

Michigan Township Focus

DECEMBER 2018

OFFICIAL PUBLICATION OF THE MICHIGAN TOWNSHIPS ASSOCIATION

Interlocal divorce

Breaking up is hard to do— but doesn't have to be

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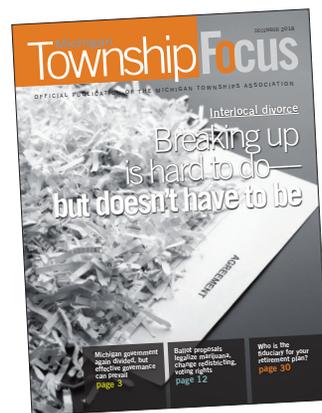


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December 2018 | Volume 6, Number 11



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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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Interlocal divorce:

Breaking up is hard to do—but doesn't have to be

Intergovernmental cooperation is certainly not a new concept for townships. But interlocal agreements can also be ripe for conflict, and some townships might find themselves facing a dissolution they never expected. An amicable, professional dissolution can help communities remain good neighbors, and even keep you out of court.

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Who is the fiduciary for your retirement plan?



A competitive retirement plan can be an effective tool for recruiting and retaining talented employees, in both the public and private sector. A critical obligation that employers—including townships—face is the fiduciary responsibility for the plan and its assets.



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Michigan Township Focus, Issue 11 December 2018 (ISSN 2330-9652), is published monthly, except for a combined April/May issue. MTA membership provides a subscription to township board members, the manager/superintendent, planning commission chairperson and township attorney. Member counties also receive subscriptions for elected officials, the equalization director and road commission chairperson. Annual membership dues include \$33 for a one-year subscription to *Michigan Township Focus*. Additional member subscriptions are available for \$33 per year. Subscription rate for residents and firms in member townships is \$44 per year (schools and libraries may subscribe for \$33 a year).

Michigan Township Focus is a publication of the Michigan Townships Association, 512 Westshire Dr., Lansing, MI 48917-9757. Phone: (517) 321-6467; fax: (517) 321-8908; Web: www.michigantownships.org. Periodicals postage paid at Lansing, MI. POSTMASTER: Send address changes to: *Michigan Township Focus*, P.O. Box 80078, Lansing, MI 48908-0078.

Direct all display and classified advertising inquiries to Ashley Maher at (517) 321-6467. Member rate for a classified ad in either the magazine or on the MTA website on a monthly basis is \$1 per word. Call MTA for non-member rates. Deadlines for display and classified ads in the magazine are five weeks preceding the publication date. Send ads to: P.O. Box 80078, Lansing, MI 48908-0078; phone: (517) 321-6467, ext. 254; fax: (517) 321-8908; or email: ashley@michigantownships.org.

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Michigan government again divided, but effective governance can prevail

In the aftermath of the heaviest gubernatorial election turnout in 56 years, Michigan will once again have a divided state government. With Democrats claiming the governor's office, but Republicans holding the Michigan Senate and House of Representatives—albeit with smaller majorities—a change in the state government political climate is a certainty.



Three of four legislative caucuses will have new leadership. Republicans will continue their control of the Michigan Senate with Sen. Mike Shirkey (R-Clarklake) as the new Senate majority leader. Shirkey has made clear his caucus will continue to focus on Michigan's business climate. Senate Minority Leader Jim Ananich (D-Flint) expects his

caucus to work on safe drinking water, roads and government transparency, and with Democrats netting five more Senate seats to garner a 22-16 split, Ananich expects more compromise and cooperation between the two caucuses.

Republicans also retained control of the House 58-52, allowing Rep. Lee Chatfield (R-Levering) to become the new speaker of the House. In addition to auto insurance reform, Chatfield also hopes to focus on roads and government accountability. Rep. Christine Greig (D-Farmington Hills) will lead the House minority caucus that will make roads and water quality high priorities, among other issues.

And what will likely be Gov.-elect Gretchen Whitmer's legislative priorities? Perhaps the most memorable election tagline was her "Let's fix the d@mn roads," which served as the lynchpin of a platform that included additional state support for other infrastructure, especially water systems, restoring revenue sharing to local governments and more state resources for schools.

What does all of it mean for Michigan townships?

The continuing deterioration of local roads and pressures on townships to seek property tax millages and divert more township funds to maintain roads continue as major concerns for township leaders. Numerous polls showed that promises to fix poor roads also resonated with voters, but candidates were generally vague as to where the money would come from, and how much they would spend. Despite substantial

recent road funding increases, current legislative funding plans will not end road deterioration, according to road asset management experts. Whitmer and others are framing potential new transportation revenues as "user fees" to avoid the stigma of tax increases.

However, Whitmer may pivot toward water infrastructure funding as a more immediate environmental priority, a concern shared by other Democratic legislative leaders. Potential water contamination from per- and polyfluoroalkyl substances (PFAS) has emerged as a statewide issue, and Lansing-based Public Sector Consultants estimates the current statewide water infrastructure funding shortfall at \$700 million. Water infrastructure funding is one of Gov. Rick Snyder's lame-duck priorities as well; he is urging the Legislature to adopt a new statewide fee on Michigan's municipal water customers to raise money that the state would use to improve water infrastructure problems.

Out of 110 members, the Michigan House will have 45 new members, of which only one has previous legislative experience. In the 38-member Senate, seven have no prior legislative experience and 23 are current or former House members who will be representing new constituents and local governments. To ensure legislative solutions that effectively address diverse local needs, township leaders should reach out to new lawmakers early in their terms and continue to cement close ties with veteran lawmakers, especially committee chairs and other leaders who drive legislative priorities and outcomes.

Despite the perception that divided government results in policy gridlock, Michigan's recent legislative history includes many examples of political leaders of both parties putting problem-solving ahead of partisan advantage, but the current lame-duck session could set the tone for the next session. Whitmer indicates that she intends to meet regularly with "the quadrant" of legislative leaders of both parties. MTA looks forward to working with Gov. Whitmer and legislative leaders to solve Michigan's infrastructure challenges, seek new laws that township officials need to better serve their communities, and avoid legislative outcomes that undermine strong township government.

news¬es

a compendium of noteworthy items

WELCOME TO TOWNSHIP GOVERNMENT

What every new official must know

Here are some tips to ensure a smooth transition for newly elected township officials.

Take the oath of office. All officials elected to township office at the Nov. 6 general election may qualify for office as soon as the election is certified by the county board of canvassers; they do not have to wait until Nov. 20. To qualify for office, each official must take the oath of office (even if they were previously appointed to fill a vacancy and took the oath for that appointment) and, in some circumstances, be bonded. The newly elected official must take the oath before Jan. 1, 2019, or the office becomes vacant.

Each township official who was appointed to fill a vacancy holds office until a successor is elected and qualified, but cannot hold office beyond Jan. 1, 2019. If a township official elected in the November 2018 election does not become qualified until late December, for example, the official “holding over” would be paid a pro-rata share of the monthly salary. The new official’s compensation would be pro-rated to the day of the month that official qualified for office.

The oath may be administered by the township supervisor or deputy supervisor, township clerk or deputy clerk, or other qualified person, such as a judge, county clerk, deputy county clerk, state senator or representative, or notary public.

Take custody of the records of the office. An outgoing official must turn over to his or her successor all of the files, computer passwords, keys, equipment and other materials related to the office. This should be done after the county board of canvassers certifies the election and notifies the candidates. All documents, records or files created while in office are township property, and the willful withholding or destruction of township books, papers or records is a misdemeanor, punishable by up to two years in prison or a fine of up to \$1,000. (MCL 750.491)

Note: An “exit” audit of township finances is not required simply because township offices have changed hands. A township board may choose at any time to contract to have an audit done if there are concerns about financial irregularities, but it will be in addition to any regularly scheduled audit.

Notify financial institutions. New clerks and treasurers should notify each banking institution that does business with the township that the previous clerk or treasurer’s signature is no longer valid. Establish the new official’s signature as the one of record. The same applies to a new deputy clerk and deputy treasurer.

Appoint a deputy. The clerk and treasurer are each required by law to appoint a deputy as soon as possible after taking the oath of office. The supervisor has the option to appoint a deputy. A deputy must also take the oath of office.

Contact the township’s bond representative. A treasurer, deputy treasurer, clerk, deputy clerk or constable must be bonded before taking the oath of office. Contact the township’s bond representative immediately after the election is certified to add new names to the bond. Some companies offer a “blanket” bond that covers all township employees who handle funds.

Complete employee payroll forms. For IRS and Social Security reporting purposes, all elected township officials are “employees.” If a new official is a new township employee, he or she should complete the IRS W-4, Michigan W-4 and U.S. I-9 forms, and file them with the clerk or township payroll department. The township must report new employees to the state on the State of Michigan New Hire Reporting Form 3281. If the new official will be participating in a township pension plan, he or she should receive the Social Security Form SSA-1945 windfall elimination provision notice.

Learn about your new office and township policies. Review the township board meeting minutes from the last few years to learn about current township issues and projects. Ask for copies of any written board policies and procedures, and make an effort to become familiar with parliamentary procedure. Because townships are only able to take actions authorized or expressly implied by law, take some time to learn about the most common township enabling statutes. Review the mission statements or minutes of township departments, committees or commissions.

THE VOTES ARE IN

56-year record turnout, high rate of millage approvals in midterm election

More than four million Michiganders cast ballots in the Nov. 6 midterm elections, the most for a gubernatorial race since 1962, according to the Secretary of State’s office. At least 52 percent of the state’s voting-age population voted. Michigan has a total of about 7.5 million registered voters.

According to an analysis by *Gongwer News Service*, local voters were generally supportive of requests to increase property taxes for a variety of local services, with 72 percent of such ballot proposals passing. The millage increases will help fund police, fire protection or emergency medical services, road construction, library services, and parks and recreation, among others.

