



WHAT CAN WE DO ABOUT THESE ROADS?

Issues

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- Who is responsible for the roads?
- Funding roads
- Liability
- What can townships do?



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Who is responsible for the roads?

State Trunk Line Highway System

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- McNitt Act of 1931 and now Public Act 51 of 1951
- County road commission required to take over as county roads all public streets and alleys outside of incorporated cities and villages as either primary or county local roads (MCL 247.669)

State Trunk Line Highway System

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- Township governments have no direct authority over local roads. The Michigan Department of Transportation (MDOT), the County Road Commission (CRC) and city and villages all have responsibilities for roads within their own jurisdictions.

State Trunk Line Highway System

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- Motor Vehicle Highway Fund
 - ▣ Highway user tax dollars earmarked exclusively for highway purposes and distribution formula of the MVH Fund
 - ▣ Increased the state gas tax from 3 to 4.5 cents per gallon (since 1997, 19 cents per gallon)
 - ▣ Increased weight taxes on commercial vehicles

State Trunk Line Highway System

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- Section 20 of PA 51 authorizes township board to appropriate general fund monies into the county road fund for the maintenance and/or improvement of county roads and for widening of state trunk line highways, pursuant to an agreement with the county road commission or state highway commissioner.
- Also authorizes board to levy up to 3 mills for such purposes without vote of electors (additional 3 mills up to 6 mills with vote of electors)
 - **MCL 247.670:** “Notwithstanding any other provisions of this act the township board of any township may also levy a property tax of not to exceed 3 mills on each dollar of assessed valuation of the township in any year for the maintenance or improvement of county roads within the township or for the widening of state trunk line highways, as aforesaid, without submitting the question to the electors of said township, and pay any sum so raised into the county road fund of the county for the aforesaid purposes pursuant to an agreement with the county road commission...” [Excerpt]
 - **Very limited exception to Headlee requirement for property taxes to be voted**—A tax authorized by law or charter before Dec. 23, 1978, may be levied at the rate authorized by law or charter before Dec. 23, 1978 (even if not actually being levied then). (Michigan Constitution of 1963, Article 9, Sec. 3, and *American Axle and Manufacturing, Inc. v Hamtramck*, 461 Mich. 352 (2000))
 - **CONSULT YOUR ATTORNEY FIRST!!!**

State Trunk Line Highway System

- Township with population of 15,000 or more may assume jurisdiction of improvement and maintenance of county local roads within the township with the written approval of the CRC and under contract with CRC. (MCL 247.670a)
- Bloomfield Township, Oakland County:
 - Road Division established in the early 1970s, maintains 176 miles of Oakland County subdivision roads and 37 miles of unpaved gravel roads within the township.
 - By a contractual agreement with the township, the Road Commission for Oakland County (RCOC) retains responsibility for 50 miles of primary roads and state trunk lines within Bloomfield Township.
 - Some of the RCOC's maintenance responsibilities are storm sewers, ditches, forestry and signs in the right-of-way on all public roads.

Township Roads

- County road commission may, by resolution, relinquish jurisdiction of a road, and if accepted by the township board, the road is a township road (not in county jurisdiction)
- (Rare) Air force base closings—Specific statute designates whether county or township gets roads
- Road ending on lake or stream—Township has first right of refusal to public roads that provide public access to lake or stream

Township Franchise Authority

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- Not the same as authority for the roads
- Article VII, Section 29 of Michigan Constitution of 1963:
 - ▣ “No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.”

Township Franchise Authority

- Utilities providing telecommunication, video, water, sewer, gas or other services and utilizing the public roads and rights of way in township can be required by township ordinance to submit plans for installation, comply with township requirements for installation and location of facilities, and pay townships reasonable permit fees for review, monitoring and right of way use.
- BUT, see MCL 247.183(2) and *City of Lansing v. State*, 275 Mich. App. 423, 2007, (re: Wolverine Pipeline):
- “(2) A utility as defined in 23 CFR 645.105(m) may enter upon, construct, and maintain utility lines and structures, including pipe lines, longitudinally within limited access highway rights-of-way and under any public road, street, or other subsurface that intersects any limited access highway at a different grade, in accordance with standards approved by the state transportation commission and the Michigan public service commission that conform to governing federal laws and regulations and is not required to obtain the consent of the governing body of the city, village, or township as required under subsection (1).”

