

BIENNIAL REPORT
of the
ATTORNEY GENERAL
of the
STATE OF MICHIGAN
for the
BIENNIAL PERIOD ENDING DECEMBER 31, 2004
MICHAEL A. COX
ATTORNEY GENERAL

AUTHORITY

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LETTER OF TRANSMITTAL

To the Honorable Legislature of the State of Michigan:

In accordance with the provisions of MCL 14.30, I submit the Report of the Attorney General for the biennial period of January 1, 2003 through December 31, 2004.

MICHAEL A. COX
Attorney General



MICHAEL A. COX

Attorney General

Born in 1961, Cox entered the Marines after graduation from Catholic Central High School in Detroit and went on to graduate from the University of Michigan Law School in 1989. Cox went to work for the Wayne County Prosecutor's Office in Detroit where he prosecuted organized crime cases ranging from public corruption to drug and gang-related homicides. He tried more than 125 jury trials, in addition to hundreds of bench trials, with a conviction rate in excess of 90 percent. In 2000, Cox was appointed the Director of the Wayne County Prosecutor's Homicide Unit, which prosecuted approximately two-thirds of all homicides in Michigan. He and his wife, Laura, a former federal agent, have four children. Cox was sworn in as Attorney General of Michigan, January 1, 2003.



CAROL L. ISAACS

Chief Deputy Attorney General

East Lansing, Michigan. Received Bachelor of Science degree from Michigan State University and Juris Doctorate degree from Thomas M. Cooley Law School, Lansing, Michigan. Admitted to practice law in 1993. First woman Chief Deputy. Appointed Chief Deputy Attorney General January 2003.

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ATTORNEYS GENERAL OF THE STATE OF MICHIGAN

APPOINTED

DANIEL LEROY	July 18th, 1836–1837
PETER MOREY	March 21st, 1837–1841
ZEPHANIAH PLATT	March 4th, 1841–1843
ELON FARNSWORTH	March 9th, 1843–1845
HENRY N. WALKER	March 24th, 1845–1847
EDWARD MUNDY	March 12th, 1847–1848
GEORGE V. N. LOTHROP	April 3rd, 1848–1850

ELECTED

WILLIAM HALE	1851–1854
JACOB M. HOWARD	1855–1860
CHARLES UPSON	1861–1862
ALBERT WILLIAMS	1863–1866
WILLIAM L. STOUGHTON	1867–1868
DWIGHT MAY	1869–1872
BYRON B. BALL(a)	1873–1874
ISAAC MARSTON	April 1st, 1874–1874
ANDREW J. SMITH	1875–1876
OTTO KIRCHER	1877–1880
JACOB J. VAN RIPER	1881–1884
MOSES TAGGERT	1885–1888
STEPHEN V. R. TROWBRIDGE(b)	1889–1890
BENJAMIN W. HOUSTON	March 25th, 1890–1890
ADOLPHUS A. ELLIS	1891–1894
FRED A. MAYNARD	1895–1898
HORACE M. OREN	1899–1902
CHARLES A. BLAIR	1903–1904
JOHN E. BIRD(c)	1905–1910
FRANZ C. KUHN(d)	June 7th, 1910–1912
ROGER I. WYKES	September 6th, 1912–1912
GRANT FELLOWS	1913–1916
Alex J. GROESBECK	1917–1920
MERLIN WILEY(e)	1921–1922
ANDREW B. DOUGHERTY(f)	1923–1926
CLARE RETAN	1926–1926
W. W. POTTER(g)	1927–1928
WILBUR M. BRUCKER	1928–1930
PAUL W. VOORHIES	1931–1932
PATRICK H. O'BRIEN	1933–1934
HARRY S. TOY(h)	October 24th, 1935–1935
DAVID H. CROWLEY	1935–1936

(a) Resigned April 1st, 1874. Isaac Marston appointed to fill vacancy.

(b) Resigned March 25th, 1890. Benjamin W. Houston appointed to fill vacancy.

(c) Resigned June 6th, 1910. Franz C. Kuhn appointed to fill vacancy.

(d) Resigned September 6th, 1912. Roger I. Wykes appointed to fill vacancy.

(e) Resigned January 9th, 1923. Andrew B. Dougherty appointed to fill vacancy.

(f) Resigned October 27th, 1926. Clare Retan appointed to fill vacancy.

(g) Resigned February 16th, 1928. Wilbur M. Brucker appointed to fill vacancy.

(h) Resigned October 14th, 1935. David H. Crowley appointed to fill vacancy.

RAYMOND W. STARR	1937–1938
THOMAS READ	1939–1940
HERBERT J. RUSHTON	1941–1944
JOHN J. DETHMERS(i)	1945–1946
FOSS O. ELDRÉD	September 9th, 1946–1946
EUGENE F. BLACK	1947–1948
STEPHEN J. ROTH	1949–1950
FRANK G. MILLARD	1951–1954
THOMAS M. KAVANAGH(j)	1955–1957
PAUL L. ADAMS(k)	1958–1961
FRANK J. KELLEY	1962–1998
JENNIFER M. GRANHOLM	1999–2002
MICHAEL A. COX	2003–

-
- (i) Resigned September 9th, 1946. Foss O. Eldred appointed to fill vacancy.
 - (j) Resigned December 31st, 1957. Paul L. Adams appointed to fill vacancy.
 - (k) Resigned December 31st, 1961. Frank J. Kelley appointed to fill vacancy.

REGISTER OF
DEPARTMENT OF ATTORNEY GENERAL
2003–2004

Attorney General	MICHAEL A. COX
Chief Deputy Attorney General	CAROL L. ISAACS
Director for External Affairs	STUART M. SANDLER
Child and Family Services Bureau Chief	WANDA M. STOKES
Consumer Protection and Criminal Prosecutions Bureau Chief	A. MICHAEL LEFFLER
Economic Development and Oversight Bureau Chief	DEBORAH ANNE DEVINE
Governmental Affairs Bureau Chief	GARY P. GORDON
Solicitor General	THOMAS L. CASEY
Assistant Attorney General for Law	SUSAN I. LEFFLER
Director of Homeland Security and Special Projects	ROBERT IANNI
Assistant in Charge of Detroit Office	RON D. ROBINSON
Director of Legislative Affairs	DEENA M. BOSWORTH
Director of Communications	RANDALL H. THOMPSON
Special Assistant to the Attorney General	NATHAN C. JORDAN

During this biennial period Thomas P. Furtaw and Kevin G. Simowski served as Bureau Chiefs in the former Criminal Justice Bureau before its merger into the Consumer Protection and Criminal Prosecutions Bureau and the Governmental Affairs Bureau.

OPINION REVIEW BOARD

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Deborah Anne Devine
Stewart H. Freeman¹
Robert Ianni
Patrick F. Isom
J. Peter Lark²
Russell E Prins
Thomas F. Schimpf
Lucille Taylor³
Treva R. Truesdale⁴

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Thomas P. Furtaw⁷
Wallace T. Hart
Judy A. Hartsfield⁸
Orijakor N. Isiogu⁹
Michael F. Murphy¹⁰
Margaret A. Nelson
Paul F. Novak¹¹
Peter L. Plummer¹²
George N. Stevenson
Cynthia A. Aven – Secretary

¹ Deceased 11/11/2004. Stewart Freeman first joined the Department of Attorney General on June 6, 1966, and continued his dedicated service for over 38 years. Over his career with the department he served as Assistant in Charge of the Environmental Protection, Tort Defense, Special Projects, Consumer Protection, and Tobacco Litigation Divisions and as a member of the Attorney General's Opinion Review Board over the span of three different administrations. His honorable service will continue to be respected for years to come.

² Resigned 8/1/2003.

R. John Wernet, Jr. resigned 1/31/2003.

³ Special Assistant Attorney General appointed 6/9/2004.

⁴ Appointed 5/27/2003; resigned 6/9/2004.

⁵ Term expired 5/25/2003.

⁶ Term expired 5/25/2003.

⁷ Leave of absence from LAB 8/20/2004.

⁸ Resigned 7/23/2004.

⁹ Term expired 5/25/2003.

¹⁰ Term expired 5/25/2003.

¹¹ Resigned from LAB 10/1/2003.

¹² Resigned from LAB 10/24/2004.

ASSISTANT ATTORNEYS GENERAL

YASMIN J. ABDUL-KARIM
RICHARD M.C. ADAMS
TODD B. ADAMS
TONATZIN M. ALFARO-MAIZ
DONALD L. ALLEN, JR.
CYNTHIA A. ARCARO
CYNTHIA M. ARVANT
ROSENDO ASEVEDO, JR.
ANDREA D. BAILEY
SUSAN K. BALKEMA
PATRICIA S. BARONE
KATHARYN A. BARRON
MARGARET A. BARTINDALE
DENISE C. BARTON
H. DANIEL BEATON, JR.
BRAD H. BEAVER
LAURYL SCOTT BEECKMAN
JULIA R. BELL
MICHAEL R. BELL
TERRENCE G. BERG¹³
ROSS H. BISHOP
PHILIP L. BLADEN
E. JOHN BLANCHARD
JACK A. BLUMENKOPF
MARK E. BLUMER
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HENRY J. BOYNTON
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JEFFREY S. BRAUNLICH¹⁴
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SARAH K. BRENNER
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MARVIN L. BROMLEY
BARBARA J. BROWN¹⁵
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JENNIFER S. CALLAGHAN¹⁶
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WILLIAM C. CAMPBELL
DAVID C. CANNON
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KELLY A. CARTER
JEROME C. CAVANAGH
KATHLEEN L. CAVANAUGH
JOHN M. CHARAMELLA¹⁷
WILLIAM A. CHENOWETH
MELISSIA R. CHRISTIANSON
DENISE H. CHRYSLER¹⁸

SUANN D. COCHRAN
TODD H. COHAN
DEBORAH S. COHN
LAURA A. COOK
FELICIA M. COURTRIGHT
JAMES C. COWARD, JR.
LINDA K. CRAVEN
JULIUS O. CURLING
JOHN D. DAKMAK
ERROL R. DARGIN
TIFFANY N. DAUGHERTY
MARK F. DAVIDSON
JON M. DEHORN
JAMES P. DELANEY
WILLIAM W. DERENGOSKI¹⁹
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DARNELLE DICKERSON
SUZANNE R. DILLMAN
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MARK E. DONNELLY
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RONALD H. FARNUM
JAMES T. FARRELL
SHARON L. FELDMAN²⁴
CHANTAL B. FENNESSEY
ELAINE D. FISCHHOFF
KATHLEEN P. FITZGERALD
STEVEN B. FLANCHER

¹³ RESIGNED 6/26/2003

¹⁴ RETIRED 3/31/2003

¹⁵ RESIGNED 1/2/2004

¹⁶ RESIGNED 2/27/2004

¹⁷ RESIGNED 4/28/2004

¹⁸ RESIGNED 2/28/2003

¹⁹ RETIRED 11/26/2003

²⁰ RETIRED 8/8/2003

²¹ RETIRED 12/20/2003

²² RESIGNED 3/12/2004

²³ RETIRED 5/5/2004

²⁴ RESIGNED 3/12/2004

SHERRI T. FLEMING²⁵
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DARRIN F. FOWLER
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STEWART H. FREEMAN²⁷
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JAMES E. LONG
IRIS M. LOPEZ

²⁵ RESIGNED 10/22/2004

²⁶ RETIRED 12/31/2004

²⁷ DECEASED 11/10/2004

²⁸ RESIGNED 9/19/2003

²⁹ RESIGNED 4/23/2004

³⁰ RESIGNED 7/23/2004

³¹ RESIGNED 6/20/2003

³² RESIGNED 3/24/2003

³³ RESIGNED 4/9/2004

³⁴ RESIGNED 8/1/2003

³⁵ RETIRED 10/31/2003

JOHN P. MACK
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KEVIN T. SMITH
KRISTIN M. SMITH
NICHOLE M. SOMA

³⁶ RESIGNED 1/17/2003

³⁷ RESIGNED 2/28/2003

³⁸ RESIGNED 1/17/2003

³⁹ RESIGNED 6/20/2004

⁴⁰ RESIGNED 1/2/2004

⁴¹ RETIRED 8/27/2004

⁴² RESIGNED 1/17/2003

⁴³ RESIGNED 3/20/2003

SUZANNE D. SONNEBORN
TRACY A. SONNEBORN
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MICHAEL A. YOUNG
MORRISON R. ZACK

⁴⁴ RESIGNED 6/17/2003

⁴⁵ RESIGNED 4/6/2004

⁴⁶ RESIGNED 1/31/2003

⁴⁷ RESIGNED 10/26/2004

Executive Assistant to Attorney General HOLLY M. McDONALD

Executive Assistant to Chief Deputy Attorney General SANDRA J. SZUL

Executive Assistant to Director for External Affairs ANDREW H. PHELPS

SENIOR EXECUTIVE MANAGEMENT ASSISTANTS

CYNTHIA L. ARMSTRONG
CYNTHIA A. AVEN
DIANE M. ERLEY⁴⁸
LOIS E. GRUESBECK⁴⁹
ALICIA K. KIRKEY
CARLA S. LECHLER
MAXINE R. RECK
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HARRIET J. WEAVER⁵⁰

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ESTHER H. BAN
CONNIE L. BARR
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M. ANNETTE BARZEY
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RHONDA G. FLOYD
JOLINDA J. FULTON⁶⁰
PATRICIA A. GAME
LOIS J. GARVER
MARY E. GEE
JULIE A. GERSZEWSKI

⁴⁸ TRANSFERRED 3/21/2003
⁴⁹ TRANSFERRED 12/5/2003
⁵⁰ RETIRED 7/30/2004
⁵¹ TRANSFERRED 7/18/2003
⁵² TRANSFERRED 7/18/2003
⁵³ TRANSFERRED 7/18/2003
⁵⁴ TRANSFERRED 2/13/2004
⁵⁵ RETIRED 4/25/2003
⁵⁶ TRANSFERRED 8/15/2003
⁵⁷ TRANSFERRED 6/20/2003
⁵⁸ TRANSFERRED 3/12/2004
⁵⁹ TRANSFERRED 3/14/2003
⁶⁰ RETIRED 4/25/2003

CHERYL A. GOFF
AMY A. GONEA
MARNI J. GOODWIN
STEPHANIE L. GRACE
KIMBERLY S. GREENHOE
HOLLY L. GUSTAFSON
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KIMBERLY K. HARRIS-BURROWS⁶¹
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JUDY G. KILDUFF
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SARA B. KINSTREY
PATRICIA A. KLEIN
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MICHELE L. LEMMON
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BERTHA L. MATHIS
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JOLEEN A. MCQUISTON
MARIE G. MEDLOCK⁶²
VICKIE A. MINER
LAUREN J. MORRISH
ANNETTE L. MURPHY
KIMBORLY S. MUSSER
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NANCY M. O'SHEA
MISHELLE R. PAGELS⁶³
MARIE B. PARKER⁶⁴
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SHARON M. PAVLIK
CATHY M. PAWLUS
CHRISTINA M. PEARCE⁶⁵
MARGARET M. PERRIN

DELYNN M. PETTIT
PIER M. PIEPENBROK
DIANE M. PITTMAN
SHARON L. PITTMAN⁶⁶
THERESA L. POLLACK
TANYA L. POPE
KARON M. POST
PAMELA A. PUNG
CLARISSE Y. RAMEY
MARILYN REED
DENISE R. RICHARDS
CHERIE A. RICHIE
PHYLLIS I. RIED
NANCY L. ROBINS
DEBRA D. ROBINSON⁶⁷
RHONDA S. ROBISON
CYNTHIA M. RUFF
JOY S. RYAN
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CRISTIE A. SCHAFER
JANET A. SCHAFER
KELLY J. SCHUMAKER
DEBBIE J. SCOTT
BETTY S. SHEPARD
JERI M. SHERWOOD
MARY E. SIGFRED
CAROL L. SIMON
SANDRA J. SMUCKER⁶⁸
KAREN K. SPARKS⁶⁹
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ANDREA C. STRONG
JANET K. SWANSON⁷⁰
SUSAN R. SWANSON
JACQUELINE M. SZYMANSKI
MYRNA L. TATE
CINDY K. TESSMAN
BARBARA A. TESZLEWICZ
NATALIE D. THELEN
SUSAN L. TIGNER
WENDY L. TODD
PAMELA A. WALTERS WHALON

⁶¹ TRANSFERRED 11/7/2003

⁶² TRANSFERRED 7/18/2003

⁶³ RESIGNED 2/20/2004

⁶⁴ TRANSFERRED 8/29/2003

⁶⁵ TRANSFERRED 6/18/2004

⁶⁶ RESIGNED 3/10/2003

⁶⁷ RESIGNED 1/26/2004

⁶⁸ TRANSFERRED 1/17/2003

⁶⁹ RETIRED 7/30/2004

⁷⁰ RETIRED 2/20/2004

DEBRA L. WHIPPLE⁷¹
JENNIFER J. WHITEHEAD⁷²
WENDY J. WHITMORE
LATASHA S. WILKINS
MARY F. ZISCHKE

HUMAN RESOURCES STAFF
DOUGLAS J. BRAMBLE, DIRECTOR
JULIE A. CAMPBELL
TRACI A. CREGO⁷³
VERONICA E. ESTRADA
JUSTIN A. GRAY
TRISHA L. HAMPTON⁷⁴
MARY V. JOY
IRENE A. WINTER

FISCAL MANAGEMENT STAFF
JAMES SELLECK, DIRECTOR
BETH L. BALL
SUSAN A. BRISTOL
ANNE M. GIRVIN⁷⁵
NICOLAS L. LYON⁷⁶
CARRIE S. MOREY
SERGIO PANEQUE⁷⁷

PURCHASING PROCUREMENT
STAFF
CRAIG A. FARR
CYNTHIA J. FOURNIER

STOREKEEPERS
JANICE J. ADAMS
RODGER F. BROWN
JACKIE E. CROCKETT

DEPARTMENT SUPERVISOR
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REGULATION AGENT
CONSTANCE Y. HAWTHORNE
MARK KACHAR
MARGARET L. ROST

DEPARTMENTAL TECHNICIANS
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BEVERLY J. BALLINGER
ANGELA E. BRANCH
DANIEL J. BURNS
SANDRA M. CUDDY
MICHELLE R. DOERR
BETH A. DOYLE-STEADMAN
CHYNESSIA M. EVANS
BARBARA L. FAIR

TAMARA L. McCOMB
MITZI F. MERTENS
MELODY L. O'KEEFE
PATRICIA D. OVENSHERE⁷⁸
ANGELITA RIPLEY
CHERYL A. SCOTT⁷⁹
CYNTHIA A. SCOTT
JOANN C. SEPIC
GRETCHEN W. VILLARREAL
ROSETTA T. WATTS

COMMUNICATIONS
REPRESENTATIVE
MARTHA K. EYDE

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KIM W. EDDIE
JOHN P. GOERGEN
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MYRA J. HOLMI
KAREN G. MALEITZKE
KIM I. MATHISON
JOEY K. SCHUELLER
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BEVERLY A. THELEN
MATTHEW K. WADE
BRIAN C. ZUBEL

AUDITORS
STANWOOD L. KRYCINSKI
JOSEPH J. KYLMAN
RICHARD J. RUELLE
ERIC D. SPANOGLE

INVESTIGATORS
PETER B. ACKERLY
LYNNE M. BARRON

⁷¹ TRANSFERRED 1/10/2003

⁷² RESIGNED 11/30/2004

⁷³ TRANSFERRED 4/24/2004

⁷⁴ TRANSFERRED 8/29/2003

⁷⁵ TRANSFERRED 10/8/2004

⁷⁶ TRANSFERRED 1/31/2003

⁷⁷ TRANSFERRED 1/31/2003

⁷⁸ RETIRED 11/10/2003

⁷⁹ RESIGNED 3/28/2003

GARY L. CALDER⁸⁰
DONALD W. CHRISTY, JR.
JAMES P. CLICKNER
LINDA L. DAMER
ROBERT L. DAUSMAN, JR.
MARK W. DEHAAN⁸¹
WILLIAM E. DENNIS
TERRENCE P. DOYLE⁸²
DENNIS S. EDWARDS⁸³
WAYNE M. ETUE⁸⁴
THOMAS C. FULLER
TRACY L. GREENWOOD
GEORGE A. HARRIS
MICHAEL P. HARRIS⁸⁵
DENNIS G. KAPELANSKI
KEVIN K. KONCZAL⁸⁶
ROBERT D. KRAFT
JACQUELYN M. LACK
JAMES A. MAY
MARTIN J. MAY
ADOLPH McQUEEN, JR.
JOHN P. METTS
DANEIL MITCHELL
DONOVAN MOTLEY
SHELA E. MOTLEY⁸⁷
JOHN C. MULVANEY
MIKE ONDEJKO
JESSICA L. OSTROWSKI
ROBERT R. PEPLINSKI
RANDEL L. POMPEY⁸⁸
IVES R. POTRAFKA⁸⁹
PHILLIP C. PRESNELL⁹⁰
DAVID M. RUIZ
CLYDE F. SANFORD⁹¹
FRANK SAUCEDO, JR.⁹²
WESLEY G. SHAW
MARK S. SIEGEL
DENA L. SMITH
DANIEL C. SOUTHWELL
ROLLIE E. STEPHENS
THOMAS A. STROEMER
ROBERT M. TRAMEL
REBECCA A. TREBER
MELANIE M. VERMILLION
MICHAEL D. WILLIAMS
JACK S. WING
JAMES W. WOOD
STAR L. ZYLSTRA

PARALEGALS
LINDSAY D. BURR
LYNDA K. HOOD-SARWAS⁹³

MARTIN J. MAY
DIANE M. MICALE
CATHY I. MURRAY
AMY J. REED

ADMINISTRATIVE ASSISTANTS

MATHEW G. DAVIS⁹⁴
SAGE D. EASTMAN⁹⁵
REBECCA M. JARVIS⁹⁶
ADAM J. JONES

ACCOUNTING TECHNICIAN

MARJORIE L. PENDELL

ACCOUNTING ASSISTANT

CARRIE M. FEDEWA

DEPARTMENTAL ANALYSTS

CHRISTINE S. DINGEE
JENIFER L. ESCH
J. LOUISE FINDLEY
RHONDA L. KING⁹⁷
NATALIE M. STEWART

DEPARTMENTAL SPECIALISTS

MARION Y. GORTON
VICTORIA F. MANNING⁹⁸

⁸⁰ RESIGNED 12/19/2003

⁸¹ RESIGNED 6/30/2004

⁸² RETIRED 4/1/2004

⁸³ RESIGNED 3/24/2004

⁸⁴ RESIGNED 1/22/2004

⁸⁵ RESIGNED 11/19/2004

⁸⁶ RESIGNED 7/30/2004

⁸⁷ RESIGNED 4/1/2004

⁸⁸ RESIGNED 9/25/2004

⁸⁹ RESIGNED 1/2/2004

⁹⁰ RESIGNED 4/23/2003

⁹¹ RESIGNED 8/16/2004

⁹² RESIGNED 6/11/2004

⁹³ TRANSFERRED 4/9/2004

⁹⁴ RESIGNED 5/26/2004

⁹⁵ RESIGNED 10/9/2003

⁹⁶ RESIGNED 8/26/2003

⁹⁷ RESIGNED 6/18/2004

⁹⁸ TRANSFERRED 1/3/2003

THUMBNAIL SKETCHES
OF
ASSISTANT ATTORNEYS GENERAL

Yasmin J. Abdul-Karim

Farmington Hills, Michigan. University of Michigan-Dearborn, B.A. University of Michigan, J.D. Admitted to practice law June 1996. Appointed Assistant Attorney General December 2002.

Richard M.C. Adams

Grand Ledge, Michigan. Oakland University, B.A. University of Detroit, M.A. Wayne State University, J.D. Admitted to practice law December 1980. Veteran of Vietnam War. Appointed Assistant Attorney General September 1987.

Todd B. Adams

Okemos, Michigan. Miami University, B.A. University of Michigan, J.D. Admitted to practice law 1984. Appointed Assistant Attorney General February 1986 - August 1999. Reappointed December 2002.

Tonatzin M. Alfaro-Maiz

Lansing, Michigan. Michigan State University, B.A. Valparaiso Law School, J.D. Admitted to practice law August 1984. Appointed Assistant Attorney General June 1985.

Donald L. Allen, Jr.

Lansing, Michigan. Wayne State University, B.S. Wayne State University, J.D. Admitted to practice law in 1983. Appointed Assistant Attorney General February 1988.

Cynthia A. Arcaro

East Lansing, Michigan. Michigan State University, B.A. Grand Valley State University, M.A. Thomas Cooley Law School, J.D. Admitted to practice law in 1995. Appointed Assistant Attorney General February 2004.

Cynthia M. Arvant

Huntington Woods, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law November 1995. Appointed Assistant Attorney General January 2000.

Rosendo Asevedo, Jr.

Novi, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law March 1978. Veteran of Vietnam War. Appointed Assistant Attorney General December 1985.

Andrea D. Bailey

Lathrup Village, Michigan. Western Michigan University, B.S. Eastern Michigan University, M.A. Wayne State University Law School, J.D. Admitted to practice law June 1995. Appointed Assistant Attorney General February 1996.

Susan K. Balkema

Grand Rapids, Michigan. University of Michigan, B.A. Loyola University of Chicago, School of Law, J.D., Specialty Certificate in Health Law. Admitted to practice law in Illinois, November 2002; Michigan, November 2003. Appointed Assistant Attorney General July 2004.

Patricia S. Barone

Lansing, Michigan. University of Michigan, B.G.S. Antioch School of Law, Washington, D.C., J.D. Admitted to practice law in Washington, D.C., 1978; Michigan, 1978. Appointed Assistant Attorney General May 1984.

Katharyn A. Barron

East Lansing, Michigan. University of Notre Dame, B.A., J.D. Admitted to practice law November 1991. Appointed Assistant Attorney General October 1992.

Margaret A. Bartindale

Royal Oak, Michigan. Alma College, B.A. Detroit College of Law, J.D. Wayne State University, LL.M. Admitted to practice law July 1988. Appointed Assistant Attorney General June 1990. Resigned June 1992. Reappointed November 1995.

Denise C. Barton

Ann Arbor, Michigan. Michigan State University, B.A. Georgetown University, J.D. Admitted to practice law in Pennsylvania, November 1978; Michigan, September 1988. Appointed Assistant Attorney General December 1988.

H. Daniel Beaton, Jr.

Grand Ledge, Michigan. Marquette University, B.A. Detroit College of Law, J.D. Admitted to practice law May 1990. Appointed Assistant Attorney General June 1990. Laid-off January 1991 due to budgetary restraints. Reappointed October 1991.

Brad H. Beaver

Ann Arbor, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law in 1993. Appointed Assistant Attorney General January 1996.

Lauryl Scott Beeckman

Bloomfield Hills, Michigan. Central Michigan University, B.A.A. Thomas M. Cooley Law School, J.D. Admitted to practice law February 1994. Appointed Assistant Attorney General June 2004.

Julia R. Bell

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law in Michigan, 1983; California, 1985. Appointed Assistant Attorney General June 1987.

Michael R. Bell

DeWitt, Michigan. University of Colorado, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law in Michigan, May 1993. Appointed Assistant Attorney General October 2004.

Terrence G. Berg

Detroit, Michigan. Georgetown University, B.S., J.D. Admitted to practice law in 1986. Appointed Assistant Attorney General May 1999.

Ross H. Bishop

DeWitt, Michigan. Michigan State University, B.S. Thomas M. Cooley Law School, J.D. Veteran of Vietnam War. Admitted to practice law May 1976. Appointed Assistant Attorney General November 1978.

Philip L. Bladen

East Lansing, Michigan. University of Wisconsin, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1997. Appointed Assistant Attorney General June 1997.

E. John Blanchard

Haslett, Michigan. University of Michigan. B.G.S. Thomas M. Cooley Law School, J.D. Admitted to practice law October 1978. Appointed Assistant Attorney General October 1978.

Jack A. Blumenkopf

Oak Park, Michigan. Wayne State University, B.A. Wayne State University Law School, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General October 1974.

Mark E. Blumer

East Lansing, Michigan. Michigan State University, B.A. University of Detroit, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney January 1976.

Thomas P. Boyd

Lansing, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law June 1991. Appointed Assistant Attorney General February 1995.

Henry J. Boynton

East Lansing, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law in Michigan, 1975; Florida, 1975. Appointed Assistant Attorney General October 1976.

Robert L. Brackenbury

Ann Arbor, Michigan. Eastern Michigan University, B.S, M.A. Wayne State University, J.D. Admitted to practice law in Michigan, November 1999. Appointed Assistant Attorney General July 2003.

Jeffrey S. Braunlich

Okemos, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1988. Appointed Assistant Attorney General July 1988.

Megan Maher Brennan

Grosse Pointe Park, Michigan. Michigan State University, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1987. Appointed Assistant Attorney General August 2003.

Sara K. Brenner

Farmington Hills, Michigan. Grand Valley State University, M.B.A. Michigan State University, Detroit College of Law, J.D. Admitted to practice law May 2003. Appointed Assistant Attorney General March 2004.

David D. Brickey

Lansing, Michigan. Michigan State University, B.A. DePaul University College of Law, J.D. Admitted to practice law November 1993. Appointed Assistant Attorney General August 1999.

Marvin L. Bromley

Grand Ledge, Michigan. Grand Valley State College, B.S. Detroit College of Law, J.D. Admitted to practice law May 1974. Appointed Assistant Attorney General August 1975.

Barbara J. Brown

East Lansing, Michigan. Green Mountain College, A.A. University of Vermont, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1987. Appointed Assistant Attorney General July 1987.

Larry F. Brya

Grand Ledge, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1976. Appointed Assistant Attorney General August 1976.

Steven M. Cabadas

Clarkston, Michigan. Western Michigan University, B.A. Detroit College of Law, J.D. Admitted to practice law June 1985. Appointed Assistant Attorney General September 2003.

John M. Cahill

Howell, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1979. Appointed Assistant Attorney General May 1979. Resigned October 1987. Reappointed July 1990.