BOARD OF REVIEW MEMBERS

BOR appointments due Jan. 1



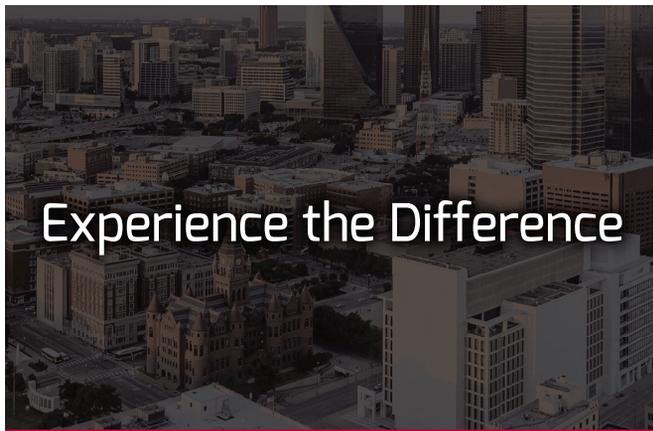
The General Property Tax Act (MCL 211.28(1)) requires township boards to appoint members to the township's three-, six- or nine-member board of review (BOR). BOR members serve for two years, beginning at noon on Jan. 1 of each odd-numbered year. Each BOR member must take the oath of office within 10 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.

MTA offers training for new and advanced BOR members this winter; turn to page 27 to learn more. Order a copy of MTA's *Board of Review Manual* online at www.michigantownships.org, or by calling (517) 321-6467.



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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 2018, the available days for required December office hours are **Wednesday, Dec. 26 through Monday, Dec. 31**. Treasurers **must** choose one day (unless a bank assists in collection). (MCL 211.44(2))

The last day to pay 2018 property taxes without incurring any interest or penalty is **Thursday, Feb. 14, 2019**. Treasurers **may** choose to hold office hours.

The last day to pay 2018 property taxes before they are returned as delinquent is **Thursday, Feb. 28, 2019** (the last day of February). (MCL 211.45) Treasurers **must** hold office hours.

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It's the most wonderful time of the year

The state Christmas tree—which stands in front of the Capitol throughout the holiday season—has come to have special meaning for MTA as well. MTA Life Member **Denny Olson, Breitung Charter Township** (Dickinson Co.) supervisor, has been on the state Christmas Tree Crew for more than a dozen years. 2018 MTA President **Ken Gauthier, Sanborn Township** (Alpena Co.) supervisor, and MTA Treasurer **Bill Deater, Grant Township** (St. Clair Co.) supervisor, have also joined the crew, helping to search for, harvest, deliver and stand the impressive conifer that signifies the holidays for many Michiganders.



This year's tree is especially significant, as it hails from Gauthier's home area. The tree was harvested on Oct. 25 in **Ossineke Township** (Alpena Co.), at a ceremony attended by Ossineke Township supervisor and MTA District Director **7 Ken Lobert** (who also pitched in on the crew this year!), as well as state lawmakers, schoolchildren and area residents—all proud that the symbol of the season hailed from their region. MTA Past President **Diane Randall, Roscommon Township** (Roscommon Co.) supervisor, was also on-site helping provide food to the entire crew.

Said Gauthier, "I am very proud that we found the state Christmas tree in Ossineke Township this year, and the fact that I am MTA president this year is just an added bonus."

For Olson, the feeling of joy being involved in the project never gets old. "With over 40 years in the timber industry and over 13 years searching for the state Christmas tree, this has become a special time of year for me," he said. "Seeing the children's faces and listening to them yell, "Timber!" make the kid in me happy.

"Also, most of the state Christmas trees have come from townships. Townships grow really good trees."

mta events | December

11 *New Officials Training* workshop, Gaylord

13 *New Officials Training* workshop, Okemos

profile



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- **Litigation and Appeals**—Effective representation of townships before Michigan trial and appellate courts and Michigan tribunals and agencies
- **Renewable Energy**—Help with legal and regulatory issues presented by renewable energy providers including zoning matters and property tax appeals.
- **Recreational Marijuana**—With the recent passing of Proposal 1, we can help prepare ordinances for municipalities that wish to prohibit, limit or regulate marijuana establishments

Foster Swift attorneys are accessible to respond quickly to your township's legal needs. Visit www.fosterswift.com/services-Municipal-Law.html or contact Mike Homier at (616) 726-2230 or mhomier@fosterswift.com.

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Advertorial

MTA launches new 'Township Talk' podcast

Earlier this fall, MTA launched our newest endeavor to help keep member township officials—as well as lawmakers and the public—



better informed on issues impacting local government. Our podcast, "Township Talk," launched in October, and so far, feedback has been extraordinary, with officials letting us know that we've hit the mark with this new offering.

Host Bethany Mauger, MTA staff writer, talks with MTA staff, other experts and pundits, and even local officials to explore topics and issues on a local, legislative and statewide level. The mobile format allows members to listen—and learn—as they work, drive, exercise or simply relax. Episodes have covered topics from MTA Executive Director Larry Merrill taking a look back at where townships came from—and where they are headed—to all things Election 2018, as well as the new Lead & Copper Rule and recreational marijuana—with many more in the works.

Download "Township Talk" from iTunes or GooglePlay, or simply listen directly from an email sent to all members when each new episode becomes available. All podcasts are also available on www.michigantownships.org (click on "Township Talk" podcast under the "About Townships" tab).

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ANSWER ON PAGE 11

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DECEMBER

1 2018 taxes due and payable to treasurer are a lien on real property. (MCL 211.40)

Results of equalization studies should be reported to assessors of each township.

By 6 Post-general election campaign statements filed. Books closed Nov. 26.

11 *Tuesday after the second Monday in December.* Special board of review (BOR) meeting may be convened by assessing officer to correct qualified errors. (MCL 211.53b) The township board may authorize, by adoption of an ordinance or resolution, an alternative meeting date during the week of the second Monday in December. (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 BOR 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 BOR in the year for which the exemption was claimed or the immediately succeeding three years. (MCL 211.7cc(19)) (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, State Tax Commission (STC) Bulletin 6 of 2017)

31 Tax day for 2019 property taxes. (MCL 211.2(2))

All taxes due and liens are cancelled for otherwise unsold 2018 foreclosure parcels purchased by the state or transferred to the local unit or the Michigan Land Bank Fast Track Authority. (MCL 211.78m(12) and (13))

The Michigan Department of Treasury may appeal the 2018 classification of any assessable property to the Small Claims Division of the Michigan Tax Tribunal. (MCL 211.34c(7))

Deadline for an owner that 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.

JANUARY

2 Deadline for counties to file equalization studies for 2019 starting bases with STC for all classifications in all units on STC Form L-4018. (R 209.41(5))

By 10 Except as otherwise provided in Section 9m (bank or trust), 9n (farm products) or 9o (sugar from sugar beets), 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 (L-4175)—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, 2018.

31 Deadline for employers providing Affordable Care Act information, including IRS Forms 1095-B (Health Coverage) and 1095-C (Employer-provided Health Insurance Offer and Coverage), that must be reported to covered individuals and employees.



63

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We understand that PA 202 of 2017 requires certain local units of government to file reports with the state about ‘retirement plans.’ Are townships required to comply with this?

Possibly, if your township provides a “retirement plan,” which is defined by the act as, “a retirement system, trust, plan, or reserve fund that a local unit of government establishes, maintains, or participates in and that, by its express terms or as a result of surrounding circumstances, provides retirement pension benefits or retirement health benefits, or both.”

However, the state Department of Treasury has indicated that townships that provide defined *contribution* plan benefits only are exempt from the filing and reporting requirements. Pension plans (retirement systems) are typically either a defined benefit plan or defined contribution plan:

Defined benefit plans are based on participants receiving future benefits, usually expressed in a monthly benefit based on a percentage of future earnings, sometimes referred to as “final average compensation.” Since townships are required to use level cost funding methods—where obligations for retirement benefits are funded as the service to the township is rendered—an annual study called an actuarial valuation is usually required. This study reviews the various assumptions of investment earnings, pay increases, retirement, disability and mortality rates, and any changes to the employee group, as well as changes to the retirement package. Annual contributions required to meet these obligations are then determined.

Defined contribution plans are much less complex to administer since the “promise” required to be funded is based on a percentage of today’s compensation. For example, if a township established a “money purchase” pension plan, and determined to fund 10 percent of pay, the township’s obligation would likely be to fund 10 percent of the eligible employees’ compensation. The participants would then have a number of investment choices to consider. Upon retirement, they would receive a lump sum, or an annuity of their investment, depending on plan options.

Townships providing no retirement systems to their employees or elected officials or those that provide only defined contribution plans are exempt from filing annual reporting with the state.

All other townships are required to file Form 5572, *Public Act 202 of 2017 Pension Report*, which requires the following data:

- The plan’s funded ratio—how the assets of the plan compare to the liabilities of the plan amounts that are due to retirees

- The annual required contribution, if it is a retiree health care plan
- The actuarial determined contribution, if it is a retirement pension plan
- The local unit of government’s annual governmental fund revenues

This data will be used by state Department of Treasury to determine if the plan is “underfunded” and needs to file additional reports or other corrective measures.

In addition, these plans will have to all adopt “uniform assumptions” as established by the Department of Treasury in plan reporting. These requirements are outlined in the draft form, available at www.michigan.gov/treasury, under “Local Government,” then “Local Fiscal Health.”

The purpose of using uniform assumptions is for the township board, residents, the state treasurer and other stakeholders to have a common benchmark of the employer’s (township) progress toward funding the promises made to retirees in both post-retirement health care (if applicable) and defined benefit pension obligations.

The use of these uniform standards will first be required in fiscal year 2019. There are a number of transitional issues that are addressed in the draft implementation guide; it is suggested that townships meet with their plan administrator and perhaps their CPA firm to help with implementation.

Note: The uniform assumptions are not required to be used for funding calculations; they are used for external reporting. It is the state’s hope that all employers will revise their funding assumptions to be in line with their reporting assumptions, as they are likely more conservative.

The Form 5572 reporting is due six months after year-end (like the township’s audit reports). Bi-annual townships should consult with the implementation guide for non-audit year reporting.

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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What township board positions have the authority to appoint a deputy?

The township clerk and treasurer are each required by law to appoint one deputy (MCLs 41.69 and 41.77). The township supervisor may choose to appoint one deputy (MCL 41.61).

What authority does a deputy have?

Deputies are different from other “employees.” A deputy position is not a “job”; it’s an appointment to a public office.

The number one authority of a deputy is to serve as a substitute for the official. In the case of the absence, sickness, death or other disability of the official, the deputy possesses the powers and performs the statutory duties of the office, except that a deputy does not have a vote on the township board. In addition, a deputy supervisor does not moderate a township board meeting.

This means that a deputy automatically has the authority to perform a statutory duty of the office, without further authorization, when the official is absent, sick, disabled or has died. But it also means that a deputy has no authority beyond those situations to perform a statutory duty of the office—or any additional duties or job functions—without further authorization by the board and the official.

