are paid generally for 500 weeks (MCL 318.321) unless death occurs during the 500 weeks, then benefits may be extended. (MCL 418.375(2))

If the employee dies due to injury or workplace disability, benefits will be paid to any dependents under 16 years of age or anyone defined as a dependent by law. (MCL 418.331(b))

Wage benefits may be reduced if other benefits such as Social Security or pension plan disbursements are being paid or if the claimant is only partially disabled. (MCLs 418.373(2) and 418.361(1))

"Volunteer" firefighters are subject to specific provisions of the act. The loss of weekly wages will be calculated differently depending on whether they are "bona fide" volunteers or paid on-call volunteers, and whether they have another full-time job in addition to their firefighting service. (MCL 418.354(15))

Fire and police employees may also be covered by duty disability pension benefits. If they are, they would not be covered by the act.

Minimizing risk and loss due to worker disability

According to experts, developing programs to minimize risk and loss due to worker disability may limit the cost of workers' compensation premiums. These programs may include safety management and training, managed care and

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returned-to-work policies. Your township should work with its insurance carrier for suggestions on how to make your workplace safer, Schultz said.

Safety training is an important tool used to educate all township personnel about safety rules, workers' compensation, and their duties and responsibilities in the workplace. When developing safety policies, procedures and training, the township should consider:

- Allowing only properly authorized and instructed employees or volunteers to do jobs customized for a specific job area.
- Prohibiting employees from doing any job that appears unsafe. Describe the factors that would make a job unsafe, and provide guidelines and policies for reporting the condition to the supervisor or management.
- Holding emergency preparedness drills for employees and volunteers. The training should include the nature of the drill and expectations for employee and volunteers during a drill, for example, training election workers how to handle a precinct emergency in case of natural disaster or a violent act.
- Paying attention to employees or volunteers learning new operations to make sure they have the proper job skills and awareness of hazards. Provide guidelines for learning new tasks and describe expectations.
- Training supervisory staff to recognize hazards and understand their responsibilities. Provide guidelines for reporting and correcting hazards.

Managed care programs allow townships a measure of control over the employee's choice of doctor and the treatments given. Creating programs and policies to manage care may help to lower costs, manage the claim, and audit any expenses related to the injury. The WDCA allows the insurance carrier, along with the township, to control the medical care for the first 28 days following the injury. (MCL 418.315) If the township delays reporting by even a week, the injury can worsen and lessen the time frame for the township to control the medical care.

Townships should check with their insurance carrier to determine the availability of any managed care options. If not provided by the insurance carrier, townships can seek the assistance of a third-party administrator specializing in managed care.

Return-to-work strategies and programs have traditionally been used to reduce workers' compensation costs; however, they can do much more—they can improve productivity and morale, save townships time and money, and protect townships from loss of talent. Examples of effective return-to-work strategies include offering the opportunity to work part time, telecommuting, modifying work duties, modifying schedules, and implementing reasonable accommodations to



Developing programs to minimize risk and loss due to worker disability may limit the cost of workers' compensation premiums. These programs may include safety management and training, managed care and return-to-work policies.

provide employees with the tools and resources they need to carry out their responsibilities.

Depending on medical recommendations, the act allows a township to give, in writing, an offer to work within an employee's capacity to perform without risk to their health or safety, provided the work is within a reasonable distance from their home. (MCLs 418.301(9)(a) and 418.401(9))

If the township has an established return-to-work policy and has offered the employee an option for returning to work, and the employee refuses to accept the work, then the employee may be considered as voluntarily removing themselves from the job market. In this case, no further benefits may have to be paid. An offer of this nature only needs to be kept available for a reasonable amount of time. If there is a difference in pay between the current job and the offered job, the township may still have to pay a wage benefit for the difference in pay.

Interaction with other laws

It is also important to recognize and evaluate the interaction of the WDCA with the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA).

The three laws have different purposes:

- An ADA disability is any impairment, work-related or not, that "substantially limits one or more major life activities of a person, or the person has a record of such an impairment or is regarded as having such an impairment." 42 U.S. Code § 12102

- The FMLA entitles eligible employees of certain townships to take unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Townships may designate the work-related injury leave as FMLA leave and count the leave against the employee's FMLA leave entitlement with the workers' compensation absence concurrently. If FMLA leave and WDCA leave run concurrently, wage replacement will be paid by workers' compensation. FMLA coverage applies only in townships with 50 or more employees and to those employees who have worked for the township for 12 months.
- The WDCA provides for loss of wages and medical, death and vocational rehabilitation.