Jennifer S. Callaghan

Rochester Hills, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law November 2000. Appointed Assistant Attorney General November 2000.

Thomas C. Cameron

Trenton, Michigan. Western Michigan University, B.B.A. Wayne State University, J.D. Admitted to practice law May 1996. Appointed Assistant Attorney General July 2003.

Christine Mikrut Campbell

Lansing, Michigan. Michigan State University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law in Michigan, 1980; Florida, 1982. Appointed Assistant Attorney General September 1986.

William C. Campbell

Brighton, Michigan. Wayne State University, B.A. University of Detroit School of Law, J.D. Admitted to practice law December 1986. Appointed Assistant Attorney General November 1988.

David C. Cannon

Troy, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law December 1980. Appointed Assistant Attorney General April 1986.

Ray W. Cardew, Jr.

Royal Oak, Michigan. Wayne State University, B.S. Detroit College of Law, J.D. Admitted to practice law December 1972. Appointed Assistant Attorney General July 1978.

Stephanie A. Carl

Royal Oak, Michigan. Michigan State University, B.A. Michigan State University, Detroit College of Law, J.D. Admitted to practice law November 2000. Appointed Assistant Attorney General July 2003.

Kelly A. Carter

Belleville, Michigan. Alma College, B.A. University of Detroit Mercy School of Law, J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General January 1997.

Thomas L. Casey

Okemos, Michigan. Indiana University, Michigan State University, B.A. University of Michigan, J.D. Admitted to practice law November 1974. Appointed Assistant Attorney General November 1975. Appointed Solicitor General July 1992.

Jerome C. Cavanagh

Haslett, Michigan. Wayne State University, B.A. Detroit College of Law, J.D. Admitted to practice law June 1996. Appointed Assistant Attorney General June 1997.

Kathleen L. Cavanaugh

Lansing, Michigan. Michigan State University, B.S. Wayne State University Law School, J.D. Admitted to practice law November 1985. Appointed Assistant Attorney General October 1987.

John M. Charamella

East Lansing, Michigan. Michigan State University, B.S. University of Pittsburgh, J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General October 1999.

William A. Chenoweth

East Lansing, Michigan. Alma College, B.A. University of Notre Dame Law School, J.D. Admitted to practice law October 1977. Appointed Assistant Attorney General June 1981.

Melissia R. Christianson

Lansing, Michigan. University of Wisconsin, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 2004. Appointed Assistant Attorney General June 2004.

Denise H. Chrysler

Lansing, Michigan. University of Michigan, B.A., J.D. Admitted to practice law June 1981. Appointed Assistant Attorney General August 1983.

Suann M. Cochran

Canton, Michigan. Eastern Michigan University, B.S. Wayne State University, J.D. Admitted to practice law November 1983. Appointed Assistant Attorney General October 1984.

Todd H. Cohan

Haslett, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General December 1977.

Deborah S. Cohn

Huntington Woods, Michigan. Wayne State University, B.S., J.D. Admitted to practice law May 1972. Appointed Assistant Attorney General April 1990.

Laura A. Cook

St. Johns, Michigan. Central Michigan University, B.S. University of Michigan Law School, J.D. Admitted to practice law in 1991. Appointed Assistant Attorney General March 1999.

Felicia M. Courtright

Allen Park, Michigan. Eastern Michigan University, B.S. Detroit College of Law, J.D. Admitted to practice law November 1994. Appointed Assistant Attorney General July 2004.

James C. Coward, Jr.

Lansing, Michigan. Coastal Carolina University, B.A. Michigan State University, Detroit College of Law, J.D. Wayne State University Law School, LL.M. Admitted to practice law May 2003. Appointed Assistant Attorney General March 2004.

Linda K. Craven

Williamston, Michigan. Michigan State University. Thomas M. Cooley Law School, J.D. Admitted to practice law in 1980. Appointed Assistant Attorney General June 1994.

Julius O. Curling

Livonia, Michigan. University of Michigan, B.A. Valparaiso University School of Law, J.D. Admitted to practice law May 1998. Appointed Assistant Attorney General December 2002.

John D. Dakmak

Detroit, Michigan. University of Detroit, B.S. Michigan State University, College of Law, J.D. Admitted to practice law May 1998. Appointed Assistant Attorney General August 2004.

Errol R. Dargin

Southfield, Michigan. Wayne State University, B.A. Wayne State University, M.A.T., M.S.L.S. Detroit College of Law, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General October 1978.

Tiffany N. Daugherty

West Bloomfield, Michigan. Michigan State University, B.A. University of Michigan, J.D. Admitted to practice law May 1998. Appointed Assistant Attorney General August 2003.

Mark F. Davidson

Dearborn, Michigan. Wayne State University, B.A. Detroit College of Law, J.D. Admitted to practice law November 1980. Appointed Assistant Attorney General November 1985.

Jon M. DeHorn

Detroit, Michigan. University of Michigan, A.B. Indiana University, J.D. Admitted to practice law in 1975. Appointed Assistant Attorney General April 1975.

James P. Delaney

Beverly Hills, Michigan. University of Detroit, B.A. Detroit College of Law, J.D. Admitted to practice law May 1977. Appointed Assistant Attorney General November 1978.

William W. Derengoski

Williamston, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1982. Appointed Assistant Attorney General March 1983.

Deborah Anne Devine

Lansing, Michigan. Central Michigan University, B.S. Detroit College of Law, J.D. Admitted to practice law November 1978. Appointed Assistant Attorney General November 1978.

Darnelle Dickerson

Highland Park, Michigan. Wayne State University, B.S. University of Detroit Law School, J.D. Admitted to practice law May 1983. Appointed Assistant Attorney General December 2002.

Suzanne R. Dillman

Ann Arbor, Michigan. Butler University, B.S. Indiana University School of Law, J.D. Admitted to practice law in Indiana, November 2002; Michigan, May 2004. Appointed Assistant Attorney General July 2004.

Heather L. Donald

Royal Oak, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law November 1997. Appointed Assistant Attorney General July 2003.

Mark E. Donnelly

Grand Rapids, Michigan. University of Michigan, B.G.S. Detroit College of Law, J.D. Admitted to practice law November 1986. Appointed Assistant Attorney General December 1986.

Heather M. Durian

Mason, Michigan. Calvin College, B.A. Michigan State University, College of Law, J.D. Admitted to practice law November 2004. Appointed Assistant Attorney General November 2004.

Sanna Durk

East Lansing, Michigan. Western Michigan University, B.A. University of Michigan, M.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1990. Appointed Assistant Attorney General July 1990. Laid-off January 1991 due to budgetary restraints. Reappointed October 1991.

David G. Edick

East Lansing, Michigan. Michigan State University, B.S. Wayne State University Law School, Detroit College of Law, J.D. Admitted to practice law November 1979. Appointed Assistant Attorney General March 1982.

Eric J. Egan

Lansing, Michigan. Central Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1981. Appointed Assistant Attorney General May 1981.

George M. Elworth

East Lansing, Michigan. Stanford University, A.B. University of Michigan, J.D. Admitted to practice law in Georgia and Illinois, 1969 and Michigan, 1974. Served in U.S. Army 1964-1966. Appointed Assistant Attorney General August 1974.

Ronald W. Emery

Lansing, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General September 1975.

Donald E. Erickson

Okemos, Michigan. University of Michigan, B.A., J.D. Admitted to practice law December 1971. Appointed Assistant Attorney General August 1978.

Stacy L. Erwin

Lansing, Michigan. Saginaw Valley State University, Ferris State University, B.A. Detroit College of Law at Michigan State University, J.D. Admitted to practice law in 2002. Appointed Assistant Attorney General December 2002.

Angelita Espino

Detroit, Michigan. University of Arizona, B.A. Wayne State University, M.S.L.S. Detroit College of Law, J.D. Admitted to practice law December 1988. Appointed Assistant Attorney General January 1993.

Angie A. Fadly

Okemos, Michigan. University of Michigan, B.A. DePaul University College of Law, J.D. Admitted to practice law November 2002. Appointed Assistant Attorney General March 2004.

Ronald H. Farnum

DeWitt, Michigan. Oakland University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law December 1979. Appointed Assistant Attorney General January 1980.

James T. Farrell

Lansing, Michigan. Central Michigan University, B.S. Wayne State University, J.D. Admitted to practice law November 1983. Appointed Assistant Attorney General October 1998.

Sharon L. Feldman

Okemos, Michigan. University of Michigan, B.A., J.D. Admitted to practice law in Massachusetts, 1985; Michigan, 1987. Appointed Assistant Attorney General January 1988.

Chantal M. Fennessey

Grosse Pointe Farms, Michigan. Michigan State University, B.A. University of Detroit, J.D. Admitted to practice law November 1989. Appointed Assistant Attorney General November 1989. Laid-off January 1991 due to budgetary restraints. Reappointed June 1992.

Elaine D. Fischhoff

West Bloomfield, Michigan. Wayne State University, B.A., J.D. Admitted to practice law November 1974. Appointed Assistant Attorney General July 1976.

Kathleen P. Fitzgerald

Owosso, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law in 1980. Appointed Assistant Attorney General July 1997.

Steven B. Flancher

Eaton Rapids, Michigan. Northern Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1993. Appointed Assistant Attorney General May 1993.

Sherri T. Fleming

Lansing, Michigan. Northeastern Illinois University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law June 2002. Appointed Assistant Attorney General December 2002.

David K. Foust

Grosse Pointe Woods, Michigan. Wayne State University, B.A. Wayne State University, J.D. Admitted to practice law December 1973. Appointed Assistant Attorney General September 1975.

Darrin F. Fowler

Lansing, Michigan. Michigan State University, B.A. Notre Dame Law School, J.D. Admitted to practice law November 1997. Appointed Assistant Attorney General December 1997.

Michael J. Fraleigh

East Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General November 1984.

Phillip I. Frame

Mason, Michigan. Eastern Michigan University, B.B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1986. Appointed Assistant Attorney General April 1990.

Kevin L. Francart

Flint, Michigan. Kemper Military College, A.A. University of Michigan, Flint, A.B. Thomas M. Cooley Law School, J.D. Admitted to practice law July 2001. Appointed Assistant Attorney General August 2003.

Stewart H. Freeman

Williamston, Michigan. Wayne State University, B.A., J.D. Admitted to practice law December 1966. Appointed Assistant Attorney General December 1966.

Michael G. Frezza

Grosse Pointe Park, Michigan. University of Michigan, B.B.A. Wayne State University, J.D. Admitted to practice law November 1992. Appointed Assistant Attorney General July 1997.

Leo H. Friedman

Okemos, Michigan. Eastern Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General November 1976.

LuAnn C. Frost

Charlotte, Michigan. Lake Superior State University, B.S. Wayne State Law School, J.D. Admitted to practice law November 1989. Appointed Assistant Attorney General November 1989. Laid-off January 1991 due to budgetary restraints. Reappointed October 1991.

Thomas P. Furtaw

Grosse Pointe Woods, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law May 1995. Appointed Assistant Attorney General January 2003.

Debra M. Gagliardi

East Lansing, Michigan. University of Michigan, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law in 1982. Appointed Assistant Attorney General December 1997.

Katherine C. Galvin

East Lansing, Michigan. Michigan State University, B.A. University of Michigan, J.D. Admitted to practice law November 1995. Appointed Assistant Attorney General August 1997.

Kathleen A. Gardiner

Royal Oak, Michigan. Wayne State University, Oakland University, B.A. University of Michigan Law School, J.D. Admitted to practice law in 1991. Appointed Assistant Attorney General July 1994.

Richard P. Gartner

East Lansing, Michigan. Wayne State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1977. Appointed Assistant Attorney General May 1977.

Stephen M. Geskey

Lansing, Michigan. Michigan State University, B.S. University of Detroit School of Law, J.D. Admitted to practice law November 1995. Appointed Assistant Attorney General December 1997.

Kathleen A. Gleeson

Eaton Rapids, Michigan. Michigan State University, B.S. Duquesne University School of Law, J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General June 1997.

James W. Glennie

Mason, Michigan. University of Michigan, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1985. Appointed Assistant Attorney General December 1985.

Dana M. Goldberg

Royal Oak, Michigan. Michigan State University, B.A. Case Western Reserve University School of Law, J.D. Admitted to practice law November 1998. Appointed Assistant Attorney General June 1999.

Howard E. Goldberg

Farmington Hills, Michigan. Wayne State University, B.A., J.D. Admitted to practice law January 1971. Appointed Assistant Attorney General July 1971.

Paul D. Goodrich

Troy, Michigan. Michigan State University, B.A. University of Michigan, M.A. Indiana University, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General October 1974.

Gary P. Gordon

Okemos, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General November 1976.

Jennifer L. Gordon

Berkley, Michigan. Eastern Michigan University, B.S. University of Detroit, J.D. Admitted to practice law November 1998. Appointed Assistant Attorney General December 1998.

Neil D. Gordon

Ann Arbor, Michigan. University of Michigan, B.S. George Washington University, J.D. Admitted to practice law January 1991. Appointed Assistant Attorney General May 1997.

Sara R. Gosman

East Lansing, Michigan. Princeton University, B.A. Harvard Law School, J.D. Harvard John F. Kennedy School of Government, M.P.A. Admitted to practice law May 2004. Appointed Assistant Attorney General June 2004.

A. Peter Govorchin

Okemos, Michigan. Grand Valley State College, Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law June 1980. Appointed Assistant Attorney General July 1980.

Terrence P. Grady

Okemos, Michigan. University of Detroit, A.B. University of Detroit School of Law, J.D. Admitted to practice law December 1969. Appointed Assistant Attorney General December 1969.

Erik A. Grill

Okemos, Michigan. University of Dearborn, B.A. Detroit College of Law at Michigan State University, J. D. Admitted to practice law November 2002. Appointed Assistant Attorney General December 2002.

Joshua W. Gubkin

Lansing, Michigan. Michigan State University, B.S. Stuart School of Business, M.S. Chicago-Kent College of Law, J.D. Admitted to practice law in Illinois, 1997; Michigan, 1999. Appointed Assistant Attorney General October 1999.

Socorro Guerrero

East Lansing, Michigan. University of Michigan, B.A. University of Toledo, J.D. Admitted to practice law October 1977. Appointed Assistant Attorney General June 1989.

Charles D. Hackney

East Lansing, Michigan. Kalamazoo College, B.A. University of Michigan Law School, J.D. Admitted to practice law January 1968. Appointed Assistant Attorney General January 1968.

Tariq S. Hafeez

Canton, Michigan. University of Michigan, B.A., J.D. Admitted to practice law November 2002. Appointed Assistant Attorney General March 2004.

Felepe H. Hall

Detroit, Michigan. Wayne State University, B.A. Ohio Northern University, J.D. Admitted to practice law May 1999. Appointed Assistant Attorney General February 2004.

Linda K. Handren

Dearborn, Michigan. Barry University, B.A. Middlebury College, M.A. Wayne State University, J.D. Admitted to practice law November 2000. Appointed Assistant Attorney General November 2000.

Katherine L. Hansen

Detroit, Michigan. Morningside College of Sioux City, Iowa, B.A. Drake University of Law, J.D. Wayne State University, LL.M.. Admitted to practice law November 1991. Appointed Assistant Attorney General January 2000.

Juandish M. Harris

Southfield, Michigan. Western Michigan University, B.B.A. Wayne State University Law School, J.D. Admitted to practice law November 2002. Appointed Assistant Attorney General March 2004.

Kim G. Harris

Okemos, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law June 1971. Appointed Assistant Attorney General April 1990.

Edith C. Harsh

Lansing, Michigan. Indiana University, B.A. University of Notre Dame, J.D. Admitted to practice law June 1981. Appointed Assistant Attorney General May 1984.

Wallace T. Hart

Williamston, Michigan. University of Michigan-Flint, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law October 1977. Appointed Assistant Attorney General October 1977.

Judy A. Hartsfield

Southfield, Michigan. University of Michigan, B.A. University of San Diego School of Law, J.D. Admitted to practice law June 1982. Appointed Assistant Attorney General December 1988.

Kevin R. Himebaugh

Lansing, Michigan. Hope College, B.A. Western Illinois University, M.S. Wayne State University Law School, J.D. Admitted to practice law November 1998. Appointed Assistant Attorney General November 1998.

Alan F. Hoffman

DeWitt, Michigan. Ohio Northern University, B.A. Ohio Northern University School of Law, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General May 1977.

Genevieve D. Hopkins

Grosse Pointe Park, Michigan. University of Michigan, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1997. Appointed Assistant Attorney General December 2004.

Rose A. Houk

East Lansing, Michigan. Wayne State University, B.A., J.D. Admitted to practice law in 1969. Appointed Assistant Attorney General May 1980.

Peggy A. Housner

Novi, Michigan. Saginaw Valley College, Central Michigan University, B.S. Wayne State University Law School, J.D. Admitted to practice law November 1992. Appointed Assistant Attorney General February 1996.

Raymond O. Howd

Haslett, Michigan. University of Michigan, B.A. University of Detroit, J.D. Admitted to practice law June 1985. Appointed Assistant Attorney General September 1985.

Steven D. Hughey

East Lansing, Michigan. Michigan State University, B.A. University of Detroit, J.D. Wayne State University, LL.M. Admitted to practice law in 1980. Appointed Assistant Attorney General April 1988.

Roland Hwang

Northville, Michigan. University of Michigan, B.S., M.B.A. Wayne State University Law School, J.D., LL.M. Admitted to practice law February 1981. Appointed Assistant Attorney General October 1988.

Robert Ianni

Okemos, Michigan. Wayne State University, B.S. Detroit College of Law, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General October 1974.

David R. Ishbia

Farmington Hills, Michigan. Michigan State University, B.S. Wayne State University, J.D. Admitted to practice law May 2004. Appointed Assistant Attorney General December 2004.

Orjiakor N. Isiogu

Lansing, Michigan. Wayne State University, B.A., J.D. Admitted to practice law November, 1989. Appointed Assistant Attorney General November 1989. Laid-off January 1991 due to budgetary restraints. Reappointed October 1991.

Patrick F. Isom

Lansing, Michigan. Wayne State University, B.A. University of Michigan, J.D. Admitted to practice law December 1972. Appointed Assistant Attorney General December 1972.

Molly M. Jason

Lansing, Michigan. University of Notre Dame, B.B.A. Miami University, M.B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1995. Appointed Assistant Attorney General August 1997.

Julie M. Jensen

Scotts, Michigan. University of Michigan, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1992. Appointed Assistant Attorney General August 2003.

Tonya C. Jeter

Southfield Michigan. Wayne State University, B.A., J.D. Admitted to practice law July 2000. Appointed Assistant Attorney General October 2000.

Daphne M. Johnson

Grand Ledge, Michigan. Michigan State University, B.A. Western Michigan University, M.P.A. Detroit College of Law at Michigan State University, J.D. Admitted to practice law November 2000. Appointed Assistant Attorney General December 2002.

Thomas C. Johnson

Jenison, Michigan. Western Michigan University, B.S. University of Detroit, J.D. Admitted to practice law November 1978. Appointed Assistant Attorney General May 1980.

Charles L. Jones

Owosso, Michigan. Michigan State University, B.S. Detroit College of Law, J.D. Admitted to practice law in 1975. Appointed Assistant Attorney General April 1990.

Paul W. Jones

Okemos, Michigan. University of Michigan, A.B. American University, Washington College of Law, J.D. Admitted to practice law November 1985. Appointed Assistant Attorney General May 2000.

Jason S. Julian

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1986. Appointed Assistant Attorney General August 1988.

Katherine A. Kakish

Dearborn, Michigan. University of Jordan, B.A. Wayne State University, J.D. Admitted to practice law November 2001. Appointed Assistant Attorney General March 2004.

Richard M. Karoub

Farmington Hills, Michigan. Michigan State University, B.A. University of Detroit, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General January 1986.

Victoria A. Keating

Detroit, Michigan. Ohio University, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General July 1992.

Matthew C. Keck

Lansing, Michigan. Albion College, B.A. Duke University School of Law, J.D. Admitted to practice law November 1999. Appointed Assistant Attorney General December 1999.

Rhondi B. Keller

Southfield, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law November 1998. Appointed Assistant Attorney General May 2000.

Sean D. Kerman

Royal Oak, Michigan. University of Michigan, B.A. University of Detroit Mercy, M.B.A., J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General January 1997.

Morris J. Klau

West Bloomfield, Michigan. University of Michigan, B.G.S. University of Detroit, J.D. Admitted to practice law November 1982. Appointed Assistant Attorney General July 1983.

Richard L. Koenigs knecht

St. Johns, Michigan. Michigan State University, B.S. University of Michigan, J.D. Admitted to practice law December 1973. Appointed Assistant Attorney General February 1988.

Timothy F. Konieczny

Lansing, Michigan. University of Michigan, Aquinas College, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General April 1983.

Raina I. Korbakis

East Lansing, Michigan. Michigan State University, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General December 1997.

Peter T. Kotula

Grosse Pointe Park, Michigan. Michigan State University, B.A. University of Notre Dame, J.D. Admitted to practice law November 1988. Appointed Assistant Attorney General November 1992.

Amy Ronayne Krause

Lansing, Michigan. University of Michigan, B.A. University of Notre Dame, J.D. Admitted to practice law May 1988. Appointed Assistant Attorney General February 1997.

Kurt E. Krause

Lansing, Michigan. Michigan State University, B.A. DePaul University College of Law, J.D. Admitted to practice law November 1988. Appointed Assistant Attorney General December 1997.

Karen K. Kuchek

Okemos, Michigan. Central Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1992. Appointed Assistant Attorney General December 2002.

Thomas A. Kulick

Okemos, Michigan. University of Notre Dame, A.B. University of Detroit, M.B.A., J.D. Admitted to practice law in 1971. Appointed Assistant Attorney General March 1979.

Bryan E. Kurtz

Howell, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. C.P.A. Admitted to practice law June 1993. Appointed Assistant Attorney General November 1998.

Alan J. Lambert

Lansing, Michigan. Wayne State University, B.A. Detroit College of Law, J.D. Admitted to practice law May 1993. Appointed Assistant Attorney General October 1998.

H. Steven Langschwager

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1997. Appointed Assistant Attorney General June 1997.

J. Peter Lark

Okemos, Michigan. Boston College, B.S. Western New England College, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General May 1979.

A. Michael Leffler

East Lansing, Michigan. Michigan State University, B.A., M.A. Wayne State University Law School, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General October 1974.

Susan I. Leffler

East Lansing, Michigan. University of Michigan, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1978. Appointed Assistant Attorney General January 1980.

Melinda A. Leonard

Northville, Michigan. Taylor University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law in Indiana, 2002; Michigan, 2001. Appointed Assistant Attorney General August 2004.

John F. Leone

Lansing, Michigan. University of Michigan, B.G.S. Thomas M. Cooley Law School, J.D. Admitted to practice law June 1986. Appointed Assistant Attorney General February 1997.

Vincent J. Leone

East Lansing, Michigan. University of Michigan, B.A. Detroit College of Law, J.D. Admitted to practice law October 1974. Appointed Assistant Attorney General October 1974.

Jessica E. LePine

Grand Ledge, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1993. Appointed Assistant Attorney General October 1997.

Daniel M. Levy

West Bloomfield, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law November 1986. Appointed Assistant Attorney General December 1992.

Chester W. Lewis

East Lansing, Michigan. Colby College, A.B. University of Rhode Island, M.C.P. Wayne State University, J.D. Admitted to practice law in Michigan, 1974; Connecticut, 1975. Served in the United States Army, 1959-1962. Appointed Assistant Attorney General August 1975.

Larry W. Lewis

Plymouth, Michigan. Virginia State University, B.A. University of Michigan, M.S.W. Detroit College of Law, J.D. Admitted to practice law February 1987. Appointed Assistant Attorney General April 1989.

Brooke M. Liszak

Lansing, Michigan. Michigan State University, B.A. Wayne State University Law School, J.D. Admitted to practice law November 2001. Appointed Assistant Attorney General March 2004.

Sheryl L. Little-Fletcher

Detroit, Michigan. Michigan State University, B.S. University of Baltimore School of Law, J.D. Admitted to practice law in Maryland, 1992; Michigan, 1996. Appointed Assistant Attorney General June 1997.

Michael A. Lockman

Farmington Hills, Michigan. Wayne State University, B.A., J.D. Admitted to practice law December 1967. Appointed Assistant Attorney General December 1967.

James E. Long

Lansing, Michigan. Michigan State University, B.A. George Mason University School of Law, J.D. Admitted to practice law in Virginia, 1993; Michigan, 1995. Appointed Assistant Attorney General March 1996.

Iris M. Lopez

West Bloomfield, Michigan. Marygrove College, B.A. Wayne State University, J.D. Admitted to practice law November 1977. Appointed Assistant Attorney General April 2000.

John P. Mack

Petoskey, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1978. Appointed Assistant Attorney General July 1990.

S. Peter Manning

Howell, Michigan. Michigan State University, B.A. University of Michigan, J.D. Admitted to practice law in 1991. Appointed Assistant Attorney General April 1994.

Howard C. Marderosian

Williamston, Michigan. Eastern Michigan University, B.B.A. Detroit College of Law, J.D. Admitted to practice law December 1972. Veteran of U.S. Army. Appointed Assistant Attorney General March 1975.

Erica Weiss Marsden

Ann Arbor, Michigan. University of Michigan, B.A. George Washington University Law School, J.D. Admitted to practice law November 1975. Appointed Assistant Attorney General May 1976.

Harold J. Martin

Bark River, Michigan. University of Michigan, Michigan State University, B.S. American University, Washington College of Law, J.D. Admitted to practice law November 1986. Appointed Assistant Attorney General November 1988. Laid-off January 1991 due to budgetary restraints. Reappointed March 1991.

Robert J. Martin

Grosse Pointe Woods, Michigan. Macomb County Community College, A.A. Oakland University, B.A. Detroit College of Law, J.D. Admitted to practice law in 1975. Appointed Assistant Attorney General April 1990.

Mark W. Matus

Okemos, Michigan. Grand Valley State College, B.S. Wayne State University, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General October 1985.

Thomas E. McClear

Owosso, Michigan. Michigan State University, B.A. University of Detroit Law School, J.D. Admitted to practice law October 1975. Veteran of Vietnam War. Appointed Assistant Attorney General October 1988.

Michael C. McDaniel

East Lansing, Michigan. St. Bonaventure University, B.A. Case Western Reserve University, J.D. Admitted to practice law November 1981. Appointed Assistant Attorney General January 1984.

Kelly J. McDoniel

Farmington Hills, Michigan. Central Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 2004. Appointed Assistant Attorney General December 2004.

Linda P. McDowell

Farmington Hills, Michigan. Wayne State University, B.A., J.D. Admitted to practice law November 1978. Appointed Assistant Attorney General April 1990.

Patrick McElmurry

Okemos, Michigan. University of Detroit, B.A. Detroit College of Law, J.D. Admitted to practice law December 1971. Appointed Assistant Attorney General January 1972.

Donald S. McGehee

Okemos, Michigan. Northern Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1985. Appointed Assistant Attorney General December 1985.

Joel D. McGormley

Lansing, Michigan. Miami University, B.A. University of Toledo College of Law, J.D. Admitted to practice law November 1999. Appointed Assistant Attorney General February 2000.

Marci B. McIvor

Grosse Pointe Park, Michigan. Harvard University, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1982. Appointed Assistant Attorney General February 1986.

Kelley T. McLean

Harper Woods, Michigan. Albion College, B.A. University of Detroit, J.D. Admitted to practice law in 1997. Appointed Assistant Attorney General July 1998.

Julie A. McMurtry

Rochester Hills, Michigan. University of Michigan, B.A. Detroit College of Law, J.D. Admitted to practice law November 1994. Appointed Assistant Attorney General June 1997.

Musette A. Michael

Lansing, Michigan. Western Michigan University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1981. Appointed Assistant Attorney General December 1988.

Heather S. Meingast

Haslett, Michigan. Michigan State University, B.A. Michigan State University, Detroit College of Law, J.D. Admitted to practice law May 1998. Appointed Assistant Attorney General February 2004.

Gerald C. Miller

Ann Arbor, Michigan. University of Michigan, B.A. Detroit College of Law, J.D. Admitted to practice law in 1975. Appointed Assistant Attorney General June 1992.

Robert L. Mol

DeWitt, Michigan. Grand Rapids Junior College, A.S. University of Michigan, B.G.S. Wayne State University, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General February 1988.

William E. Molner

Lansing, Michigan. Eastern Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General November 1976.

Frank J. Monticello

DeWitt, Michigan. Grand Rapids Junior College, A.D., Michigan State University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General April 1985.

Laura L. Moody

East Lansing, Michigan. Liberty University, B.S. University of Detroit, J.D. Admitted to practice law November 1994. Appointed Assistant Attorney General February 1997.

Michael E. Moody

East Lansing, Michigan. Michigan State University, B.A. University of Detroit Mercy, J.D. Admitted to practice law November 1994. Appointed Assistant Attorney General November 1995.

Susan B. Moody-Frezza

Grosse Pointe Park, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law May 1987. Appointed Assistant Attorney General December 1988. Laid-off January 1991 due to budgetary restraints. Reappointed October 1991.

Lamar D. Moreland

Belleville, Michigan. Wayne State University, B.S. Michigan State University, Detroit College of Law, J.D. Admitted to practice law March 1999. Appointed Assistant Attorney General September 2004.

Thaddeus E. Morgan

East Lansing, Michigan. Albion College, B.A. University of Detroit School of Law, J.D. Admitted to practice law November 1992. Appointed Assistant Attorney General September 2003.

William R. Morris

East Lansing, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law December 1980. Appointed Assistant Attorney General October 1983.

Michael F. Murphy

Canton, Michigan. Wayne State University, B.A. University of Detroit, J.D. Admitted to practice law November 1978. Appointed Assistant Attorney General May 1989.

Margaret A. Nelson

Okemos, Michigan. Nazareth College at Kalamazoo, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1979. Appointed Assistant Attorney General November 1983.

Michael A. Nickerson

Okemos, Michigan. Eastern Michigan University, A.B. Detroit College of Law, J.D. Admitted to practice law October 1975. Appointed Assistant Attorney General October 1975.