Township Franchise Authority

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- METRO Act:
 - The Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act, Public Act 48 of 2002, MCL 484.3101, *et seq.*, includes a provision for annual Right-of-Way (ROW) payments to townships, cities and villages. These ROW payments come from statewide rights-of-way fees annually collected from telecommunication providers by the METRO Authority. They are disbursed to the local units in late May or early June.
 - The Metro Act specifically dictates how the ROW payments may be used by the municipality receiving them. Section 10(4) of the Metro Act (MCL 484.3110(4)) provides that: “The amount received under sections 11 and 12 shall be used by the municipality solely for rights-of-way related purposes. Rights-of-way purposes does not include constructing or utilizing telecommunication facilities to serve residential or commercial customers.”

Responsibility to Maintain

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- County road commission is responsible for county roads:
- MCL 224.21(2): “A county shall keep in reasonable repair, so that they are reasonably safe and convenient for public travel, all county roads, bridges, and culverts that are within the county's jurisdiction, are under its care and control, and are open to public travel.”

Responsibility to Maintain

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- Who decides how to keep county roads reasonably safe and convenient for public travel?
- The county road commission, and the methods employed by the road commission in maintaining the roads are left to their discretion.
- The statute does not list any specific methods which must be employed by the road commission in keeping the roads safe and convenient for public travel. Thus, the road commission has no clear and specific legal duty to use a specific method or schedule.
- Evidence can establish that roads are not reasonably safe ... BUT

Responsibility to Maintain

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- Can a county road commission be required to do something?
- If evidence shows roads are not reasonably safe, a court may order road commission to discharge its duty (*writ of mandamus*) under MCL 224.21(2), BUT it cannot order the method.
 - ▣ *Canton Twp. v Wayne Co. Road Commission*, 141 Mich. App. 322, 1985—Dust control
 - ▣ *Inwood Twp. v Schoolcraft Road Com'n*, Court of Appeals, Unpublished, January 31, 1997—Dust control

Responsibility to Maintain

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- “The record shows that to eliminate the problem of washouts, rutting, and potholes, the 2-1/2 miles of local roads at issue would have to be reconstructed at a cost of \$150,000 per mile, while the county received only \$1,350 per mile for maintenance and repair-and 40% of those funds were earmarked for snow removal. The sections of road at issue carried an average of less than two cars per hour. [The road commission] was aware of washouts and other problems on the local roads, but it had determined that it was more expedient to fix the problems as they arose as opposed to depleting its limited resources to completely reconstruct the roads. The determination of the best way to allocate resources was within the discretion of the road commission. It was not within the power of the trial court to issue a writ of mandamus ordering defendant to carry out its duties in a particular fashion.”

Inwood Tp. v. Schoolcraft Road Com'n 1997, Court of Appeals, Unpublished

Responsibility to Maintain

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- Can a county road commission be ~~required~~ convinced to do something?
- Establish good working relationship with the county road commission.
- Find funding.
- Pick your battles.



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Funding roads

Funding for Public Roads

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- County road commissions have no taxing authority.
- Gas tax is fixed amount, not percent, of gas sales
 - ▣ Gas prices go up, but gas tax does not
 - ▣ Gas sales go down, so less gas tax collected
 - ▣ Counties share funding with MDOT and cities/villages, but counties have most road miles
- CRAM estimates 20% of average CRC budget comes from:
 - ▣ Special assessments
 - ▣ Road millages
 - ▣ Township appropriations

Funding for Public Roads

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- No legal requirement for a township to use its general funds to match ANY funds expended by the county road commission for the maintenance or construction of roads within township.
- Argument for matching funds utilized by road commission is based on MCL 247.662(15) which prohibits the CRC from expending “Michigan Transportation Funds” for construction purposes on county local roads unless such expenditures are “matched by money from other sources.” Other sources may be county special assessments, county taxes, county commissioners’ contributions, and township special assessments.” [PA 119 of 2011 allows county to transfer surplus general operating funds to road commission. MCL 247.121]
- Prohibition does not apply to primary roads or maintenance purposes.