Many injuries are not "disabling" under the ADA because they do not substantially limit a worker's ability to perform a major life activity. But, it is also possible that an impairment that is not "substantially limiting" in one circumstance could result in disability in other circumstances. For example, a firefighter falls and breaks a leg and the leg heals normally within a few months. Although the worker may be awarded workers' compensation benefits for the injury, he or she would not be considered a person with a disability under the ADA because, long-term, the injury will not limit their

ability to perform a major life activity. However, if the firefighter's leg took longer to heal than usual, and during that period the worker could not walk, he or she would be considered to have a disability. If the injury, for example, caused a permanent and limiting limp, the worker might be considered disabled under ADA and be entitled to ADA protection. Townships with these types of situations should work with their township attorney and insurance carrier.

A responsibility for all townships

Townships have a legal responsibility to comply with these laws and others, or face significant violations for non-compliance. Townships also have the ethical and moral responsibilities to assure their employees and volunteers receive benefits and protections provided by law—regardless of the number of employees or the positions they hold.



Cindy Davis,

MTA Member Information Services Liaison

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Contributions by MTA Staff Attorney Catherine Mullhaupt and MTA Staff Writer Bethany Mauger.



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2017 Board of Review Training announced

To assist township board of review members, alternates, supervisors and assessors in preparing for 2017 board of review sessions, MTA is conducting half-day *Board of Review Training* at 13 locations across the state this February.

Concurrent sessions offered at each location allow participants to choose the appropriate level and topics of interest. The advanced session is geared to experienced board of review members, while the basic session acquaints

newer board of review members with their statutory duties and requirements. Dates and locations are:

- Feb. 2:** DoubleTree by Hilton, Grand Rapids
- Feb. 3:** Holiday Inn West, Kalamazoo
- Feb. 7:** Magnuson Franklin Square Inn, Houghton
- Feb. 8:** Island Resort & Conference Center, Harris
- Feb. 9:** Little Bear East, St. Ignace
- Feb. 13:** Bavarian Inn Lodge, Frankenmuth
- Feb. 14:** Quality Inn Forward Conf. Center, West Branch
- Feb. 15:** Comfort Inn & Suites Conference Center, Mt. Pleasant
- Feb. 21:** Evergreen Resort, Cadillac
- Feb. 22:** Treetops Resort, Gaylord
- Feb. 23:** Ramada Inn, Alpena
- Feb. 27:** Comfort Inn & Village Conference Center, Chelsea
- Feb. 28:** Lansing Community College West Campus, Lansing

Registration fees include lunch. Check-in and lunch begin at 11:30 a.m. Sessions are held from 12:30 to 4:30 p.m.

Registration materials will be mailed in December, and will also appear in the January *Township Focus*. Watch www.michigantownships.org for more information and online registration.

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upcoming MTA workshop

REGISTRATION INFORMATION

New Officials Training

As a new township official, you'll learn a lot over the next four years, but there's no way you can learn it all at once. MTA's three-part *New Officials Training* series delivers essential information as you need it and when you can make the best use of it. Targeted to ALL new officials, **Part 1: Getting Started Right**, is specifically designed to introduce you to what you need to know as you attend your first board meetings and take on your administrative duties.

What is township government and how do you fit into it?

What are the crucial functions you need to perform right now for your specific office?

How can you bring fresh perspectives to the board, while valuing the work of veteran board members and staff?

Topics discussed in the morning general session include:

- **Township Overview:** structure, authority, mandated functions and administration
- **Intergovernmental Relations:** local, regional, state and federal agencies, as well as planning and economic development
- **Permissive Functions:** land use, public safety, roads and others
- **New Official Survival Skills:** panel discussion with veteran township officials

Individual breakout sessions will be held in the afternoon:

- **Clerks:** records, minutes, notices, financial administration and reporting, accounts payable, elections and cemeteries
- **Supervisors:** meeting management, ordinances, lawful expenditures, budgets, township administration, overseeing assessing and risk management
- **Treasurers:** financial administration, internal controls and reporting, types of financial institutions and investments townships may use, receiving/receipting money, and other tax collecting responsibilities
- **Trustees:** evaluating the township's financial position, creating and maintaining a township culture of ethical excellence, how to be a servant-leader and other watchdog responsibilities



Add-on Options:

MTA's publication packages—available at discounted rates!—are a must-have for new officials, allowing you to take home resources and access information whenever you need it. Individual books will be sold on-site, while supplies last.