Does a deputy continue to serve when the official resigns from board office?

No. A deputy serves at the “pleasure of the official,” which means that the deputy’s appointment depends on the official holding the office. The laws that state when a deputy has the authority of the office do not specifically state that a deputy serves in the event of the official’s resignation, even though they do specifically state a deputy’s authority to serve in the case of the absence, sickness, death or other disability of the official. When an official resigns board office, he or she gives up all authority of the office, including the authority to appoint the deputy, so the deputy’s authority also ends.

Who may serve as a deputy?

Anyone who is capable of performing the specific duties of the office may be appointed. There is no minimum age limit, but the person must be legally able—and responsible enough—to perform the statutory duties and functions.

There is no requirement that a deputy be a resident of the township—or the state or the country! There have been some deputies who crossed state lines or even over from Canada to serve in a Michigan township. But the person must be readily available when the official is not.

There is no prohibition against a relative serving as an official’s deputy. But the most important qualification of a deputy is the ability to be available when the official is absent, ill or disabled, or has died. So a relative may not be a good choice if that person is going on vacation with the official, or would be a caregiver or a grieving family member.

It is possible for one person to serve as more than one deputy, such as the same person serving as both a deputy clerk and deputy supervisor, but it is not possible for the same person to serve as both deputy clerk and deputy treasurer (or for the clerk or treasurer to serve as the other’s deputy), because of the segregation of duties required by law and the Michigan Department of Treasury regarding those two offices.

How many deputies may an official have?

An official may have only one deputy at a time. It is possible for an official to appoint different deputies during the official’s term of office—as long as it is only one at a time. For example, an official who has her spouse as her deputy might want to appoint someone else to be their deputy while the official and her spouse are away on vacation.

How do I appoint a deputy?

There isn’t an official process, other than you state who you are appointing and the new deputy must take the oath of office. If you want to switch deputies, you let one deputy go by appointing a new deputy who takes the oath; then the “old” deputy is no longer the deputy. That’s all that must be done to make the appointment legally, but from a practical standpoint, you should let the board and other staff—and the bank, if your signatures are on the bank cards—know, so they know who has the deputy authority for your office.

What control does a township board have over my deputy?

The township board does not have a vote over who you appoint, but the board determines what hours the deputy may work and what the compensation will be. (The one exception to board control over who serves as a deputy is if you want to have a trustee serve as your deputy in a township under 40,000 in population. A board

would have to authorize a trustee to serve as a deputy as an additional duty before that could occur because the positions are otherwise incompatible. Note that although it may be possible, it may not be appropriate for a trustee to serve as a deputy, because of the fiduciary responsibilities.)

The board's authority over the person who serves as a deputy is best explained in "MTA's Theory of the Three Types of Deputies." You won't find these spelled out by name in the law, but this does explain what the law allows:

1) The Substitute Deputy

This is the original form of deputy required by law. This deputy shows up only when the official cannot perform a statutory duty of the office. It's like Superman and Clark Kent—you never see the official and their deputy together at the same time!

This deputy has no authority to perform at other times. If the official is always available, it may be that the deputy never actually shows up or performs any of the statutory duties of the office, but as long as they were ready and available to do so, they fulfilled their responsibility.

The board controls what, if anything, this deputy position is paid.

2) The Assistant Deputy

Here, the deputy works along with the official. The official must have township board authorization for a deputy to work as more than just a substitute. MCLs 41.61, 41.69 and 41.77 state that, with the approval of the official, the deputy may assist the official in the performance of the statutory duties of the office at any additional times agreed upon between the board and the official, except the deputy shall not have a vote on the township board.

The board has the ability to determine the extent or limit of the hours that the deputy works, either directly by specifying hours or through the amount the board allocates to pay for deputy hours.

Neither of these first two types of deputies are subject to wage and hour restrictions. Just like the township board offices, deputies are not required to be paid a minimum wage or to work certain hours. There are no legal requirements to provide overtime, vacation, sick time or comp time. A township board may treat these deputies as if they are subject to any or all of these employment laws, and it may really be appropriate to do so, but it is not required.

Neither of these types of deputies are subject to unemployment insurance, but they are subject to workers' disability compensation.

3) The Deputy Plus

This is when a person who is a deputy also holds an *employment position* with the township. For example, the clerk makes a township clerical worker his deputy. Or the deputy treasurer is hired by the board to also serve as office manager. Here, the township board is the employer, just as with any other township employment position. The official has no individual authority over those job duties.

The employment "part" of this dual position IS subject to unemployment insurance (but still not the deputy part). It is also subject to the Fair Labor Standards Act, and wage and hour regulations.

Sometimes this type of deputy situation can create confusion, especially if the township doesn't distinguish between the deputy duties and any employment job description. It may seem like splitting hairs when everything is going well, but when things change or go badly, it can really make a difference—especially to the person who is caught in the middle. For example, if the board discharges the person from the employment position, they are still the deputy. Or, if the official removes the deputy or the official resigns or isn't reelected, then the deputy part is gone, but the employee "part" still shows up for work!

To avoid confusion and stress for all involved, we strongly recommend that townships have a position description for deputy duties and a separate job description for the non-statutory township "job" position. If the township has a need for that "job" position, then it should have a separate job description and pay rate anyway.

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.



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Voter-approved ballot proposals legalize recreational marijuana, bring changes to redistricting, voting rights

This fall, voters across Michigan overwhelmingly said yes to three ballot proposals covering issues from recreational marijuana to straight-party voting.

Proposal 18-1 legalizes recreational marijuana and allows townships to prohibit or limit licensed recreational marijuana facilities from their jurisdictions by passing an ordinance. Under Proposal 18-2, Michigan's state House and Senate district boundaries, as well as congressional boundaries, will soon be determined by a new 13-member commission made up of selected applicants to represent Republicans, Democrats and political independents. Proposal 18-3 provides voters with new voting rights, including straight-party voting, in-person registration extended to Election Day and no-reason absentee voting.

MTA did not take a position on these proposals but will continue informing MTA members of any implementation legislation impacting townships. As a statutory change, Proposal 18-1 takes effect 10 days after its election results are certified, which was completed by the state board of canvassers on Nov. 26. Proposals 18-2 and 18-3 are both constitutional changes and therefore take effect Dec. 22, 45 days after Election Day.

Legislation may be required to implement one or more of the proposals and MTA will keep members informed of any proposed statutory changes.

Recreational marijuana legal in Michigan

Ten years after Michiganders voted to legalize medical marijuana, they decided to extend that legalization to recreational marijuana.

Proposal 18-1 allows adults who are at least 21 years old to use and possess certain amounts of marijuana, and even grow plants in their home. A new licensing and regulatory framework will be created for retailers and growers, among other related businesses. Taxes collected on the marijuana will help patch potholes and funnel dollars to schools, and a portion will also go to the local government and county in which any licensed facility is located.

Townships may ban or limit any marijuana facilities from their jurisdictions, and also regulate hours, locations and other key aspects of the businesses. **However, unless a township passes an ordinance opting out**, the state will issue a license to qualified marijuana facilities seeking to locate there. (MTA has a sample opt-out ordinance your township may adopt if desired, as well as a "Township and Marijuana Regulation" information packet; both can be downloaded from the

members-only section of www.michigantownships.org or call (517) 321-6467.)

MTA did not take a position on the ballot proposal as MTA's member-initiated and member-approved policy platform does not address recreational marijuana.

For years, a variety of groups have pushed for marijuana to be legalized, citing Michigan's over-crowded jails filled with more people arrested for marijuana possession than for violent crimes. Some have also pointed to racial and socioeconomic disparities found in marijuana arrest data. Proponents say legalizing marijuana would save money by slowing the rapidly growing prison population and potentially improve social justice.

However, opponents say a regulatory system would not eliminate the black market, and that the new law does not generate the resources that could be needed to deal with public safety issues, marijuana abuse and other related public health issues.

New regulation and taxation act created

Under Proposal 18-1, the current medical marijuana system remains in effect, and a new act called the Michigan Regulation and Taxation of Marihuana Act is created, allowing an individual who is at least 21 years old to possess, use, consume, purchase, transport or process up to 2.5 ounces of marijuana. Of this, no more than 15 grams can be in the form of marijuana concentrate. A person may also give this amount free to another individual who is at least 21 years old. As long as it's within a person's home, up to 12 marijuana plants at one time may be cultivated for personal use. Up to 10 ounces of marijuana, plus any marijuana produced by the plants, may be kept at home, as long as amounts over 2.5 ounces are stored securely.

Recreational marijuana will be regulated similarly to alcohol—the substance is banned for those under 21, it cannot be consumed on school property, and operating any type of vehicle while under its influence is illegal. It also cannot be consumed or smoked in a public place, except for areas designated for marijuana use that aren't accessible to people under 21. Additionally, the measure does not stop an employer—including townships—from enforcing its own workplace drug policies, and landlords could still regulate or ban marijuana use on their properties.

Opt-outs, ordinances and referendum

Businesses that sell, grow, process or transport will be required to obtain a license before they can operate in your township. However, the licensing process is different than the current process outlined in the Medical Marihuana Facilities Licensing Act (MMFLA). Under the MMFLA, townships are required to adopt an ordinance allowing medical marijuana facilities, essentially "opting in" to the system. Under the new act, townships must "opt out" by passing an ordinance banning or regulating recreational marijuana facilities. Without such an ordinance, facilities can obtain a license to operate there.



Unlike medical marijuana, recreational marijuana language includes a provision allowing a referendum on the issue. Individuals can petition to initiate an ordinance to provide for the number of marijuana establishments allowed or to prohibit marijuana establishments within a municipality. The referendum would appear on the next general election ballot if the petition received a sufficient number of signatures.

A township's ordinance can limit the number of establishments allowed within its jurisdiction or ban them outright. Townships may also set reasonable restrictions on public signs for marijuana establishments, as well as regulate the time, place and manner of their operation, and the production, manufacture, sale or display of marijuana accessories. Additionally, townships can require marijuana establishments to also get a municipal license before operating.

Taxes and fees

To help offset administrative costs, townships may charge an annual fee of up to \$5,000 per license. It can also set a \$5,000 civil fine for any marijuana ordinance violations. However, no ordinances can restrict transporting marijuana through the municipality. Municipal ordinances also cannot be adopted if they're unreasonable or impracticable.