Funding for Public Roads

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- In real life, a county road project may not get done without township funds.
- Townships may choose to pay for maintenance or construction of public roads
 - ▣ General operating funds
 - ▣ Specific millage (property tax)
 - ▣ Special assessments (several statutes)
 - ▣ METRO Act payments
 - ▣ Borrowing—requires Municipal Finance Commission approval (qualifying statement)



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Liability

Liability: Highway Exception to Governmental Immunity

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- Generally, each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair:
 - ▣ Reasonably safe
 - ▣ Convenient for public travel
- “Highway” means public highway, road or street open for public travel. (MCL 691.1401(e))
 - ▣ Includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway
 - ▣ NOT alleys, trees or utility poles

Liability: Highway Exception to Governmental Immunity

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- BUT, duty of state and county road commissions extends only to the “improved portion of the highway designed for vehicular travel”
 - ▣ Does NOT include sidewalks, crosswalks or other installations outside the improved portion of the highway designed for vehicular travel
- Township is responsible for maintaining sidewalks (including ADA curb cuts, etc.)
- Township is not liable for injuries resulting from defective sidewalks unless township knew or should have known of defect at least 30 days prior. Deviation of less than 2” presumed (rebuttable) to not be defect (MCL 691.1402a)

Liability: Highway Exception to Governmental Immunity

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- In 2009 Michigan Supreme Court in *Robinson v City of Lansing*, narrowly interpreted the provisions of the governmental immunity law (MCL 691.1402a) relating to sidewalks to mean a municipality could not use the "two-inch rule" as a defense if a sidewalk is adjacent to a state highway (vs. county road).
- HB 4589
- SB 201



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What can townships do?

Township Authority

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- ❑ Pass ordinances designating truck routes, weight limits and requiring certain trucks to be covered when on public roads. Also air brake (“jake brake”) regulations (noise ordinance). (MCL 41.181, Ordinances, and MCL 257.726, Motor Vehicle Code)
- ❑ Regulate size, lighting and spacing of signs along state highways and in township (MCL 252.304)
- ❑ Participate in establishing speed limits with road commission and State Police. (MCL 257.628)

Township Authority

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- Regulate parking by ordinance
- Traffic enforcement—Michigan Vehicle Code, Uniform Traffic Code
- Provide bike paths
- Zone for “complete streets” (pedestrian, bike access)
- Public Act 240 of 2008 amended Part 811 of the Natural Resources and Environmental Protection Act (NREPA) to allow eligible* counties and townships in those counties to authorize the operation of off-road vehicles (ORVs) on roads. Beginning July 17, 2009, a township may adopt an ordinance to close roads to ORV operation.

Township Authority

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- Provide the following improvements by special assessment (on county roads with CRC consent):
 - Bicycle paths
 - Street lighting
 - Sidewalks

Private Roads

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- No authority to spend public funds on a private road. (Exception--County road commissions in U.P. may provide snow removal and maintenance on private roads and driveways with road tax.)
- But township may fund private road projects through special assessment (must recover any public costs)
- Township is NEVER required to establish special assessment

Private Roads

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- A township may regulate private roads by ordinance:
 - ▣ Eliminate development of future private roads (usually in zoning ordinance)
 - ▣ Permit private roads with requirements for:
 - Minimum road design and construction standards (including meeting minimum county road commission standards to facilitate making private road into public road)
 - Maintenance agreements (including requirement for special assessments)
 - Meeting Zoning Ordinance provisions for setbacks, lot sizes
 - Standardized road names
 - Review of location and construction
 - Restrictions on extending
 - Removing township liability

Private Roads

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- A township may regulate private roads by ordinance:
 - ▣ Limit number of dwelling units or businesses using private road for access
 - ▣ Controlling parking