OPTION 1: Township Basics Kit

Guide to Township Government (specific to your office), *Authorities and Responsibilities of Michigan Township Officials, Boards and Commissions*, and *Introduction to Township Board Meetings* (\$80 discounted rate; regularly \$93)

OPTION 2: Township Essentials Collection

Includes resources offered in the Township Basics Kit PLUS *Building a Better Budget* (includes CD), *Introduction to FOIA*, *The Township Guide to Planning & Zoning* and *Policy Matters!* (\$198 discounted rate; regularly \$230)

Cancellations & Substitutions: Written cancellation requests received at the MTA office two weeks prior to the workshop date will receive a full refund. No refunds will be issued thereafter. You may switch workshop locations at no charge if you notify MTA of the change at least one week prior to the workshop; otherwise, a \$25/person fee will be assessed. You may substitute another individual from your township for your registration at any time without incurring a charge; please notify MTA of the change.

New Officials Training Registration Form

Please check the date/location you will attend:

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| <input type="checkbox"/> Dec. 13: Port Huron | <input type="checkbox"/> Jan. 11: Houghton | <input type="checkbox"/> Jan. 19: Kalamazoo |
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*To qualify for early-bird rates, paid registrations must be received at the MTA office at least one week prior to the event. Rates apply to MTA members; non-members, call MTA for rates.

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Photos taken of sidewalk defect 30 days after accident not proof of 30-day notice

Bernardoni v. City of Saginaw, 499 Mich. 470, (2016)—The Michigan Supreme Court reversed the state Court of Appeals to hold that “for purposes of the highway exception, plaintiff’s photographs of a sidewalk defect taken about 30 days after an accident alone do not create a genuine issue of material fact as to whether the sidewalk defect existed at least 30 days before the accident. Without more, a jury has no basis for concluding that the defect was present for the requisite period of time.”

Booking photos may be exempt from disclosure under federal FOIA

Detroit Free Press v. U.S. Department of Justice, U.S. Sixth Circuit, ___ F.3d ___, decided July 14, 2016—In a case involving the federal Freedom of Information Act, the Sixth Circuit Court of Appeals overruled its holding in *Detroit Free Press, Inc. v. Dep’t of Justice* (Free Press I), 73 F.3d 93 (6th Cir. 1996) and held that the question of whether booking photos may be released under the federal FOIA is subject to the personal privacy exemption determination, on a case-by-case basis.

County shooting range not ‘ancillary’ to building erected to support shooting range

Coloma Charter Township v. Berrien County, ___ Mich. App. ___, Sept. 6, 2016—In the most recent chapter of an ongoing dispute over a county-owned outdoor shooting range, the Michigan Court of Appeals held that the county acted in violation of *Herman v. Berrien County*, 481 Mich. 352 (2008) and MCL 46.11(b) and (d), by siting a building at the range in violation of the township’s zoning.

The Court reviewed the case law, stating that, “In *Herman*, the Supreme Court held that the CCA [County Commissioners Act], MCL 46.1 *et seq.*, and specifically MCL 46.11(b) and (d), authorizes a county to site county buildings even if inconsistent with local township regulations. The Court also held that because a building cannot function normally without such items as a parking lot, sidewalks, and light posts, those types of ancillary uses are also permitted by statute and therefore also have priority over township zoning provisions. ...

“Thus, a county can site county buildings pursuant to MCL 46.11(b) and (d), and the *Herman* Court held that ‘ancillary’ land uses fell within that siting power to allow for the normal use of the building. And, of course, the Court held that this shooting range was not an ancillary use of the building containing indoor instructional rooms.”