Paul F. Novak

Lansing, Michigan. Michigan State University, B.A., M.A. Emory University School of Law, J.D. Admitted to practice law November 1986. Appointed Assistant Attorney General January 1989.

Cynthia M. Nunez

Detroit, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law June 1994. Appointed Assistant Attorney General February 1997.

Patrick J. O'Brien

East Lansing, Michigan. Sacred Heart Seminary College, Wayne State University, B.A. Detroit College of Law, J.D. Admitted to practice law May 1977. Appointed Assistant Attorney General June 1977.

Richard T. O'Neill

Jackson, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1976. Appointed Assistant Attorney General December 1979.

Emmanuel B. Odunlami

Lansing, Michigan. Wayne State University, B.S. Michigan State University College of Law, J.D. Admitted to practice Law November 2003. Appointed Assistant Attorney General February 2004.

Linda M. Olivieri

East Lansing, Michigan. State University of New York at Brockport, B.S. University of Notre Dame, J.D. Admitted to practice law October 1977. Appointed Assistant Attorney General February 1988.

Michael J. Orris

Dearborn, Michigan. Michigan State University, B.A. Michigan State University, Detroit College of Law, J.D. Admitted to practice law January 1996. Appointed Assistant Attorney General, October 2003.

Dee J. Pascoe

East Lansing, Michigan. Eastern Michigan University, B.B.A. Wayne State University, J.D. Admitted to practice law November 1995. Appointed Assistant Attorney General November 1998.

Oronde C. Patterson

Detroit, Michigan. Michigan State University, B.S. University of Detroit Mercy School of Law, J.D. Admitted to practice law November 1997. Appointed Assistant Attorney General September 2004.

Donna L. Pendergast

Southfield, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law February 1988. Appointed Assistant Attorney General August 2003.

Sante J. Perrelli

East Lansing, Michigan. Michigan State University, University of Michigan, B.G.S. University of Detroit, J.D. Admitted to practice law November 1980. Appointed Assistant Attorney General April 1997.

William F. Pettit

East Lansing, Michigan. University of Michigan, B.A. Wayne State University Law School, J.D. Admitted to practice law in 1986. Appointed Assistant Attorney General June 1999.

Jonathan C. Pierce

Okemos, Michigan. Michigan State University, B.A. Villanova University, J.D. Admitted to practice law February 1992. Appointed Assistant Attorney General December 1992.

Linda M. Pietroski

Troy, Michigan. Western Michigan University, B.S. Detroit College of Law, J.D. Admitted to practice law May 1993. Appointed Assistant Attorney General June 2004.

James R. Piggush

East Lansing, Michigan. St. Joseph's College, B.A. St. John's University, M.A. University of Notre Dame, Ph.D. SUNY at Buffalo, J.D. Admitted to practice law November 1978. Appointed Assistant Attorney General April 1990.

Nancy A. Piggush

East Lansing, Michigan. Sienna Heights College, B.A. University of Notre Dame Law School, J.D. Admitted to practice law in New York, 1973; Michigan, 1978. Appointed Assistant Attorney General February 1996.

Thomas S. Piotrowski

Ypsilanti, Michigan. University of Michigan, Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law, January 1987. Appointed Assistant Attorney General June 1998.

Peter L. Plummer

Lansing, Michigan. Northern Michigan University, B.S. Wayne State University, J.D. Admitted to practice law October 1975. Appointed Assistant Attorney General July 1997.

Joseph E. Potchen

Okemos, Michigan. Michigan State University, B.A. Loyola University of Chicago, J.D. Admitted to practice law in Illinois, 1990; Michigan, 1994. Appointed Assistant Attorney General April 1994.

Nancy B. Pridgen

Flushing, Michigan. Butte College, A.S. Auburn University, B.A. Vanderbilt University School of Law, J.D. Admitted to practice law in Georgia, November 2000; Michigan, November 2004. Appointed Assistant Attorney General December 2004.

Russell E Prins

East Lansing, Michigan. Massachusetts Institute of Technology, S.B. Stanford University, J.D. Admitted to practice law in 1966. Military service 1966-1969. Appointed Assistant Attorney General April 1970.

Stanley F. Pruss

St. Johns, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law May 1982. Appointed Assistant Attorney General May 1982.

Susan Przekop-Shaw

Lansing, Michigan. University of Michigan, B.S. University of Tennessee College of Law, Thomas M. Cooley Law School, J.D. Admitted to practice law November 1979. Appointed Assistant Attorney General April 1989.

C. Adam Purnell

Lansing, Michigan. Central Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1997. Appointed Assistant Attorney General May 2000.

Thomas Quasarano

Lansing, Michigan. University of Detroit, B.A., M.A. University of South Carolina School of Law, J.D. Wayne State University, LL.M. Admitted to practice law October 1977. Appointed Assistant Attorney General March 1988.

Ronald E. Quick

Grosse Pointe Woods, Michigan. University of Detroit, B.B.A. Detroit College of Law, J.D. Admitted to practice law in 1969. Appointed Assistant Attorney General April 1990.

Patricia Terrell Quinn

East Lansing, Michigan. University of Michigan, B.A. Oakland University, M.A.T. Wayne State University Law School, J.D. Admitted to practice law November 1982. U.S. Peace Corps, 1970-1971. U.S. Teacher Corps, 1972-1974. Appointed Assistant Attorney General November 1985.

Dennis J. Raterink

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1995. Appointed Assistant Attorney General December 2002.

Victoria A. Reardon

Grosse Pointe, Michigan. Duquesne University, University of Pittsburgh, B.A. University of Akron, J.D. Admitted to practice law October 1988. Appointed Assistant Attorney General October 1998.

Robert P. Reichel

Charlotte, Michigan. University of Michigan, B.A., J.D. Admitted to practice law December 1980. Appointed Assistant Attorney General September 1983.

Michael J. Reilly

Okemos, Michigan. Kalamazoo College, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1989. Appointed Assistant Attorney General May 2000.

T. Blair Renfro

East Lansing, Michigan. University of Texas, B.A. Michigan State University College of Law, J.D. Admitted to practice law May 2004. Appointed Assistant Attorney General December 2004.

B. Eric Restuccia

Canton, Michigan. University of Pennsylvania, B.A. University of Michigan Law School, J.D. Admitted to practice law December 1993. Appointed Assistant Attorney General September 1993.

Cori E. Reyes

Lansing, Michigan. University of Michigan, B.A. Wayne State University Law School, J.D. Admitted to practice law November 2003. Appointed Assistant Attorney General February 2004.

Matthew H. Rick

DeWitt, Michigan. Michigan State University, B.A. University of Detroit, J.D. Admitted to practice law October 1990. Appointed Assistant Attorney General July 1997.

Michelle M. Rick

DeWitt, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law November 1991. Appointed Assistant Attorney General December 1995.

Stephen M. Rideout

East Lansing, Michigan. Alma College, B.A. Detroit College of Law, J.D. Admitted to practice law May 1986. Appointed Assistant Attorney General June 1986.

James E. Riley

East Lansing, Michigan. Michigan State University, B.S., M.B.A. Detroit College of Law, J.D. Admitted to practice law in Michigan, 1974; Florida, 1976. Appointed Assistant Attorney General August 1974.

Santiago Rios

Lansing, Michigan. Michigan State University, B.A. University of Notre Dame, J.D. Admitted to practice law in Illinois, 1975; Michigan, 1993. Appointed Assistant Attorney General December 1995.

Ron D. Robinson

Detroit, Michigan. Dartmouth College, B.A. University of Detroit, J.D. Admitted to practice law November 1983. Appointed Assistant Attorney General April 1984.

William A. Rollstin

Royal Oak, Michigan. Ferris State University, B.S. University of Detroit Mercy School of Law, J.D. Admitted to practice law 1987. Appointed Assistant Attorney General March 2004.

Kandy C. Ronayne

Plymouth, Michigan. Eastern Kentucky University, B.A., M.S. Detroit College of Law, J.D. Admitted to practice law November 1984. Appointed Assistant Attorney General January 1998.

Amy L. Rosenberg

Okemos, Michigan. University of Michigan, B.A., J.D. Admitted to practice law November 1992. Appointed Assistant Attorney General December 1992.

Merry A. Rosenberg

Lansing, Michigan. Michigan State University, B.A. University of Minnesota, J.D. Admitted to practice law December 1980. Appointed Assistant Attorney General December 1984.

Judith Blinn Rudman

East Lansing, Michigan. University of Michigan, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General January 1977.

Suzan M. Sanford

Grand Ledge, Michigan. Central Michigan University, B.S. University of Wisconsin School of Law, J.D. Admitted to practice law December 1987. Appointed Assistant Attorney General February 1988.

Thomas P. Scallen

Grosse Pointe Park, Michigan. John Carroll University, A.B. University of Detroit School of Law, J.D. Admitted to practice law December 1973. Appointed Assistant Attorney General October 1985.

Bethany L. Scheib

Fowlerville, Michigan. Lansing Community College, A.A. Western Michigan University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law June 1996. Appointed Assistant Attorney General February 1997.

John C. Scherbarth

Okemos, Michigan. University of Michigan, A.B. Wayne State University, J.D. Admitted to practice law October 1975. Appointed Assistant Attorney General April 1983.

Charles C. Schettler, Jr.

Okemos, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law November 1978. Veteran of Vietnam War. Served in U.S. Navy 1972-1975. Appointed Assistant Attorney General November 1978.

Thomas F. Schimpf

East Lansing, Michigan. University of Detroit, B.A. New York University, J.D. Admitted to practice law in New Jersey, 1972; Michigan, 1973. Appointed Assistant Attorney General December 1973.

Barbara A. Schmidt

Eaton Rapids, Michigan. Harper Hospital School of Nursing, R.N. Wayne State University, B.S.N. Wayne State University Law School, J.D. Admitted to practice law November 1987. Appointed Assistant Attorney General June 1988.

Mark V. Schoen

Okemos, Michigan. Albion College, B.A. Wayne State University Law School, J.D. Admitted to practice law December 1973. Appointed Assistant Attorney General November 1988.

Marie Shamraj

Lansing, Michigan. Michigan State University, B.A., M.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1991. Appointed Assistant Attorney General July 1992.

James C. Shell

Grand Ledge, Michigan. Hope College, Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law June 1989. Appointed Assistant Attorney General June 1989. Laid-off January 1991 due to budgetary restraints. Reappointed September 1991.

Emily S. Sherman

Franklin, Michigan. University of Michigan, B.A. Emory University School of Law, J.D. Admitted to practice law November 1993. Appointed Assistant Attorney General August 1997.

Patricia L. Sherrod

Southfield, Michigan. University of Detroit, A.B. Wayne State University, J.D. Admitted to practice law November 1976. Appointed Assistant Attorney General March 1979.

David W. Silver

Brighton, Michigan. University of Michigan, B.A. University of Kentucky, J.D. Admitted to practice law April 1975. Appointed Assistant Attorney General April 1975.

Kevin G. Simowski

Plymouth, Michigan. University of Michigan, B.A. Wayne State University Law School, J.D. Admitted to practice law November 1982. Appointed Assistant Attorney General February 2004.

Diane M. Smith

Lansing, Michigan. University of Wisconsin, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1981. Appointed Assistant Attorney General November 1998.

Jarrod T. Smith

Lansing, Michigan. Michigan State University, B.S. Michigan State University College of Law, J.D. Admitted to practice law November 2003. Appointed Assistant Attorney General February 2004.

Kevin T. Smith

Owosso, Michigan. Northern Michigan University, B.S. University of Michigan, M.S., J.D. Admitted to practice law July 1981. Appointed Assistant Attorney General May 1984.

Kristin M. Smith

Lansing, Michigan. Lansing Community College, A.A. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1992. Appointed Assistant Attorney General July 1997.

Nichole M. Soma

Ferndale, Michigan. Michigan State University, B.S. University of Detroit Mercy, J.D. Admitted to practice law November 1997. Appointed Assistant Attorney General November 1997.

Suzanne D. Sonneborn

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General December 1996.

Tracy A. Sonneborn

Lansing, Michigan. Michigan State University, B.A. University of Munich; Indiana University; University of Michigan, J.D., M.B.A. Admitted to practice law June 1988. Appointed Assistant Attorney General December 1992.

Daniel E. Sonneveldt

Lansing, Michigan. Western Michigan University, B.B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 2000. Appointed Assistant Attorney General November 2000.

Allan J. Soros

St. Johns, Michigan. University of Steubenville, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1990. Appointed Assistant Attorney General November 1990. Laid-off January 1991 due to budgetary restraints. Reappointed July 1992.

E. Michael Stafford

Holt, Michigan. Northern Michigan University, A.B. University of Michigan Law School, LL.B. Admitted to practice law in 1966. Appointed Assistant Attorney General May 1988.

Kathryn A. Steiner

Grosse Pointe Park, Michigan. University of Michigan, B.A. Wayne State Law School, J.D. Admitted to practice law November 1998. Appointed Assistant Attorney General December 2002.

George N. Stevenson

Lansing, Michigan. Wayne State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1986. Appointed Assistant Attorney General February 1988.

Pamela J. Stevenson

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1987. Appointed Assistant Attorney General October 1988.

Wanda M. Stokes

Lansing, Michigan. Michigan State University, B.A. University of Detroit-Mercy, J.D. Admitted to practice law April 1990. Appointed Assistant Attorney General September 1999.

James L. Stropkai

Okemos, Michigan. University of Michigan, B.A. Wayne State University, J.D. Admitted to practice law December 1974. Appointed Assistant Attorney General June 1977.

Ronald J. Styka

Okemos, Michigan. University of Detroit, A.D. University of Michigan, J.D. Admitted to practice law November 1971. Appointed Assistant Attorney General November, 1971.

Chester S. Sugierski, Jr.

Holt, Michigan. Lawrence Institute of Technology, B.S. Wayne State University, J.D. Admitted to practice law December 1972. Appointed Assistant Attorney General July 1978.

John F. Szczubelek

East Lansing, Michigan. Michigan State University, B.A. Wayne State University, J.D. Admitted to practice law May 1993. Appointed Assistant Attorney General May 1993.

David E. Tanay

East Lansing, Michigan. Albion College, B.A. Detroit College of Law at Michigan State University, J.D. Admitted to practice law November 1996. Appointed Assistant Attorney General December 1996.

Scott L. Teter

Cassopolis, Michigan. Kalamazoo College, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1987. Appointed Assistant Attorney General March 2003.

Kevin M. Thom

Lansing, Michigan. Michigan State University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 1984. Appointed Assistant Attorney General April 1985.

Regina D. Thomas

Detroit, Michigan. Tennessee State University, B.S. Vanderbilt University School of Law, J.D. Admitted to practice law November 1995. Appointed Assistant Attorney General December 2002.

John L. Thurber

Okemos, Michigan. Kenyon College, University of Edinburgh, B.A. University of Detroit, J.D. Admitted to practice law November 1993. Appointed Assistant Attorney General March 1996.

Troy D. Tipton

Ypsilanti, Michigan. Eastern Michigan University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law in 2001. Appointed Assistant Attorney General May 2001.

Treva R. Truesdale

Lansing, Michigan. University of Detroit, B.A. Howard University School of Law, J.D. Admitted to practice law May 1978. Appointed Assistant Attorney General November 1985.

Virginia H. Trzaskoma

Warren, Michigan. Wayne State University, B.A. University of Detroit Mercy, J.D. Admitted to practice law November 1998. Appointed Assistant Attorney General December 2004.

Brenda E. Turner

East Lansing, Michigan. Kalamazoo College, B.A. University of Detroit Law School, J.D. Admitted to practice law January 1975. Appointed Assistant Attorney General March 1979.

Janet A. VanCleve

Lansing, Michigan. Michigan State University, B.A. University of Michigan, J.D. Admitted to practice law November 1983. Appointed Assistant Attorney General December 1988.

Rebekah Mason Visconti

Clarkston, Michigan. Oakland University, B.A. University of Detroit, J.D. Admitted to practice law June 1989. Appointed Assistant Attorney General June 1989. Laid-off January 1991 due to budgetary restraints. Reappointed January 1992.

Martin J. Vittands

Troy, Michigan. Central Michigan University, B.S. Detroit College of Law, J.D. Admitted to practice law November 1976. Veteran of Vietnam War. Appointed Assistant Attorney General November 1976.

David A. Voges

East Lansing, Michigan. Valparaiso University, B.S. Wayne State University, M.A., J.D. Admitted to practice law October 1975. Appointed Assistant Attorney General October 1975.

Michele M. Wagner-Gutkowski

Alma, Michigan. University of Central Florida, B.A. Florida State University, College of Law, J.D. Admitted to practice law in Florida, September 1990; Michigan, April 1991. Appointed Assistant Attorney General March 2004.

John D. Walter

East Lansing, Michigan. University of Michigan, B.S., J.D. Admitted to practice law November 1979. Appointed Assistant Attorney General February 1984.

Lamont M. Walton

Lansing, Michigan. University of Illinois, B.S. University of Michigan, J.D. Admitted to practice law December 1975. Appointed Assistant Attorney General October 1985.

Robert C. Ward, Jr.

Williamston, Michigan. Virginia Military Institute, B.A. Detroit College of Law, J.D. Admitted to practice law December 1970. Veteran of Vietnam War. Appointed Assistant Attorney General January 1976.

Thomas D. Warren

Mason, Michigan. Kansas State University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law in Michigan, May 1979; Indiana, 1999. Appointed Assistant Attorney General November 2004.

Jessica L. Weiler

Burton, Michigan. Oakland University, B.A. Thomas M. Cooley Law School, J.D. Admitted to practice law May 2002. Appointed Assistant Attorney General February 2004.

Donna K. Welch

St. Clair Shores, Michigan. Michigan State University, B.A. Detroit College of Law, J.D. Admitted to practice law August 1983. Appointed Assistant Attorney General April 1984.

Robert S. Welliver

East Lansing, Michigan. College of St. Thomas, St. Paul, Minnesota, B.A. Wayne State University, J.D. Admitted to practice law December 1973. Appointed Assistant Attorney General December 1973.

R. John Wernet, Jr.

Grand Ledge, Michigan. University of Michigan, B.A. Antioch School of Law, J.D. Admitted to practice law in Washington, D.C., November 1975; Michigan, March 1980. Appointed Assistant Attorney General December 1979.

Gerald A. Whalen

Grand Rapids, Michigan. Mercy College of Detroit, B.A. University of Detroit, J.D. Admitted to practice law in Michigan, 1990; Washington D.C., 1993. Appointed Assistant Attorney General January 1997.

Glenn R. White

East Lansing, Michigan. Michigan State University, B.S. Thomas M. Cooley Law School, J.D. New York University, LL.M. Admitted to practice law November 1995. Appointed Assistant Attorney General June 1997.

Jane A. Wilensky

Okemos, Michigan. Boston University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1979. Appointed Assistant Attorney General October 1984.

Lisa K. Winer

Ann Arbor, Michigan. Boston University, B.A. Suffolk University Law School, University of Michigan Law School, J.D. Admitted to practice law November 2000. Appointed Assistant Attorney General November 2000.

Mitchell J. Wood

Lansing, Michigan. Michigan State University, B.S. Thomas M. Cooley Law School, J.D. Admitted to practice law November 1989. Appointed Assistant Attorney General July 1996.

Shannon N. Wood

Northville, Michigan. University of Michigan, B.A. Wayne State Law School, J.D. Admitted to practice law November 1999. Appointed Assistant Attorney General January 2000.

Joseph L. Yanoschik

Monroe, Michigan. Wayne State University, B.S., J.D. Admitted to practice law in 1990. Appointed Assistant Attorney General November 1997.

Michael A. Young

Madison Heights, Michigan. Wayne State University, B.S. Detroit College of Law, J.D. Admitted to practice law November 1992. Appointed Assistant Attorney General April 1993.

Morrison R. Zack

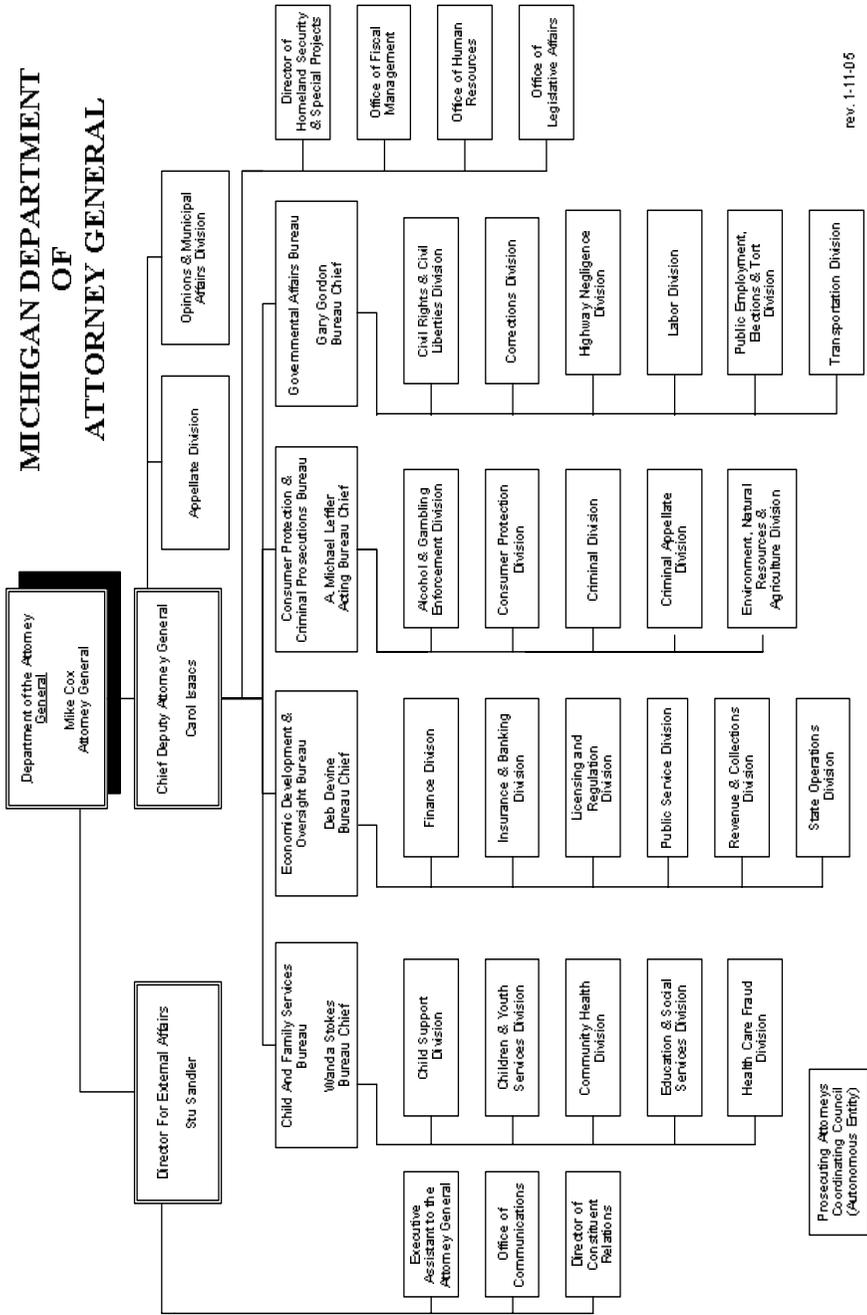
Farmington Hills, Michigan. Wayne State University, B.A., J.D. Admitted to practice law December 1973. Appointed Assistant Attorney General February 1974.

**PROSECUTING ATTORNEYS
2003-2004**

County	County Seat	Prosecuting Attorney
Alcona	Harrisville	Thomas J. Weichel
Alger	Munising	Karen A. Bahrman
Allegan	Allegan	Frederick L. Anderson
Alpena	Alpena	Dennis P. Grenkowitz
Antrim	Bellaire	Charles H. Koop
Arenac	Standish	Curtis G. Broughton
Baraga	L'Anse	Joseph P. O'Leary
Barry	Hastings	G. Shane McNeill
Bay	Bay City	Joseph K. Sheeran
Benzie	Beulah	Anthony J. Cicchelli
Berrien	St. Joseph	James A. Cherry
Branch	Coldwater	Kirk A. Kashian
Calhoun	Marshall	John A. Hallacy
Cass	Cassopolis	Victor A. Fitz
Charlevoix	Charlevoix	John A. Jarema
Cheboygan	Cheboygan	Catherine M. Castagne
Chippewa	Sault Ste. Marie	Brian A. Peppler
Clare	Harrison	Norman E. Gage
Clinton	St. Johns	Charles D. Sherman
Crawford	Grayling	John B. Huss
Delta	Escanaba	Steven E. Parks
Dickinson	Iron Mountain	Christopher S. Ninomiya
Eaton	Charlotte	Jeffrey L. Sauter
Emmet	Petoskey	James R. Linderman
Genesee	Flint	David S. Leyton
Gladwin	Gladwin	Thomas R. Evans
Gogebic	Bessemer	Richard B. Adams
Grand Traverse	Traverse City	Alan R. Schneider
Gratiot	Ithaca	Keith J. Kushion
Hillsdale	Hillsdale	Neal A. Brady
Houghton	Houghton	Douglas S. Edwards
Huron	Bad Axe	Mark J. Gaertner
Ingham	Mason	Stuart J. Dunning III
Ionia	Ionia	Ronald J. Schafer
Iosco	Tawas City	Gary W. Rapp
Iron	Crystal Falls	Joseph C. Sartorelli
Isabella	Mt. Pleasant	Larry J. Burdick
Jackson	Jackson	Henry C. Zavislak
Kalamazoo	Kalamazoo	Jeffrey R. Fink
Kalkaska	Kalkaska	Brian F. Donnelly
Kent	Grand Rapids	William A. Forsyth
Keweenaw	Eagle River	Donna L. Jaaskelainen
Lake	Baldwin	Michael J. Riley

Lapeer	Lapeer	Byron J. Kenschuh
Leelanau	Leland	Joseph T. Hubbell
Lenawee	Adrian	Irving C. Shaw, Jr.
Livingston	Howell	David L. Morse
Luce	Newberry	Peter Tazelaar II
Mackinac	St. Ignace	W. Clayton Graham
Macomb	Mt. Clemens	Eric J. Smith
Manistee	Manistee	Ford K. Stone
Marquette	Marquette	Gary L. Walker
Mason	Ludington	Susan J. Kasley
Mecosta	Big Rapids	Peter M. Jaklevic
Menominee	Menominee	Daniel E. Hass
Midland	Midland	Michael D. Carpenter
Missaukee	Lake City	William J. Donnelly, Jr.
Monroe	Monroe	William P. Nichols
Montcalm	Stanton	Andrea S. Krause
Montmorency	Atlanta	Terrie J. Case
Muskegon	Muskegon	Tony D. Tague
Newaygo	White Cloud	Chrystal R. Roach
Oakland	Pontiac	David G. Gorcycya
Oceana	Hart	Terry L. Shaw
Ogemaw	West Branch	LaDonna A. Schultz
Ontonagon	Ontonagon	James R. Jessup
Osceola	Reed City	Sandra D. Marvin
Oscoda	Mio	Barry L. Shantz
Otsego	Gaylord	Kyle T. Legel
Ottawa	Grand Haven	Ronald J. Frantz
Presque Isle	Rogers City	Donald J. McLennan
Roscommon	Roscommon	Mark D. Jernigan
Saginaw	Saginaw	Michael D. Thomas
Sanilac	Sandusky	James V. Young
Schoolcraft	Manistique	Peter J. Hollenbeck
Shiawassee	Corunna	Randy O. Colbry
St. Clair	Port Huron	Michael D. Wendling
St. Joseph	Centreville	Douglas K. Fisher
Tuscola	Caro	Mark E. Reene
VanBuren	Paw Paw	Juris Kaps
Washtenaw	Ann Arbor	Brian L. Mackie
Wayne	Detroit	Kym L. Worthy
Wexford	Cadillac	William M. Fagerman

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



rev. 1-11-05

OPINION POLICY

Michigan law¹ provides that it shall be the duty of the Attorney General, when required, to give his opinion on questions of law submitted to him by the Legislature,² Governor, Auditor General, Treasurer, or any other state officer.³ Michigan's Supreme Court has recognized that one of the "primary missions" of the Attorney General is to give legal advice to members of the Legislature, and to departments and agencies of state government.⁴ County prosecutors may also submit opinion requests provided that they are accompanied by a memorandum of law analyzing the legal question.

The demand for legal services from this office continues to rise at a more rapid rate than the resources available to us. Therefore, consistent with his primary mission, the Attorney General must concentrate limited resources on opinion requests that affect the operation of state government rather than on requests that primarily affect local units of government. The Legislature has authorized local units of government to employ their own legal counsel who are usually more familiar with local conditions. Thus, as a general rule, the Attorney General will not issue opinions concerning strictly local matters such as interpretation of local charters, local ordinances, locally negotiated collective bargaining agreements, and other local issues.

Upon receipt, all opinion requests are referred to the Assistant Attorney General for Law. Opinion requests are initially evaluated to determine whether to grant the request. Typical reasons for declining a request are: 1) the requester is not a person authorized to request an opinion under the applicable law; 2) the request seeks an interpretation of proposed legislation that may never become law; 3) the question asked is currently pending before a tribunal; 4) the request involves the operation of the judicial branch of government or a local unit of government; or 5) the request seeks legal advice on behalf of, or involves disputes between, private persons or entities.

If the request is granted, it is then determined whether the response should be classified as a formal opinion, letter opinion, or informational letter. Formal opinions address questions significant to the State's jurisprudence that warrant publication. Letter opinions involve questions that should be addressed by the Attorney General but are of limited impact and do not warrant publication. Informational letters address questions that have relatively clear, well-established answers or are narrow in scope. Copies of all pending requests are provided to the Governor's Legal Counsel and to the Senate and House Majority and Minority Counsel, thereby affording notice that the question is under review and the opportunity for input. On request, any person is permitted to present information regarding pending requests.

¹MCL 14.32.

²The Attorney General has historically interpreted this to include individual legislators.

