

# Township Law *E-Letter*

Fahey Schultz Burzych Rhodes PLC, Township Attorneys

## **MICHIGAN VILLAGES: COOPERATE, INCORPORATE OR DISSOLVE?**

*Financial efficiency in the delivery of government services has been a matter of great interest in Lansing this legislative term. Although some members of the state legislature sought to “consolidate” Township services to achieve this goal, they fortunately discovered that Townships provide great value for the taxes they collect. There are a number of other options available to address local government costs. This article examines village government, and some of the tools that can allow village government to better serve Michigan’s financial needs.*

### SUMMARY

- Townships have borne most of the legislative interest in local government consolidation over the last year. Other possible options for local cost savings remain largely unexplored. This Township Law *E-Letter* examines some of the legal options for bringing more fiscal efficiency to village government in Michigan.

**Remember HB 4780?** Many Township officials were shocked last year when some state legislators in Lansing decided to “downsize” (if not eliminate) Township government. Townships are arguably the most tax-efficient form of government, returning more service to taxpayers dollar-for-dollar than any other government agency at the local, state or federal levels. The state has been feeling an increasing financial pinch for the last few years, and is understandably looking for ways to deliver government more efficiently, but HB 4780 advocates discovered that Townships are the heroes in that endeavor.

There are a number of other areas the state might look to find examples of local government that could benefit from consolidation. One example is the layer of local government represented by Michigan’s villages.

In Michigan, villages are either home rule villages or general law villages, but

the powers of both types of villages are very similar. Village residents are also Township residents, and are allowed to vote in all Township elections and hold Township offices. In a sense, village residents have “dual-citizenship.”

Villages rely on Townships for tax assessing, board of review, tax collection and for most elections. Many villages also rely on Townships to provide their residents fire protection, ambulance and EMS service, libraries, cemeteries, and other services.

Although villages often provide additional services that many Townships do not provide, such as police protection, sanitary sewer and water service, those services typically carry high millages and user rates. Many villages levy millages of 10 to 15 mills, while Townships most often levy 1 mill or even less (with the Headlee rollback).

In a number of communities, the cost of village government is receiving more

scrutiny. Three different options have been offered to deal with the costs of village government.

### Cooperation

As the cover story in the April 2008 edition of the *Michigan Townships News* demonstrates, Townships have used cooperative efforts to deliver the full range of municipal services to their residents, including sewer, water, police, fire protection, EMS, and many other government services. Joint and collaborative activities with other area governments can be an extremely effective and efficient way to deliver needed services. This has been one of the strengths of Township government in our state, and has helped to make local tax dollars go much farther than if each unit operated its own service separate from its neighbors.

Unfortunately, many villages (and cities) have often not been as willing to cooperate with surrounding Townships in the delivery of services. Especially in the delivery of water and sewer services, the majority of villages and cities insist that they will not even sell those services to properties outside their boundaries unless the properties are annexed. This practice is especially inequitable considering that the large majority of cities and villages built or improved their sewer and water plants with 90% state and federal tax subsidies.

Although this barrier to cooperation has been well-known for years, the state has done nothing to curb it, and actually provides incentives for **non**-cooperation. For example, the State Boundary Commission regularly rewards cities and villages that deny access to their state and federally subsidized sewer and water systems by allowing more and more acreage to be annexed from Townships to cities. This is one unfortunate area where state policy has failed to address or incentivize the needed cooperation for local government success.

There is no question that cooperation is the most promising route to controlling increasing costs of local government. Without the active participation of villages, however, cooperation will not flourish. As state laws presently stand, there is often little that can be done to force cooperation, and state policies that actually reward uncooperative cities and villages need to be corrected.

### Incorporation

Instead of cooperating, the reaction of some villages to questions about costs has been to try to extend their financial powers even further by incorporating as cities. Over the last few years, the Michigan Municipal League has sponsored seminars for village officials, urging this option. The argument frequently made for this action is that, once incorporated as a city, the taxpayers will no longer need to pay 1 mill to the Township, and therefore the taxpayers will “reduce” their total taxes paid to the Township and village. This argument is invalid, however, because it ignores the cost of the services provided by the Township that the new city will be required to duplicate at great expense.

If a village incorporates as a city, it will need to duplicate a number of services that are already provided to village residents by the Township. These include tax assessing and collection services, the board of review, and election costs (both the initial cost of voting machines and continuing costs for each election). The new city may also find itself in the position of replacing or duplicating fire protection, ambulance, library, and other services that were formerly provided to village residents by the Township. In some cases, where the Township cemetery is located in the village, the new city will become responsible for all the cemetery operating, maintenance and administrative expenses.

In addition to the Township services that must be duplicated, the village will be required to bear the substantial “transactional costs” necessary to

become a city. These include costs for State Boundary Commission proceedings, as many as four (4) separate special elections, legal and drafting fees for a new charter, and other costs just to become a city that must be borne by the taxpayers.