The Court then pointed out (*citations omitted*):

“The problem with the building constructed in front of the existing shooting range is that it is ancillary to the use of the shooting range, as opposed to the shooting range being ancillary to the normal use of the building. See *Random House Webster’s College Dictionary* (2003) (‘ancillary’ is defined as ‘subordinate’ or ‘subsidiary’). Indeed, the shooting range existed long before the building, and was utilized (until the courts stopped its use) without the existence of the building. The evidence shows that the shooting range was and is the main feature of this activity, making the building subordinate to, or ancillary to, the shooting range. The county’s argument has the tail (a small structure) wagging the dog (the previously constructed and utilized range). Or, stated differently, the county used an after-the-fact building in an attempt to statutorily shield its non-conforming land use, something the *Herman* Court stated was impermissible under the CCA. No matter the intentions of the county in seeking to comply with *Herman*, the facts reveal a belated attempt to protect a land use by siting an adjacent building. This it cannot do.

“There is an additional reason why the county’s position cannot prevail. As we have noted, the *Herman* Court concluded that ‘Berrien County’s outdoor shooting ranges do not have priority over the township ordinances that plaintiffs rely on because they are land uses that are not indispensable to the normal use of the county building.’ Consequently, the Supreme Court has spoken: shooting ranges are not a normal or indispensable use of a county building. This decision makes sense on a number of different levels. The purpose of the CCA is to allow counties priority over the TZA to build buildings and ancillary items to those buildings such as parking lots, shrubs, and lighting, which are specifically adapted to support the use of the building. We find no support in the CCA that the Legislature contemplated shooting ranges as normal uses of county buildings.”

Dissenting in part, Justice Markey stated, “Despite recognizing that Berrien County constructed a new building—the clear and only purpose of which is the indoor discharging of firearms—the majority concludes that these cases are controlled by the holding of *Herman*. But *Herman* held only that the outdoor shooting ranges were not ancillary to a different, classroom-instruction-only building. The majority cites no language in the CCA to support its conclusion but instead relies on the idiom of ‘the tail wagging the dog.’ In my view, the dog in these cases is the CCA, which has supremacy over the tail, the township’s ordinances. Because the new structure is a ‘building,’ one must look to the language of the CCA for a basis to preclude the county from invoking its authority to ‘site’ it.”

OMA remedies do not include declaratory judgment

Citizens for a Better Algonac County Schools v. Algonac County Schools, ___ Mich. App. ___, September 8, 2016—The Michigan Court of Appeals overturned the trial court issuance of a declaratory judgment that the school board had violated the Open Meetings Act (OMA), holding that, “it was improper to issue a judgment that ... awarded plaintiffs declaratory relief, as it effectively signified that plaintiffs had a recognizable cause of action for declaratory relief, running afoul of the OMA’s three-tiered enforcement scheme and *Speicher v. Columbia Township Board of Trustees*, 497 Mich. 125 (2014).”

Although the school board was found to have violated the OMA by discussing superintendent contract negotiations by email, the Court ruled that only three remedies may be obtained under the OMA, and they do not include declaratory relief: “In sum, MCL 15.270 (action to invalidate decision made in violation of the OMA), MCL 15.271 (action for injunctive relief to enjoin ongoing OMA violation and to compel compliance), and MCL 15.273 (action for damages for intentional OMA violation) “create a three-tiered enforcement scheme for private litigants.”

The Court did note that “each one of the three remedies, when pursued, would result in a ruling by a trial court that would necessarily have a declaratory component to it, i.e., if invalidation was sought under MCL 15.270, if injunctive relief was requested under MCL 15.271, or if a damages

claim was alleged under MCL 15.273, an underlying determination would need to be made regarding whether there was or was not a violation of the OMA. Ultimately, however, the structure of the OMA and the somewhat limited nature of the available remedies as recognized in *Speicher* only allow for causes of action seeking, on the basis of an alleged OMA violation, (1) invalidation of a public body’s decision, (2) injunctive relief, or (3) money damages.”

Justice O’Connell concurred in part and dissented in part: “While a party is only entitled to attorney fees and costs under MCL 15.271(4), MCL 15.271(1) provides that a party ‘may commence a civil action to compel compliance or to enjoin further noncompliance with this act.’ ... The Michigan Supreme Court did not reverse the trial court for granting declaratory relief: it merely refused to allow attorney fees and costs unless the plaintiff attained injunctive relief.”

The Court also confirmed the retroactive application of *Speicher* to cases that were pending when *Speicher* was decided.