³*LaFountain v Attorney General*, 200 Mich App 262, 264; 503 NW2d 739 (1993).

⁴*East Grand Rapids School Dist v Kent County Tax Allocation Bd.*, 415 Mich 381, 394; 330 NW2d 7 (1982).

If the opinion request is granted, it is assigned to an assistant attorney general having a recognized expertise in the relevant area of the law. This attorney is expected to prepare a thoroughly researched and well written draft. The Assistant Attorney General for Law edits the draft to assure it is both legally sound and well written. The draft may be circulated to other attorneys within the Department of Attorney General for substantive review.

All informational letters, and most letter opinions, are submitted directly to the Chief Deputy Attorney General for review and approval. If the draft does not require further editing, it is submitted to the Attorney General or, in the case of informational letters, the draft is signed and issued by the Chief Deputy Attorney General. Drafts of most formal opinions and some letter opinions are first submitted for consideration and approval by the Attorney General's Opinion Review Board (ORB).

The ORB, which meets weekly to review draft opinions, consists of senior assistant attorneys general appointed by the Attorney General. The ORB assures that draft opinions are both legally accurate and well written. In considering a draft, the ORB has several options, including receiving input from the drafter as well as other persons outside the department, revising the draft, directing that revisions be made by others, and requesting that a counter draft be submitted by either the original drafter or by another person.

Upon final ORB approval, draft opinions are submitted to the Chief Deputy Attorney General for review and, if approved, to the Attorney General for his further review, approval, and signature or other appropriate action. The Director for External Affairs also participates in the review process.

Upon issuance, formal opinions are published and indexed in the Biennial Report of the Attorney General. Formal opinions issued since March 1, 1963, are available on the Attorney General's website: www.michigan.gov/ag. Formal opinions issued since 1977 can be found on both Westlaw and Lexis. Formal and letter opinions are available on request from the Department's Opinions and Municipal Affairs Division.

FORMAL OPINIONS

1

COUNTIES: Payment of pension benefits to reemployed retirants via a deferred retirement option plan (DROP)

RETIREMENT AND PENSIONS:

Consistent with MCL 46.12a(28), a county may adopt a deferred retirement option plan (DROP) and may, with approval of the affected employee, pay the employee's retirement or pension benefit into the DROP program if (1) the reemployed retirant works less than 1,000 hours per 12-month period or the position is an elected or appointed position meeting the requirements of MCL 46.12a(b)(i)(B)-(D); (2) the employee is not eligible for any employee benefits other than those required by law or those provided by virtue of being a retirant; and (3) the employee is not a member of the county's retirement plan and does not receive additional retirement credits during the period of reemployment.

Opinion No. 7122

January 14, 2003

Honorable Alan Sanborn
State Senator
The Capitol
Lansing, Michigan 48913

You have asked whether, consistent with MCL 46.12a(28), a county may adopt a "deferred retirement option plan" (DROP) for retired county employees who become reemployed by the county.

Information supplied with your request indicates that Macomb County is considering adopting a DROP arrangement whereby any county employee eligible to draw a full retirement benefit could elect to participate in the DROP.¹ While Macomb County has not finalized the terms of its DROP proposal, under the typical DROP arrangements described in the materials supplied to this office, a DROP participant could continue in county service for up to five years. The employee would earn his or her position's usual salary during the continued service, but would no longer contribute to, and would not earn service credit for, the county pension plan. The employee's retirement allowance would be calculated as of the DROP election date and, during the employee's continued county service, a percentage (up to 100%) of the allowance would be paid monthly into a DROP account established for the employee. The DROP account would earn interest at a fixed rate.

The employee would not have access to the DROP account until he or she finally leaves county service. At that time, the DROP account money could be (1) paid out in a lump sum, (2) rolled over into an IRA or 401(k) account, (3) converted into monthly payments to supplement the employee's "frozen" retirement allowance, or (4) drawn out depending on the employee's financial needs and applicable DROP distribution rules.²

A county has only those powers granted to it by the Constitution or the Legislature. *Alan v Wayne County*, 388 Mich 210, 245; 200 NW2d 628 (1972). A county may not adopt a pension plan that contravenes state law and, in particular, MCL 46.12a. *Gray v Wayne County*, 148 Mich App 247; 384 NW2d 141, *lv den* 426 Mich 872 (1986). Thus, for example, a county may not implement a "20 and out"

¹The employee would have to be, for example, at least age 55 with 25 years of service. MCL 46.12a(1)(b).

²While not precedential, the Internal Revenue Service has ruled favorably on the federal tax treatment of certain lump sum distributions from a DROP account. Private Letter Ruling 200219042.

program when MCL 46.12a specifies that employees must have 25 years of service or attain age 60 with at least 5 years of service to retire with full benefits. *Gray, supra*.³

The authority of a county to provide pension benefits for county employees is set forth in the county pension plan act, MCL 46.12a. Nothing in that act precludes a county, with the consent of the affected employees, from establishing a DROP system for payment of otherwise lawful pension or retirement benefits to retired county employees who become reemployed by the county. The act does, however, impose limitations on the authority of the county to make continued retirement or pension benefit payments to those employees irrespective of whether a DROP program has been adopted. MCL 46.12a(28)⁴ provides in pertinent part:

(28) One of the following conditions applies to a retirant who is receiving a pension or retirement benefit from a plan under this section if the retirant becomes employed by a county that has established a plan under this section:

(a) Payment of the pension or retirement benefit to the retirant shall be suspended if the retirant is employed by the county from which the retirant retired and the retirant does not meet the requirements of subdivision (b) or (d).

Subdivision (28)(d), MCL 46.12a(28)(d), deals with certain employees of the state judicial council and, thus, is not germane to your question. Subdivision (28)(b), MCL 46.12a(28)(b), is germane. It provides:

(b) Payment of the pension or retirement benefit to the retirant shall continue without change in amount or conditions by reason of employment by the county from which the retirant retired if all of the following requirements are met:

(i) The retirant meets 1 of the following requirements:

(A) For any retirant, is employed by the county for not more than 1,000 hours in any 12-month period.

(B) For a retirant who was not an elected or appointed county official at retirement, is elected or appointed as a county official for a term of office that begins after the retirant's retirement allowance effective date.

(C) For a retirant who was an elected or appointed county official at retirement, is elected or appointed as a county official to a different office from which the retirant retired for a term of office that begins after the retirant's retirement allowance effective date.

(D) For a retirant who was an elected or appointed county official at retirement, is elected or appointed as a county official to the same office from which the retirant retired for a term of office that begins 2 years or more after the retirant's retirement allowance effective date.

³Because your letter makes no reference to any collective bargaining agreement, this opinion does not address what impact, if any, a collective bargaining agreement might have on the question. 1988 PA 499 amended MCL 46.12a to authorize counties to enter into collective bargaining agreements that provide "retirement benefits that are in excess of the retirement benefits otherwise authorized to be provided under this section." See MCL 46.12a(27). Thus, a county could agree to calculate an employee's final average compensation based upon his or her three highest consecutive years of compensation, rather than the five years mandated by MCL 46.12a(2)(a), if part of a collective bargaining agreement reached under the Public Employment Relations Act, MCL 423.201 *et seq.* *Macomb County Professional Deputies Assn v Macomb County*, 182 Mich App 724; 452 NW2d 902 (1990).

⁴Your request letter refers to MCL 46.12a(29). Subsequent to your request, the Legislature enacted 2002 PA 730 which amended MCL 46.12a to remove the requirement for a county pension plan committee. This caused a renumbering of MCL 46.12a's subsections, so the operative subsection here is now MCL 46.12a(28) rather than (29).

(ii) The retirant is not eligible for any benefits from the county other than those required by law or otherwise provided to the retirant by virtue of his or her being a retirant.

(iii) The retirant is not a member of the plan during the period of reemployment, does not receive additional retirement credits during the period of reemployment, and does not receive any increase in pension or retirement benefits because of the employment under this subdivision.

By its plain terms, MCL 46.12a(28) mandates that, if a retired county employee is reemployed by the county, the employee's pension or retirement benefit may continue to be paid only if each of three specific conditions is met. First, pursuant to subsection (b)(i), unless the position is one of the qualifying elected or appointed positions, the reemployed retirant must work less than 1,000 hours per 12-month period. Second, pursuant to subsection (b)(ii), the employee must not be eligible for any employee benefits other than those required by law⁵ or those provided by virtue of his or her being a retirant.⁶ Finally, under subsection (b)(iii), the employee may not be a member of the county's retirement plan and may not receive additional retirement credits during the period of reemployment. Unless each of these conditions is met, payment of the employee's pension or retirement benefit "shall be suspended."

It is my opinion, therefore, that consistent with MCL 46.12a(28), a county may adopt a deferred retirement option plan (DROP) and may, with approval of the affected employee, pay the employee's retirement or pension benefit into the DROP program if (1) the reemployed retirant works less than 1,000 hours per 12-month period or the position is an elected or appointed position meeting the requirements of MCL 46.12a(b)(i)(B)-(D); (2) the employee is not eligible for any employee benefits other than those required by law or those provided by virtue of being a retirant; and (3) the employee is not a member of the county's retirement plan and does not receive additional retirement credits during the period of reemployment.

MIKE COX
Attorney General

⁵Among employee benefits "required by law" are worker's compensation coverage pursuant to MCL 418.101 *et seq* and, for applicable employees, overtime compensation under MCL 408.384a.

⁶A county pension plan may provide group life, health, accident and hospitalization coverage to retirants. MCL 46.12a(1)(a). Retirant insurance benefits often differ from active employee insurance benefits. For example, health, accident, and hospitalization benefits for retirants are commonly coordinated with Medicare coverage. Group life coverage, if provided for retirants, is often less extensive than that provided active employees.

CONCEALED WEAPONS: Possession of handguns within state parks or while hunting during bow and arrow only hunting season

FIREARMS:

HUNTING:

A person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park provided that the pistol is not loaded. A person licensed to carry a concealed pistol may possess a loaded pistol within a state park only during established hunting seasons on lands designated open to hunting or at a target range established by the Department of Natural Resources or during an officially sanctioned field trial.

A person licensed to carry a concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.

Opinion No. 7123

February 11, 2003

Honorable Rich Brown
State Representative
The Capitol
Lansing, MI 48913

Honorable James L. Koetje
State Representative
The Capitol
Lansing, MI 48913

You have requested my opinion on two questions relating to the possession of concealed pistols. You first ask whether a person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park. Your second question asks whether a person licensed to carry a concealed pistol is subject to any restrictions established by the Department of Natural Resources in connection with wildlife hunting in Michigan or may possess or carry a firearm while hunting deer during "bow and arrow only" hunting season.

The Concealed Pistol Licensing Act (Act), 1927 PA 372, as amended, MCL 28.421 *et seq.*, regulates the possession and carrying of concealed pistols. The Act prohibits persons from carrying a concealed pistol unless they have been licensed in accordance with the provisions of the Act. Section 5c(2), MCL 28.425c(2), provides that licensees may carry a concealed pistol "anywhere in this state," subject to certain exceptions found in section 5o and "except as otherwise provided by law."

Section 5o of the Act, MCL 28.425o, identifies specific locations where the carrying of a concealed pistol is expressly prohibited. These locations are commonly referred to as gun-free zones and include: A school or school property; a public or private daycare center, public or private child care agency, or public or private child placing agency; a sports arena or stadium; certain premises licensed by the Michigan Liquor Control Commission; property owned or operated by a church, synagogue, mosque, temple, or other place of worship; an entertainment facility that seats 2,500 or more people; a hospital; or a dormitory or classroom of a college or university. The list of gun-free zones in section 5o is not all-inclusive, however, because section 5c(2) of the Act also prohibits the carrying of a concealed pistol in those locations where such a ban is "otherwise provided by law."

The phrase "provided by law" was construed by the Michigan Supreme Court in *Viculin v Dep't of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971). In holding that appeal procedures set forth in a Michigan court rule were properly considered a method of review "provided by law" as used in Const 1963, art 6, § 28, the Court explained that the rule fell within the scope of this phrase because "[i]t was adopted pursuant to the power vested" in the Court. 386 Mich at 397, n 20.

This view is consistent with established principles describing what is meant by the word "law." Its meaning was summarized in 52A CJS, Law, p 737, in the following way:

It has been held to be a broad term, variously and frequently defined, its meaning in every instance to be governed by the context.

* * *

[I]t is a general rule of conduct declared by some authority possessing sovereign power over the subject; a rule which every citizen of the state is bound to obey; an established or permanent rule established by the supreme power, or the power having the legislative control of the particular subject That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law. [Footnotes omitted.]

These general principles have been applied by Michigan courts. For example, properly promulgated administrative rules have the force and effect of law. *Clonlara, Inc v Michigan State Bd of Ed*, 442 Mich 230, 239; 501 NW2d 88 (1993). See also *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 485-486; 516 NW2d 102 (1994) (a "law" includes "those principles promulgated in constitutional provisions, common law, and regulations as well as statutes"). Moreover, the Michigan Supreme Court has afforded full legal force and effect to orders issued by the Director of the Michigan Department of Natural Resources pursuant to statutory authorization in *DNR v Seaman*, 396 Mich 299, 310-314; 240 NW2d 206 (1976).

An examination of the Michigan laws dealing with the possession of firearms discloses several additional instances where the prohibition of firearms is "otherwise provided by law." Among these is 2001 PA 225, MCL 259.80f, effective April 1, 2002, which prohibits the possession of a firearm in the "sterile" (i.e., secure) area of a commercial airport. In addition, the Michigan Supreme Court, in Administrative Order 2001-3, 464 Mich 1xxv, has, with certain exceptions, prohibited the possession of a weapon in any courtroom or facility used for official business of the court. A person violating the order may be held in contempt of court. The Michigan Department of Agriculture has also promulgated a rule making it unlawful for any person, except authorized peace officers and other persons authorized by law, "to enter upon a fairgrounds and have in his possession any firearm loaded or unloaded." 1979 AC, R 291.208.

The Michigan Department of Natural Resources has also adopted rules in the discharge of its duties concerning state park and wildlife management that fall within the "otherwise provided by law" provision of section 5c(2) of the Concealed Pistol Licensing Act. MCL 324.504 authorizes the Department of Natural Resources to promulgate rules "for the protection of the lands and property under its control against wrongful use or occupancy." This section also authorizes the Department to issue orders necessary to implement rules promulgated under this section. These orders take effect upon posting. Violation of a rule or order issued under this section constitutes a civil infraction punishable by a fine of not more than \$500.00. MCL 324.504.

Pursuant to this authority, the Department of Natural Resources has promulgated rules relating to the possession of a firearm on certain state lands administered by the department.¹ Rule 27(b) makes it unlawful for a person to carry or possess a loaded firearm "in state parks and state recreation areas," except on lands designated open to hunting during established hunting seasons or at an officially established target range or during an officially sanctioned field trial. 2001 MR 20, R 299.927. There is no prohibition against carrying or possessing an unloaded firearm in such areas. Department employees acting in the line of duty and certain other authorized persons are exempt from this rule. 2001 MR 20, R 299.930. On a designated shooting range,

¹Your question only deals with the possession of firearms in state parks. Additional regulations limit the possession of firearms in federal parks, such as Isle Royale National Park, Sleeping Bear National Lake Shore, and Pictured Rocks National Lake Shore. See 36 CFR 2.4.

a person shall not "[p]ossess a loaded firearm, except at established shooting stations on the firing line." 1979 AC, R 299.673. The Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.*, further allows a person to transport a firearm while going to and from a target range provided the firearm is unloaded and either encased or carried in the trunk of a vehicle. MCL 324.43513.

It is my opinion, therefore, in answer to your first question, that a person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park provided that the pistol is not loaded. A person licensed to carry a concealed pistol may possess a loaded pistol within a state park only during established hunting seasons on lands designated open to hunting or at a target range established by the Department of Natural Resources or during an officially sanctioned field trial.

Your second question asks whether a person licensed to carry a concealed pistol is subject to any restrictions established by the Department of Natural Resources in connection with wildlife hunting in Michigan or may possess or carry a pistol while hunting deer during "bow and arrow only" hunting season.

As previously noted, section 5c(2) of the Concealed Pistol Licensing Act, with certain exceptions, allows a licensee to carry a concealed pistol anywhere in this state except "as otherwise provided by law." MCL 324.40107 is a provision of the NREPA that expressly delegates to the Department of Natural Resources the responsibility to issue orders regarding hunting in Michigan. A person who violates orders issued under section 40107 of the NREPA is subject to various criminal penalties, including imprisonment and fines. MCL 324.40118. Pursuant to this authority, the Department of Natural Resources has issued a number of orders regulating the possession of firearms in connection with the hunting of animals in Michigan. Wildlife Conservation Order 3.101(3) provides that a person hunting deer during the "muzzle-loading and black-powder firearms only" season shall possess only a muzzle-loading rifle, muzzle-loading shotgun, or black-powder pistol. Wildlife Conservation Order 3.101(5) prohibits a person who is hunting deer with a bow and arrow during the open "bow and arrow only" season from possessing a firearm of any type unless that person is properly licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.² Wildlife Conservation Order 3.101e(2) prohibits an adult accompanying a youth firearm deer hunter from possessing a firearm while accompanying a youth hunter during the specified youth firearm deer-hunting season. As these orders are adopted pursuant to powers vested in the Department of Natural Resources and the failure to follow them subjects the offender to sanctions or legal consequences, these orders fall within the scope of the phrase "otherwise provided by law" used in section 5c(2) of the Act. See *DNR v Seaman, supra*.

²OAG, 1985-1986, No 6406, p 431 (December 10, 1986), concluded that a person licensed to carry a concealed weapon could carry a pistol while hunting deer, provided the person was licensed to hunt deer with certain handguns. The opinion did not consider whether a concealed weapon could be carried where that person was licensed to hunt only with a bow and arrow, so it has no application here.

It is my opinion, therefore, in answer to your second question, that a person licensed to carry a concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.

MIKE COX
Attorney General

Editor's Note: After OAG No 7123 was released, 2004 PA 129 and 130 were enacted into law, effective June 3, 2004. These acts amended MCL 324.504, 324.43510, and 324.43516. Under MCL 324.504(3) as amended, the Department of Natural Resources "shall not promulgate or enforce a rule that prohibits an individual who is licensed or exempt from licensure under 1927 PA 372, MCL 28.421 to 28.435, from carrying a pistol in compliance with that act, whether concealed or otherwise, on property under the control of the department." MCL 324.43510(2) as amended provides: "This act or a rule promulgated or order issued by the department or the commission under this act shall not be construed to prohibit a person from transporting a pistol or carrying a loaded pistol, whether concealed or not" if certain specified circumstances apply. MCL 324.43516 as amended specifies that its provisions are subject to MCL 324.43510. Accordingly, OAG No 7123 has been superseded by subsequent legislation.

CRIMINAL LAW: Application of motorboat noise limits to wind noise produced by airboat propeller

LAW ENFORCEMENT:

NATURAL RESOURCES, DEPARTMENT OF:

The noise limit provisions in section 80156 of the Natural Resources and Environmental Protection Act do not apply to noise produced by an airplane propeller on an airboat.

Opinion No. 7124

February 20, 2003

Honorable Patricia Birkholz
State Senator
The State Capitol
Lansing, MI 48909

You have asked if the noise limit provisions in section 80156 of the Natural Resources and Environmental Protection Act apply to noise produced by an airplane propeller on an airboat. Information received with your request indicates that residents who live near the Kalamazoo River have complained about noise generated by airboats used on the river.

The Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, MCL 324.101 *et seq.*, was enacted to consolidate and codify Michigan laws relating to the environment and natural resources. Subchapter 5 of the NREPA, MCL 324.80101 *et seq.*, governs watercraft and marine safety. Section 80156, which establishes motorboat sound level standards, provides in relevant part as follows:

(1) Subject to subsection (2),¹ a person shall not operate a motorboat on the waters of this state unless the motorboat is *equipped and maintained with an effective muffler or underwater exhaust system that does not produce sound levels in excess of 90 dB(A)* when subjected to a stationary sound level test as prescribed by SAE J2005 or a sound level in excess of 75 dB(A) when subjected to a shoreline sound level measurement procedure as described by SAE J1970. The operator of a motorboat shall present the motorboat for a sound level test as prescribed by SAE J2005 upon the request of a peace officer. *If a motorboat is equipped with more than 1 motor or engine, the test shall be performed with all motors or engines operating.* To determine whether a person is violating this subsection, a peace officer may measure sound levels pursuant to procedures prescribed in SAE J1970, issued 1991-92.

* * *

(6) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days and a fine of not less than \$100.00 or more than \$500.00. Additionally, before putting the motorboat back in use, *a person who violates this section is required to install an effective muffler or underwater exhaust system that meets the requirements of this section on the motorboat in violation at his or her expense.* [Emphasis added.]

As appears from the quoted language in section 80156, the statute prohibits the operation of a motorboat engine that exceeds specified sound levels. Whether the maximum sound levels specified in section 80156 apply to other noises produced by a motorboat, namely wind noise from an operating airplane propeller, is a question of statutory interpretation.

Section 80103(f) of the NREPA defines the term "motorboat" as follows:

"Motorboat" means a vessel propelled wholly or in part by machinery.

An airboat is a flat-bottomed boat, powered by an airplane propeller projecting above the stern, and is used in shallow waters. *American Heritage College Dictionary*, Third Edition (1997). Information available on the Internet indicates that an airboat propeller is powered by an engine above the stern, much like a common fan. Since an airboat's engine and propeller constitute "machinery" that propels a vessel, an airboat clearly falls within the definition of motorboat as set forth in section 80103(f) of the NREPA.

Information supplied to my staff indicates that a principal sound emanating from an operating airboat is the noise produced by the movement of the airboat's airplane propeller, as distinct from its engine. Thus, while an airboat may be equipped with a muffler or underwater exhaust system that limits engine sound to decibel levels below the maximum levels established by subsection (1) of section 80156, it is possible that the noise produced by the movement of the airboat's airplane propeller could exceed those levels.

In order to ascertain the intent of the Legislature, the entire act should be read and meaning must be given, if possible, to every word of the statute. *Grand Rapids v Crocker*, 219 Mich 178, 182-183; 189 NW 221 (1922). Legislative intent is not to be determined from focusing on isolated words, but from the entire act. *Taylor v Auditor General*, 360 Mich 146, 151; 103 NW2d 769 (1960). Since section 80156 imposes criminal penalties for violations of the NREPA, it must be narrowly construed. *People v Ellis*, 204 Mich 157; 169 NW 930 (1918).

The first sentence of subsection (1) of section 80156 provides that:

[A] person shall not operate a motorboat on the waters of this state unless the motorboat *is equipped and maintained with an effective muffler or underwater exhaust system that does not produce sound levels in excess of [the applicable decibel level under the specified sound test].* [Emphasis added.]

¹Subsection (2) authorizes the Department of Natural Resources to establish, by rule, a different motorboat sound level test and maximum sound levels. No such rule has been adopted.

If the emphasized words were omitted from the statute, the specified maximum sound levels would clearly apply to a motorboat generally, rather than to a motorboat's engine. A cardinal rule of statutory interpretation requires that each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence. *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000).

The language of subsection (1) of section 80156 emphasized above is also used in subsection (3), which provides that:

A person shall not manufacture, sell, or offer for sale a motorboat for use on the waters of this state unless that motorboat *is equipped and maintained with an effective muffler or underwater exhaust system* that complies with the applicable sound levels permitted under subsection (1) or (2). [Emphasis added.]

Further, subsection (6) requires a person in violation:

[T]o install an effective muffler or underwater exhaust system that meets the requirements of this section on the motorboat in violation at his or her expense. [Emphasis added.]

The Legislature has not defined "muffler" as that term is used in the NREPA. Where a word is not defined in a statute, it should be given its ordinary meaning and a court may consult dictionary definitions. *Markillie v Bd of County Road Comm'rs*, 210 Mich App 16, 21; 532 NW2d 878 (1995). Commonly understood, the term "muffler" means "[a]ny device that absorbs noise, especially that of internal-combustion engine." *American Heritage Dictionary* (1970). (Emphasis added.) In the Michigan Vehicle Code, the Legislature adopted a comparable definition of muffler as being a "device for abating the sound of escaping gases of an internal combustion engine." MCL 257.707a(e). (Emphasis added.) This definition clarifies the legislative intent to regulate motorboat engine noise.

Strengthening the conclusion that the Legislature intended to regulate only engine noise is section 80156(2)(c), where the Legislature has provided that the test of maximum decibel noise levels shall be performed with "all motors or engines operating." In addition, when section 80156 was added to the NREPA, it replaced section 113 of 1967 PA 303, the now-repealed Marine Safety Act. Section 113 addressed motorboat noise as follows:

Every motorboat being operated on the waters of this state and being propelled by a permanently or temporarily attached motor shall be provided and equipped with a stock factory muffler, underwater exhaust, or other modern device capable of adequately *muffling the sound of the exhaust of the engine* of such motorboat. [Emphasis added.]

Section 113 clearly addressed motorboat *engine* noise. Section 80156, read as a whole, likewise is intended to address engine noise. Although awkwardly worded to imply that engine mufflers or their underwater exhaust systems produce noise, when read as a whole, including the language that requires testing with all motors or engines operating, it is clear that the statute's noise limit applies to the motorboat's *engine*.

It must therefore be concluded that an airboat is a motorboat for the purposes of section 80156(1) of the NREPA and that the operator of an airboat may be cited for violating this statute if a law enforcement officer determines that the airboat's engine, as equipped with a muffler or underwater exhaust system, produces sound levels in excess of the specified levels. Noise produced from the movement of the airboat's airplane propeller may not, however, be used to establish a violation of section 80156(1). If there is a public noise problem associated with the operation of airboat propellers, the Legislature is, of course, free to amend the NREPA if it determines that propeller noise should also be regulated.

It is my opinion, therefore, that the noise limit provisions in section 80156 of the Natural Resources and Environmental Protection Act do not apply to noise produced by an airplane propeller on an airboat.

MIKE COX
Attorney General

INCOMPATIBILITY: Holding dual offices as city attorney and city council member of two different cities

The Incompatible Public Offices Act prohibits a person from simultaneously serving as a member of a city council of one city and as the city attorney for another where the two cities are parties to a contract.

Opinion No. 7125

February 20, 2003

Honorable Randy Richardville
State Representative
The Capitol
Lansing, Michigan

You have asked whether the Incompatible Public Offices Act permits a person to simultaneously serve as a member of a city council of one city and as the city attorney of another where the two cities are parties to a contract.

In the Incompatible Public Offices Act (Act), MCL 15.181 *et seq.*, the Legislature has enacted a general prohibition against holding incompatible offices. Section 2 of the Act provides in relevant part that "a public officer or public employee shall not hold 2 or more incompatible offices at the same time." MCL 15.182. A "public officer" is defined to include a person who is elected or appointed to a public office of a city in this state or to a council of a city in this state. MCL 15.181(e).

You advise that your inquiry addresses the situation of a person serving on the Detroit City Council and as Ecorse City Attorney. Section 3-105 of the Detroit City Charter states that the elective officers of the city include the nine members comprising the city council. Section 9 of chapter VI of the Ecorse City Charter describes the city attorney among the city's appointive officers. See also OAG, 1987-1988, No 6418, p 15 (January 13, 1987) (treating the office of city attorney as a public office subject to the incompatibility provisions of MCL 15.182) and OAG, 1991-1992, No 6717, p 139 (April 7, 1992) (same). Thus, both the offices of city council member and of city attorney involved in your inquiry fall within the Act's definition of "public officer."

Whether these two positions are "incompatible" as defined in the Act requires consideration of section 1(b), MCL 15.181 (b), which defines "incompatible offices" as:

[P]ublic offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.
- (iii) A breach of duty of public office.

Recognizing that the Legislature used the undefined term "public official" in defining the phrase "incompatible offices" instead of the defined terms "public employee" and "public officer," the Michigan Supreme Court construed the phrase "public offices held by a public official" to encompass positions of public employment. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 158-162; 627 NW2d 247 (2001). Thus, the positions of city council member and city attorney both are "public offices held by a public official" falling within the scope of the Act's proscriptions.

The analysis next proceeds to whether a person's performance of the duties of city council member of one city and city attorney of a second city results in any of the three situations prohibited under section 2 of the Act. There is no suggestion in the materials provided to this office that the two offices are either subordinate to one another or supervised by one another. The answer to your question therefore turns on whether the performance of the duties of one of these offices results in a breach of duty of public office with regard to the other.

The Michigan Supreme Court has provided recent guidance in analyzing this issue consistent with numerous opinions issued by this office. In *Macomb County Prosecuting Attorney, supra*, the Court made clear that incompatibility under the Act "exists only when the performance of the duties of one of the public offices 'results in' one of the three prohibited situations." *Id.*, at 162-163, quoting OAG, 1979-1980, No 5626, p 537 (January 16, 1980). According to the Court, "the Legislature clearly restricted application of the statutory bar to situations in which the specified outcomes or consequences of a particular action actually occur." *Id.*, at 163. Incompatibility is not established where a breach of duty *may* occur or where there exists only the *potential* for a conflict. *Id.*

A breach of duty does arise, however, when a public official holding dual offices "cannot protect, advance, or promote the interest of both offices simultaneously." *Id.*, at 164. Determining whether a breach of duty exists requires examination into the duties and responsibilities of each of the dual offices held. OAG, 1993-1994, No 6791, p 121 (March 11, 1994). A public office is a public trust, and the courts have imposed a fiduciary standard upon public officials that requires disinterested conduct. OAG, 1997-1998, No 6931, p 5 (February 3, 1997), citing *Wilson v Highland Park City Council*, 284 Mich 96, 104; 278 NW 778 (1938). If anything arises that prevents a person holding dual offices from serving either of the offices with undivided loyalty, a breach of duty occurs and the offices are incompatible. OAG No 6931, at 7.