Each marijuana retailer and microbusiness will be charged a 10 percent excise tax on marijuana sales, to be collected by the state Department of Treasury and deposited into a Marihuana Regulation Fund. This money will first go to implementation, administration and enforcement of the act. Then, for at least two years or until 2022, \$20 million annually will be required to conduct one or more FDA-approved clinical trials studying the use of marijuana in treating U.S. Armed Forces veterans and in preventing veteran suicide. Any balance afterward will be allocated in the following formula:

- 35 percent to the School Aid Fund, to be used for K-12 education.
- 35 percent to the Michigan Transportation Fund, to be used for the repair and maintenance of roads and bridges.
- 15 percent to municipalities where a marijuana retail store or microbusiness is located, in proportion to the number of businesses in the municipality.
- 15 percent to counties where a marijuana retail store or microbusiness is located, in proportion to the number of businesses in the county.

State oversight and administration

The Michigan Department of Licensing and Regulatory Affairs (LARA) is responsible for administering the new act. LARA will grant or deny applications, create rules to implement and administer the act, and collect license fees and fines. Licenses will be issued in categories similar, but not identical, to those under the MMFLA, including marijuana microbusinesses, retailers, processors, safety compliance facilities, secure transporters and multiple classes of growers.

LARA is required to begin accepting applications within one year after the act's effective date of Dec. 6. For the first two years, it can only accept applications for a Class A (up to 100 plants) grower license or microbusiness license from Michigan residents. During that period, only persons licensed under the MMFLA can apply for a retailer, processor or other classes of grower licenses. Any applicant can be accepted for a safety compliance facility license. After the first year, the restrictions will lift, and LARA may accept applications from any applicant, but only if LARA determines that more licenses were necessary to efficiently meet the demand for marijuana, curtail the illegal market or provide reasonable access to marijuana in rural areas.

If LARA does not create rules or accept or process applications in a timely manner, a person could, starting one year after the act's effective date, apply for a recreational marijuana establishment license directly with the municipality where it would be located. The local unit will have to issue a municipal license within 90 days of receiving the application, unless it wasn't in compliance with the act or rules and notifies the applicant of that finding. The municipal license would have the same authority as a state license, but the license holder would not be subject to LARA regulation or enforcement during that license's term.

Watch MTA publications, podcast and workshops for updates and additional details and information as this issue evolves and a regulatory system is put into place.

Approved constitutional amendment will mean redistricting changes

For decades, Michigan lawmakers have been tasked with shaping boundaries of congressional and state House and Senate districts. A ballot proposal approved by voters instead shifts that responsibility to a select number of registered voters.

Proposal 18-2 amends the state constitution to do away with the current method of determining district boundaries, instead placing the process in the hands of a new Independent Citizens Redistricting Commission. Every 10 years, following a U.S. census, 13 commissioners will be selected from applicants to represent Republicans, Democrats and political independents. This commission will adopt redistricting plans that meet certain criteria and put each plan up for public discussion and comment. Then, the plan with the majority bipartisan support will be adopted by the commission.

Under this proposal, Michigan's state and federal districts will be redrawn following the expected 2020 U.S. Census.

The proposal, commonly known as "Voters Not Politicians," opens the Independent Citizens Redistricting Commission to applications from all registered and eligible Michigan voters. The only exceptions are for current or former lobbyists, elected officials or candidates for partisan federal, state or local offices, or a close relative of anyone disqualified under those criteria. Anyone selected as a commissioner cannot hold a partisan elective office at the state, county, city, village or township level in Michigan for five years.

The Michigan secretary of state (SOS) will begin accepting commission applications starting Jan. 1 in the year a census is being conducted, such as 2020. Additionally, 10,000 applications will be mailed to randomly selected Michigan voters. The SOS will continue mailing applications to random voters through June 1, until qualifying applications are received in response to the mailing for 30 Democrats, 30 Republicans and 40 unaffiliated applicants. The SOS will eliminate incomplete or nonqualifying applications, as well as make random selections. Additionally, party leaders of both the state House and Senate may strike five applicants for a total of 20 strikes. The final commission will be selected by Sept. 1, with each commissioner to be paid at least 25 percent of the governor's salary, which equates to at least \$39,825 in 2018.

The commission must hold at least 10 public meetings throughout the state and accept written submissions from anyone in the public before drafting a redistricting plan. Then, after developing at least one proposed plan for



each type of district (state House, state Senate and U.S. House), the commission will publish the proposed plan and supporting materials.

For a plan to be adopted, it must meet the following requirements:

- Districts must be of equal population and must comply with the Voting Rights Act and other federal laws.
- Districts must be geographically contiguous. Island areas would be considered contiguous to the county of which they are a part.
- Districts must reflect the state's diverse population and communities of interest, which may include populations that share cultural or historical characteristics or economic interests. This does not include relationships with political parties, incumbents or political candidates.
- Districts must not provide a disproportionate advantage to any political party.
- Districts must not favor or disfavor an incumbent elected official or candidate.
- Districts must reflect consideration of county, city and township boundaries, meaning, ideally, townships wouldn't be split into multiple districts.
- Districts must be reasonably compact.

Before a plan can be adopted, the commission will test it for compliance using appropriate technology. Then, it will provide public notice of each plan being considered and allow at least 45 days for public comment.

Once a plan is adopted, the commission must publish it within 30 days as well as material reports, reference materials and data used in drawing it. It will also issue a report explaining the basis for the decision. Commissioners who do not agree with the adopted plan may submit dissenting reports. An adopted plan will become law 60 days after its publication, and the commissioners' terms will expire once their obligations are complete. Before that, the Michigan Supreme Court can remand a plan to the commission for further action if it fails to comply with constitutional requirements, both state and federal. However, no body except the Independent Citizens Redistricting Commission may adopt a redistricting plan. The functions of the commission are not subject to the Legislature's control or approval.

Constitutional change impacts voting, voter registration

A ballot proposal approved last month is meant to make the voting and voter registration process easier and more flexible, but may also increase work for township clerks.

Proposal 18-3 amends Michigan's constitution to enshrine some actions that are current practice—including voting by a secret ballot, timely distribution of absentee ballots to military personnel, and a statewide audit of election results. Additionally, it provides voters with five new voting rights:

straight-party voting, automatic registration, registration by mail up to 15 days before an election, in-person registration extended to Election Day with proof of residency, and no-reason absentee voting.

The logistics of how some of these amendments will work—such as in-person registration on Election Day—were not addressed in the proposal. MTA anticipates that the Legislature will need to address implementation issues through follow-up legislation.

Under Proposal 18-3, in-person voter registration will be allowed up to, and even on, Election Day, with proof of residency. Same-day registration will take place at the citizen's local clerk's office, not at the polling location itself. Without proof of residency, the person can register in person up to and including 15 days before Election Day. Some clerks are concerned about how they would update their voter file at polling locations once same-day registration is allowed. For example, some polling locations are not connected to the internet due to cybersecurity concerns. However, 15 states and the District of Columbia already allow same-day registration. These logistical challenges are issues that will be addressed statutorily. Additionally, a person can register to vote by mail up to 15 days before an election, rather than the current requirement of at least 30 days.

One of the biggest changes to the state constitution is the right to no-reason absentee voting. Previously, Michigan citizens could only vote with an absentee ballot if they expected to be out of town on Election Day, were 60 years old or older, were unable to vote without assistance at the polls, were in jail awaiting arraignment or trial, were unable to attend the polls due to religious reasons, or were appointed to work as an election inspector outside their precinct. Under Proposal 18-3, voters will not be required to give a reason to get an absentee ballot during the 40 days before an election. Voters may also choose whether the ballot is applied for, received and submitted in person or by mail. During that 40-day period, election officials must be available to issue and receive absentee ballots during regular business hours and at least eight hours during the Saturday and/or Sunday immediately before the election. Absentee ballots can be made available at other times and places as well.

Also of note is the right to vote a straight-party ticket. While Michigan had allowed the practice for years, the Legislature voted to ban straight-party voting in Public Act 268 of 2015. A federal court decision eventually allowed citizens to vote a straight ticket in 2016 and 2017; however, on appeal, the federal Sixth Circuit Court of Appeals ruled that straight-party voting would not be an option in the November 2018 election. Proposal 18-3 instead enshrines this right in the constitution, eliminating the need for future court decisions.



Legislative lowdown

A quick look at critical bills that MTA is following as they move through the legislative process. For a complete list, head to MTA's "Legislative Action Center" on the members portion of www.michigantownships.org, or look to our weekly and monthly newsletters sent to all MTA member officials.

SB 45: Disabled veterans' property tax exemption—Expands disabled veterans' property tax exemption to include residential real property or agricultural real property owned by a disabled veteran, decreasing local revenue. *MTA opposes.*

SB 157 & HB 5723: Water works projects—Preempts local ordinances restricting or prohibiting the evaluation, comparison or use of certain pipe and piping materials. *MTA opposes.*

SBs 305-310: Tax increment financing—Modifies capture of library mills to allow libraries to opt out of tax capture and redefines "obligation" to exempt library millages automatically. *MTA opposes.*

SB 329 & HB 4503: Land use/zoning preemption—Limits local zoning regulation of vacation rentals and short-term rentals. *MTA opposes.*

SB 396: Seasonal weight limit—Exempts vehicles associated with forest products or harvesting from seasonal weight limit and height and width restrictions. *MTA opposes.*

SB 578: Deed restrictions—Excludes private deed restrictions from being considered by Michigan Tax Tribunal when highest and best use of property considered subject to an assessment dispute. *MTA supports.*

SB 637: Small cell—Creates Small Wireless Communications Facilities Deployment Act that would standardize permits, fees, right-of-way use and other regulation of wireless service providers when utilizing the public right-of-way. *MTA neutral.*

SB 723 & HB 4362: Disabled veterans' property tax exemption—Requires reimbursement to local taxing units for property tax revenue loss incurred due to disabled veterans' property tax exemptions. *MTA supports.*

SB 741 & HB 6295: Local preemption—Prohibits local regulation of dogs based upon breed or perceived breed. *MTA opposes.*

SB 927: Personal property tax exemption—Provides exemption for qualified heavy equipment from property taxes. *MTA opposes.*

SB 1031: Personal property tax exemption—Provides exemption for qualified utility personal property installed after Dec. 31, 2017. *MTA opposes.*

SB 1035: Property tax exemption—Provides exemption for sportsmen club real property if dedicate facilities for charitable purpose for a limited period of time each year. *MTA opposes.*