Past failure to enforce zoning ordinance insufficient to preclude future enforcement

Charter Township of Lyon v. Petty, ___ Mich. App. ___, decided Oct. 13, 2016—Where unlawful commercial uses were made of two neighboring properties in a residential zoning district for over 40 years without zoning enforcement, the Court of Appeals held that the property owners failed to show sufficient proof of “prejudice” required to establish laches or estoppel (citations omitted):

“[T]he Hoskins and Petty families contended that the township’s decades-long pattern of ignoring their zoning violations, and the investments they made in their businesses as a result, precluded the township from taking enforcement action now. To this end, the Hoskins and Petty families asserted laches and estoppel defenses. These defenses ‘are judicially disfavored’ because they invite judicial interference into an area of local ‘public interest’ and are ‘rarely applied in the zoning context except in the clearest and most compelling circumstances.’ And relevant to both, a historic failure to enforce a particular zoning ordinance, standing alone, is insufficient to preclude enforcement in the present. ...

“The prejudice necessary to establish a laches or estoppel defense cannot be a *de minimis* harm. [T]he party fighting the zoning enforcement must show that he or she ‘made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights which he or she ostensibly had acquired.’ Courts have also held that the property owner must establish ‘a financial loss ... so great as practically to destroy or greatly to decrease the value of the ... premises for any permitted use.’ Precedent emphasizes the inadequacy of the evidence in this case. ...

“The enforcement of the township’s zoning ordinance will work an inconvenience to the defendants who have operated their businesses for years without the expense of owning or leasing commercial property. That inconvenience, however, does not overcome the township’s statutory authority to ensure that neighboring parcels maintain compatible uses.”

Merry and **bright**

Community comes together to create township holiday decorations

Each Christmas tree, poinsettia, snowflake and candy cane hanging along **Thomas Township's** (Saginaw Co.) main thoroughfare this month is a labor of love, with at least five community members working together to create each decoration festooning the township this holiday season.

The project began two years ago when Director of Public Works **Rick Hopper** hand-sketched designs for the decorations. Those designs were turned over to the industrial arts students at Swan Valley High School, who turned rerod metal—provided by a donation from the Thomas Township Business Association—into the decoration structures.

Finally, National Honor Society students covered the metal with tinsel and finishing touches, before they were affixed to the township streetlights by Kiwanis and Lions Club volunteers, as well as volunteers from an area church.

A true community effort

All 98 decorations are the result of a true community effort, township Manager **Russ Taylor** said. That's just the kind of relationship the township has with its local schools, volunteer clubs and the residents in general. Whenever there's a need, officials always know their citizens will step up to help however they can.

"It creates a stronger sense of ownership. They feel like they're really part of the community," Taylor said. "Even if they're not part of the decision-making process, they're part of the result. They have an impact on where they live and work, and how the community develops."

Thomas Township isn't exactly small—it has a population of nearly 12,000. But it still has that small-community feeling that Taylor loves. It's the kind of place where neighbors help one another.

The community Christmas project was born purely out of necessity. For years, Thomas Township rented Christmas decorations from a private company and had them hung on the power line poles. But in 2012, when they hung the decorations on their new streetlights, they ran into a problem—the outlet's low moisture tolerance caused the decorations to trip off with each rain or snow. This was more than just an inconvenience. Each time it happened, crews were forced to climb 20 feet to reset the electrical plugs on all 98 poles.

Township employees searched for a solution to the problem, even testing different types of Christmas decorations in the middle of July. Taylor lost count of how many people called him to say, "Did you know you have Christmas decorations up?" They discovered that the only type of bulb that worked wasn't available from their current supplier. But with each decoration costing \$300-\$600 apiece, and with 98 poles to decorate, purchasing new decor wasn't an option.

So the township got creative. Instead of searching for a cheaper option, they decided to make their own. Once Hopper, who's an amateur artist, created the designs, they contacted Swan Valley High School.

Thomas Township has worked with students in the past on projects from website development to cleaning up parks. Township officials have also taught government classes and helped educate students about what their local government does for them.

"I think every aspect of getting students more connected with their community leadership and their local government is really important," Taylor said. "Our particular school system has made an effort to make those connections as well. It's been a good relationship through the years."

A way to say 'thank you'

Industrial arts teacher Patrick Kennelly challenged his advanced students to create the decorations using the township's design, dimensions and materials. Kennelly saw the project as a way to help teach his students about how to be a good citizen and make a difference in the community where they live. He and his students have partnered with the township many times, using their skills and talents to benefit others.