One circumstance presenting a clear incompatibility under these guiding principles is when a person is placed at both ends of a contract between the two governmental units served. *Macomb County Prosecuting Attorney*, 464 Mich at 166. The degree of control exercised by the person in the situation presented is not determinative; rather, "the positioning of the two offices on opposite sides of a contractual relationship is the crucial factor." *Wayne County Prosecutor v Kinney*, 184 Mich App 681, 685; 458 NW2d 674 (1990), *lv den* 436 Mich 887 (1990). Where the two entities are parties to an existing contract or are negotiating toward the formation of a contract between them, incompatibility is clearly demonstrated and prohibited. *Macomb County Prosecuting Attorney*, 464 Mich at 165.

Moreover, a public official's abstention from the responsibilities of his or her office in order to avoid participating in the approval, amendment, or implementation of an agreement between the two public entities which he or she serves is itself a breach of duty. "Only vacation of one office will resolve the public official's dilemma." *Contesti v Attorney General*, 164 Mich App 271, 281; 416 NW 2d 410 (1987), *lv den* 430 Mich 893 (1988), *quoting with approval*, OAG, 1979-1980, No 5626, p 537, 545 (January 16, 1980).

Applying these authorities to the facts presented by your request, we first examine the office of city council member. We are advised through materials forwarded to this office that all the members of the Detroit City Council are involved in decisions

that directly affect the water rates that will be paid by residents of the City of Ecorse, through an existing contractual arrangement between the City of Ecorse and the Detroit Water and Sewerage Department. As recently as February 2002, the Detroit City Council approved resolutions adjusting the rates to be charged suburban customers, including Ecorse, and your letter indicates that a public hearing was scheduled for February of this year on proposed water rates for the 2003-2004 fiscal year. While the subject contract does not include a provision specifying a particular methodology or formula for determining the rates that will be set, we are advised that, upon publication of the proposed rates for the coming fiscal year, the City's Water Department solicits comments from each municipality affected. The municipality is provided an opportunity to contest certain aspects of the rate and adjustments may result from that process before the rates are presented to the City Council for approval.

In addition, clause 16 of the contract between the two cities provides that "all existing and future charter provisions and ordinances of the City of Detroit and pertaining to the supplying of water to suburban communities shall govern the same and be considered a part of this agreement." Thus, consideration of any such ordinance or charter provision by the Detroit City Council constitutes consideration of a revision of the contract with the City of Ecorse as well. The forwarded materials indicate that the Detroit City Council voted to approve a water bond ordinance as recently as Fall 2002. Finally, the existing term of the contract is for an "indefinite period of time," subject to termination upon one year's notice by either party or upon mutual consent.

Turning to the other of the dual offices at issue in your question, a municipal attorney's duties generally include acting as legal advisor to the municipality and representing the municipality in legal proceedings, but each city's charter must be examined to determine the authority actually conferred. The person serving as Ecorse City Attorney under that city's charter "shall act as legal advisor to and as attorney and counsel for the municipality and all its officers and departments in matters relating to their official duties." Ecorse City Charter, chapter VI, section 9, paragraph 1. In addition, the city attorney is required to conduct all the city's litigation and, of particular relevance to your question, "to prepare, or officially pass upon, all contracts . . . in which the City is concerned." *Id.*

Thus, as a member of the Detroit City Council and as Ecorse City Attorney under these circumstances, the person involved is plainly positioned on both sides of the contractual relationship between the two cities described above giving rise to a prohibited incompatibility. When called upon to consider whether to approve or disapprove the rates to be charged residents of the City of Ecorse and when considering whether to adopt water-related ordinances that will become a part of the contract with Ecorse by operation of clause 16, the person who also serves as Ecorse City Attorney cannot simultaneously satisfy a fiduciary duty of loyalty owed to both cities. In addition, as long as the contract is in place and the rates continue to be subject to adjustment, questions necessarily arise regarding whether it continues to be in the best interests of the respective cities to continue the contract.

This conclusion is consistent with OAG No 6717, p 139, *supra*, in which it was determined that a person may not simultaneously serve as a member of a governing body of one unit of local government and as the attorney for a second unit of local government if the two units of government have entered into or are negotiating one or more contracts with one another.¹

¹As was also stated in OAG No 6717, this opinion does not address the extent to which the Michigan Rules of Professional Conduct may apply to any of the facts addressed in this opinion. Those questions are within the sole prerogative of the Michigan Supreme Court in the exercise of its constitutional authority to regulate the practice of law in this state and the State Bar of Michigan. *Id.*, at 142.

Finally, it should be emphasized that a person's abstention from the responsibilities of his or her office does not serve to eliminate the incompatibility. *Contesti, supra*. A person cannot refrain from voting on a matter to avoid a breach of public duty or attempt through other less direct means to avoid the responsibilities that inhere in a given office.²

It is my opinion, therefore, that the Incompatible Public Offices Act prohibits a person from simultaneously serving as a member of a city council of one city and as the city attorney for another where the two cities are parties to a contract.

MIKE COX
Attorney General

PUBLIC SCHOOL ACADEMIES: Charter school's authority to operate at multiple sites

SCHOOLS AND SCHOOL DISTRICTS:

Under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

Opinion No. 7126

March 6, 2003

Honorable Lisa Wojno
State Representative
The Capitol
Lansing, MI

You ask whether under the Revised School Code a public school academy (popularly called a charter school) may operate at more than one site.

Information supplied with your request indicates that a public school academy operates in one school building (grades K-5) at one street address in city A and operates in another school building (grades 6-10) at a different street address in the same city. Both building sites are specified in the school's charter application and in its authorizing contract.

In Part 6A of the Revised School Code, 1976 PA 451, MCL 380.1 *et seq*, the Legislature provided for the organization and operation of public school academies. MCL 380.501-380.507. A public school academy is defined as a "public school" and a "governmental agency." MCL 380.501. See *Council of Organizations and Others for Education about Parochialism v Governor*, 455 Mich 557, 567; 566 NW2d 208 (1997). In order to organize and operate a public school academy, a person or entity must apply to an authorizing body for a contract. MCL 380.502(3). As part of its application, a proposed public school academy must include a description of, and address for, the proposed physical plant in which the academy will be located. MCL 380.502(3)(j).

² For example, delegating the duties held by the office of city attorney to another or contracting out any part of the duties defined by charter as included within the position's responsibilities would not suffice to avoid an incompatibility. The only resolution of the "public official's dilemma" is vacating one of the offices. *Contesti*, 164 Mich App at 281.

If an authorizing body issues a contract for a public school academy, the contract must include certain information including a description of, and address for, the academy's proposed physical plant. MCL 380.503(5)(g). Section 504(1), MCL 380.504(1), addresses the siting of the public school academy:

A public school academy may be located in all or part of an existing public school building. A public school academy shall not operate at a site other than the *single site requested for the configuration of grades that will use the site*, as specified in the application required under section 502 and in the contract. [Emphasis added.]

The purpose of statutory interpretation is to ascertain and effectuate legislative intent. If the language employed in a statute is plain and unambiguous, the statute must be applied as written and no additional interpretation is necessary. *Owendale-Gagetown School Dist v State Bd of Education*, 413 Mich 1, 8; 317 NW2d 529 (1982). In construing a statute, it is presumed that every word has some meaning and every effort must be made to avoid a construction that would render any part surplusage or nugatory. *Bommarito v Detroit Golf Club*, 210 Mich App 287, 292-293; 532 NW2d 923 (1995).

Section 504(1) of the Revised School Code provides that a public school academy "shall not operate at a site other than the single site requested for the configuration of grades that will use the site." The word "configuration" is defined as an arrangement of parts. *Webster's New World Dictionary, Third College Edition* (1988). To conclude that a public school academy may operate at only a single site would render the phrase "for the configuration of grades that will use the site" surplusage and thus violate the rule of statutory interpretation cited above.

To give meaning to every word in section 504(1) of the Revised School Code, it must be concluded that the Legislature has limited the number of sites at which a public school academy may conduct its operations to a single site for each configuration of grades. A public school academy may not, for example, operate three separate elementary schools under a single contract, all covering the same grades, at three separate locations. The statute does, however, permit a public school academy to operate at more than one site provided that it uses only a single site for each configuration of grades. Thus, a public school academy, like the one described in your inquiry, may operate one site for grades 1 through 5 and a second site for grades 6 through 10, subject, of course, to the further requirements that these sites have been specified in the school's charter application and in the contract issued by its authorizing body as required by sections 502(3)(j) and 503(5)(g) of the Revised School Code.

It is my opinion, therefore, that under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

MIKE COX
Attorney General

MENTAL HEALTH: Responsibility for transporting and for costs of transporting certain mental health patients to and from court hearings**COUNTIES:****PEACE OFFICERS: Signing of applications for hospitalization of certain persons with mental illness**

Counties are responsible for transporting, and for the costs incurred by county peace officers associated with transporting, persons hospitalized under chapter 4 of the Mental Health Code to and from court to secure their right under section 455 of the Mental Health Code to be present at their civil commitment hearings.

A law enforcement officer who personally observes conduct that causes the officer to reasonably believe an individual requires mental health treatment and, based on those observations, takes the individual into protective custody, is the only person authorized to execute the application for hospitalization under section 427 of the Mental Health Code and may not delegate that responsibility to a mental health services worker.

Opinion No. 7127

April 7, 2003

Honorable Stephen F. Adamini
State Representative
The Capitol
Lansing, MI

You have asked two questions concerning the Mental Health Code. You first ask who is responsible for transporting, and for the costs incurred by county peace officers associated with transporting, persons hospitalized under chapter 4 of the Mental Health Code to and from court to secure their right under section 455 of the Code to be present at their civil commitment hearings.

Your office has advised that your request arises from a situation in the Upper Peninsula. Luce County residents who are ordered by the Luce County Probate Court to be hospitalized for mental health services are sent to the Psychiatric Unit at Marquette General Hospital located in Marquette County. The Luce County Sheriff's Department transports these individuals to and from probate court hearings required by the Mental Health Code concerning the patients' continued involuntary hospitalization. The Luce County Sheriff's Department has sought reimbursement from the community mental health services program for the costs it incurs transporting the hospitalized persons between the hospital and the court based on its belief that these are program costs and not the county's responsibility. The community mental health services program denies that the transportation costs qualify for reimbursement.

The Mental Health Code (Code), 1974 PA 258, as amended, MCL 330.1101 *et seq.*, is a comprehensive codification of the laws relating to mental health in Michigan. Chapter 4 of the Code contains the sections relating to civil admission and discharge procedures for mentally ill individuals. You refer to three sections of chapter 4 that deal with involuntary commitment. Section 426, MCL 330.1426, provides that when a peace officer is given "an application [for hospitalization] and physician's or licensed psychologist's clinical certificate, the peace officer shall take the individual . . . into protective custody and transport the individual" to a hospital or preadmission screening unit.

Section 436 of the Code, MCL 330.1436, addresses the situation where, prior to hospitalization, an individual has failed to comply with a court order requiring the individual to be examined by a physician or licensed psychologist. In that instance,

"the court may order a peace officer to take the individual into protective custody and transport him or her to a preadmission screening unit or hospital designated by the community mental health services program or to another suitable place" for the examination.¹ (Emphasis added.)

Similarly, section 438 of the Code, MCL 330.1438, provides for immediate involuntary mental health care in order to prevent physical harm to the individual or others. In that instance, "the court may order the individual hospitalized and may order a peace officer to take the individual into protective custody and transport the individual to a preadmission screening unit" and ultimately to a hospital for treatment if necessary. (Emphasis added.)

Sections 426, 436, and 438 of the Code directly address who bears responsibility for transporting individuals to hospitals and preadmission screening units.² The plain language of these sections places this responsibility on peace officers. These sections do not address, however, who bears responsibility for transporting individuals from their hospital placements to and from court for civil commitment hearings.

Civil commitment hearings are governed by sections 452 to 465 of the Code. MCL 330.1451. Section 452 provides that court hearings shall be convened upon the filing of certain petitions. MCL 330.1452. Under section 453 of the Code, MCL 330.1453, the court is required to give notice of the petition and the time and place of the hearing to the individual subject to the petition and other related information and, under section 454 of the Code, MCL 330.1454, must appoint counsel to represent the individual unless other arrangements have been made. Section 455(1) of the Code, MCL 330.1455(1), mandates that, absent certain circumstances not relevant here, "[t]he subject of a petition has the right to be present at all hearings" and further provides that the right may be deemed waived by the subject's failure to attend. Section 457 of the Code mandates that the prosecuting attorney of the county where a court has its principal office shall participate in the hearings convened under chapter 4 of the Code, unless the petitioner has retained private counsel. MCL 330.1457.

These sections of the Code do not specifically address who is responsible for transporting hospitalized individuals to court for hearings convened under chapter 4 of the Code. A review of other authorities, however, leads to the conclusion that this responsibility is an important part of meeting due process requirements and, accordingly, falls on the counties.

Federal case law establishes that the courts are responsible for securing the person's right to be present at civil commitment hearings. See *Bell v Wayne County General Hospital at Eloise*, 384 F Supp 1085, 1102 (ED Mich, 1974) (3-judge court). The court in *Bell* ruled that failure to provide all possible means to ensure the presence of individuals subject to a commitment hearing is a violation of their constitutional right to due process. *Id.*, at 1099. Moreover, as explained in OAG, 1975-1976, No 4875, p 89, 90 (May 30, 1975), responsibility for conducting civil commitment proceedings and for the costs associated with those proceedings resides in the various counties:

The civil commitment of the mentally ill is justified by the police and *parens patriae* powers of the state. *Donaldson v O'Connor*, 493 F2d 507 (5th Cir, 1974). The State of Michigan has traditionally delegated the power of civil commitment

¹A "community mental health services program" means one of three things under the Code, each of which is defined separately: 1) a program operated under chapter 2 as a county community mental health agency; 2) a community mental health authority; or 3) a community mental health organization. MCL 330.1100a(15).

²Although not mentioned in your request, sections 427, 428, 455(8), and 475(2)(b) of the Code, MCL 330.1427, 330.1428, 330.1455(8), and 330.1475(2)(b), also authorize peace officers under certain circumstances to take individuals into protective custody and transport them to a hospital or preadmission screening unit.

to the various counties. That the commitment process (as opposed to the treatment process) has continued to be fully delegated to the counties by 1974 PA 258 is clear from a reading of that Act. For example, commitment proceedings are instituted in the probate court of the county where the subject of the petition either resides or was found, MCLA 330.1400; MSA 14.800(400); MCLA 330.1434; MSA 14.800(434). The county prosecutor has the duty to participate in commitment proceedings except in cases where the petitioner has retained private counsel, MCLA 330.1457; MSA 14.800(457). If the subject of a commitment petition demands a jury trial, the jury is chosen from residents of the county, MCLA 330.1458; MSA 14.800(458).

It is therefore my opinion that the legislature intended that the counties were to be the responsible governmental bodies for conducting commitment proceedings. Since 1974 PA 258 contains no provision regarding state reimbursement of the counties for the expenses of commitment proceedings *it can readily be inferred that the legislature intended that the counties would absorb those expenses.* [Emphasis added.]

A review of the pertinent sections of the Code in its present form leads to the same conclusion reached in OAG, No 4875. Since the subject of a petition has the right to be present at court hearings under section 455, the costs associated with securing that right are costs of the commitment proceedings, not costs associated with actual treatment, and, accordingly, are costs the Legislature intended to be borne by the counties.³ The conclusion that the Legislature intended that the counties assume all costs of the commitment proceedings is supported by the fact that the Legislature did not appropriate to the Michigan Department of Community Health or to any other state agency funds for the payment of transportation to and from court hearings in civil commitment hearings. Const. 1963, art 9, § 17 provides:

No money shall be paid out of the state treasury except in pursuance to appropriations made by law.

The failure to make such appropriations is further evidence of a legislative intent that the cost of transportation be paid for by counties.

A question related to yours was addressed in OAG, 1979-1980, No 5811, p 1065 (November 5, 1980). At issue there was whether the county was eligible for state reimbursement of the costs of transporting mental health patients to and from state psychiatric hospitals. The opinion explained that the Code has set forth the mechanisms for allocating the costs of the public mental health system between the state and the various counties and that, subject to sufficient appropriations, the state pays 90% of the annual "net cost" of the county's community mental health services program. The opinion then examined the definitions of "net cost" and related terms and determined that transportation expenses were not reimbursable to the counties because they fell outside the scope of "mental health services" as described in then section 208 of the Code. OAG, No 5811, at pp 1066-1067. Thus, transportation expenses to and from civil commitment hearings were the responsibility of the county and not properly charged to the community mental health program or payable by the state through its allocated share of the net cost.

The provisions of the Code analyzed in OAG, No 5811 have not changed materially since that opinion issued, and accordingly, the conclusion reached in the opinion remains true today.⁴ Although 1995 PA 290 amended the Code and changed "county community mental health program" to "community mental health services

³Since this responsibility was established before adoption of Const 1963, art 9, §§ 25-31, your question does not give rise to any "Headlee Amendment" implications.

⁴One exception not applicable here but nevertheless worth noting is section 426, quoted above. When this section was amended by 1995 PA 290, it added the sentence providing that "[t]ransportation to another hospital due to a transfer is the responsibility of the community mental health services program."

program," this change has no impact here. Section 206 of the Code, MCL 330.1206, now sets forth the array of mental health services to be provided by a community mental health services program, and the Legislature has not added transportation to the list of services delineated there.

Nor have there been any subsequent regulatory or contractual changes that warrant a different conclusion. The Michigan Department of Community Health has not promulgated any rule requiring transportation to and from probate courts as a mental health service to be provided by a community mental health services program. Additionally, under section 232 of the Code, MCL 330.1232, the Michigan Department of Community Health enters into contracts with the community mental health services program providers for the provision of mental health services. This contract also does not direct or provide for payment to transport a patient to and from court hearings.⁵

It is my opinion, therefore, in answer to your first question, that counties are responsible for transporting, and for the costs incurred by county peace officers associated with transporting, persons hospitalized under chapter 4 of the Mental Health Code to and from court to secure their right under section 455 of the Mental Health Code to be present at their civil commitment hearings.

Your second question asks whether a law enforcement officer who personally observes conduct that causes the officer to reasonably believe an individual requires mental health treatment and, based on those observations, takes the individual into protective custody, may delegate to a mental health services worker responsibility to execute the application for hospitalization under section 427 of the Mental Health Code.

Section 424 of the Code, MCL 330.1424, generally describes what an application for hospitalization must contain. An application must contain an assertion that the individual is a person requiring treatment, along with the alleged facts that are the basis for the assertion and any known names and addresses of witnesses to those facts. MCL 330.1424(1). The application may only be made by persons 18 years of age or older and "shall be made under penalty of perjury." MCL 330.1424. Among the circumstances that may lead to the conclusion that a person is one "requiring treatment" are that the person has mental illness and may physically injure himself or another or is unable to attend to his or her basic physical needs. MCL 330.1401(1).⁶

Section 427(1) of the Code, MCL 330.1427(1), specifically prescribes the duties and responsibilities of a law enforcement officer who witnesses the conduct of an individual who might require treatment. It provides in pertinent part:

⁵Your letter indicates that you are concerned that many rural counties have only one designated psychiatric unit at a hospital that may be as many as two hours or more away from the county where the hearings will be held and the costs associated with this lengthy travel are substantial. The regulations governing psychiatric hospitals or units provide a means for minimizing the inconvenience and expense associated with the transportation of patients to and from their hearings under the Code. The rules for the licensure of psychiatric hospitals or units require that a licensed facility shall provide appropriate on-site space for probate court hearings on involuntary admission if a court deems convening there practicable. 1979 AC, R 330.1228. Additionally, section 456 of the Code provides that the court may, whenever practicable, hold the hearings at the hospitals or other convenient location within or without the county. MCL 330.1456. This is supported by the authority conferred on the probate court or family court respectively, by MCL 600.816 and 600.1517, to move the location of the hearing. Section 457 of the Code also provides that the prosecuting attorney responsible for the hearing may permit the prosecuting attorney or assistant prosecuting attorney from another county to participate in the hearing, thus facilitating a hearing in another county. MCL 330.1457.

⁶The State Court Administrative Office's (SCAO) Form PCM 201 is a "Petition/Application for Hospitalization" and is available on the SCAO's website.

If a peace officer observes an individual conducting himself or herself in a manner that causes the peace officer to reasonably believe that the individual is a person requiring treatment as defined in section 401, the peace officer may take the individual into protective custody and transport the individual to a preadmission screening unit designated by a community mental health services program for examination under section 429 or for mental health intervention services. The preadmission screening unit shall provide those mental health intervention services that it considers appropriate or shall provide an examination under section 429. The preadmission screening services may be provided at the site of the preadmission screening unit or at a site designated by the preadmission screening unit. Upon arrival at the preadmission screening unit or site designated by the preadmission screening unit, *the peace officer shall execute an application for hospitalization of the individual.* (Emphasis added.)

The word "execute" is not defined in the Code. Where a statute does not define one of its terms, it is customary to look to a dictionary for a definition, *Marcelle v Taubman*, 224 Mich App 215, 219; 568 NW2d 393 (1997). The plain and ordinary meaning of "execute" when used in connection with writings or documents, such as an application, is "to complete or make valid . . . as by signing." *Webster's New World Dictionary, Third College Ed.* (1988), p 475. In statutory interpretation, the word "shall" when used to direct a public official is mandatory, and "may" is discretionary. *Southfield Twp v Drainage Bd for Twelve Towns Relief Drains*, 357 Mich 59; 97 NW2d 821 (1959); *Fink v Detroit*, 124 Mich App 44, 49; 333 NW2d 376 (1983). Moreover, when the language of a statute is clear, it must be applied as written. *Lorenz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

Applying these rules of construction, section 427 gives a peace officer discretion to take an individual into protective custody if he or she reasonably believes that individual requires treatment. Once the officer has exercised that discretion, however, the only person authorized to execute the application for hospitalization described under section 427 of the Code is the peace officer.⁷ It is the peace officer who has personally observed the facts forming the basis for the conclusion that the person requires treatment. That the Legislature viewed this as a solemn responsibility is evidenced by the requirement that statements made in the application are subject to the penalty of perjury.

It is my opinion, therefore, in answer to your second question, that a law enforcement officer who personally observes conduct that causes the officer to reasonably believe an individual requires mental health treatment and, based on those observations, takes the individual into protective custody, is the only person authorized to execute the application for hospitalization under section 427 of the Mental Health Code and that responsibility may not be delegated to a mental health care worker.

MIKE COX
Attorney General

⁷This is in contrast to section 425 of the Code, in which the Legislature has provided that the clinical certificate required for hospitalization of an individual under section 423 of the Code "may be executed by any physician or licensed psychologist, including a staff member or employee of the hospital with which the application and clinical certificate are filed." MCL 330.1425.

COUNTIES: Authority of county board of commissioners to reduce appointed county treasurer's salary during term of office

PUBLIC OFFICES AND OFFICERS:

A county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term. The statutory prohibition applies regardless of whether the person was elected or appointed to that term of office.

Opinion No. 7128

April 7, 2003

Honorable Patricia Birkholz
State Senator
The Capitol
Lansing, Michigan

Honorable Fulton J. Sheen
State Representative
The Capitol
Lansing, Michigan

You ask if a county board of commissioners may reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term.

Const 1963, art 7, § 9, addresses the compensation of county officers and provides as follows:

Boards of supervisors shall have *exclusive power* to fix the compensation of county officers *not otherwise provided by law*. [Emphasis added.]

The Legislature has also addressed the compensation of county officers. Section 1(1) of 1879 PA 154,¹ as amended, MCL 45.421(1), the Salaries of County Officers Act (Act), provides as follows:

The annual salary of each salaried county officer, which is by law fixed by the county board of commissioners, shall be fixed by the board before November 1 each year and *shall not be diminished during the term for which the county officer has been elected or appointed*, but may be increased during the officer's term of office. [Emphasis added.]

Constitutional and statutory provisions are to be construed according to their plain meaning. *People v Bulger*, 462 Mich 495, 507; 614 NW2d 103 (2000) ("[T]he primary source for ascertaining [a constitutional provision's] meaning is to examine its plain meaning as understood by its ratifiers at the time of adoption"); *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001) ("If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written").

The phrase "not otherwise provided by law" in Const 1963, art 7, § 9, means that a county board of commissioners may set the salary of county officers, subject to any compensation provisions that have been adopted as law by the Legislature, such as MCL 45.421. See OAG, 1997-1998, No 6941, p 38, 39 (June 13, 1997).

¹Section 1(2) provides an exception for counties that have a county officers compensation commission:

Notwithstanding subsection (1), for a county which has a county officers compensation commission, the compensation of each nonjudicial elected officer of the county shall be determined by that commission. A change in compensation for those officers of a county which has a county officers compensation commission shall commence at the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected. [MCL 45.421(2).]

Because your question relates to salaries fixed by the county board of commissioners under section 1(1), this opinion does not address compensation set under section 1(2).

In *Attorney General v Oakland County*, 125 Mich App 157, 158-159; 335 NW2d 654 (1983), the Court recognized that under the Act, the county board of commissioners has considerable latitude in establishing the compensation of county officers. MCL 45.421, to the extent that it prohibits a county board of commissioners from decreasing the salary of a county officer during his or her term, is consistent with the Legislature's power to provide by law for the compensation of county officers. OAG, 1997-1998, No 6941, *supra*, at p 39.

Furthermore, the prohibition in MCL 45.421 against a county board of commissioners decreasing a county officer's salary during his or her term is not limited to the person who was elected to the office. This is because MCL 45.421 expressly provides that such a prohibition applies to the "term" of office and not the officer personally. Thus, a "term" is not personal to the officer but rather refers to the office.

The validity of the foregoing conclusion is underscored by reference to MCL 168.203 and MCL 168.209. MCL 168.203, which defines the term of office of a county treasurer, provides:

The *term of office* of the . . . county treasurer, . . . shall begin on January 1 next following the election, and continues until a successor is elected and qualified [Emphasis added.]

MCL 168.209, which sets forth the manner of filling a vacancy of the term of a county treasurer, provides:

If a vacancy occurs in an elective or appointive county *office*, it shall be filled in the following manner:

* * *

(2) If the vacancy is in any other county *office*, the presiding or senior judge of probate, the county clerk, and the prosecuting attorney shall appoint a suitable person to fill the vacancy.

(3) *A person appointed shall take and subscribe to the oath as provided in section 1 of article XI of the state constitution of 1963, give bond in the manner required by law, and hold office for the remainder of the unexpired term and until a successor is elected and qualified. However, if the next general November election is to be held more than 182 days after the vacancy occurs, and it is not the general November election at which a successor in office would be elected if there were no vacancy, the person appointed shall hold office only until a successor is elected at the next general November election in the manner provided by law and qualifies for office. The successor shall hold the office for the remainder of the unexpired term.* [Emphasis added.]

Finally, although not dealing specifically with the Act in question here, the Michigan Supreme Court in *Hawkins v Voisine*, 292 Mich 357, 359; 290 NW 827 (1940), held that a person whose entitlement to the office of village president was not decided until after the term had expired was nevertheless entitled to the salary, explaining: "An official salary is not made dependent upon the amount of work done, but belongs to the office itself without regard to the personal service of the officer." (Citations omitted.)

It is my opinion, therefore, that a county board of commissioners may not reduce the annual salary of a county treasurer during a four-year term of office, following the resignation of the person elected to that office, and prior to the appointment of a new county treasurer for the unexpired remainder of the term. The statutory prohibition applies regardless of whether the person was elected or appointed to that term of office.

MIKE COX
Attorney General

INCOMPATIBILITY: Incompatibility of office of member of concealed weapons licensing board and county commissioner**COUNTY COMMISSIONER:****CONCEALED WEAPONS LICENSING BOARDS:**

The Incompatible Public Offices Act prohibits a person from simultaneously holding the office of county commissioner and member of the concealed weapons licensing board for that county.

Opinion No. 7129

April 7, 2003

Brian A. Peppler
Chippewa County Prosecuting Attorney
300 Court Street
Chippewa County Courthouse Annex
Sault Ste. Marie, MI 49783

You have asked whether the Incompatible Public Offices Act prohibits a person from simultaneously holding the office of county commissioner and member of the concealed weapons licensing board for that county.

The Incompatible Public Offices Act (Act), 1978 PA 566, as amended, MCL 15.181 *et seq.*, addresses the simultaneous holding of multiple public offices. Section 2 of the Act, MCL 15.182, prohibits public officers and employees from simultaneously holding two or more incompatible offices. Section 1(b) of the Act, MCL 15.181(b), defines "incompatible offices" as:

[P]ublic offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.
- (iii) A breach of duty of public office.

Incompatibility based on subordination and supervision has been the subject of numerous court cases and opinions of the Attorney General. Authority in one office to appoint or remove a person from another office violates these prohibitions. OAG, 1979-1980, No 5626, p 537, 542 (January 16, 1980), explained that the power of removal constituted an incompatibility at common law that continues in force under the Act:

[T]he first and second criteria of incompatibility as set forth by the statute would extend to those situations in which "the incumbent of one of the offices has the power of appointment as to the other office, or the power to remove the incumbent of the other."

In Michigan, the power in one office to appoint or remove a person from another office creates an incompatibility in those two offices. The law was aptly summarized in *Attorney General, ex rel Moreland v Common Council of City of Detroit*, 112 Mich 145, 173; 70 NW 450, 459-460 (1897), cited with approval in *Petitpren v Wayne-Westland Community Schools*, 91 Mich App 590, 593; 283 NW2d 812 (1979):

The power of removal is ever present, ready for use when its exercise is required. The argument that the contingency for its use is very remote is without force. We have been unable to find a decision which holds that one person may hold two offices, in one of which he is clothed with power to remove the person holding the other.

Other opinions of this office have likewise found the power of one office to appoint or remove a person from another office creates an incompatibility in those two offices. See, *e.g.*, OAG, 1981-1982, No 6030, p 534 (January 21, 1982), finding incompatible the offices of mayor (a member of the city council) and city assessor where the city assessor serves at the pleasure of the council.

