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Township Law *E-Letter*

Are Citizen Referenda Rights and Initiative Rights a Problem for Townships?

*Township officials are elected township boards every four years. Townships are operated and governed by township boards, which are structured to be responsive to the residents of the township. Often, township boards are required to take certain actions that are necessary to preserve the health, safety and welfare of township residents. The residents, however, do not always agree with such actions. This can occur with amendments to a zoning ordinance to comply with state law, increases to water and sewer rates, or the proposal of millages to address emergency services, police protection, roads and general operating funds. Numerous news articles cover election issues on initiatives and referenda, as they often occur over hotly-debated topics. The Legislature has enacted a long list of statutes that provide township residents the ability to place a proposal on the ballot without township board action or place a proposal on the ballot to approve or reject township board actions by a vote of the electors. These two primary powers are identified as the right to initiative and the right to referendum. This **E-letter** explains the general background of both powers and lists the numerous opportunities provided to township residents to either petition the township board to take some local action or petition after the township board has made a decision to approve or reject such action at an election.*

THE RIGHT TO INITIATIVE AND REFERENDUM

The Michigan Constitution and numerous Michigan statutes govern initiatives and referenda. Article II, § 9 of the Michigan Constitution reserves the powers of initiative and referendum for the people. This constitutional provision is self-executing and contains various steps which must be taken in referring an act of the state Legislature to the electors. Section 9 of Article II reserves the power to enact **state statutes** by initiative or reject **state statutes** by referendum, but it does not contain a provision reserving to the people the power of initiative and referendum with respect to **local ordinances**. *Korash v City of Livonia*, 388 Mich 737, 742 (1972).

Initiative and referendum rights to enact or reject ordinances or resolutions by local legislative bodies, therefore, exist only in statutes and municipal charters. This means the electors may only exercise their initiative or referendum powers to alter a local government's actions if expressly authorized to do so either by state statute or municipal charter. Additionally, the power of initiative and referendum are limited to matters that are truly "legislative" in character. *West v City of Portage*, 392 Mich 458, 466 307 (1974). For example, in *West v City of Portage*, the Michigan Supreme Court **refused** to extend the powers of initiative and referendum to administrative acts of local units of government because the "most

mundane executive matters” such as “whether a particular secretary or clerk is to be hired or terminated, whether the garbage is to be collected on Monday or Tuesday, and whether male municipal employees may wear short-sleeved shirts in the summer time and female employees may wear pantsuits at any time,” are not suited for initiative and referendum.

This means that township residents only have initiative or referendum rights if they are provided by statute or municipal charter, and if the township’s action is in fact legislative in nature. General law townships are not governed by charters, but by statutes and related constitutional provisions. Charter townships are governed under both statutes and constitutional provisions, but also by The Charter Township Act, Public Act 359 of 1947, which serves as their charter. See MCL 42.1.

STATUTORY INITIATIVE RIGHTS

As the following list demonstrates, there are a vast number of statutory initiatory rights provided. Many initiative rights are provided equally to city, villages, and townships, whereas others are specific to each form of government. The statutory rights range from creating a township band to establishing a zoning ordinance. The below list provides a snapshot of some of the more prominent as well as obscure rights to initiatives that may impact a township:

- MCL 35.864 allows a proposal to be placed on a ballot to erect or construct a memorial to veterans, soldiers, or sailors within a township, if a petition has been signed by at least 100 legally-qualified electors.
- MCL 38.561 allows a proposal to be placed on a ballot to create a pension board in any township having a paid or part-paid fire or police department if a petition has been signed by at least 10% of a township’s registered and qualified voters.
- MCL 41.8 allows, but does not require, a township to reestablish an annual meeting of the electors of the township if a petition is signed by at least 5% of the township’s registered voters who voted for the office of township supervisor at the immediately-preceding township supervisor election.
- MCL 41.25 mandates a township board to order a **special township meeting of the electors** if a written request is made and signed by any 12 electors of the township or 1% of the registered electors of the township, whichever is greater, specifying the purposes for which the meeting is to be held.
- MCL 41.95 allows a proposal to be placed on a ballot to determine the salary of officers comprising the township board when no annual meeting is held if, within 30 days after the township board first votes on the salary, a petition is filled and has been signed by at least 10% of the qualified voters of the township.
- MCL 41.416 allows a proposal to be placed on a ballot for the township to borrow money to purchase or maintain a town hall, fire station, or library if a petition is signed by at least 20% of the township’s registered voters.
- MCL 41.424 allows a proposal to be placed on a ballot establishing a park commission to acquire, maintain, manage, and control township parks if a petition is signed by at least 8% of the township’s registered voters.