"We are so fortunate to be part of a school that is surrounded by a community that supports us," Kennelly said. "This is one way that our students are able to say thank you to the people of Thomas Township, and to hopefully brighten up their holidays."

Once Kennelly's students were finished, township staff covered the decorations with lights before National Honor Society students draped them with tinsel. Then, they were handed off to the club and church volunteers, who gave of their time to hang the decorations on township streetlights.

In total, each decoration cost \$25-\$50 to create. And since the township won't need to rent decorations anymore, it will save about \$7,000 a year.

But the project means more to Taylor than just a way to save money. He envisions today's high school students walking the Thomas Township sidewalks with their own children decades from now and saying, "I built that when I was young!"



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A group effort

Township employees, area students and local community organizations all pitched in to design, create and hang new Christmas decorations, making the main thoroughfare in Thomas Township (Saginaw Co.) merry and bright for residents and visitors.





The hows and whys of monitoring employee technology usage

In the not too distant past, employers and employees had a clearer idea of what was—and was not—part of the workplace. In the past two decades, however, changing technologies and work habits have blurred that distinction.

At the same time, technological leaps have made it increasingly cheap and easy for employers to electronically monitor employee conduct. Employers, including townships, may wish to consider the benefits and risks of electronic monitoring, and must also respect the legal limits on such monitoring.

The increasingly blurry line between work and home

It is not so easy anymore to tell if an employee is engaged in work or personal business at any given moment. Employees now access employer computer networks from home both during and outside of regular working hours. Employees regularly connect with one another by email at all hours, from virtually any location. Employees often use employer-owned computers both in and outside of the traditional workplace to engage in social media, shopping and personal business.

Employees are increasingly bringing their private electronic devices to work to conduct private business, as well as to connect to the employer's networks. With greater frequency, employees are installing privately registered applications, like Messenger, Facebook or What's App, on employer devices to communicate outside of the employer's networks.

New technologies for monitoring employee conduct

Employers now have a number of increasingly powerful tools to electronically monitor employee conduct on workstations (laptop or desktop computers), smartphones, and email servers. For smartphones, employers may now install Mobile Device Management software onto both employer- and employee-owned smartphones, which allows the employer to monitor and record the Internet browsing activity, real-time physical locations of smartphones, social media activity performed on smartphones, photographs and videos created and received by smartphones, and more.

For workstations, employers can install software that monitors and records information in real time, such as email usage, access of township file servers, Web browsing activity, instant message activity, and others.

Why monitor?

Employers have legitimate motives to electronically monitor employee conduct, such to investigate and prevent the unlawful discriminatory harassment of fellow employees; stop or limit non-work related Internet activity during work time and/or while using employer devices to shop,

engage in social media, visit inappropriate websites, use excessive bandwidth, or conduct personal business; or capture electronic communications or records that may be the subject of “litigation holds” or township record-keeping policies.

Legal limits on monitoring

There is no single law that sets out the limits on employer monitoring. Below are a few of the more significant laws of which employers should be aware before undertaking monitoring.

The Fourth Amendment to the U.S. Constitution prohibits a government employer from engaging in the unreasonable search of things in which an employee has a reasonable expectation of privacy. Whether an employee had a reasonable expectation of privacy in information on a computer or smartphone often turns on whether the government employer made a clear disclosure that the employee’s use of the technology would be monitored. In some cases, the government employer’s motive for the search will impact whether the search is lawful. For example, in *City of Ontario v. Quon*, a court found that the search of an employee’s text messages did not violate the Fourth Amendment because the employer was trying to determine whether the employee’s excessive texting was work-related or for personal use.

Townships should review any applicable collective bargaining agreement (CBA) to ensure that the contract does not prohibit monitoring. Even if a CBA does not prohibit the monitoring, the township should consider whether it can unilaterally make the decision to monitor, or if it is a change in working conditions that must be negotiated with the union. Townships must also be familiar with Michigan’s common law, which prohibits an employer from using an unreasonable means or method to intrude upon a matter in which an employee has a right of privacy.