There are also many “hidden costs” that accompany bigger and more bureaucratic government. For example, only a tiny fraction of Michigan villages have village managers, but almost all cities have city managers. Employment of a city manager, together with the other layers of personnel that inevitably come with cityhood, is a substantial expense that many village residents don’t think about when they are considering city incorporation. It is no secret that the average Michigan city levies about four (4) mills more than the average Michigan village. This tax disparity is attributable to the higher cost of city government.

Some villages have earnestly explored the incorporation option and have reached these same conclusions. Notably, in 2005, the Village of Sparta Cityhood Investigation Committee, after several months of study, strongly recommended that the village not seek to incorporate as a city. After looking at the services that the new city would have to duplicate, at a substantial cost in excess of the taxes that village residents paid to the Township for those same services, the Committee concluded that “becoming a city would only duplicate these services and increase city operational costs.”

On the other hand, there are an increasing number of villages that are pursuing (or attempting) the path to cityhood, regardless of the costs they may be foisting onto their residents. This not only burdens the residents of the new city, but also threatens the efficiency of services delivered to adjoining and nearby municipalities as well.

### **Dissolution/Disincorporation**

If villages choose not to cooperate, and especially if they aggressively pursue city incorporation,

Township officials will need to look at other available legal options. One option that should not be taken lightly is the possible dissolution of the village and the return of its territory to the full jurisdiction of the Township.

Most Township officials are not familiar with the village dissolution process. Although the process was overhauled by the legislature a few years ago, it is relatively unknown and has been rarely used. So, to provide more information to interested officials, we discuss the process here.

Village dissolution begins with a petition by the village residents, with signatures of a least 15% of the village’s registered electors. The petition must ask for a vote on the question of disincorporation of the village and the return of its territory to the Township or Townships in which it is located.

The petition must be addressed to and filed with the Township Clerk, who has the responsibility to determine whether the petition is legally sufficient. If the petition is sufficient, the Township Clerk is also responsible for holding the disincorporation election at the next general or special election in the village and the Township, unless the village council chooses to create a “disincorporation commission.”

There are two different paths village dissolution can take. If the village council does not opt to create a disincorporation commission, the decision is made by a vote of the village electors and the electors of all the Townships in which the village is located. For the disincorporation to prevail, a 2/3 majority of the combined village and Township voters who cast ballots on the question must vote yes. After a favorable vote, the County Board of Commissioners is required to enter a resolution vacating the incorporation of the village. Any debts of the village must be assessed against the lands comprising the former village.

*Cooperative solutions to delivering municipal services are preferable, but when they are not available, Townships need to look for novel and creative solutions.*



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The second route to village disincorporation must be followed if the village council chooses to create a village disincorporation commission. In this case, each Township in which the village is located appoints 3 members to the commission and the village appoints an equal number. The commission must develop a disincorporation plan for the orderly disincorporation of the village.

To adopt the incorporation plan, at least 2/3 of the village members and 2 of the members from each township must approve the plan. Next, the village council and the Township Board must each ratify the plan. Finally, the question of disincorporation pursuant to the plan is submitted to the affected village and Township voters. For the plan to be approved, a majority of the electors voting in the village and a majority voting in each Township must separately approve the plan at the election.

If the disincorporation plan is not promptly approved by the commission and ratified by the village council and the Township Boards, then the disincorporation question must be submitted to the village and Township voters within one year after the petition was filed in accordance with the first method discussed above.

After a disincorporation petition is filed, and until the election has been conducted, the village may not pursue any annexation proposals and may not attempt to incorporate as a city. Disincorporation petitions for any village may not be filed more often than once every 2 years.

To date, the village disincorporation procedure has been rarely used. There

may be situations where dissolution of a village could be the best option to increase the efficiency of local government services. If local cooperation is not working, and the voters of the village and the Township are inclined to pursue a consolidation of services into one unit of government, then village disincorporation may be the right solution for the community.

### **Conclusions**

Cooperative solutions to delivering municipal services are preferred, but not always available. Fahey Schultz Burzych Rhodes PLC, Township Attorneys, recognize that the solutions to the problems of today's Townships sometimes call for unique approaches. Our lawyers are very familiar with the challenges faced by Township officials, and we specialize in working with Townships to develop creative solutions to their problems. We welcome your questions and ideas about ways to improve the delivery of government services to your Township.

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*Fahey Schultz Burzych Rhodes PLC, Township Attorneys, is a law firm specializing in the representation of Townships. Our lawyers have more than 30 years of experience in Township law, and have represented more than 100 Townships across the State of Michigan. This publication is intended for our clients and friends. This communication highlights specific areas of law, and is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.*