- MCL 42.2 and MCL 42.3 allow a proposal to be placed on a ballot establishing a charter township from a general law township if a petition is signed by at least 10% of the total electors who voted for the office of township supervisor at the immediately preceding township supervisor election.
- MCL 42.34 allows a proposal to be placed on a ballot to annex a portion of a charter township contiguous to a city or village to that city or village if a petition is signed by 20% of the registered electors in the area to be annexed.
- MCL 117.9 allows for a variety of petition methods to initiate the annexation of a portion of a township to a city.
- MCL 123.41 allows, upon a petition signed by at least by 10% of the qualified voters of a township or village not exceeding 10,000 inhabitants, the proposal whether a community center should be established.
- MCL 123.461 provides, upon receiving a petition signed by not less than 5% of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected, the petitioners may request that a township submit the question of levying an ad valorem property tax not to exceed 1.5 mills to operate centers exclusively for youths under the 21 years of age.
- MCL 123.861 allows a proposal to be placed on a ballot to levy a tax to establish and maintain a township band for musical purpose for the benefit of township residents, if a petition is signed by at least 10% of the qualified voters of a township having a population not exceeding 50,000 inhabitants.
- MCL 125.3211 allows, *but does not require*, a township to proceed with the adoption of a zoning ordinance under the Michigan Zoning Enabling Act upon receipt of a petition signed by number of qualified and registered voters residing in the zoning jurisdiction equal to not less than 8% of the total votes cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected.
- MCL 168.951 provides voters the right to petition to recall elective officers in the electoral district in which the officer is elected.
- MCL 285.202 and 285.203 allows a proposal to be placed on a ballot to determine whether a township should adopt the provisions of the Promoting Agricultural Interests of Townships Act, PA 197 of 1956, if a petition is signed by 10% of the registered electors of the township.
- MCL 333.27956 allows a proposal to be placed on a ballot to determine whether a municipality should provide for or allow marihuana establishments or completely prohibit marihuana establishments within the municipality if a petition is signed by a number greater than 5% of the votes cast for governor by qualified electors in the municipality.
- MCL 397.173(a) permits a proposal to be submitted to the electors on the question of becoming a district library or joining an existing district library if a petition is signed by not less than 5% of the registered electors in the township.
- MCL 397.352 submits the question of consolidation of two township libraries to the qualified electors of each township when a petition is signed by registered electors equal to not less than 25% of the registered electors of each township.
- MCL 436.2101 and MCL 436.2105 allows a proposal to be placed on a ballot to determine whether an establishment may sell spirits and mixed spirit drinks for consumption on its premises if an adequate petition is filed with the requisite percentage of qualified voters dependent upon the type of municipality involved.

- MCL 436.2111 allows a proposal to be placed on a ballot to determine whether a township should prohibit the sale of beer or wine during certain hours on Sunday if, within 60 days before the regular state election, an adequate petition is filed with the requisite percentage of qualified voters.

STATUTORY RIGHTS TO REFERENDA

Unlike an initiative, which places a new proposal before the electors, a referendum places a proposal on the ballot that questions whether township board action should be approved or rejected. It is akin to a “veto” where the township residents can disapprove of township board action by majority vote. Township residents are vested with a check on the township board as it relates to the subject matter governed by the statutory right to referendum. Just like statutory rights to initiatives, various matters are subject to referenda.

The following are examples of statutory referenda rights:

- MCL 41.95 provides that, after a township board adopts an ordinance establishing a compensation commission to determine elected officials’ salaries, a proposal to ratify or reject the ordinance is placed on a ballot if a petition is filed within 60 days of the effective date of the ordinance and signed by at least 5% of the registered voters of the township.
- MCL 41.350s allows township residents to approve or reject a township board ordinance relating to the operation, control, and maintenance of township water supply and sewage disposal services and facilities under the statute, if a petition is filed within 30 days of the ordinance’s date of publication and signed by at least 10% of the township’s registered voters.
- MCL 324.4709 states a township may not enter into a contract for the acquisition, construction, improvement, enlargement, extension, operation, or financing of a sewage disposal system or water supply system unless approved by the vote of a majority of the electors if, within 30 days after the date of publication, a petition is filed and signed by not less than 10% of the registered electors residing within the township.
- MCL 42.6 allows the voters to approve or deny a charter township ordinance creating a compensation commission, if a petition is filed not more than 60 days after the effective date of the ordinance and signed by at least 5% of the registered electors of the township.
- MCL 121.3 provides that a proposal on whether to incorporate as a municipal authority to acquire, own and operate water supply and transmission systems may be submitted to a vote of its qualified electors.
- MCL 124.288 allows a proposal to be placed on the ballot to approve or reject execution of a municipal contract regarding municipal sewage and water supply systems if, within 45 days after the date of publication of the notice of the contract, a petition is signed by not less than 10% or 15,000, whichever is less, of the registered electors residing within the township.
- MCL 124.505a allows an election to approve or reject an interlocal agreement for sharing revenue under the Urban Cooperation Act of 1967 if, within 45 days of the township board’s approval of the agreement, a petition is filed and signed by a minimum of 8% of the registered electors of the township voting in the last general election.