Several federal and state statutes impact if, and under what circumstances, an employer may gain access to electronically stored information. The Stored Wire and Electronic Communications and Transaction Records Act creates a private cause of action, as well as potential criminal penalties, for the intentional and unauthorized access to “a facility through which an electronic communication service is provided.” The Internet Privacy Protection Act (IPPA) prohibits employers from asking employees to grant access to or allow observation of employee Internet accounts. Significantly, IPPA contains important exceptions for employers, such as where the employer pays for the device, provides the account or service, or is conducting certain kinds of investigations.

Michigan’s Bullard-Plawewski Employee Right to Know Act generally prohibits an employer from gathering or keeping a record of an employee’s associations, political activities, publications, or communications of nonemployment activities. However, an employee may authorize such monitoring in writing. The prohibition also does not apply to activities that occur on the employer’s premises or during working hours that interfere with the performance of the employee’s duties or that of other employees.

Just because you can, should you?

Employers have legitimate reasons, and increasingly effective tools, to lawfully monitor employee conduct that takes place outside of the traditional four walls of the workplace. In making monitoring decisions, employers must respect employees’ constitutional, common law, statutory and sometimes contractual rights to limit monitoring. As with any personnel policy, employees should be notified in advance of any monitoring policy. Employees should be required to sign an acknowledgement of the policy, to create a paper trail should there be a later dispute as to whether or not the employee was informed of the policy.

Of course, with monitoring as with anything else, just because you can do it, does not mean you should do it. Work with your township legal counsel to help you weigh the costs, benefits and risks of a monitoring decision.



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townships in the spotlight



Vienna Charter Township

The Taymouth Indians of the Huron Tribe were the first people to inhabit the **Vienna Charter Township**

(Genesee Co.) area. In 1833, Charles McLean came from Saginaw County and became the township's first settler. Because of the abundance of pine timber and the Brent and Pine Creeks, the lumber industry prospered in the area. As the land was cleared, it became a farming community and then a bedroom community for General Motors workers during the late 1940s.

In 1978, Vienna Township became a charter township. Today, the 35-square-mile suburban community, with a population of 13,000 and located between Flint and Saginaw, boasts a mix of open spaces, residential development, agriculture and business development.

In 1992, the Vienna Business Development Authority (BDA) was formed to encourage commercial growth in the township. Water, sewer and sidewalk infrastructure expanded from the city of Clio, creating a business district corridor. Today, the BDA is proud of a vibrant business district. The BDA has developed an extraordinary ongoing beautification project that began in 2011 to include colorful flower beds along Vienna Road, which has earned awards for beautification and a "best" highway exit award for manicured lawns and flower garden displays.

In the last three years, street lighting has created a warm and inviting exit for the business district with seasonal Christmas decorations and light pole ornaments. Vienna Charter Township and Clio I-75 Exit 131 is also home of the Clio Area Amphitheater, Clio Area Sports Complex, Veteran's Memorial Park, Clio City Park, Center for the Arts and Historical Clio Pere Marquette Depot. The Trolley Line and City Bike Trail System has more than 14 miles

of connections throughout the area, with many beautiful vistas, wooded areas, points of interest and restaurants along the way.

The BDA continues to work at improving business and economic development in the community while expanding its vision for the future. With this mission in mind, plans to promote tourism are at hand, with several new recreational and art projects that bring attention to the community. Bridge Park Butterfly Gardens and pathway hosts a nationally recognized registered Monarch waystation and includes a handicap-accessible picnic area. An 80-foot steel bridge was constructed—a work of art in itself—and spans over a natural stream running through the property. It is not unusual to see a photographer wandering around for a picture opportunity amongst the flower gardens, and many wedding and graduation pictures are taken there. The park includes a butterfly bench and a seven-foot stainless steel butterfly sculpture "in-flight" hovering over the main butterfly garden with under-lighting for an impressive night-time display.

The newest project is Gazebo Memorial Park, located adjacent to the township hall, featuring an Amish-made Victorian gazebo that was partially funded by donations from the community, American Legion and sponsors. Future plans for the park, which sits in front of the Clio Area Center for the Arts, include art shows, special events, and possibly a water fountain, English gardens and sculptures.

The township is thankful for the continuous financial support from businesses, organizations and residents that have made these projects and ongoing projects possible. Visitors are welcome to make Keep Michigan Beautiful Award-winning Vienna Charter Township a "must stop" at Exit 131 on I-75.



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