SBs 1188 & 1191-1193: Local preemption—Preempts local regulation of removal of trees and other vegetation in certain zoning classifications. *MTA opposes.*

HB 4077: Freedom of Information Act—Prohibits public bodies from commencing civil actions against entities making FOIA requests. *MTA opposes.*

HB 4162: Special assessments—Allows townships to create special assessment districts for communications infrastructure including broadband and high-speed internet. *MTA supports.*

HB 4184: Open Meetings Act—Clarifies physical presence required for vote, excluding emergency meetings and elected members called for military duty; allows board to waive one meeting for each member for good cause. *MTA neutral.*

HB 4290 & SB 756: Sewer backup liability—Amends definition for a sewage disposal system event, clarifies the identification of a design or construction defect in a sewage disposal system, and provides governmental agencies with expanded immunity from system overflow or backup. *MTA supports.*

HBs 4359, 4370 & 4371: Special assessments—Allows townships to create special assessment district for private utility services. *MTA supports.*

HB 4397: Dark stores—Requires Michigan Tax Tribunal determinations to consider all three methods of appraisal in assessment disputes and prohibits deed restrictions on valuation of property. *MTA supports.*

HBs 4431-4432: Legislative subpoena—Expands legislative subpoena authority to include local public bodies. *MTA opposes.*

HB 4671: Election administration—Allows local or county clerk to conduct election activities for a local clerk if approved by the governing bodies of both participating entities. *MTA neutral.*

HBs 4747-4748: Filing fee for township candidates—Provides option for individuals seeking township offices to pay a filing fee or file signature petitions to be on the ballot. *MTA supports.*

HBs 4814-4815: Millage election limitation—Limits all millage ballot questions—including new, increasing and renewal millages—to November general elections after Dec. 31, 2017. *MTA opposes.*

HB 4766: Open Meetings Act—Allows additional remedies for noncompliance to include attorney fees and allow a one-year window during which civil actions may be brought. *MTA opposes.*

HB 4986 & SB 1042: Disabled veterans' property tax exemption/income tax—Provides an income tax credit for disabled veterans in an amount equal to 100 percent of the individual's property taxes paid or 23 percent of gross rent paid, and repeals the disabled veterans' property tax exemption. *MTA supports.*

HB 5207: Semi-open primary—Requires voter to indicate which political party ballot he or she wishes to vote at primary election. *MTA neutral.*

HBs 5325 & 5720: Economic development—Revises definition of "assessable property" in Principal Shopping District Act and Business Improvement Zones Act. *MTA supports.*

HB 5490: Michigan Transportation Fund—Allows townships to assume jurisdiction of roads under jurisdiction of county road commissions and receive a share in the distribution of MTF revenue that would otherwise go to the county road commission. *MTA supports.*

HB 5802: Land use—Requires tax payment certification prior to approval of land division. *MTA supports.*

HB 5947: Land use/zoning preemption—Limits local zoning regulation of a barn or other facilities on land zoned for agricultural purposes for commercial venue for weddings or similar events. *MTA opposes.*

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MTA's 2019 Capitol Conference February 27 | Lansing

Join MTA and fellow township officials for this important event where you will learn about legislative issues impacting townships, and have the opportunity to meet with state decision-makers and legislators. Look for registration details in upcoming issues of *Township Focus* and MTA newsletters, and on www.michigantownships.org.

Sen. Mike Shirkey (R-Clarklake)

After nearly eight years in the Michigan Legislature, Sen. Mike Shirkey's priorities haven't changed.

True, the agenda may look different from year to year. As goals are accomplished, others rise to the forefront. But the Clarklake Republican says he is focused on continuing to move Michigan forward.

Shirkey plans to maintain that mindset as the new Senate-elect majority leader. Right away, that will mean working across the aisle with the new Democratic administration of Gov.-elect Gretchen Whitmer.

"We believe that everything starts at the top, and the administration has to collectively move towards doing better," Shirkey said. "Once we make that determination, there is no telling what can be accomplished for the greater good."

Shirkey came to the Legislature with an extensive background in manufacturing. After working for General Motors in various management and engineering roles for 13 years, he founded his own engineering company, Orbitform, which manufactures forming, fastening, joining and assembly equipment for a wide range of industries.

Not one to stay idle, Shirkey spends his spare time hunting, fishing, golfing and exercising. When he's not in Lansing, you might find him finishing his latest woodworking project in "grandpa's workshop." He's also an active member of the Jackson Free Methodist Church, where he leads construction and expansion projects. He and his wife of 42 years, Sue, have three children and several grandchildren.

Shirkey is a Michigander through and through, and his primary goal for the coming legislative session is to address the real issues that impact his fellow citizens. Michigan's roads are in a deplorable state, while the cost of auto insurance continues to rise.

"If Michigan is going to improve and maintain its roads, waterworks and other critical infrastructure, it needs innovation," Shirkey said.

"Our current systems are outdated and outperformed by many," he said. "We need to take charge and make sure the foundation on which many Michigan families live is sturdy."

While Shirkey has a strong background in innovation, one area where he shared he lacks firsthand experience is in local government. That's why he counts on his township officials to communicate with him about the issues they face and provide a foundation of understanding.

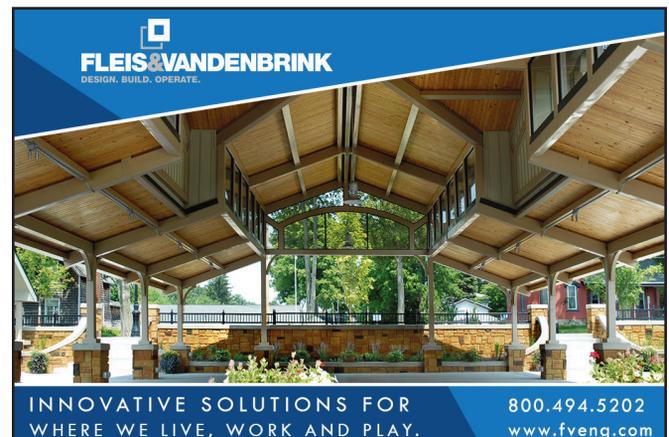


New Senate-elect majority leader Sen. Mike Shirkey (R-Clarklake) says his overall goal as a state lawmaker is simple: to be a contributing factor to the overall greatness of our state.

Over and over, local officials have told him they're concerned about their chronic lack of funding, as well as a lack of communication, resources and personnel. Shirkey believes a key part of the solution is engaging with local citizens. Hearing their needs and concerns will allow townships to fine-tune their services based on their residents' desires. He also said working toward automated systems will allow townships to provide services more effectively.

Shirkey is proud to have been part of moving Michigan forward over the last several years. In particular, he points to the Right to Work act as one of his greatest accomplishment, saying it increased capital investment and growth throughout the state as well as in smaller communities. However, there's still work left to be done. His goal isn't to stand out. He wants to be part of the greater good.

"We hope to simply be a contributing factor to the overall greatness of our state," he said.



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Sen. Jim Ananich (D-Flint)

Michiganders should be able to drink a glass of water straight from the tap without fear, state Sen. Jim Ananich says.

In a state flanked by the Great Lakes, more citizens are rightfully looking at their faucets with concern. The Flint water crisis and, more recently, the presence of toxic per- and polyfluoroalkyl substances (PFAS) in certain water supplies, has spurred Ananich, a former Flint City Council member, to aggressively pursue clean water and make sure the state doesn't neglect its water sources. As the state Senate minority leader, he's looking forward to working with Gov.-elect Gretchen Whitmer to protect Michigan's most precious resource and the people who depend on it.

"A clean glass of water for your child shouldn't be a Democratic issue or a Republican issue, and I have every confidence that we can work together to make sure Michigan families are safe," Ananich said.

Ananich's career in public service began in education. After earning a bachelor's degree in political economics from Michigan State University, as well as a secondary education certificate in social studies, he taught at Carman-Ainsworth and Flint Community Schools. It was there that he also worked as an education coordinator for Priority Children, which helped train Genesee County youth for internships and jobs.

Four years on the Flint City Council eventually led to two terms in the Michigan House of Representatives. He was later selected by his peers to lead the Democratic caucus in 2014, when he was re-elected to the state Senate. When he's not in session or driving back and forth from Flint, you can find him and his wife, Andrea, at music-makers class with their three-year-old son, Jacob.

As Ananich looks toward a new session—and serving alongside a new governor's administration—infrastructure continues to top his priority list. Michigan's failing roads must be repaired, and while funding is a major issue, it's just as key that they be fixed the right way, with high-quality materials and builder warranties. He also emphasized the need for saving time, resources and traffic headaches by scheduling road, sewer and broadband upgrade projects to occur simultaneously.

Lawmakers need township officials to provide their valuable input as they tackle fixing the roads and expanding broadband access, Ananich said.

"Legislators must be committed to having every voice at the table as bills are drafted and discussed," he said. "Township officials and legislators who have good working relationships will be able to make sure township needs are



State Senate minority leader Sen. Jim Ananich (D-Flint) is looking forward to working with Gov.-elect Gretchen Whitmer to protect Michigan's most precious resource—water—and the people who depend on it.

reflected in the legislation that end up on the governor's desk."

While the state works toward increasing funding for infrastructure, it must also address the chronically underfunded revenue sharing dollars. As this money has decreased, it has dramatically impacted the ability of townships and cities to care for their roads, fund police and fire departments and even keep basic operations running.

"In the next budget cycle, Democrats will work to restore balance and fairness to revenue sharing," Ananich said.

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- MTA Director of Member Information Services
Michael Selden: michael@michigantownships.org
- MTA Staff Attorney Catherine Mullhaupt:
catherine@michigantownships.org
- MTA Member Information Services Liaison
Cindy Dodge: cindy@michigantownships.org



Interlocal divorce

Breaking up is hard to do— but doesn't have to be

Most township board members brim with optimism when they sign an agreement forming a joint fire department or a public waterworks spanning multiple local units. They envision decades of partnership and working together for the good of their residents. Problems will certainly arise, but they're nothing the local units can't overcome with hard work and dedication.

No one wants to think about a day when one, or even all, of the parties involved decide to walk away. But despite their best efforts, some townships might find themselves facing a dissolution they never expected.