- MCL 124.25 allows the electors of a township to approve or reject a contract for an Act 425 conditional transfer of property if a petition is filed by either 20% or more of the registered electors residing with the property to be transferred or by persons owning 50% or more of the property to be transferred.
- MCL 125.1262 allows the voters to approve or reject the issuance of bonds under the Industrial Development Revenue Bond Act of 1963 if, within 45 days from the publication of a notice of intention to issue the bonds, a petition is filed requesting a referendum upon the question signed by not less than 5% of the registered electors of the township.
- MCL 125.1633 provides the voters of a township may dissolve an economic development corporation that has been organized through the right of referendum.
- MCL 125.3402 states a zoning ordinance or amendment to a zoning ordinance adopted by the township may not take effect until approved by a majority of the registered electors residing in the zoning jurisdiction (not the township as a whole) if, within 30 days after publication of the ordinance, a petition is signed by a number of registered electors residing in the township not less than 15% of the total vote cast within the township for all candidates for governor at the last preceding general election at which a governor was elected.
- MCL 125.3813 states, in some circumstances, a township ordinance creating a planning commission may not take effect until approved by a majority of the electors residing in the unincorporated portion of the township if, within 63 days after the ordinance is published, a petition is signed by a number of qualified and registered voters not less than 8% of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected.
- MCL 125.653 allows the voters to approve or reject an ordinance providing for the creation of a housing commission if, within at least 14 days after its enactment, a petition is signed by at least 3% of the number of voters registered at the last regular election.
- MCL 141.133 states a township may not issue bonds under the Revenue Bond Act unless approved by a majority of the electors if, within 45 days after the publication of the notice of intent to issue bonds, a petition is filed signed by not less than 10% or 15,000 of the registered electors, whichever is less, residing within the limits of the township.
- MCL 141.104 provides a township may not acquire a utility for the supplying of light, heat, or power unless approved by 3/5 of the electors of such municipality.
- MCL 324.11903 provides a township with the power to enter into a contract providing for the acquisition, financing and operation of a waste management project unless, within 45 days of execution, a petition requesting referendum upon the contract is filed and signed by not less than 5% or 15,000 of the registered electors residing within the township.
- MCL 397.322 states a question of issuing bonds under the Township and Village Libraries Act must be submitted to the legal voters of the township or village.
- MCL 486.504 states a township may not enter into a contract for the purchase of water unless approved by vote of a majority of the qualified electors of the township if, within 30 days following the date of the contract's publication, a petition is filed signed by not less than 10% of the registered electors residing within the limits of such township.

ISSUES PRESENTED BY INITIATIVES AND REFERENDA

The above lists exemplify the varied and numerous options available to township residents to file petitions for an initiative or referendum. For townships, initiatives and referenda present two issues: (1) the process is often used as leverage by township residents to attempt to sway or change the vote of the township board; and (2) the filing of a petition requires verification of its validity, potentially preparing a ballot question, and holding an election.

Township boards are often faced with the threat of initiatives or referenda as they make contested legislative decisions. Township residents are aware in certain instances the idea of seeking a referendum or initiating a process may cause the township board to change its majority position on an issue. For instance, township residents often exercise their rights to seek a referendum on zoning ordinances that relate to divided issues in the community, such as wind ordinances or marijuana ordinances. A more tumultuous result often occurs when township residents initiate the right to recall elected township board members. See MCL 168.951.

Although the threat or use of these statutory rights may have dramatic impact on the township, it is important to remember that exercising the right to petition the township is not a negative aspect of the representative form of township government. Due to the close relationship between the township board and local township residents over local concerns and the extensive right to petition for action by the township board, it may represent more of a true democracy than many other forms of government. The majority of the people in the township can vote upon important issues, such as incurring more debt through bond issuance, the construction of a water or sewer system, or the choice to choose again as to the members who are elected before completion of a 4-year term.

It is important to remember for any township board that the petition right itself does not make the result self-evident. The filing of a valid petition requires a vote before the electorate of the township, and often, the township board and the township electors are in unison and understand there are hard-but-important decisions that must be made. The township board and electors often understand the importance of bond issuances, the approval of millages for roads, and the passage of zoning ordinance amendments. These aspects of local township governance are why the township form of government is responsive and accountable to its residents.

Exercising these rights does place a burden on the township to verify a petition's compliance with the applicable statutory authority. As noted above, every initiative or referendum has different signature requirements. In addition, petition form requirements, language required on the petition, and qualifications of the petition signers can complicate review of the petition upon filing.

The first step in reviewing any petition is to determine the underlying statute that authorized its filing. The township can then follow the statutory requirements provided in the relevant Act. If none are clearly provided, the township may want to consult with its township attorney to determine the petition requirements. Another important aspect is to determine the validity of the signers, who are often required

to be qualified electors, registered electors, or even “freeholders” or property owners. Some of these statutes were adopted almost 100 years ago and remain unchanged.

It is not clear that the statutory references to “qualified and registered” or only “registered” creates a distinction.

For most purposes, a “qualified” elector refers to an individual who is a citizen of the United States, 18 years of age, a resident of the State of Michigan, and a resident of the township. See MCL 168.491. A qualified elector is then entitled to be registered as an elector in the township in which he or she resides. Thus, not all petition signatory requirements are based upon registered electors but may only be based on qualified electors. Generally, however, many petitions require qualified and registered electors. The township, when reviewing the petition, will have to verify that the signatures satisfy the specific statute’s qualifications.

-- Chris Patterson and Kendall O’Connor

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