The Concealed Pistol Licensing Act (Concealed Pistol Act), 1927 PA 372, as amended, MCL 28.421 *et seq.*, regulates the possession and carrying of concealed pistols. The Concealed Pistol Act establishes the concealed weapons licensing board and provides for its membership. Section 5a(1)(a), MCL 28.425a(1)(a), provides that the county prosecuting attorney is a member of the concealed weapons licensing board unless he or she does not want to be a member. This section also provides for the county board of commissioners to appoint the replacement for a county prosecuting attorney who chooses not to serve as a member.

Section 5a(1)(a) of the Concealed Pistol Act, MCL 28.425a(1)(a), empowers the county board of commissioners to both appoint and remove the member of the concealed weapons licensing board replacing the county prosecutor as follows:

The county board of commissioners shall then appoint a replacement for the prosecuting attorney who is a firearms instructor who has the qualifications prescribed in section 5j(1)(c). The person who replaces the prosecuting attorney shall serve on the concealed weapon licensing board in place of the prosecuting attorney for the remaining term of the county prosecuting attorney *unless removed for cause by the county board of commissioners*. [Emphasis added.]

Information accompanying your letter includes the added detail that the person at issue in your request was appointed to membership on the concealed weapons licensing board before election to the county board of commissioners. While this chronology may have altered the analysis if the county board of commissioners' power under the Concealed Pistol Licensing Act was limited to the *appointment* of concealed weapons licensing board members, it does not affect the analysis related to the county board of commissioners' power to *remove* such a member.

It is my opinion, therefore, that the Incompatible Public Offices Act prohibits a person from simultaneously holding the office of county commissioner and member of the concealed weapons licensing board for that county.

MIKE COX
Attorney General

RETIREMENT AND PENSIONS: Determining "credited service in force" under the Reciprocal Retirement Act

PUBLIC EMPLOYEES:

The Reciprocal Retirement Act permits a city employee to use his years of service with a prior public employer to meet his present employer's retirement plan's service requirements, even if the employee has withdrawn his funds from the prior employer's retirement plan.

Opinion No. 7130

April 21, 2003

Honorable Mark Schauer
State Senator
The Capitol
Lansing, MI 48913

You have asked whether the Reciprocal Retirement Act permits a city employee to use his years of service with a prior public employer to meet his present employer's retirement plan's service requirements, even if the employee has withdrawn his funds from the prior employer's retirement plan.

Information supplied with your request indicates that the employee in question worked 15 years for a Michigan county where he participated in a defined contribution retirement plan.¹ Under the terms of the defined contribution plan, he was required to withdraw his funds within one year of leaving county employment, which he did. After leaving employment with the county, he became an employee of a city where he is a member of a defined benefit retirement plan. He has worked for the city since 1997 and presently is 60 years of age. An employee who is 60 years of age and has ten years of service may retire under the city's plan. Thus, the issue is whether the employee may use part of his county service to meet the city's 10-year service requirement for retirement.

The Reciprocal Retirement Act (Act), 1961 PA 88, as amended, MCL 38.1101 *et seq.*, provides "for the preservation and continuity of retirement system service credits for public employees who transfer their employment between units of government." Section 3(1) of the Act allows a municipal unit to adopt the provisions of the Act for its employees. MCL 38.1103(1). Section 3(3) of the Act requires the governing body of a municipal unit to file a written certification with the Secretary of State if it has elected to come within the provisions of the Act. MCL 38.1103(3). According to the Secretary of State, the city has complied with section 3 of the Act and is, therefore, a "reciprocal unit," as defined in the Act. MCL 38.1102(d).

Section 5 of the Act provides that an employee may use prior service credit to meet the service requirements of a subsequent public employer, as follows:

A member of a reciprocal retirement system who has 30 months or more of credited service acquired as a member of the system and who has attained the age but has not met the service requirements for age and service retirement shall be entitled to use his or her *credited service in force* previously acquired as a member of governmental unit retirement systems in meeting the service requirements of the system from which he or she retires. . . . Except as provided in section 6,

¹A defined contribution plan often provides a set employer contribution for the employee's retirement account and an employer match-up to a set limit for employee contributions. The State Employees' Retirement Act, for example, provides an employer contribution equal to 4% of an employee's compensation and an employer match for employee contributions up to an additional 3% of compensation. MCL 38.63. Defined contribution plans are usually established as qualified 401(k) plans. In contrast, a defined benefit plan provides a fixed retirement allowance, usually paid monthly, based on the employee's age, compensation, and years of service.

credited service acquired in a governmental unit in which the member was previously employed shall not be used in determining the amount of his or her retirement allowance payable by the reciprocal retirement system from which he or she retires unless otherwise provided by the retirement system. [MCL 38.1105. Emphasis added.]

Based upon the information provided with your request, the employee in question meets the required 30 months of credited service with the city and has attained age 60 but has not met the city's service requirements. The employee, however, may use service credit obtained while a member of the county retirement system if that service constitutes "credited service in force." MCL 38.1105.² This quoted language is not defined in the Act, nor has any appellate court interpreted it.

The first task when interpreting a statute is to ascertain and give effect to the intent of the Legislature. When the language of the statute is clear and unambiguous, the plain language of the statute must be given effect. *Paaso v Paaso*, 170 Mich App 628, 635; 428 NW2d 724 (1988), *lv den* 431 Mich 1207 (1988). Every word in a statute must be given effect and any construction that would render any part of a statute surplusage or nugatory must be avoided. *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW 2d 155 (1992). When interpreting a statute, the entire Act must be read so that the meaning given to one section is consistent with the meaning given to other sections. *Simmons v Marlette Bd of Education*, 73 Mich App 1, 5; 250 NW2d 777 (1976). It is reasonable to conclude that words used in one place in a statute have the same meaning when used in another place in the same statute. *Phipps v Campbell, Wyant & Cannon Foundry*, 39 Mich App 199, 216; 197 NW2d 297 (1972).

The phrase "credited service in force" is also found in section 4 of the Act. MCL 38.1104. Section 4 provides for receiving a retirement allowance from a preceding employer:

A member of a reciprocal retirement system who leaves the employ of a reciprocal unit, designated as the preceding reciprocal unit, and enters the employ of another governmental unit, designated as the succeeding governmental unit, shall be entitled to a retirement allowance payable by the preceding reciprocal unit's retirement system subject to the following conditions:

- a) The member has 30 months or more of *credited service in force* acquired in the employ of the preceding reciprocal unit.
- b) The member does not withdraw his or her accumulated deposits from the preceding reciprocal unit's retirement system, or if the member has withdrawn the accumulated deposits, the member deposits with the preceding reciprocal unit the amount withdrawn together with interest compounded annually at the rate in effect for the preceding reciprocal unit; the deposit to be made within 5 years after the date the member becomes employed by the succeeding governmental unit.
- c) The member enters the employ of each succeeding governmental unit within 15 years after the date of leaving the employ of each preceding governmental unit.
- d) The member's *credited service in force* with the preceding reciprocal retirement systems plus the member's credited service acquired in the employ of succeeding governmental units equals or exceeds the minimum credited service required for age and service retirement in the applicable preceding reciprocal retirement system.

²Counting the years of prior service with the reciprocal unit does not enhance the retirement allowance paid, rather it only serves to qualify the employee to receive the allowance paid by the subsequent employer.

e) The retirement allowance payable by any preceding reciprocal retirement system shall be determined at the time the member ceased to be a member of the preceding reciprocal retirement system, upon the basis of the retirement allowance formula of the preceding reciprocal retirement system, the member's *credited service in force* in the preceding reciprocal retirement system, and the member's final average salary at that time. [MCL 38.1104. Emphasis added.]

Thus, for a member to receive a retirement allowance from a preceding reciprocal employer under section 4, the employee must, among other things, 1) have 30 months or more of "credited service in force" with the preceding employer, 2) not have withdrawn his or her deposits from the preceding retirement system or must have repaid the funds timely with interest, and 3) have "credited service in force" with the preceding system plus the service acquired with his or her succeeding employer that meets the minimum credited service required for retirement in the preceding retirement system.

The meaning of "credited service in force" intended by the Legislature must be determined by reading sections 4 and 5 together to arrive at a consistent interpretation. *Phipps*, 39 Mich App at 216. One suggestion offered in the materials forwarded with your request is to construe the phrase to mean essentially "credited service with contributions still on deposit." This interpretation cannot be sustained, however, because it would render the language of section 4(b) mere surplusage. *Altman, supra*; *People v Belanger*, 120 Mich App 752; 327 NW2d 554 (1982). In other words, since section 4 (b) of the Act states as a condition of receiving a retirement allowance that an employee maintain his accumulated deposits with the preceding retirement system, the Legislature must not have intended "credited service in force" used elsewhere in the Act to have this same meaning. Thus, the phrase "credited service in force" as used in section 5 cannot mean that the member must not have withdrawn his retirement deposits with his former retirement system.

Moreover, the phrase "credited service in force" does not support a legislative intent that funds must remain on deposit in order for service to be in force. Where the Legislature intends such a meaning, it uses words to that effect. For example, section 55(1) of the Michigan Legislative Retirement System Act, MCL 28.1055 (1), does so in plain and unmistakable terms:

By accepting the refund [of plan contributions] a member who does not meet the requirement of section 23(1)(a) [for receiving a retirement allowance] upon leaving service or a deferred vested member forfeits all accrued rights and benefits in the retirement system and loses credit for all service rendered to the state for which credit is given under this act.³

It is my opinion, therefore, that the Reciprocal Retirement Act permits a city employee to use his years of service with a prior public employer to meet his present employer's retirement plan's service requirements, even if the employee has withdrawn his funds from the prior employer's retirement plan.

MIKE COX
Attorney General

³Thus, defined benefit plan Legislative Retirement System members who accept a refund of contributions no longer have credited service that could be transferred to a reciprocal retirement system. See Letter Opinion of the Attorney General to Senator Virgil C. Smith, Jr., dated May 26, 1989.

SCHOOLS AND SCHOOL DISTRICTS: Constitutional rollback of voter-approved millages for sinking funds

HEADLEE AMENDMENT:

TAXATION:

A rollback of multi-year, voter-approved millages that create a sinking fund for the construction and repair of school buildings approved after May 31 of the tax year is required by Const 1963, art 9, § 31, and its implementing legislation in each year after the year of approval in which the percentage increase in the taxable value of the affected property exceeds the increase in the General Price Level from the previous year. Each year's millage is to be reduced by not only the millage reduction fraction for that year but also by the millage reduction fractions for previous years as well.

Opinion No. 7131

April 24, 2003

Honorable Mark H. Schauer
State Senator
The Capitol
Lansing, Michigan 48913

You have asked to what extent, if any, a rollback of voter-approved millages that create a sinking fund for the construction and repair of school buildings approved after May 31 of the tax year is required by Const 1963, art 9, § 31, and its implementing legislation.

The Revised School Code, section 1212(1), MCL 380.1212(1), authorizes local school boards with prior voter approval to levy taxes to create a fund for certain capital improvements. This section provides in pertinent part:

If approved by the school electors of the school district, the board of a school district may levy a tax of not to exceed 5 mills on the state equalized valuation of the school district each year for a period of not to exceed 20 years, for the purpose of creating a sinking fund to be used for the purchase of real estate for sites for, and the construction or repair of, school buildings. The sinking fund tax levy is subject to the 15 mill tax limitation provisions of section 6 of article IX of the state constitution of 1963 and the property tax limitation act, Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217a of the Michigan Compiled Laws.

Const 1963, art 9, § 31, is part of the Headlee Amendment adopted by the electorate in 1978. This section provides in pertinent part:

If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value.¹

¹ With the passage of "Proposal A," and its attendant amendments to Const 1963, art 9, § 3, in 1994, it is now the increase of the "taxable value" of property, rather than the increase of the "[a]ssessed valuation of property as finally equalized," which drives the determination of whether, and to what extent, millage rollbacks occur. MCL 211.34d(1)(d).

By this measure the voters mandated that the total of taxes assessed against all taxable property within a taxing unit shall not increase from one tax year to the next at a rate exceeding the rate of increase in the General Price Level² for the prior year. In any tax year in which the value of all taxable property has, in comparison with the value of the same property for the previous tax year, increased at a rate in excess of the rate of increase in the General Price Level, the Constitution requires a reduction in the *rate* of taxation so that the revenue realized from such property for the current year does not exceed that which was realized from that same property for the prior year by more than the percentage increase in the General Price Level.

This constitutionally mandated rollback of authorized millage rates has been implemented by the Michigan Legislature in accordance with Const 1963, art 9, § 34, through its passage of amendments to the General Property Tax Act, specifically section 34d, MCL 211.34d. They establish the "millage reduction fraction" (MRF) as the basis for calculating a rollback and describe how the MRF shall be applied.

This fraction is calculated by comparing the value of taxable property that existed in the prior tax year with the value of the same property for the current year. It is designed to arrive at a true comparison by eliminating the increases and decreases in value attributed to additions and losses. Thus, the MRF involves the determination of the ratio between:

- (a) the value of the property for the previous year, less losses, multiplied by the sum of 1.0 plus the rate of increase in the General Price Level (the numerator of the fraction); and
- (b) the value of the property for the current year, less additions (the denominator of the fraction).

The value lost when property or improvements become exempt from taxation, are removed, razed, or otherwise destroyed in the previous year (losses) is subtracted from the numerator, and the value added by new improvements or other enhancements during the current year (additions) is subtracted from the denominator. Simply stated, losses, which are not present in the current year, are subtracted from the prior year and additions, which were not present in the prior year, are subtracted from the current year. Thus, the values compared are truly "apples to apples." It is the difference in the value of property that is actually present in both years that determines whether a MRF is appropriate, and to what extent.

If the value of such property for the prior year (properly adjusted), multiplied by the sum of 1.0 plus the rate of increase in the General Price Level, is less than the value of the identical property (again, properly adjusted) for the current year, then the value of such property has appreciated at a rate greater than the rate of increase in the General Price Level. To reduce the excessive increase in revenue that would result if the original millage were applied against that increased value, the effective millage (rate of taxation) is multiplied by the determined MRF, a number less than 1, so that the amount of revenue received is properly reduced.³

The Legislature, in MCL 211.34d, states it this way:

- (6) The number of mills permitted to be levied in a tax year is limited as provided in this section pursuant to section 31 of article IX of the state constitution of 1963. A unit of local government shall not levy a tax rate greater than the rate determined by reducing its maximum rate or rates authorized by law or charter by a millage reduction fraction as provided in this section without voter approval.

²The General Price Level is defined by the Constitution as "the Consumer Price Index for the United States as defined and officially reported by the United States Department of Labor or its successor agency." Const 1963, art 9, § 33. See also MCL 211.34d(1)(f).

³For a year in which the calculated MRF is equal to or greater than 1.0, no rollback is statutorily required because the value of the property has not increased at a greater rate than the rate of increase in the General Price Level.

(7) A millage reduction fraction shall be determined for each year for each local unit of government. . . . For ad valorem property taxes that are levied after December 31, 1994, the numerator of the fraction shall be the product of the difference between the total taxable value for the immediately preceding year minus losses multiplied by the inflation rate and the denominator of the fraction shall be the total taxable value for the current year minus additions. For each year after 1993, a millage reduction fraction shall not exceed 1.

* * *

(9) The millage reduction shall be determined separately for authorized millage approved by the voters. The limitation on millage authorized by the voters on or before May 31 of a year shall be calculated beginning with the millage reduction fraction for that year. Millage authorized by the voters after May 31 shall not be subject to a millage reduction until the year following the voter authorization which shall be calculated beginning with the millage reduction fraction for the year following the authorization. The first millage reduction fraction used in calculating the limitation on millage approved by the voters after January 1, 1979 shall not exceed 1.

(10) A millage reduction fraction shall be applied separately to the aggregate maximum millage rate authorized by a charter and to each maximum millage rate authorized by state law for a specific purpose.

* * *

(16) Beginning with taxes levied in 1994, the millage reduction required by section 31 of article IX of the state constitution of 1963 shall permanently reduce the maximum rate or rates authorized by law or charter. . . . The reduced maximum authorized rate or rates for 1995 and each year after 1995 shall equal the product of the immediately preceding year's reduced maximum authorized rate or rates multiplied by the current year's millage reduction fraction and shall be adjusted for millage for which authorization has expired and new authorized millage approved by the voters pursuant to subsections (8) to (12).

You ask about a local school board that has obtained voter approval for levying a tax for each of four consecutive tax years. The voters approved the levy at an election conducted after May 31. The school district was authorized to first levy the tax in the same calendar and tax year that the levies were approved.⁴ The levies authorized were:

- 5 mills for the first year.
- 4 mills for the second year.
- 3 mills for the third year.
- 2 mills for the fourth year.

In the situation presented in your request, the first year in which taxes are collected is the same calendar and tax year in which the voters approved the levy of taxes. Since voter approval was given after May 31 of that year, no rollback in the approved millage rate is called for in the first year. MCL 211.34d(9). The question arises whether the approved millages for the subsequent years are subject to constitutional and statutory rollbacks, and if so, to what extent.

It should be emphasized that whether the voter-approved millages are for a flat, ascending, or descending rate of millage is, for millage rollback purposes, immaterial. In substance, Const 1963, art 9, § 31, calls for a reduction in the rate of taxation whenever the monies realized from taxing property (after adjustments) at the voter-approved rate would result in realizing more tax revenue for the year of levy than would be realized by multiplying the authorized rate of taxation by the taxable value of all property (after adjustments) and by the rate of increase of the General Price Level for the preceding tax year(s).

⁴In Michigan, the tax year for property tax is the same as the calendar year. OAG, 1965-1966, No 4463, p 207 (February 21, 1966).

The determination of an MRF must be calculated each year that a levy is in force. MCL 211.34d(7). As noted above, the fraction becomes the basis for adjusting rates only for years in which it yields a number less than 1.0.

As indicated by MCL 211.34d(6), the number of mills that may be levied in a tax year is limited by Const 1963, art 9, § 31, and a unit of local government⁵ may not levy a tax rate greater than the rate determined by reducing its authorized maximum rate or rates authorized by law or charter by an MRF, as set forth in MCL 211.34d, without voter approval. In this regard, OAG, 1979-1980, No 5562, p 389 (September 17, 1979), concluded that the "maximum authorized rate" as that term is used in Const 1963, art 9, § 31, includes the basic 15 mills that may be levied without voter approval,⁶ any tax authorized in a charter approved by the electorate, as well as any tax voted by the electors.⁷ Since the millage contemplated in your question is, as indicated by MCL 380.1212, subject to the 15 mill limitation and was approved by the electorate, for the first year the maximum authorized rate as approved by the voters is 5 mills, the second year it is 4 mills, the third year it is 3 mills, and for the fourth and last year it is 2 mills.

There is no question that, as to the first year of the millage, the full 5 mills may be levied. This is so because the millage was approved after May 31 of that first year and MCL 211.34d(9) provides that "[m]illage authorized by the voters after May 31 shall not be subject to a millage reduction until the year following the voter authorization" This language also indicates, however, that the remaining millages are subject to millage rollbacks starting in the second year.

As noted earlier, MCL 211.34d(16) provides:

Beginning with taxes levied in 1994, the millage reduction required by section 31 of article IX of the state constitution of 1963 shall permanently reduce the maximum rate or rates authorized by law or charter. . . . The reduced maximum authorized rate or rates for 1995 and each year after 1995 shall equal the product of the immediately preceding year's reduced maximum authorized rate or rates multiplied by the current year's millage reduction fraction and shall be adjusted for millage for which authorization has expired and new authorized millage approved by the voters pursuant to subsections (8) to (12).

Where the terms of a statute are clear and unambiguous, albeit complicated, they must be applied as written. See *Storey v Meijer, Inc.*, 431 Mich 368, 376; 429 NW2d 169 (1988). As each of the tax years in issue is after 1995, the Headlee implementing legislation makes clear that beginning with the second year of the millage, the MRF, if called for, is to be applied against each millage, permanently reducing the "maximum rate" previously approved. For the second year of the millage, pursuant to MCL 211.34d(9), the appropriate millage is the MRF for that year multiplied by the maximum authorized millage rate. For the third and fourth years, the appropriate millage is computed pursuant to MCL 211.34d(16) and is the product of the then current maximum authorized rate, which is reduced by the prior years' MRFs, multiplied by the current year's MRF.

As explained by the Michigan Supreme Court in *Bolt v City of Lansing*, 459 Mich 152, 160-161; 587 NW2d 264 (1998), the Headlee Amendment, of which Const 1963, art 9, § 31, is a part,

"[G]rew out of the spirit of 'tax revolt' and was designed to place specific limitations on state and local revenues. The ultimate purpose was to place public

⁵A "unit of local government" is defined by Const 1963, art 9, § 33, to include "any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government."

⁶This is set forth in Const 1963, art 9, § 6.

⁷Also included are millages authorized by state law for a specific purpose. MCL 211.34d(10).

spending under direct control." *Waterford School Dist v State Bd of Ed*, 98 Mich App 658, 663; 296 NW2d 328 (1980). More recently, this Court has stated,

The Headlee Amendment was "part of a nationwide, 'taxpayers revolt' . . . to limit legislative expansion of requirements placed on local government, to put a freeze on what they perceived was excessive government spending, and to lower their taxes both at the local and the state level." [*Airlines Parking, Inc v Wayne Co*, 452 Mich 527, 532; 550 NW2d 490 (1996).]

The Supreme Court in *Bolt*, 459 Mich at 160, also explained how constitutional provisions should be interpreted:

A primary rule in interpreting a constitutional provision such as the Headlee Amendment is the rule of "common understanding":

"A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people*, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding*, and ratified the instrument in the belief that that was the sense designed to be conveyed.'" [*Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971), quoting Cooley's Const Lim 81 (emphasis in original).]

In this case, Const 1963, art 9, § 31, requires that, excluding adjustments for new construction and improvements, if the taxable value of property increases from one year to the next by more than the percentage increase in the General Price Level, the millage to be applied against property is to be reduced so as to produce a percentage increase in property tax collected equal only to the increase in the General Price Level. Increases in the taxable value of property at rates in excess of the rate of increase in the General Price Level are effectively removed from the computation of the total amount of property tax to be collected by local units of government. Taxpayers are assured that, absent consideration for "new construction and improvements," the total amount of property tax to be collected by the local unit of government in future years will not increase at rates in excess of the rate of increase in the General Price Level unless specifically approved by the electorate in what is commonly known as a Headlee "override." Thus, for each year that an authorized millage is in existence, whether it is a millage for a current year or a future year, it must be recalculated to recognize the effect of an increase in taxable value beyond the rate of increase in the General Price Level.

Because of the nature of the declining millage rates approved by the affected electorate in your question, if the current year's MRF were to be multiplied by the maximum authorized rate levied in the prior year without consideration of the lower voter-approved rate for the current year, the taxpayers in the local unit of government would not obtain the tax benefit that Const 1963, art 9, § 31, was designed to grant. Applying a hypothetical MRF to the factual situation giving rise to your request serves to illustrate this point.

For example, if the MRF for each year is .95, the millage that could be levied in the second year (the year following the year of voter authorization) would be 3.8 mills (4 mills x .95). For the third year, if the MRF in effect for that year (again, .95) were multiplied by the rate levied in the second year, the resulting millage rate would be 3.61 mills (3.8 mills x .95). As the voter-authorized rate for the third year is only 3 mills, however, unless the third year's reduced maximum authorized millage is determined by acknowledging that the 3 mills authorized were in effect from the date the millage was first approved, the taxpayers would get no benefit from the tax relief contained in Const 1963, art 9, § 31, despite the fact that having MRFs of less than 1 for the second and third tax years presumes that taxable values have grown faster than the increase in the General Price Level for those years.

If the voter-approved rates are properly accounted for in the second year, the millage for the third year, although not yet levied, should be 2.85 mills (3 mills x .95). Similarly, in that second year, the millage for the fourth year, although not yet levied, should be 1.9 (2 x .95). In the year in which the third year millage is actually levied, the millage for that year would be 2.7075 (the rolled back 2.85 mills from the second year x .95). Likewise, in that third year, the millage for the fourth year, again although not yet levied, should be 1.805 (2 x .95 x .95). In the fourth year, the millage that could be legally levied would be 1.7147 (the rolled back third year of 1.805 x .95). Determining the millage levied in the third and fourth years by only multiplying the previously authorized millage rate by that year's specific MRF presumes that the electorate voted to override the impact of the Headlee Amendment to the Constitution for those years when the millages were first approved, despite no such election having been held.

In other words, to conclude that the voters who initially approved the declining millage rates for the tax years in question also, at the same election, voted to override the prospective benefit of Const 1963, art 9, § 31, so that the full amount of the previously approved millages for the second, third, and fourth tax years could be levied, would be contrary to the common understanding of the people and thwart the intent of Const 1963, art 9, § 31 – to reduce the property tax burden of taxpayers so that the increase in taxable valuation of property beyond the increase in the General Price Level does not result in higher property taxes, unless the electorate approves a millage increase.

It is my opinion, therefore, that a rollback of multi-year, voter-approved millages that create a sinking fund for the construction and repair of school buildings approved after May 31 of the tax year is required by Const 1963, art 9, § 31, and its implementing legislation in each year after the year of approval in which the percentage increase in the taxable value of the affected property exceeds the increase in the General Price Level from the previous year. Each year's millage is to be reduced by not only the millage reduction fraction for that year but also by the millage reduction fractions for previous years as well.

MIKE COX
Attorney General

TAXATION: State payments in lieu of property taxes and appropriations regarding tax reverted lands

DEPARTMENT OF NATURAL RESOURCES:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT:

APPROPRIATIONS:

Property owned by the State of Michigan is not subject to forfeiture, foreclosure, and sale under the General Property Tax Act if the state fails to make the payments in lieu of property taxes required under Part 21, subpart 14 of the Natural Resources and Environmental Protection Act.

Section 404 of 2002 PA 525, section 1002 of 2001 PA 44, and section 1002 of 2000 PA 267, sections of three appropriations acts for the Department of Natural Resources, violate Const 1963, art 4 § 25, in that they alter or amend section 131 of the General Property Tax Act but do not re-enact and publish that section at length.

Notwithstanding the unconstitutionality of certain provisions of the appropriations acts as determined in this opinion, the Department of Natural Resources is not required under section 131 of the General Property Tax Act to distribute to local tax collecting units the proceeds that were deposited in the land sale fund in fiscal years 2000 through 2003. Consistent with established principles advancing the interest of budgetary stability provided for under Michigan's Constitution, this opinion applies prospectively only.

Opinion No. 7132

May 1, 2003

Honorable Patricia Birkholz
State Senator
The Capitol
Lansing, MI 48909

You have asked three questions relating to payments in lieu of taxes made by the Department of Natural Resources (DNR) with respect to state-owned lands administered by the department and the disposition of proceeds realized as the result of the sale by the DNR of state-owned tax reverted lands.

You first ask whether property owned by the State of Michigan is subject to forfeiture, foreclosure, and sale under the General Property Tax Act if the state fails to make the payments in lieu of property taxes required under Part 21, subpart 14 of the Natural Resources and Environmental Protection Act.

The General Property Tax Act (GPTA), 1893 PA 206, MCL 211.1 *et seq*, is an act whose purposes, as expressed in its title, include:

[T]he levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund

State-owned lands are not subject to taxation or to liens arising from real property taxes unless expressly subjected to those taxes by statute. *State Highway Comm'r v Simmons*, 353 Mich 432; 91 NW2d 819 (1958); *Porter v Auditor General*, 255 Mich 526; 238 NW 185 (1931); *People v Ingalls*, 238 Mich 423; 213 NW 713 (1927); *Hammond v Auditor General*, 70 Mich App 149; 245 NW2d 544 (1976). As stated in *People v Ingalls*, at 425-426:

The doctrine has been pretty well settled in this State and elsewhere that property owned by the State or by the United States is not subject to taxation unless so provided by positive legislation. And municipalities and State agencies are included in this class when their property is used for public purposes. The reason which supports this doctrine is that, if taxes were permitted to be levied against the sovereign, it would be necessary to tax itself in order to raise money to pay over to itself. This would be an idle thing to do. . . .

It is of no consequence what use the State makes of its property. The same reason exists for not taxing State property not in governmental use as exists for taxing State property in governmental use.

The GPTA does not subject lands or interests in lands held by the state to taxation or liens arising from the non-payment of taxes. The GPTA, section 71, in fact, expressly exempts most state-owned lands and interests from taxation and liens arising from non-payment:

Public property belonging to the state, except licensed homestead lands, part-paid lands held under certificates, and lands purchased at tax sales, and still held by the state is exempt from taxation under this act. This exemption shall not apply to lands acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the lands are located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition. [MCL 211.71.]

Courts have long held that state or publicly held lands or interests in lands are not subject to sale or loss through tax foreclosure proceedings prosecuted under the GPTA to enforce the collection of delinquent taxes, *King v School Dist No 5*, 261 Mich 605; 247 NW 66 (1933); *Porter, supra*, and *Hammond, supra*, even taxes lawfully assessed against the lands prior to their acquisition by the public, *State Highway Comm'r v Simmons, supra*.

These cases are consistent with the general rule stated in 30 Am Jur 2d, Executions and Enforcement of Judgments, § 197:

As a general proposition, an execution may not be levied against the property of a state . . . in the absence of a statute expressly granting such right. . . . Reasons given for the rule are that title to such property is held in trust for the public, and that in any event, such a seizure and sale of public property would be against public policy, since the effect of such a sale would be the destruction of the means provided by law for carrying on the government. [Footnotes omitted.]

While state-owned lands have always been exempt from real property taxation, the Legislature has chosen to require that certain payments in lieu of taxes be made on state-owned lands administered by the DNR (and its predecessors, including the Department of Conservation and the Public Domain Commission). Under section 2150 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.2150,¹ the DNR makes payments in lieu of taxes to counties and local units of government from moneys appropriated by the Legislature for such purposes on tax reverted, recreation, or forest lands and any other lands held by the department (except lands purchased after January 1, 1933, for natural resource purposes). These payments have been made since 1994 at the rate of \$2.00 per acre, with 50% prorated to the county general fund and 50% to the township general fund.

Under sections 2152 through 2154 of the NREPA, MCL 324.2152 – 324.2154,² the DNR makes payments in lieu of taxes to local units of government from funds appropriated for such purposes by the Legislature on the Mason Game Farm and all

¹This section was formerly in force as 1917 PA 166, MCL 211.581.