Bill Fahey, a township attorney and partner at Fahey Schultz Burzych Rhodes, PLC, has helped to facilitate his fair share of interlocal divorces. While plenty of agreements stand the test of time, many don't last forever. Whether it's changing demographics, dissatisfaction with the agreement's pay structure or even personality conflicts, the reality is some interlocal agreements are bound to come to an end.

The end of a community partnership is far from rare, and certainly nothing to be ashamed of. As townships grow, and new leaders take office, it's natural that agreements of

yesterday no longer serve today's needs. Some problems can be solved through intentional communication and mediation, and others can even be prevented by writing an agreement designed to fairly distribute the cost and burden of the service. Sometimes, though, it's best to part ways.

Breaking up may be hard to do, but Fahey says it doesn't have to be bitter. An amicable, professional dissolution won't just help your communities remain good neighbors—it could even keep you out of court.

A long history of cooperation

Intergovernmental cooperation is not a new concept. Some Michigan statutes allowing collaboration date back to the 1930s and '40s, and the 1963 state constitution specifically allows local units of government to work together on any



While most don't enjoy dissolving a joint agreement, the reality is most partnerships don't last forever. Instead of feeling upset, townships should congratulate one another on the run they had.

service that they could provide individually. For decades, townships, cities and villages have joined together to provide services for the simple fact that most municipal services are staggeringly expensive.

Gov. Rick Snyder has pushed for communities to collaborate and provide joint services in recent years, but most local units work with another municipality in one way or another simply because it makes financial sense. This is especially true for fire services—a reason why joint fire departments are so common. Hiring certain personnel, buying costly fire tankers and other equipment, and paying for insurance are out of reach for many townships on their own, especially small communities. Other communities collaborate on police departments, parks, building authorities, cemeteries—to name just a few.

“For the most part, this equipment is sitting in a fire barn somewhere until it needs to be used, which isn’t all that often,” Fahey said. “It makes fantastic financial sense when you have an investment like that in those assets for multiple units of government to get together and to help finance it, and all take advantage of the use of the asset when they need it.”



If you're in the early stages of forming a joint organization, don't wing it. An attorney or consultant can help the municipalities draft a contract that sets up your organization for success.

A breeding ground for conflict

But like any other business deal, interlocal agreements are ripe for conflict. When multiple local units—and officials—work together on an issue, some are bound to have different ideas on how it should be handled. Finding an agreement that works for everyone isn't easy, and after the contract is signed, the dynamics may quickly change. New officials are elected, more residents move in, and property values trend up or down. A payment structure that made sense 10 years ago no longer seems fair today.

"A divorce is the best analogy I can come up with," Fahey said. "Everybody lives in the same community, and there are all sorts of common interests. Frequently, there are things that are just very divisive that prevent people from coming together, or over time they come to dislike or disagree with one another."

Most problems with joint agreements stem from one or more local units believing that the shared costs don't reflect the benefits they reap from the agreement, Fahey said. Instead of putting themselves in the other community's shoes, interlocal board members may suspect they're getting a raw deal and make up their minds to change it somehow. Interpersonal conflicts can also drive splits. Some officials just don't get along, and no matter how solid the agreement might be, they'll continue to butt heads.

Many times, the deal might not have been a good one from the start. Officials might have second thoughts, or a new generation of officials is elected and wants out. A new board, without the context of personal relationships with another local unit's officials, might see the deal with a new set of eyes. Without that more personal relationship as a basis, the deal is viewed less fondly.

A unique challenge of joint departments is the lack of community identity they can sometimes bring with them, said **Doug Mansfield**, supervisor of **Union Township** (Grand Traverse Co.). Residents are used to volunteering to pick up trash at their township park, or cheering as their fire department's tanker cruises down Main Street in the Memorial Day parade. When a department or service belongs to multiple communities, residents can sometimes feel like it belongs to no one. They're less likely to drive to the neighboring township to volunteer for park clean-up, and without a local fire station, they feel as if they don't really have a department. While the problem isn't usually a deal-breaker, it can be difficult for some communities to overcome.

Case study:

10-township fire department lasts 30 years

The Grand Traverse Rural Fire Department was the brain child of 10 small, rural communities more than 30 years ago, when the county got out of the business of directing fire administration. They signed one of the biggest and first joint agreements for the time, before there was much legislation or caselaw to guide them, said Mansfield.

Except for a few highways or big box stores sprinkled throughout a few of the townships, each community looked the same—small population, rural character, sparse buildings. Alone, they didn't have the purchasing power to buy costly firefighting equipment. The joint agreement allowed them to accomplish their mission of "tankers and engines"—to go to banks and finance fire trucks and meet federal requirements—and also hire a chief who focused on that mission.



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As time passed, the townships in the agreement no longer looked the same. Some experienced a commercial boom, while others saw their home values skyrocket. Only a few remained essentially unchanged in those three decades. Just like children growing up in a family, those townships have different needs. The growing townships now needed ambulance services with both basic and advanced life support, while the unchanged townships still had the “tankers and engines” mission.

As communities changed, problems arose. A township with a bustling highway corridor was tired of getting called to every car accident. It eventually broke off, saying it didn’t have the manpower needed to get to the highway accidents, plus other community fire runs. Another township left the department citing political pressure from residents. Both townships took with them 60 percent of the joint department’s funding.

When yet another township decided to part ways, only small, non-contiguous townships were left behind. “If you’re not contiguous, things don’t work,” Mansfield said.

At first, they hired a consultant to keep the department together, but it just wasn’t working. In the end, after 30 years, they decided to call it quits. The board dusted off the bylaws, which clearly spelled out how to disband and called for liquidation of the organization’s assets. Members hired an accountant and, after a few tense meetings, divided the department’s millions of dollars of assets.

Finally, in March 2018, the disbandment became final. Today, Union Township is part of a new joint fire district with two other townships.

“In the end, it’s local control,” Mansfield said. “If they decide as a community to do this, that’s what local control is all about, and you’ve got to let it go. You’re still going to be neighbors. You’re all part of a larger community.”

Case study: **Muddy contract language leads to split**

Harold Koviak, supervisor of **Burt Township** (Cheboygan Co.), had barely taken the oath of office when he realized he had a mess on his hands. Under the previous supervisor, Burt Township received fire services through an agreement with both the Pellston Fire Department to the west and Topinabee Fire Department to the east.

Koviak drove to the Pellston fire station to introduce himself to the chief, but no sooner had the conversation started than the fire chief announced he wouldn’t work with the Topinabee department. After years of rumors and miscommunication, the two departments didn’t like one another, to put it mildly—or the intergovernmental agreement that connected them. Their contract included no boundaries and no guidelines for who would respond to which fires.

After sitting down with each chief individually, Koviak knew it was time to scrap the old agreement. The seeds of future problems were sown in the original, muddy language. The lack of love between the departments certainly didn’t help.

“If neither party likes the agreement, and it’s not working for anyone, why not change it?” Koviak said.

But Koviak didn’t walk away from the fire departments. Instead, he created two new agreements, one with each fire department, instead of lumping them together. Each agreement included a clear boundary line and explicitly outlined how each department would be paid. Drafting the agreements separately allowed each department to hold onto their own identities—something that was important to both sides.

Case study: **Impasse leads to end of building authority**

The Kalamazoo Area Building Authority was hailed as a first-of-its-kind achievement when the four-township partnership formed five years ago. The communities involved joined together to provide building, electrical and mechanical permitting services and inspections in a more economical way, said **Jeff Sorensen**, supervisor of **Cooper Charter Township** (Kalamazoo Co.).

Sorensen and other officials believed the authority would go on to provide inspections and other services for decades to come. Then, when the organization’s fund racked up a positive balance, two factions emerged. One side wanted to leave the balance as is, while the other wanted to lower its fees and avoid a balance in the future. To some, the issue was more than a disagreement—it was an ethical dispute. It soon became clear the two sides were at an impasse.

The authority’s contract included a clause that if a new budget wasn’t adopted each year, the organization would dissolve and distribute its assets to the local units involved. Sorensen thought the clause was a formality, not something that would ever be used. After three years of operation, however, all four local units chose not to adopt a budget and dissolve.

“It’s great to join forces and work together, but if something all of the sudden changes, you always have to have some type of opt-out clause and spell things out to the T of who gets what and how it’s divvied up,” Sorensen said. “I wouldn’t enter into any agreement without that.”

Today, two of the original townships have partnered along with a nearby city to form a building authority, while Cooper Charter Township works with another neighboring township for its building services.

Lessons learned

Start your agreement strong

If you’re in the early stages of forming a joint organization, don’t wing it. Fahey recommends bringing in an attorney or consultant who can help the municipalities draft a contract that sets up your organization for success. A strong contract needs a reasonably balanced formula for dividing costs while also providing each municipality with oversight and protection. Each local unit should have the ability to approve the organization’s annual budget to help avoid surprises. This ensures that the costs stay under control for each member.



While it might seem odd to think about the end of an organization that doesn't yet exist, an exit strategy is crucial to include in the contract. You have to expect that disagreements might arise or circumstances may change. Your contract should anticipate this and include an exit strategy guaranteeing that each municipality involved would recover the investment it's made over the years.

The worst approach is to base each municipality's contribution solely on taxable value. While this factor is relevant, it's not the only aspect of a community that should be taken into account. This formula skews the higher payment toward the local unit with the most valuable land or homes—regardless of who uses the service more.

Fahey recommends a multi-faceted formula that takes into account each local unit's taxable value, population and use of service, which for a fire department would be the number of fire runs. With each factor given a one-third weighting, each local unit ends up with a fair payment, he said.

While it might seem odd to think about the end of an organization that doesn't yet exist, an exit strategy is crucial to include in the contract. Just as a prenuptial agreement outlines who gets what in case of a divorce, an exit strategy in a contract specifies how assets would be divided to help keep you out of court.

Too often, contracts don't outline what happens if a municipality leaves, or the entire organization dissolves. Some don't even allow a withdrawing local unit to take any of its assets with them, forcing a dissatisfied local unit to either stick it out or cut its losses and withdraw.

You have to expect that disagreements might arise or circumstances may change, Fahey said. Your contract should anticipate this and include an exit strategy guaranteeing that each municipality involved would recover the investment it's made over the years.

"No matter how rosy you think things are right now, they won't always be that way," he said. "You really should find a way to undo this in a way that's reasonable for everybody, or it's probably going to end up in court."

Having an exit strategy clearly outlined allowed local units in the Kalamazoo Area Building Authority to make a clean break, Sorensen said. There were no questions over who received which assets, or the dissolution process. While he never anticipated using the clause so quickly, he was grateful that once the decision to dissolve was made, it was as painless as possible.

Keeping your agreement healthy

An interlocal agreement is just like a relationship—when it's neglected, it suffers. Don't allow yourself to be lazy, Mansfield said. While a paid administrator might handle day-to-day operations, board members must take responsibility for maintaining relationships among one another. Make sure the organization remains a priority, and that the township is actively involved.

As time passes, it's natural that local units in your agreement might grow or change, and the mission you started with might shift. Mansfield recommends revisiting your mission every five years or so to make sure it still suits everyone involved. If it doesn't, sit down and hash out your priorities, and adjust your mission statement if needed.

Looking back, Mansfield realizes a key component of a successful interlocal agreement board is active board members. When you're running a joint fire department, and no board member has ever stepped foot on the scene of a car accident or fire, it's easy to lose sight of what the agreement is really about. Don't just be a board member, Mansfield said. Be a participant.

Communication

No agreement can survive without communication. In Burt Township, a miscommunication resulted in the deep rift between the two fire departments—and it took multiple in-depth discussions to clear them up. Each party needed to sit down together and hash out their issues. The key, Koviak said, is to communicate respectfully and work through problems before an agreement is drafted, not after.

"That's how you end up in court," he said.

When conflict arises, communication is key. You need to get the stakeholders talking—not just organization board members, but everyone who is impacted. For example, a problem in a joint fire department could be discussed in a meeting with firefighters and fire chiefs. A public dialogue can help to generate ideas your organization's board might not have considered. From there, your organization can consolidate ideas and choose one with the greatest support.

Just as important is the need for organization board members to communicate with their fellow township board members. While there are certainly times to use discretion, the township board needs to know when the organization is committing to major financial purchases, or when a conflict is brewing. Your silence communicates to your fellow board members that everything with the joint agreement is fine. If that's not the case, they need to know. Not only does this give them a much-needed heads up, but it also gives them an opportunity to give you potentially helpful advice. Communicating with your board also helps them to buy into the joint organization and feel ownership of it.

When things turn sour

If your organization is showing signs of unraveling, now is the time to pull your contract off the shelf. Your township needs to know its rights and what the agreement says about withdrawals and dissolutions.

"You need to know what your leverage is," Fahey said.

With those rights in mind, make a concerted effort to bring your township's concerns to the other side. Open a dialogue that includes the public and people involved with the organization. Do everything you can to reach a middle ground and correct what is wrong—until it becomes clear that isn't possible.

If another local unit in your organization is the one with concerns, try not to react defensively. Start a dialogue with them and hear them out. By listening, you might be able to

determine the problem and find a solution. Likewise, you can express your township's position and point out factors the other local unit might not have considered. "If you can keep it off the front page of the newspaper, and keep it from being a big fight, I think that's always good," Fahey said.

When to call it quits

When you've tried everything and met nothing but roadblocks, it could be time to walk away. Dissolution is far from the first alternative, Fahey said. Whether one side is being unreasonable, or there simply isn't a middle ground, reaching a compromise just might not be possible.

In a recent dissolution Fahey helped oversee, an appraisal firm was hired to determine the value of the tankers, engines and firefighting equipment. Then, each municipality's monetary contributions were analyzed in order to determine a percentage share of the assets. Any local unit that wanted to start a new fire department was given a chance to purchase the equipment, with a payment schedule that didn't place too great a burden on the purchasing local unit. When it was all said and done, each local unit walked away peacefully, ready to start their own fire department.

While most don't enjoy dissolving a joint agreement, the reality is most partnerships don't last forever. Whether in business or in the public realm, it's natural for partners to grow apart and move on. Instead of feeling upset, Mansfield said townships should congratulate one another on the run they had.



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cover story

Sometimes, you might find that returning to a small organization can actually be a benefit. Since Union Township became part of a smaller fire department, Mansfield has seen a resurgence in volunteers and enthusiasm. The people who had trouble relating to a 10-township department feel ownership of the new, closer-to-home department.

Staying out of court

It's normal for tempers to flare and emotions to run high when dissolving a contract, especially one that's been around for decades. Hiring a facilitator to mediate the dissolution process can make a huge difference in tamping down the tension—and keeping the dispute out of court. While your township can't stop another local unit from bringing a suit against you, taking proactive steps to maintain polite discourse and civility can help you avoid the deposition room.

Public discussions throughout the dissolution process also helped to keep Grand Traverse Rural Fire District board members grounded. Firefighters in the audience were deeply concerned with the department's fate, Mansfield said. They weren't in it for the money—they sincerely cared about protecting the community. They didn't care about who received which asset. Their perspective helped to keep the discussion focused on what was really important, instead of petty spats.

Like a family

Mansfield keeps coming back to the analogy of the family. An interlocal agreement is like a marriage, and the municipalities are the children. Sometimes, much like children, townships grow up differently, even if they came from similar backgrounds. Their needs, agendas and demands from their residents might change, and an agreement that once served them well might become a burden.

Consider having an annual meeting with everyone from board members to stakeholders. Invite the public, and make sure everyone in the room is on the same page. If one community thinks the agreement is no longer fair, have a discussion. Don't wait until dissatisfaction becomes a full-blown conflict.

"You need to expect change. This thing is going to mature, it's going to evolve. You have to recognize that," Mansfield said. "Expect it, and embrace that evolution."



Bethany Mauger,
MTA Staff Writer

Mika Meyers PLC
Attorneys at Law



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2019 Board of Review Training announced

To assist township board of review members, alternates, supervisors and assessors in preparing for 2019 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:

- Jan. 29:** Ramada, Alpena
- Jan. 30:** Eagle Pointe Plaza, Hale
- Jan. 31:** Bavarian Inn Lodge, Frankenmuth
- Feb. 5:** Magnusson Franklin Square Inn, Houghton
- Feb. 6:** Island Resort Conference Center, Harris
- Feb. 7:** Bay Mills Resort, Brimley
- Feb. 12:** Boyne Highlands, Harbor Springs
- Feb. 13:** Evergreen Resort, Cadillac
- Feb. 14:** Shoreline Inn Conference Center, Muskegon
- Feb. 19:** Comfort Inn Conference Center, Mt. Pleasant
- Feb. 20:** Hawk Hollow Conference Center, Bath Charter Township
- Feb. 21:** Fetzer Center at WMU, Kalamazoo
- Feb. 22:** Comfort Inn Conference Center, Chelsea

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

Registration materials were mailed to township supervisors last month. Register online or download printable forms at www.michigantownships.org.



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Designed to help build on your abilities and understanding of township government, this program enables you to successfully represent and serve your residents while shaping your community's future. Get an overview of the "hows and whys" of township government, and explore the duties and responsibilities of a township board. A helpful refresher for those changing office, too!

Breakout sessions will be held in the afternoon:

- **Supervisors and Trustees** (meeting management, ordinances, lawful expenditures, budgets, township administration, assessing oversight and the role of the trustee)
- **Clerks and Treasurers** (financial operations, internal controls, records and reporting, along with other additional duties)

Cancellations & substitutions: Written cancellation requests must have been received at the MTA office by Nov. 27 to 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.



Add-on options:

The publications offered in the Basic Starter Kit are an integral part of the training. If your township already owns current editions, bring them with you to the workshop. Individual books will be for sale on-site, while supplies last.

OPTION 1: Basic Starter 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* (\$88 discounted rate)

OPTION 2: Essential Township Collection:

Includes resources offered in the Basic Starter Kit PLUS *Building a Better Budget* (includes CD), *Introduction to FOIA*, *The Township Guide to Planning & Zoning* and *Policy Matters!* (\$218 discounted rate)



New Officials Training Registration Form

Which location will you will attend?

Dec. 11: Gaylord

Dec. 13: Okemos

Township _____ County _____

Telephone _____ Email _____

Name & Title _____ Purchase books: Basic Essential

Name & Title _____ Purchase books: Basic Essential

Name & Title _____ Purchase books: Basic Essential

	Regular Rate*	# of People Registered	TOTAL
Per person No books included	\$169	X	=
Per person Includes basic book package	\$257	X	=
Per person Includes essential book package	\$387	X	=

*Rates apply to MTA members; non-members, call MTA for rates.

NOTE: Payment must accompany form in order to be processed.

Check enclosed (payable to MTA)

Charge to: (circle one) MasterCard VISA

Card # _____ Expires _____

Print Card Holder's Name _____ Signature _____



Send your completed registration form with payment to MTA, P.O. Box 80078, Lansing, MI 48908-0078; fax: (517) 321-8908. Or register online at www.michigantownships.org. Questions? Call (517) 321-6467.

upcoming MTA workshops

REGISTRATION INFORMATION

January workshops explore board roles, assessing and taxation

Join MTA at the **Okemos Conference Center** on **Jan. 23** and gain insights into how your role as a board member relates to the board as a whole. We'll also help you understand the fundamentals of assessment and taxation. Register for one (or both!) of the sessions described below:



Township Board Roles & Relations

(B-101 - 4 credits; includes lunch served at 11:30 a.m.)

Jan. 23 from 12:30 to 4 p.m.

Examine your role as a board member and how you fit into the board as a whole. Discuss the roles of watchdog, supporter, planner, communicator and manager, as well as the relationships among board members, appointed and elected officials, and the board with the community. Identify the fundamentals of leadership and the ethical standards specific to public servants.

Presented by Larry Merrill, MTA Executive Director

Fundamentals of Assessment & Taxation

(F-105 - 4 credits; includes dinner served at 6 p.m.)

Jan. 23 from 4:30 to 8:30 p.m.

Property taxation and assessment administration are two cornerstones of township operations. From assessment and board of review meetings, all the way to tax collection—it's essential that board members have an understanding of how the process works. Learn more about the Headlee Amendment and Proposal A, as well as truth-in-taxation, assessing and equalization. Delve into a variety of revenue sources coming into the township, including millages, administrative fees and special assessments.

Presented by Shila Kiander, MAAO, Director, Mecosta County Equalization Department

These courses are part of MTA's Township Governance Academy (TGA). They are designed to enhance your leadership skills and motivate you to take on the challenges (and opportunities!) unique to those serving as an elected official. Regardless of your position on the board or amount of experience, TGA will move you to a higher level of performance and make your service more rewarding.



Uncertain whether TGA is for you? Try it! You do NOT have to be enrolled in TGA to attend the courses. Credit will be assigned retroactively if you enroll within six months of attending.