²This section was formerly in force as 1925 PA 91, MCL 211.491.

lands acquired by purchase on or after January 1, 1933. The process for making these payments was summarized in OAG, 1987-1988, No 6500, p 282, 283 (February 25, 1988):

The valuation of such lands is annually fixed by the State Tax Commission. The State Tax Commission furnishes its determination of value to the local assessing officer. That value shall be fixed at the same percentage of true cash value as other property is assessed in the assessment district. In establishing that value, the State Tax Commission shall not include the value associated with improvements made to or placed upon the lands. MCL 211.492; MSA 7.712. The local assessing officer enters the lands subject to assessment upon the assessment rolls at the value established by the State Tax Commission and, after applying the relevant equalization factor, assesses such lands at the same rate as other real property in the district is assessed. MCL 211.492; MSA 7.712. The local treasurer or other local person charged with collection of taxes then forwards the statement of the assessment to the Department of Natural Resources. MCL 211.493; MSA 7.713.

The Department of Natural Resources reviews that statement and if it concludes that the assessment has been properly determined, authorizes the State Treasurer to pay the amount of assessment.² In the 1984-85 fiscal year, the Department of Natural Resources paid to local units of government \$9,441,271.03 under 1925 PA 91, and in fiscal year 1985-86 paid \$8,589,108.21.

²These payments are made from monies appropriated by the Legislature for such purposes from the general fund, the game and fish protection fund, and the Michigan land trust fund.

The payments determined consistent with the cited provisions can only be paid if sufficient monies are appropriated by the Legislature for those purposes. This is the clear mandate of Const 1963, art 9, § 17, which provides:

No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Accordingly, if sufficient funds are not appropriated by the Legislature or appropriations made by the Legislature are reduced by executive action authorized by the Constitution,³ the DNR cannot lawfully make "full" payment. Should the state, for whatever reason, fail to pay in full the "payments in lieu of taxes," there is no provision of the GPTA that would subject the state to a lien for non-payment and there is no provision of the GPTA that would subject the lands to forfeiture or foreclosure proceedings for failure to make the "payments in lieu of taxes."

It is my opinion, therefore, in answer to your first question, that property owned by the State of Michigan is not subject to forfeiture, foreclosure, and sale under the General Property Tax Act if the state fails to make the payments in lieu of property taxes required under Part 21, subpart 14 of the Natural Resources and Environmental Protection Act.

³Const 1963, art 5, § 20, provides:

No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes.

In 2002 PA 525, sections 1051 and 1451, the Legislature appropriated funds in the amount of \$1,897,600 from Environmental Protection Fund resources for fiscal year 2003 and \$598,700 from the same source to meet obligations remaining from fiscal year 2002 for payments in lieu of taxes. The Governor vetoed each of these sections. In the Governor's words: "I do not believe this is an appropriate use of these environmental protection funds. I urge the Legislature to enact a permanent solution to the funding shortfall for payments in-lieu-of taxes." 2002 Journal of the Senate, 2163-2164 (No. 66, November 12, 2002).

Your second question is whether section 404 of 2002 PA 525, section 1002 of 2001 PA 44, and section 1002 of 2000 PA 267, sections of three appropriations acts for the Department of Natural Resources, violate Const 1963, art 4, § 25, which prohibits the Legislature from altering or amending a law unless the law is re-enacted and published at length.

Lands to which the state acquired title as the result of tax foreclosure proceedings initiated by the State Treasurer (or the predecessor Auditor General) to enforce delinquent taxes, which become a lien on the property before January 1, 1999 (i.e., 1998 and earlier tax years), are subject to sale by the DNR under section 131 of the GPTA, MCL 211.131.⁴ Under the pertinent part of subsection 1 of this section, MCL 211.131(1), proceeds from the sale are to be distributed as follows:

The proceeds of the sale, after deducting costs paid for maintaining the property in condition to protect the public health and safety shall be accounted for to the state, county, local tax collecting unit, and school district in which the property is situated, pro rata according to their interests in the property arising from the nonpayment of taxes and special assessments on the property as that interest appears in the offices of the state, county, city, and local tax collecting unit treasurers.

The three annual appropriations acts identified in your question, 2000 PA 267, section 1002, 2001 PA 44, section 1002, and 2002 PA 525, section 404, however, provide that *additional* deductions shall be made by the DNR from the proceeds of the sale:⁵

The land sale fund is created. An amount equal to the cost of personal services, printing, postage, advertising, contractual services, and facility rental associated with tax reverted lands shall be deducted from the sales and credited to the land sale fund.

Const 1963, art 4, § 25, prohibits the Legislature from altering or amending a law unless the law is republished at length:

No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.

In OAG, 1997-1998, No 6980, p 137, 138 (April 20, 1998), the Attorney General explained the impact of this provision on the DNR's 1997-1998 fiscal year appropriations act:

This constitutional provision has been interpreted on several occasions by the Michigan Supreme Court. In *Alan v Wayne County*, 388 Mich 210, 281; 200 NW2d 628 (1972), the court reaffirmed its prior holding in *Mok v Detroit Building & Savings Assoc No 4*, 30 Mich 511 (1875), which interpreted Const 1850, art 4, § 25, the identical constitutional antecedent of Const 1963, art 4, § 25, stating:

Mok stands for the rule that you *cannot* amend statute C even by putting in statute B specific words to amend statute C, unless you republish statute C as well as statute B under Const 1963, art 4, § 25.

* * *

We adopt the rule of *Mok*. . . .
(emphasis in original).

⁴Delinquent taxes levied after December 31, 1998, are governed by sections 78a through 78p of the GPTA, MCL 211.78a-211.78p, including provision for sale of lands title to which vests in a foreclosing unit of government.

⁵This legislative practice dates back to as early as 1981. In its annual appropriation for the DNR in that year, 1981 PA 37, the Legislature similarly specified:

Sec. 35. The land and lease sale service charges fund is created. An amount equal to the cost of printing, postage, advertising and facility rental associated with the sale of oil, gas and mineral leases and tax reverted lands shall be deducted from the sales and leases and credited to the land and lease sale service charges fund.

In *Alan*, the court held that any legislation that revises, alters or amends, either directly or indirectly, a previously enacted law, necessarily invokes the constitutional requirement that the affected law be reenacted.

There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. If a bill under consideration is intended whether directly or indirectly to *revise, alter, or amend* the operation of previous statutes, then the constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation.

388 Mich at 285 (emphasis in original).

See also, *Midland Twp v State Boundary Comm.* 401 Mich 641, 658-660; 259 NW2d 326 (1977), *app dis* 435 US 1004 (1978) (reaffirming rule of *Mok* and *Alan*).

Legislative passage of state department appropriation acts which purport to revise, alter or amend prior substantive laws, without reenacting such laws, have been consistently determined to violate Const 1963, art 4, § 25. See, OAG, 1997-1998, No 6968, p [101] (January 27, 1998); OAG, 1995-1996, No 6871, pp 96-99 (September 18, 1995); OAG, 1985-1986, No 6325, pp 177-179 (December 11, 1995); OAG, 1981-1982, No 5951, p 304 (August 10, 1981); and OAG, 1975-1976, No 4896, p 132 (September 9, 1975) [appropriation bill attempting to amend statutory filing fee]. Accordingly, in applying Const 1963, art 4, § 25, to section 606 of 1997 PA 112, it must be concluded that section 606 revises, alters or amends section 74117(2) of the NREPA, by enlarging the class of persons entitled to a reduced state park vehicular admission fee. The Legislature is, of course, free to amend Part 741 of the NREPA to provide reduced park entry fees for veterans, provided that such amendment complies with Const 1963, art 4, § 25.

Section 131 of the GPTA authorizes and directs the DNR to deduct from the proceeds of sales of the affected tax reverted lands "costs paid for maintaining the property in condition to protect the public health and safety." The sums remaining after these deductions "shall be accounted for to the state, county, local tax collecting unit, and school district in which the property is situated" according to their interests in the property as those interests appear in their respective treasurers' offices. MCL 211.131(1).

Thus, the provisions of these appropriations acts clearly attempt to alter or amend provisions of section 131 of the GPTA, spelling out how proceeds for sales of tax reverted lands shall be distributed. The appropriations language specifies that additional deductions shall be made by the DNR from the proceeds of sales before accounting to the units of government that held those tax liens upon the subject property that resulted in foreclosure and acquisition of title by the state. These appropriations acts do not, however, re-enact and publish the affected section of the GPTA. Therefore, these provisions violate Const 1963, art 4, § 25.

It is my opinion, therefore, in answer to your second question, that section 404 of 2002 PA 525, section 1002 of 2001 PA 44, and section 1002 of 2000 PA 267, sections of three appropriations acts for the Department of Natural Resources, violate Const 1963, art 4, § 25, in that they alter or amend section 131 of the General Property Tax Act but do not re-enact and publish that section at length.

Your third question asks whether, assuming the unconstitutionality of certain provisions of the appropriations acts at issue in this opinion, the Department of Natural Resources is required under section 131 of the General Property Tax Act to distribute to local tax collecting units the proceeds that were deposited in the land sale fund in fiscal years 2000 through 2003. My office has been advised that the amounts deposited in the land sale fund for fiscal years 1999-2000, 2000-2001, and 2001-2002, the most recent years for which information is available, total approximately \$4.6 million.⁶

⁶See the DNR report entitled "Distribution Made to Counties from the Sale of Tax Reverted Land for the Three Year Period of 1999-2002 (excluding 1999 sales of tax reverted land in the City of Detroit)."

Legislative enactments are presumed constitutional. *Gauthier v Campbell, Wyant & Cannon Foundry Co.*, 360 Mich 510, 514-515; 104 NW2d 182 (1960). Review of funding legislation is no different from other legislative enactments. *Grand Traverse County v State*, 450 Mich 457, 463-464; 538 NW2d 1 (1995). Moreover, public officials charged with carrying out legislative mandates, particularly involving fiscal responsibilities, are not generally at liberty to challenge the constitutionality of those mandates. The courts have recognized that public officials are neither authorized nor required to adjudicate legal questions and generally have no right to refuse to perform ministerial duties prescribed by law. See *Romulus City Treasurer v Wayne County Drain Comm'r*, 413 Mich 728, 743; 322 NW2d 152 (1982); *Laubach v O'Meara*, 107 Mich 29, 30-31; 64 NW 865 (1895) (observing that the performance of statutory duties cannot depend on the opinion of those public officials as to the law's regularity).

Your question involves several prior legislative acts, each of which was in force only with respect to a past fiscal year. Public officials and employees have complied with these legislative directives. The Legislature itself, commanded by Michigan's Constitution to adopt a balanced budget, relied on these provisions to accomplish the constitutional mandate. See Const 1963, art 5, §§ 18, 20 and art 4, § 31.

The proper respect for the co-equal branches of government here counsels against suggesting remedies for these prior acts and expired fiscal years. As the Supreme Court noted in *Washtenaw County v State Tax Comm*, 422 Mich 346, 379, n 7; 373 NW2d 697 (1985), concerning how best to address the consequences of its ruling that the statute before it was unconstitutional:

"The present system being unconstitutional, we come to the subject of remedies. We agree with the trial court that relief must be prospective. The judiciary cannot unravel the fiscal skein."

The Court went on to explain:

The benefit of flexibility in opinion application is evident. If a court were absolutely bound by the traditional rule of retroactive application, it would be severely hampered in its ability to make needed changes in the law because of the chaos that could result in regard to prior enforcement under the law. [*Tebo v Havlik*, 418 Mich 350, 360; 343 NW2d 181 (1984), quoting *Placek v Sterling Heights*, 405 Mich 638, 665; 275 NW2d 511 (1979).]

In this case, the local governments have already collected and spent the 1982 tax levies in question; state aid, such as the school fund and revenue sharing, has already been allocated on the basis of those figures. It would represent a considerable administrative burden to require recalculation of the 1982 equalized valuations, especially in light of the fact that no method currently exists for taking the creative financing effect into account. [*Id.*, at 378-379.]

In *Penn Mutual Life Ins Co v Dep't of Licensing and Regulation*, 162 Mich App 123, 133-134; 412 NW2d 668 (1987), the Court of Appeals, following *Washtenaw*, similarly determined that its ruling finding unconstitutional the tax scheme at issue there would have prospective application only. The Court explained:

The importance of flexibility was also pointed out in *People v Smith*, 405 Mich 418, 432; 275 NW2d 466 (1979): "Like all rules of law its wooden application, resulting in fundamental injustice, is intolerable." The *Smith* Court held that extraordinary cases are excepted from the traditional rule of retroactivity; we find that this is an extraordinary case. The receipts from the gross premium tax over the years have long since been used by the state and are no longer available for disbursement. Refunds of the magnitude involved here would place undue hardship on the people of this state. Furthermore, the state has justifiably relied on the constitutionality of this tax and balanced the state budget accordingly. [*Id.*, at 134.]

With respect to the current fiscal year, resolution is best left to the legislative process. See *Kosa v Treasurer of Michigan*, 408 Mich 356, 383; 292 NW2d 452

(1980). Among the options the Legislature may wish to consider are amending the GPTA to require that a "tax sale fund" be created and that specified deductions be made from the receipts from the sale of tax reverted property before accounting to the taxing authorities, or enacting other funding measures for the programs essential to the administration of tax reverted lands, including the sale or other disposition of these lands.

It is my opinion, therefore, in answer to your third question, that notwithstanding the unconstitutionality of certain provisions of the appropriations acts as determined in this opinion, the Department of Natural Resources is not required under section 131 of the General Property Tax Act to distribute to local tax collecting units the proceeds that were deposited in the land sale fund in fiscal years 2000 through 2003. Consistent with established principles advancing the interest of budgetary stability provided for under Michigan's Constitution, this opinion applies prospectively only.

MIKE COX
Attorney General

CONCEALED WEAPONS: Eligibility for concealed pistol license of persons whose felony convictions have been set aside

FIREARMS:

CRIMINAL LAW:

A person convicted of a felony whose conviction has been set aside by order of a Michigan court in accordance with 1965 PA 213, as amended, if otherwise qualified, may not be denied a concealed pistol license under section 5b(7)(f) of the Concealed Pistol Licensing Act. A person convicted of one of the offenses described under section 5b(8) of the Concealed Pistol Licensing Act, whose conviction has been set aside, may nevertheless be denied a concealed pistol license on the basis of information concerning that conviction if the concealed weapon licensing board determines that denial is warranted under section 5b(7)(o) of the Act.

Opinion No. 7133

May 2, 2003

Col. Tadarial J. Sturdivant, Director
Department of State Police
714 South Harrison Road
East Lansing, MI 48823

Your predecessor has asked whether a person convicted of a felony whose conviction has been set aside by order of a Michigan court in accordance with 1965 PA 213, as amended, if otherwise qualified, may apply for and obtain a concealed pistol license under the Concealed Pistol Licensing Act.

The Concealed Pistol Licensing Act (CPLA), 1927 PA 372, as amended, MCL 28.421 *et seq.*, authorizes a county concealed weapon licensing board to issue a license to carry a concealed pistol to an eligible applicant. MCL 28.425b. An applicant is required to provide a statement whether the applicant "has ever been convicted" of a felony or a misdemeanor. MCL 28.425b(1)(e). A concealed weapon licensing board "shall issue" a license to qualified persons who have "never been convicted of a felony." MCL 28.425b(7)(f). Thus, it must be determined whether a

person who has had his or her felony conviction set aside by order of a Michigan court is properly considered "never" to have been convicted of a felony for purposes of the CPLA.

The Legislature has addressed this question in the Set Aside Law, 1965 PA 213, as amended, MCL 780.621 *et seq.* Under section 1 of this law, courts are empowered to set aside the conviction of a person for certain criminal offenses, provided that the person has been convicted only once, five years have expired since the date sentencing was imposed or the term of imprisonment was completed, whichever is later, and the applicant satisfies the other requirements of the act. MCL 780.621. The court may not enter its order setting aside the conviction unless it determines that the circumstances and behavior of the applicant since his or her conviction warrant setting it aside and that such an order "is consistent with the public welfare." MCL 780.621. Once entered, the effect of a court order setting aside a conviction is plainly stated in section 2(1) of the Set Aside Law:

Upon the entry of an order pursuant to section 1, the applicant, for purposes of the law, *shall be considered not to have been previously convicted*, except as provided in this section [2] and section 3. [MCL 780.622(1); emphasis added.]

Thus, unless one of the exceptions stated in section 2 or 3 of the Set Aside Law applies for licensing purposes under the CPLA, the effect of section 2 is clear and unmistakable and must be given effect. *Storey v Meijer Inc*, 431 Mich 368, 376; 429 NW2d 169 (1988).

None of the exceptions set out in section 2 implicate the CPLA. Thus, the answer to the question turns on an analysis of section 3.

Subsection 1 of section 3 requires the court to send a copy of an order setting aside a conviction to the arresting agency and the Department of State Police. Subsection 2 then describes certain obligations of the State Police regarding that order and strictly limits the persons or entities who may have access to that order and the purposes for which such an order may be used:

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies. Except as provided in subsection (3),¹ this nonpublic record shall be made available *only* to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and *only* for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside pursuant to this act.

(c) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense.

(e) Consideration by a law enforcement agency if a person whose conviction has been set aside applies for employment with the law enforcement agency.

(f) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether an individual required to be registered under the sex offenders registration act has violated that act, or for use in a prosecution for violating that act. [MCL 780.623(2); emphasis added.]

¹ Subsection (3), which permits a person whose conviction was set aside to obtain a copy of the nonpublic record upon payment of a fee, is not impacted here and need not be discussed.

Significantly, the Legislature has also prescribed criminal penalties for a violation of these provisions:

(5) Except as provided in subsection (2), a person, other than the applicant, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. [MCL 780.623(5).]

A concealed weapon licensing board is not among the agencies or persons to whom the state police may provide access to its nonpublic record of the set aside order and related documents. Moreover, consideration in determining eligibility for licensure under the CPLA is not among the limited purposes for which a set aside conviction may be used. Indeed, the only licensing function for which the Legislature has carved out an exception is one "conducted by an agency of the judicial branch of state government." Words in a statute must be construed according to the common and approved usage of the language. MCL 8.3a. Affording the words of section 3(2) their commonly understood meaning, this exception must be read as written and may not be extended to a concealed weapon licensing board in the executive branch of government. See *Taylor v Michigan Public Utilities Comm*, 217 Mich 400, 402-403; 186 NW 485 (1922). Moreover, the express mention of one thing in a statute implies the exclusion of all other similar things. *Jennings v Southwood*, 446 Mich 125, 142; 521 NW2d 230 (1994).

The legislative history of the Set Aside Law is also instructive. When first enacted in 1965, the Set Aside Law consisted of only two sections. Section 2 of the act then provided, like its modern counterpart, that a successful applicant for an order setting aside a conviction "shall be deemed not to have been previously convicted." 1965 PA 213, section 2. Unlike current section 2, however, the original version included no exceptions to this general rule.² Most of the exceptions contained in current section 3 were added in 1982 by 1982 PA 495. The exception stated in subsection 3(2)(e) was added in 1988 by 1988 PA 11 and subsection 3(2)(f) was added in 1994 by 1994 PA 294. Thus, when the Legislature has seen fit to add to the limited purposes for which a set aside conviction may be used, it has done so, but it has not done so with regard to licensing purposes under the CPLA.

The Attorney General has considered the meaning and effect of sections 2 and 3 of the Set Aside Law and has construed that law as requiring that a person whose conviction has been set aside by a court is deemed not to have been previously convicted of the crime, except for those express limited purposes identified in the statute. See, e.g., OAG, 1973-1974, No 4774, pp 53, 55 (June 15, 1973); OAG, 1977-1978, No 5349, p 568 (August 9, 1978); OAG, 1993-1994, No 6780, p 89 (January 4, 1994). These opinions also construed the phrase "purposes of the law" contained in section 2(1) of the Act to apply to statutes of this state. OAG, 1973-1974, No 4774, and OAG, 1977-1978, No 5349, *supra*. See also *McBride v Callahan*, 173 Wash 609; 24 P 2d 105, 112 (1933). Thus, as the Set Aside Law contains no exceptions relevant to licensing under the CPLA, a person whose felony conviction has been set aside may be considered as "never having been convicted" for purposes of applying for a concealed weapon license and may not be denied a license to carry a concealed pistol under section 5b(7)(f) of the CPLA. MCL 28.425b(7)(f).

²Also, only a person whose crime was committed before he or she reached 21 years of age could apply for a set aside under the original act. The 1982 amendment extended the law's reach beyond persons who made "one youthful mistake" to everyone, regardless of age. House Legislative Analysis, HB 5229, H-3, September 21, 1982.

Under the Set Aside Law, the Department of State Police is required to retain a nonpublic record of the order setting aside a conviction and shall make it available to the courts and court agencies, law enforcement agencies, a prosecuting attorney, the Attorney General, or the Governor for the specific purposes enumerated in that statute. MCL 780.623(2). Section 5b(8) of the CPLA similarly requires the Department of State Police to maintain certain conviction information:

Upon entry of a court order³ or conviction of 1 of the enumerated prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm in this section [section 5b] the department of state police shall immediately enter the order or conviction into the law enforcement network. *For purposes of this act, information of the court order or conviction shall not be removed from the law enforcement information network, but may be moved to a separate file intended for the use of the county concealed weapon licensing boards, the courts, and other government entities as necessary and exclusively to determine eligibility to be licensed under this act.* [MCL 28.425b(8). Emphasis added.]

The "prohibitions" referred to in section 5b(8) above are enumerated in section 5b(7) of the Act.⁴ Section 5b(7)(d) refers to certain court orders that would prohibit a person subject to the order from obtaining a permit to carry a concealed pistol. In addition, section 5b(7)(e) refers to section 224f of the Penal Code, MCL 750.224f, as a provision that prohibits a person from "possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm." MCL 750.224f removes these gun rights from a convicted felon for a period of at least three years, depending on the crime committed. Even though persons described in these sections may later have their gun rights restored or convictions or other orders set aside, section 5b(8) nonetheless prohibits the State Police from removing the information from the Law Enforcement Information Network, but allows the Department to move the information "to a separate file intended for the use of the county concealed weapon licensing boards, the courts, and other government entities as necessary and exclusively to determine eligibility to be licensed under this act." Thus, the court orders and convictions referred to in section 5b(8) of the CPLA are those that the Legislature has determined bear on the ability of persons to exercise their firearm rights.

Reading the Set Aside Law and the CPLA together, the question arises whether the State Police may divulge information concerning a set aside conviction to a concealed weapon licensing board, and whether the board may use such information, without violating sections 3(3) and 3(5) of the Set Aside Law. In that regard, statutes should be harmonized and meaning and effect given to each of them wherever possible. *Nelson v Transamerica Ins Services*, 441 Mich 508, 513; 495 NW2d 370 (1992).

The Legislature has provided guidance in addressing this issue in section 5b(7)(o) of the CPLA. This section provides the following among the several circumstances that must exist for a concealed weapon licensing board to issue a license:

Issuing a license to the applicant to carry a concealed pistol in this state is not detrimental to the safety of the applicant or to any other individual. A determination under this subdivision shall be based on clear and convincing evidence of civil infractions, crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions of, or statements of, the applicant that bear directly on the applicant's ability to carry a concealed pistol. [MCL 28.425b(7)(o).]

³The court order referred to here is one that has the effect of removing or limiting certain of a person's firearm rights as enumerated in section 5b(7)(d) of the CPLA, MCL 28.425b(7)(d). This section does not refer to orders setting aside felony convictions.

⁴No other provisions of section 5b can reasonably be construed as enumerating the "prohibitions" described in section 5b(8).

Under this section, evidence of a crime that bears directly on the applicant's ability to carry a concealed pistol is appropriately considered by the boards.

The reading of sections 5b(7)(f), 5b(7)(o), and 5b(8) of the CPLA and the Set Aside Law that best harmonizes them all and gives effect to each is one that allows the State Police to share with concealed weapon licensing boards only that information pertaining to set aside "conviction[s] of 1 of the enumerated prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm in [section 5b]." This conviction information, in turn, may be used by concealed weapon licensing boards in making the determinations required under section 5b(7)(o) of the CPLA, but may not be used under section 5b(f).

This interpretation gives effect to the Legislature's unmistakable intent to make information "that bear[s] directly on the applicant's ability to carry a concealed pistol" available "for the use" of the gun boards "as necessary and exclusively to determine eligibility to be licensed" under the CPLA. MCL 28.425b(8) and MCL 28.425b(7)(o). It is also consistent with the provision of the CPLA that requires an applicant to authorize the licensing board to access any records, including otherwise privileged information, that may pertain to the applicant's qualifications to carry a concealed pistol license. MCL 28.425b(c).

It is my opinion, therefore, that a person convicted of a felony whose conviction has been set aside by order of a Michigan court in accordance with 1965 PA 213, as amended, if otherwise qualified, may not be denied a concealed pistol license under section 5b(7)(f) of the Concealed Pistol Licensing Act. A person convicted of one of the offenses described under section 5b(8) of the Concealed Pistol Licensing Act, whose conviction has been set aside, may nevertheless be denied a concealed pistol license on the basis of information concerning that conviction if the concealed weapon licensing board determines that denial is warranted under section 5b(7)(o) of the Act.

MIKE COX
Attorney General

COUNTIES: Authority of county road commission to enter agreements to maintain roads with Indian Tribes**COUNTY ROAD COMMISSIONS:****INDIAN TRIBES:**

A county road commission has the authority to enter into an agreement with an Indian Tribe under the Urban Cooperation Act of 1967 to maintain roads.

A county road commission also has the authority to enter into an agreement with an Indian Tribe under 1951 PA 35 to maintain roads that are outside the geographical boundaries of its county.

Opinion No. 7134

May 21, 2003

Honorable Ken Bradstreet
State Representative
The Capitol
Lansing, Michigan 48913

You have asked if a county road commission has the authority to enter into an agreement with an Indian Tribe to maintain roads.

The Urban Cooperation Act of 1967 (UCA), 1967 (Ex Sess) PA 7, MCL 124.501 *et seq.*, provides for interlocal public agency agreements. Section 4 of the Act, MCL 124.504, states:

A public agency of this state may exercise jointly with any other public agency of this state, with a public agency of any other state of the United States, with a public agency of Canada, or with any public agency of the United States government any power, privilege, or authority that the agencies share in common and that each might exercise separately.

Whether a county road commission and an Indian Tribe are public agencies is determined by the definition of "public agency" in section 2(e) of the Act:

"Public agency" means a political subdivision of this state or of another state of the United States or of Canada, including, but not limited to, a state government; a county, city, village, township, charter township, school district, single or multipurpose special district, or single or multipurpose public authority; a provincial government, metropolitan government, borough, or other political subdivision of Canada; an agency of the United States government; or a similar entity of any other states of the United States and of Canada. As used in this subdivision, agency of the United States government includes an Indian tribe recognized by the federal government before 2000 that exercises governmental authority over land within this state, except that this act or any intergovernmental agreement entered into under this act shall not authorize the approval of a class III gaming compact negotiated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467. [MCL 124.502(e); emphasis added.]

The UCA does not define "public authority." Thus, the ordinary meaning of the term applies, and it is appropriate to consult a dictionary to determine that ordinary meaning. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 469-470; 521 NW2d 831 (1994). "Public" has several definitions, including "acting in an official capacity on behalf of the people as a whole." *Webster's New World College Dictionary, 3rd Edition* (1997). "Authority," in the context of governmental law, is defined as "a body having jurisdiction in certain matters of a public nature." *Black's Law Dictionary, Revised 4th Edition* (1968). Because a county road commission is a body having jurisdiction in the building and maintaining of public roads, which are matters of a public nature, and because it acts in an official capacity on behalf of the people

of a county, it has the attributes of a "public authority," and therefore is a "public agency" within the UCA.

An Attorney General opinion bolsters this conclusion. OAG, 1961-1962, No 3664, p 524 (September 10, 1962), discussed the attributes of an "authority." While acknowledging that the word "authority" has no established meaning in the law, the opinion nevertheless identified several characteristics of an authority. It may have the power to sue and be sued, to acquire private property, to contract, and to issue bonds. The opinion concluded that the purpose of the Legislature in allowing the creation of an authority is to provide it with an autonomous existence. It is clear upon a reading of the County Road Law, 1909 PA 283, MCL 224.1 *et seq*, that the Legislature vested county road commissions with the attributes of an authority. For example, county road commissions may sue and be sued, MCL 224.9(3); purchase private property, MCL 224.11(4); acquire private property by condemnation, MCL 224.12; and enter into contracts for a variety of purposes, MCL 224.10(4), 224.19a(2), and 224.19(2). See also *Edington v Grand Trunk Western Railroad Co*, 165 Mich App 163; 418 NW2d 415 (1987) (a county road commission is a "public authority" empowered to order installation of railroad crossing signs under the statute at issue there).

Three additional opinions of the Attorney General have addressed whether, under the particular statutes at issue, a county road commission was a "political subdivision." Two of those opinions, OAG, 1977-1978, No 5375, p 663 (October 18, 1978) (interpreting the Emergency Preparedness Act), and OAG, 1957-1958, No 2897, p 86 (February 7, 1957) (interpreting the Michigan Employment Security Act), relied upon an earlier opinion, OAG, 1951-1952, No 1513, p 428 (January 29, 1952). OAG No 1513 interpreted 1951 PA 205, an act providing social security coverage to public employees, to determine whether road commission employees were included within the county's coverage. The particular definition examined there defined "political subdivision" for purposes of 1951 PA 205 to include:

"[A]n instrumentality (1) of a state, (2) of 1 or more of its political subdivisions, or (3) of the state and 1 or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision." [OAG No 1513 at p 429.]

The opinion considered that definition and implicitly concluded that a road commission was not a "political subdivision" for purposes of 1951 PA 205.

A county road commission is a part of county government and not a distinct juristic entity. In this connection we do not overlook the fact that a county road commission is a body corporate. The county road commissioners are, however, county officers and the employees of the county road commission have been held to be county employees. [*Id.*, citation omitted.]