Cancellations & Substitutions: Written cancellation requests received at the MTA office by Jan. 9 will receive a full refund. No refunds will be issued thereafter. You may substitute another individual from your township for your registration at any time without incurring a charge; please notify MTA of the change. Substitutions are not allowed for registrations made using scholarship funds.

TGA Registration Form

Township _____ County _____

Telephone _____ Email _____

Name & Title _____ Board Roles Fundamentals Both classes

Name & Title _____ Board Roles Fundamentals Both classes

Name & Title _____ Board Roles Fundamentals Both classes

Name & Title _____ Board Roles Fundamentals Both classes

	Regular Rate* After Jan. 9	Early-Bird Rate* By Jan. 9
Board Roles (B-101)	\$109/attendee	\$ 89/attendee
Fundamentals (F-105)	\$109/attendee	\$ 89/attendee
FULL PROGRAM: Both sessions	\$218/attendee	\$178/attendee

# of Sessions	Registration Fee	Total
_____	_____	_____
x		=

*Rates apply to MTA members. Non-members, call for rates.

NOTE: Payment must accompany form in order to be processed.

- Check enclosed (payable to MTA)
- Charge to: (circle one) MasterCard VISA

- - -	/
Card # _____	Expires _____
Print Card Holder's Name _____	Signature _____



Send your completed registration form with payment to MTA, P.O. Box 80078, Lansing, MI 48908-0078; fax: (517) 321-8908. Or register online at www.michigantownships.org. Questions? Call (517) 321-6467.



Who is the fiduciary for your retirement plan?

Studies show that how employees feel about their benefits has a major influence on how they feel about working for an organization. A competitive retirement plan can be an effective tool for recruiting and retaining talented employees, in both the public and private sector.

For employers, however, providing and administering that retirement plan generates significant administrative, financial and legal obligations, many of which can be delegated or contracted for with a vendor. Regardless of whether they offer a defined benefit or defined contribution retirement plan, one specific and critical obligation that employers—including townships—face is the fiduciary responsibility for the plan and its assets.

What is a fiduciary?

A fiduciary is a person (or entity) who acts on behalf of another person (the beneficiary) and is legally and ethically bound to act in the other person's best interests. A fiduciary owes a beneficiary duties of loyalty and due care, meaning the fiduciary must act only in the interests of the beneficiary, and must discharge their duties competently and carefully. While the duties of a retirement plan fiduciary are generally well known, determining who the plan fiduciary or fiduciaries are can be more difficult.

In this ever-evolving regulatory environment, it is more important than ever that employers understand who fulfills the fiduciary role for their retirement plan.

Who is the fiduciary?

Sometimes it is easy to determine who the fiduciary for a retirement plan is because their title gives it away. For others, their job duties provide the clue. For example, those who are named as retirement plan trustees or board members are typically fiduciaries.

However, individuals that have authority over the operation and administration of the plan, but are called something different, still may have a fiduciary responsibility to the plan participants. Under Michigan law, anyone who exercises discretionary authority over plan assets, the administration of the plan or the management of the plan is, by default, a fiduciary for the plan. In other words, if you act like a fiduciary, you are a fiduciary.

Responsibilities of a retirement plan fiduciary

The duties of a fiduciary are defined by law, with the primary responsibilities being investment oversight, adherence to the plan document and ensuring that plan expenses are reasonable.

Investment oversight

Investment oversight is likely the most challenging responsibility for a fiduciary because it requires the most expertise. As the investment fiduciary, you are required to:

- Establish clear goals and objectives for the plan investment options with well-defined measures for success
- Maintain a disciplined process for hiring, evaluating and terminating investment managers for the plan
- Choose an appropriate investment default fund for plans with participant directed accounts
- Monitor investment performance and fees
- Document all of the above in a formal Investment Policy Statement

Diversification is also critical, as it helps to minimize the risk of large investment losses. In defined contribution type plans, participants should have access to a core investment fund line-up with choices that are monitored and modified as needed. In addition, participants need to be provided sufficient information and education to make informed decisions.

Adherence to the plan document

A fiduciary must ensure that the plan complies with the terms of the plan document, which is the foundation for plan operations. The plan document must comply with IRS requirements, and should be reviewed regularly to ensure it is in current legal compliance and updated accordingly.

Ensuring expenses are reasonable

Fiduciaries are also required to ensure that plan expenses are reasonable. All plan expenses should be clearly disclosed, including custodial, recordkeeping, operating and investment management costs. These expenses should be monitored on a regular basis, with formal cost comparisons completed periodically to ensure that participants are not paying more than they should.

Transferring your fiduciary responsibility to a service provider

Along with fiduciary responsibility comes the potential for liability for breach of fiduciary duties. With recent high-profile class action suits alleging violations of fiduciary duty, and the potential for personal liability, employers who want to limit fiduciary risks often turn to third-party service providers to take on the role of fiduciary.

While some employers may believe hiring a third-party provider insulates them from all risk, not all providers assume all fiduciary responsibility for their retirement plan. Plan providers and employers can share varying degrees of fiduciary responsibility depending upon who performs various duties for the plan.

Sole fiduciary responsibility

In some instances, the plan provider is willing to take on sole fiduciary responsibility for oversight of the plan. In

this arrangement, the service provider establishes the plan document, ensures plan compliance, administers benefits, determines the investment options available and monitors fund performance. Often operating on a not-for-profit basis, they act in the best interest of plan participants, making sure investment fees are reasonable and disclosing plan costs transparently. When taking on these responsibilities as sole fiduciary, the provider also assumes sole liability for them.

Co-fiduciary responsibility

More often, plan providers are willing to take on some, but not all of the fiduciary responsibility for the plan. These providers act as co-fiduciaries. They may offer investment information and make recommendations on funds to include in the investment line-up, but ultimately it is the employer who is responsible for selecting which funds to offer participants and monitoring the performance of those funds. Further, the employer may still be responsible for plan compliance and operations. In this arrangement, the plan provider and employer share fiduciary responsibility for the plan. Shared responsibility means shared liability.

No fiduciary responsibility

Most often, however, plan providers act only as a record keeper for the plan, taking on no fiduciary responsibility and leaving decisions regarding the plan document, investment options and performance monitoring to the employer. The employer has unlimited choices under this scenario, but risks being held liable for fiduciary violations in any area of plan administration.

Which responsibilities remain with the employer?

Regardless of the level of fiduciary responsibility the plan provider is willing to accept, the employer still retains the fiduciary responsibility of selecting a competent service provider. In other words, a plan provider's promises to take over the responsibility of investment oversight for the plan does not take the employer off of the hook completely. Employers need to be sure the service provider selected is competent, charging fair fees, and will put the best interest of plan participants first.

It is important to adequately research the experience and qualifications of the service providers you select, and document your selection process. Employers should also monitor the service provider to ensure they are performing their assigned duties as agreed upon.



Carrie Lombardo, Chief Strategic and External Affairs Officer, Municipal Employees' Retirement System of Michigan

Contact Lombardo at (800) 767-6377, or visit www.mersofmich.com.



Michigan Employees' Retirement System of Michigan is an MTA Allied Service Provider at the President's Round Table level. Turn to page 2 for more information on Township Allied Service Providers.

aroundthe**state**

townships in the spotlight



Ira Township

Recreational opportunities abound in **Ira Township** (St. Clair Co.), which boasts two parks, a Little League field hosted by the Ira Township Lions Club, and a state Department of Natural Resources (DNR) boat launch located on Anchor Bay in Lake St. Clair with access to the St. Clair River and Lake Huron.



The Ira Township Park was established in 1994 on 33 acres, located in southern St. Clair County. The park is centrally located and within walking distance to the library, fire department, water department and township offices.

This park offers a variety of activities such as a basketball and volleyball court, swings, and a toddler and youth playscape complete with a sandbox and diggers. The park also features a nine-hole disc golf course, horseshoe pits, gaga ball pit, cement corn holes, barbecues, benches, picnic tables and a walking path through the woods. Additionally, community members can relax in one of two pavilions—one of which was recently built as an Eagle Scout project.

In addition to the available activities, the park also includes a veterans memorial. Recently, a butterfly bench and garden was constructed with a walking path connected to the pavilion. The butterfly garden was installed as a memorial

for a six-year-old boy from the community who passed away from cancer.

Waterworks Park is located at the end of Waterworks Drive on a peninsula. Though it has limited parking, the park is accessible by foot or bike. This park has benches overlooking the bay, fishing available, a walking path and a gazebo that was built as another Eagle Scout project.



Ira Township Parks and Recreation Department holds three annual events—an Easter egg hunt, Trick or Treat Through the Forest and the Christmas Tree Lighting Ceremony—along with a variety of other programs throughout the year.

This year, the Parks and Recreation Commission applied for a DNR Passport Grant, which if approved will allow the township to install a quarter-mile walking path through the Township Park that would connect all the activities.



Service & **LEADERSHIP** for a vibrant Michigan



Two words perfectly sum up Michigan's 6,500-plus local township officials: service and leadership. As public servants, you give of yourself to help better your community, offering guidance, vision and leadership to ensure your residents and businesses can be proud of the place they call home.

But it's not always easy, and laws, requirements, trends and culture are changing at a rapid pace. It might be easy to burn-out, or lose that spark for inspiration.

That's where MTA can help. Join us this April at our 2019 Annual Educational Conference & Expo, coming April 1-4 to DeVos Place in Grand Rapids. **We'll help you reignite that spark, and connect with both experts and peers on the value and critical importance of quality service and leadership in Michigan's 1,240 townships.** Our Annual Conference will inspire and excite today's local leaders—whether you've been serving for decades or are brand-new to office. **We hope to see you there.**

Registration materials will appear in the January *Township Focus*. Registration opens Jan. 2. Housing opens Jan. 15. Watch MTA publications and www.michigantownships.org for more details.



MICHIGAN TOWNSHIP PARTICIPATING PLAN



Municipal Office



- Largest Public Act 138 program in Michigan- Providing tailored Property/Casualty insurance coverages for public entities
- Underwritten by an A+ rated insurance carrier
- Supervised by a Michigan board of directors elected from the membership, by the membership
- Administered by Tokio Marine HCC Public Risk providing in-house underwriting, risk control and claims administration
- Servicing over 1300+ Michigan public entities



For more information please contact 1-800-783-3100 or visit our website www.theparplan.com