In contrast, however, the UCA utilizes a different definition of "political subdivision" for purposes of determining who may enter into an interlocal agreement, which definition includes a "public authority." As explained above, a road commission is a public authority. When a statute specifically defines a given term, that definition alone controls. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). Thus, a county road commission is a "public authority," and therefore is a "public agency" within the meaning of section 2(e) of the UCA.

Section 2(e) of the UCA also defines "public agency" to include "an Indian tribe recognized by the federal government before 2000 that exercises governmental authority over land within this state." MCL 124.502(e). Thus, an Indian Tribe that satisfies the terms of that definition is a "public agency" within the UCA.

These two public agencies, the road commission and the Indian Tribe, may enter into an interlocal agreement for the road commission to maintain certain roads if maintaining roads is a "power, privilege, or authority that the agencies share in

common and that each might exercise separately" under section 4 of the UCA. MCL 124.504.

Section 19(1) of 1909 PA 283 allows a road commission to maintain roads:

The board of county road commissioners may grade, drain, construct, gravel, shale, or macadamize a road under its control, make an improvement in the road, and may extend and enlarge an improvement. The board may construct bridges and culverts on the line of the road, and repair and maintain roads, bridges, and culverts. [MCL 224.19(1); emphasis added.]

Section 2(1) of 1964 PA 170, MCL 691.1401 *et seq.*, requires a governmental agency having jurisdiction over a highway to "maintain the highway in reasonable repair." MCL 691.1402(1). Therefore, the maintenance of highways is a power that a county road commission "might exercise."

An Indian Tribe also has the authority to maintain roads. The Code of Federal Regulations provides at 25 CFR 170.6 that:

The administration and maintenance of Indian reservation roads and bridges is basically a function of the local Government. Subject to the availability of funds, the Commissioner [of Indian Affairs] shall maintain, or cause to be maintained, those approved roads on the Federal-Aid Indian Road System. The Commissioner may also maintain roads not on the Federal-Aid Indian Road System if such roads meet the definition of "Indian reservation road and bridges"¹¹ and are approved for maintenance by the Commissioner. No funds authorized under 23 U.S.C. 208 are available for the maintenance of roads. [Emphasis added.]

"[L]ocal Government" is not defined in Part 170 of the Code of Federal Regulations. However, the United States Court of Appeals for the Ninth Circuit's treatment of 25 CFR 170.6 in *McDonald v Means*, 309 F3d 530, 539 (CA 9, 2002), is instructive. There, a Tribal member was injured on a Bureau of Indian Affairs road within the Northern Cheyenne Indian Reservation. *Id.*, at 535. The Ninth Circuit considered whether the Northern Cheyenne Tribal Court or the United States District Court for District of Montana had jurisdiction over a lawsuit brought by the injured member and concluded:

Moreover, the Route 5 grant preserves to the Tribe considerable rights and responsibility over traffic and maintenance on the right-of-way. *See generally* 25 C.F.R. § 170. For example, *the Code of Federal Regulations makes clear that "the administration and maintenance of Indian reservation roads and bridges is basically a function of the local government,"* 25 C.F.R. § 170.6, which, as regards Route 5, is the Northern Cheyenne Tribe. [*Id.*, at 539; emphasis added.]

Again, later in the opinion, the Court equated "local" government with "tribal" government when it stated, "The Commissioner must make recommendations to local (tribal) officials about maximum speed and weight limits . . ." *Id.*

25 CFR 170.6 establishes that a Tribe has the authority to maintain roads within its reservation. However, the regulation also indicates that the Commissioner of Indian Affairs may maintain roads on the Federal-Aid Indian Road System and some "Indian reservation roads." This apparent overlapping authority of a Tribe and the Commissioner to maintain Tribal roads necessitates that a road commission assure that it is contracting with the appropriate governmental entity. That may be done in consultation with the Tribe and the Bureau of Indian Affairs.

¹¹That definition provides: "Indian Reservation Roads and Bridges" means roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups or communities in which Indians and Alaskan Natives reside, whom the Commissioner has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. 25 CFR 170.2(d).

It is my opinion, therefore, that a county road commission has the authority to enter into an agreement with an Indian Tribe under the Urban Cooperation Act of 1967 to maintain roads.

In addition, a county road commission may contract with an Indian Tribe for road maintenance under 1951 PA 35, MCL 124.1 *et seq* (1951 PA 35), an act providing for intergovernmental contracts between municipal corporations. Section 3(1), MCL 124.3(1), authorizes a "municipal corporation" to enter into a contract with a "person" to provide any lawful municipal service that the municipal corporation furnishes within its corporate limits, outside its corporate limits:

A municipal corporation may contract for adequate consideration with a person or another municipal corporation to furnish to property outside the municipal corporate limits any lawful municipal service that it is furnishing to property within the municipal corporate limits. . . . [Emphasis added.]

The definition of "municipal corporation" expressly includes a county road commission:

"Municipal corporation" means a county, charter county, county road commission, township, charter township, city, village, school district, intermediate school district, community college district, metropolitan district, court district, public authority, or drainage district as defined in the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled law, or any other local governmental authority or local agency with power to enter into contractual undertakings. For purposes of sections 5 to 12b, "municipal corporation" includes a public transportation corporation. [MCL 124.1(a); emphasis added.]

Person is defined in section 3 as "an individual, partnership, association, governmental entity, or other legal entity." MCL 124.3(3)(c). (Emphasis added.) An Indian Tribe is a governmental entity. See *Cotton Petroleum v New Mexico*, 490 US 163, 189; 109 S Ct 1698; 104 L Ed 2d 209 (1989). Accordingly, an Indian Tribe is a "person" that may enter into a contract under section 3 of 1951 PA 35.

Since, as shown above, a road commission has both the authority and duty to maintain roads under its control, a road commission's maintenance of its own roads is a "lawful municipal service that it is furnishing . . . within the municipal corporate limits." MCL 124.3(1). Therefore, the maintenance of highways by a county road commission falls within the range of municipal services that the road commission may contract to perform outside its corporate limits.

Thus, these provisions authorize a road commission to contract with an Indian Tribe to maintain a Tribe's roads. However, the proviso in section 3(1), MCL 124.3(1), that a road commission may contract to furnish service "to property outside the municipal corporate limits" must be recognized. Because a road commission is a part of county government, a road commission's "municipal corporate limits" are the geographical limits of the county in which it operates. See OAG, 1951-1952, No 1513, *supra*. To the extent that the roads for which the Tribe is seeking maintenance are located within the geographical boundaries of a particular county, 1951 PA 35 does not allow the road commission of that county to contract to maintain those roads. Instead, this Act allows a road commission to contract to maintain only those roads that are located outside the geographical boundaries of the county.

In addition, the Attorney General has concluded that 1951 PA 35 allows a road commission to contract with another governmental entity to maintain its roads. OAG, 1979-1980, No 5524, p 246 (July 13, 1979), stated:

It is clear that under 1951 PA 35, § 2, *supra*, a board of county road commissioners is a municipal corporation authorized to contract with another governmental authority to provide road building and maintenance services.

It is also my opinion, therefore, that a county road commission has the authority to enter into an agreement with an Indian Tribe under 1951 PA 35 to maintain roads that are outside the geographical boundaries of its county.

MIKE COX
Attorney General

COUNTY CORRECTIONS OFFICERS: Whether county corrections officers are exempt from the ban on use of stun guns and similar devices in the Penal Code

PEACE OFFICERS:

STUN GUNS:

County corrections officers who are also "peace officers" have been exempted from the ban on possession of stun guns and similar devices in sections 224a and 231 of the Michigan Penal Code, MCL 750.224a and MCL 750.231, but those county corrections officers who are not "peace officers" have not been so exempted.

Opinion No. 7135

July 16, 2003

Honorable Doug Spade
State Representative
The Capitol
Lansing, MI 48909

You have asked whether county corrections officers have been exempted from the ban on possession of stun guns and similar devices in sections 224a and 231 of the Michigan Penal Code, MCL 750.224a and MCL 750.231.

Section 224a(1) of the Michigan Penal Code, MCL 750.224a(1), prohibits the possession and sale of devices commonly known as "stun guns" as follows:

Except as otherwise provided in this section, a person shall not sell, offer for sale, or possess in this state a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure, or kill.

A person who violates section 224a(1) is guilty of a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000 or both. MCL 750.224a(4).

Subsections (2) and (3) of section 224a, MCL 750.224a(2) and (3), allow for the possession and use of electro-muscular devices¹ by certain authorized personnel and for the sale and delivery of those devices:

(2) This section does not prohibit any of the following:

(a) The possession and reasonable use of a device that uses electro-muscular disruption technology by a peace officer, an employee of the department of corrections authorized in writing by the director of the department of corrections, probation officer, court officer, bail agent authorized under section 167b, licensed private investigator, aircraft pilot, or aircraft crew member, who has been trained in the use, effects, and risks of the device, while performing his or her official duties.

(b) Possession solely for the purpose of delivering a device described in subsection (1) to any governmental agency or to a laboratory for testing, with the prior written approval of the governmental agency or law enforcement agency and under conditions determined to be appropriate by that agency.

(3) A manufacturer, authorized importer, or authorized dealer may demonstrate, offer for sale, hold for sale, sell, give, lend, or deliver a device that uses electro-muscular disruption technology to a person authorized to possess a device that uses electro-muscular disruption technology and may possess a device that uses electro-muscular disruption technology for any of those purposes.²

In addition, section 231 of the Michigan Penal Code, MCL 750.231, identifies certain exempt individuals to whom various sections of the Penal Code, including section 224a, do not apply:

(1) Except as provided in subsection (2), sections 224, 224a, 224b, 226a, 227, 227c, and 227d do not apply to any of the following:

(a) A peace officer of an authorized police agency of the United States, of this state, or of a political subdivision of this state, who is regularly employed and paid by the United States, this state, or a political subdivision of this state.

(b) A person who is regularly employed by the state department of corrections and who is authorized in writing by the director of the department of corrections to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.

(c) A person employed by a private vendor that operates a youth correctional facility authorized under section 20g of 1953 PA 232, MCL 791.220g, who meets the same criteria established by the director of the state department of corrections for departmental employees described in subdivision (b) and who is authorized in writing by the director of the department of corrections to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.

¹The Legislature has defined "a device that uses electro-muscular disruption technology" to mean:

[A] device to which all of the following apply:

(a) The device is capable of creating an electro-muscular disruption and is used or intended to be used as a defensive device capable of temporarily incapacitating or immobilizing a person by the direction or emission of conducted energy.

(b) The device contains an identification and tracking system that, when the device is initially used, dispenses coded material traceable to the purchaser through records kept by the manufacturer.

(c) The manufacturer of the device has a policy of providing the identification and tracking information described in subdivision (b) to a police agency upon written request by that agency. [MCL 750.224a(5).]

²For the purposes of this opinion, it is assumed that the corrections officer is employed in that position and does not simultaneously hold one of the exempt positions identified in MCL 224a(2) or (3).

(d) A member of the United States army, air force, navy, or marine corps or the United States coast guard while carrying weapons in the line of or incidental to duty.

(e) An organization authorized by law to purchase or receive weapons from the United States or from this state.

(f) A member of the national guard, armed forces reserve, the United States coast guard reserve, or any other authorized military organization while on duty or drill, or in going to or returning from a place of assembly or practice, while carrying weapons used for a purpose of the national guard, armed forces reserve, United States coast guard reserve, or other duly authorized military organization.

(2) As applied to section 224a(1) only, subsection (1) is not applicable to an individual included under subsection (1)(a), (b), or (c) unless he or she has been trained on the use, effects, and risks of using a portable device or weapon described in section 224a(1). [MCL 750.231(1) and (2).]

The foremost rule of statutory construction is to discern and give effect to the intent of the Legislature. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). If the language of the statute is unambiguous, it must be enforced as written. Where the language is ambiguous, however, the courts may properly go beyond the words of the statute to ascertain legislative intent. *Id.* One of the means that may be utilized is to examine legislative history. *Luttrell v Dep't of Corrections*, 421 Mich 93, 103-105; 365 NW2d 74 (1984).

The plain text of sections 224a and 231 does not expressly refer to "county corrections officers." Section 231(1)(b) refers to corrections officers, but only those "employed by the state department of corrections" who are "authorized in writing by the director of the department of corrections to carry a concealed weapon." MCL 750.231(1)(b). This language is unambiguous and, therefore, allows for no further interpretation.

While section 224a(2)(a) refers to "an employee of the department of corrections authorized in writing by the director of the department of corrections," the legislative history of this section makes clear that it does not include county corrections officers within the scope of its exemption. MCL 750.224a(2)(a). 2002 PA 709, which amended section 224a to include this language, originated as House Bill 6028 and included a broad exemption for a "corrections officer" in subsection 2(a) as originally introduced. 2002 Journal of the House 1435 (No. 42, May 8, 2002). A later substitute bill narrowed the exemption from "corrections officer" to a "corrections officer authorized in writing by the director of the department of corrections." 2002 Journal of the House 2807 (No. 70, December 4, 2002). When House Bill 6028 was considered in the Senate, subsection (2)(a) was further clarified to provide the exemption for "an employee of the department of corrections authorized in writing by the director of the department of corrections," 2002 Journal of the Senate 2600 (No. 75, December 13, 2002), which was the version ultimately adopted in 2002 PA 709. This legislative history demonstrates that the Legislature clearly considered exempting all corrections officers from the ban on the use of stun guns and similar devices, but rejected that approach in favor of the narrower exemption for authorized employees of the Department of Corrections.

Another exemption of potential relevance is whether county corrections officers are "peace officers" within the meaning of section 224a(2)(a) or 231(1)(a) of the Penal Code. Neither section defines these words. When interpreting a criminal statute, the clear wording must be accepted. *People v Barry*, 53 Mich App 670, 676; 220 NW2d 39 (1974). Words and phrases in a statute must be construed according to the common and approved usage of the language. MCL 8.3a; *People v McIntire*, 461 Mich 147, 153; 599 NW2d 102 (1999). In common speech, the term "peace officer" is consistently used as synonymous with the term "law enforcement officer." OAG, 1977-1978, No 5236, pp 252, 253 (October 20, 1977). The Michigan Commission on Law Enforcement Standards Act, MCL 28.601 *et seq.*, defines a law

enforcement officer interchangeably with a police officer as one "who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state." MCL 28.602(k)(i).

In *People v Bissonette*, 327 Mich 349, 356-357; 42 NW2d 113 (1950), the Michigan Supreme Court considered the question of whether conservation officers were peace officers and offered the following definitions relating to "peace officers":

"*Peace Officers*. This term is variously defined by statute in different States; but generally it includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve the public peace.

"*Public Peace*. The peace or tranquility of the community in general; the good order and repose of the people composing a State or municipality." Blacks Law Dictionary (3rd ed), p 1341.

"*Peace officer*. Law. A civil officer whose duty it is to preserve the public peace, as a sheriff or constable." Webster's New International Dictionary (2d ed), p 1798.

This language from *Bissonette* was cited with approval in *People v Carey*, 382 Mich 285, 293-294; 170 NW2d 145 (1969), and *Michigan State Employees Ass'n v Attorney General*, 197 Mich App 528, 530-531; 496 NW2d 370 (1992).

Thus, an individual is within the recognized and accepted usage of the term "peace officer" if the individual has general responsibility for the enforcement of the law and preservation of the public peace. I am informed that the duties of local corrections officers may vary from county to county. In some counties, for example, peace officers may also serve as corrections officers. Whether a particular county's corrections officers fall within the exemption for "peace officers" will depend upon the particular duties assigned to corrections officers in that county. Those county corrections officers who are charged with the enforcement of the general criminal laws of this state or the enforcement and preservation of the public peace are "peace officers" and, accordingly, fall within the exemption for "peace officers." Those county corrections officers who are not charged with those responsibilities, however, are not "peace officers" within the common and accepted meaning of those terms and accordingly fall outside the scope of that exemption.³

It is my opinion, therefore, that those county corrections officers who are also "peace officers" have been exempted from the ban on possession of stun guns and similar devices in sections 224a and 231 of the Michigan Penal Code, MCL 750.224a and MCL 750.231, but those county corrections officers who are not "peace officers" have not been so exempted.

MIKE COX
Attorney General

³This conclusion is further supported by reference to other statutes in which the Legislature has distinguished a "peace officer" from a "corrections officer" and included both within the scope of a particular statute. See, e.g., MCL 18.361(5)(b) (crime victims compensation award shall be reduced by amount of insurance payments received but not including benefits paid to "a peace officer or a corrections officer"); MCL 750.316(1)(c) (making the murder of "a peace officer or a corrections officer" punishable as first degree murder); MCL 750.479b (making the taking of a weapon other than a firearm from the lawful possession of a "peace officer or a corrections officer" a felony); MCL 777.36(1)(a) (in determining sentences, assigning 50 points to the scoring of offense variable 6 involving the murder of a "peace officer or a corrections officer"). In contrast with these examples, as pertinent to our analysis, the Legislature chose to include certain employees of the Department of Corrections authorized in writing by the Director of the Department of Corrections and "peace officers" within the scope of MCL 750.224a and 750.231, as opposed to "corrections officers."

CONCEALED WEAPONS: Carrying of a pistol in a motor vehicle**FIREARMS:****CRIMINAL LAW:**

A person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

A person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained and that belongs to another person who has exited the vehicle, only if the occupant is not carrying the weapon, a determination that depends on the facts of each case.

Opinion No. 7136

July 30, 2003

Honorable Scott Shackleton
State Representative
The Capitol
Lansing, Michigan

You have asked two questions concerning the carrying of a pistol in a motor vehicle. You first ask if a person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

Section 227(2) of the Michigan Penal Code, MCL 750.227(2), makes it a crime to carry a pistol, whether concealed or otherwise, in a vehicle. Section 227(2) states, in pertinent part, as follows:

A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, *without a license to carry the pistol as provided by law* and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license. [Emphasis added.]

By its express terms, the criminal prohibition in section 227(2) does not apply to a person licensed to carry a pistol, provided that the pistol is carried in a manner or place consistent with any restriction upon that license. This conclusion is further supported by section 425c(2) of the Concealed Pistol Licensing Act, MCL 28.425c(2), which expressly authorizes a concealed pistol licensee to "[c]arry a pistol in a vehicle, whether concealed or not concealed, anywhere in this state." Moreover, section 231a(1)(a) of the Penal Code, MCL 750.231a(1)(a), provides that the prohibition against carrying a concealed pistol in a motor vehicle does not apply to a person holding a valid license to carry a concealed pistol, provided that the pistol is carried in conformity with any restrictions appearing on the license.¹

The primary rule of statutory construction is to effectuate the intent of the Legislature. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). If the language of a statute is clear and unambiguous, it is assumed the Legislature intended its plain meaning to be enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). Here, the statutes clearly provide that a person licensed to carry a concealed pistol is not subject to the prohibition against carrying a pistol in a motor vehicle, regardless of whether the pistol belongs to the licensee or another person.

¹ This analysis is limited to consideration of a violation of MCL 750.227 only and assumes that the pistol is lawfully owned, inspected, and has not been used in the commission of a crime.

It is my opinion, therefore, in answer to your first question, that a person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

Your second question asks if a person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained,² and that belongs to another person who has exited the vehicle.

As previously noted, MCL 750.227(2) generally prohibits a person from carrying a concealed pistol in a motor vehicle unless that person is licensed to carry a concealed pistol. MCL 750.231a(1) contains several exceptions to the prohibition. Subsection (d) exempts a person "while transporting a pistol for a lawful purpose that is licensed by the owner or occupant of the motor vehicle in compliance with section 2 of 1927 PA 372, MCL 28.422, and the pistol is unloaded in a closed case designed for the storage of firearms in the trunk of the vehicle."³ MCL 750.231a(1)(d). Subsection (e) applies to vehicles without trunks by requiring that the firearm not be readily accessible to the occupants of the vehicle. MCL 750.231a(1)(e).

Under the facts provided in your request, the passenger has remained in the vehicle with a properly stored pistol belonging to the driver. Under these facts, the exceptions contained in MCL 750.231a(d) and (e) are inapplicable since the passenger is not "transporting" the firearm. "To transport is to convey from one place or station to another" *People v Al-Saiegh*, 244 Mich App 391, 399; 625 NW2d 419 (2001).

Nonetheless, a violation of MCL 750.227(2) must be proven by evidence of the following: (1) that a weapon is present in a vehicle operated or occupied by the defendant; (2) that the defendant knew or was aware of its presence; and (3) that the defendant was "carrying" the weapon. *People v Courier*, 122 Mich App 88; 322 NW2d 421 (1982), citing *People v Butler*, 414 Mich 377; 319 NW2d 540 (1982). "Carrying" is an essential element that must be proven to establish a violation of the prohibition in section 227(2) and may not automatically be inferred from evidence that the defendant had knowledge that the weapon was present in the vehicle. *People v Emery*, 150 Mich App 657; 667; 389 NW2d 472 (1986).

The element of "carrying" depends on the particular facts of each case. It cannot be stated, as a definitive matter of law, what conduct constitutes carrying for the purposes of section 227(2). Nevertheless, Michigan courts have articulated several factors to be considered in resolving whether the essential element of "carrying" a weapon in a vehicle has been established. Factors that have been considered include: (1) the defendant's awareness of the weapon; (2) the accessibility or proximity of the weapon to the defendant; (3) the defendant's possession of items which connect him to the weapon, such as ammunition; (4) the defendant's ownership or operation of the vehicle; and (5) the length of time during which the defendant drove or occupied the vehicle. *People v Emery*, 150 Mich App at 667.

The fact that a pistol is lawfully contained does not necessarily exempt a person from possible prosecution under section 227(2). See, for example, *People v Wilson*, 2001 Mich App LEXIS 1144 (unpublished), in which the Court of Appeals held that the defendant was subject to prosecution under section 227(2), notwithstanding that the pistol was locked in the trunk of a vehicle.

²By using the term "lawfully contained," it is understood that the pistol left in the vehicle is either (1) unloaded in a closed case designed for the storage of firearms in the trunk of the vehicle; or (2) unloaded in a closed case designed for the storage of firearms in a vehicle that does not have a trunk and is not readily accessible to the occupants of the vehicle. See MCL 750.231a(1)(d) and (e).

³Section 2 of 1927 PA 372, MCL 28.422, provides the qualifications for the purchase of a pistol.

It is my opinion, therefore, in answer to your second question, that a person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained and that belongs to another person who has exited the vehicle, only if the occupant is not carrying the weapon, a determination that depends on the facts of each case.

MIKE COX
Attorney General

COUNTIES: Authority of chair of county board of commissioners to bind county to interlocal agreement

INTERLOCAL AGREEMENTS:

The Chair of the Macomb County Board of Commissioners, acting in her capacity as a member of the Regional Transit Coordinating Council, was authorized to vote in favor of the Regional Transit Coordinating Council's participation in the Detroit Area Regional Transportation Authority agreement in the absence of the approval of the Board of Commissioners of the county. The chair of a county board of commissioners does not, however, have the authority to enter into an interlocal agreement that binds a county to the agreement, without the approval of the board of commissioners of that county.

Opinion No. 7137

August 13, 2003

Honorable Leon Drolet
State Representative
The Capitol
Lansing, MI

Honorable Dan Acciavatti
State Representative
The Capitol
Lansing, MI

Honorable Jack Brandenburg
State Representative
The Capitol
Lansing, MI

Honorable Brian Palmer
State Representative
The Capitol
Lansing, MI

You have asked if the Chair of the Macomb County Board of Commissioners, acting in her capacity as a member of a Regional Transit Coordinating Council (RTCC), was authorized to vote in favor of the RTCC's participation in the Detroit Area Regional Transportation Authority (DARTA) agreement in the absence of the approval of the Board of Commissioners of the county.

The information provided with your request indicates that the Chair of the Macomb County Board of Commissioners and other statutorily prescribed members of the RTCC voted in favor of the RTCC entering into an agreement with the City of Detroit and the Suburban Mobility Authority for Regional Transportation (SMART) to create DARTA. The Counties of Macomb, Wayne, and Oakland are not parties to the DARTA agreement. The agreement states clearly that DARTA "may not and shall not bind any unit of state, county, city, township or village government to any obligation without the express consent of the individual unit." DARTA agreement, page 2, 5th Recital. DARTA was formed under the Urban Cooperation Act of 1967

(UCA), 1967 (Ex Sess) PA 7, MCL 124.501 *et seq.*, and the Intergovernmental Transfers of Functions and Responsibilities Act, 1967 (Ex Sess) PA 8, MCL 124.531 *et seq.*¹

Consideration of your question requires an analysis of the RTCC created under section 4a of the Metropolitan Transportation Authorities Act of 1967 (MTA), 1967 PA 204, MCL 124.401 *et seq.*, to ascertain the voting authority of its statutorily prescribed members. Section 4a(1) of the MTA, MCL 124.404a(1), defines the RTCC's membership and purpose as follows:

The chief executive officer of each city having a population of 750,000 or more within a metropolitan area, of each county in which such a city is located, and of all other counties immediately contiguous to such a city shall form a corporation, subject to the limitations of this act, to be known as the regional transit coordinating council for the purpose of establishing and directing public transportation policy within a metropolitan area.

The term "chief executive officer" is defined in section 2(c) of the MTA as follows:

"Chief executive officer" means, with respect to a city, the mayor of the city and, with respect to a county, either the county executive of the county or, *for a county not having a county executive, the chairperson of the county board of commissioners.* [MCL 124.402(c); emphasis added.]

Therefore, in a general law county that does not have an elected county executive, such as Macomb County, the chair of the board of commissioners is a statutorily required member of the RTCC under section 4a of the MTA. The other RTCC members are the Mayor of Detroit, and the county executives of Wayne County and Oakland County. Article IV, section 1 of the articles of incorporation of the RTCC, provides, in part, that "[e]ach of the Chief Executive Officers, as defined in the Act, of the City of Detroit and the Counties of Macomb, Oakland and Wayne, ex-officio, . . . shall have one vote in all the matters of the Council."

Section 4 of the UCA, MCL 124.504, authorizes a "public agency" to enter into an interlocal agreement with other public agencies for the joint exercise of powers, privileges, or authority that such agencies share in common and that each might exercise separately. See, for example, OAG, 1999-2000, No 7019, p 32 (May 14, 1999), which concluded that the Michigan Strategic Fund was authorized to enter into an interlocal agreement under the UCA with local public agencies to form the Michigan Economic Development Corporation to administer economic development programs and activities.

A "public agency" is defined in section 2(e) of the UCA to mean:

[A] political subdivision of this state or of another state of the United States or of Canada, including, but not limited to, a state government; a county, city, village, township, charter township, school district, single or multipurpose special district, *or single or multipurpose public authority*; a provincial government, metropolitan government, borough, or other political subdivision of Canada; an agency of the United States government; or a similar entity of any other states of the United States and of Canada. [MCL 124.502(e); emphasis added.]

Under section 4a(2) of the MTA, MCL 124.404a(2), a regional transit coordinating council is referred to as an "authority" for the sole purpose of receiving transportation operating and capital assistance grants. As a "single purpose public authority," the RTCC is within the definition of "public agency" contained in section 2(e) of the

¹This opinion does not address the substance of the DARTA agreement. Section 10 of the UCA, MCL 124.510, provides that interlocal agreements, such as the DARTA agreement, shall be submitted to the Governor. Traditionally, the Governor requests the advice of the Attorney General regarding whether an interlocal agreement is in proper form and compatible with Michigan law.

UCA. Therefore, if the members of the RTCC unanimously vote in favor of such an agreement, as is required by section 4a(6) of the MTA, MCL 124.404a(6), the RTCC may be party to an interlocal agreement.

It should be emphasized that members of the RTCC act as officers of the RTCC, not as officers of their respective city or counties. The RTCC is an independent and separate legal entity created by statute, and the actions of the RTCC are its own actions and not the actions of any city, county, or of a county board of commissioners. There is no provision in the MTA that requires the members of the RTCC to secure the approval of the governing body of their respective city or counties in order for the actions of the RTCC to become effective.

While the Chair of the Macomb County Board of Commissioners has authority to vote in her capacity as a member of the RTCC in favor of the RTCC's participation in an interlocal agreement that does not bind Macomb County, there is no authority for the chair of a county board of commissioners to enter into an interlocal agreement that binds the county, in the absence of a resolution approved by the board of commissioners of that county. The definition of "public agency" contained in section 2(e) of the UCA, MCL 124.502(e), refers to political subdivisions, "including . . . a county" and similar governmental entities, but not a single county officer. See *Belanger v Warren Consolidated School Dist Bd of Ed*, 432 Mich 575, 587; 443 NW2d 372 (1989). Under MCL 46.3(2), "the final passage or adoption of a measure or resolution" on behalf of a county requires the vote of a majority of the elected and serving members of the county board of commissioners, unless the county board of commissioners in its bylaws or some other provision of law imposes a higher voting requirement.

It is my opinion, therefore, that the Chair of the Macomb County Board of Commissioners, acting in her capacity as a member of the Regional Transit Coordinating Council, was authorized to vote in favor of the Regional Transit Coordinating Council's participation in the Detroit Area Regional Transportation Authority agreement in the absence of the approval of the Board of Commissioners of the county. The chair of a county board of commissioners does not, however, have the authority to enter into an interlocal agreement that binds a county to the agreement, without the approval of the board of commissioners of that county.

MIKE COX
Attorney General

MICHIGAN VEHICLE CODE: Enforcement of traffic laws on private roads**LAW ENFORCEMENT:****TRAFFIC RULES AND REGULATIONS:**

The provisions of the Michigan Vehicle Code applicable to private roads authorize a police agency to issue citations to motorists for certain civil infractions and criminal traffic violations on private subdivision roads accessible to the public. Even if the road is not open to the general public, section 951 of the Michigan Vehicle Code, MCL 257.951, allows a person in charge of the road to contract with a city, township, or village to enforce provisions of the uniform traffic code or ordinance adopted under that section.

Opinion No. 7138

September 23, 2003

Honorable John P. Stakoe
State Representative
The Capitol
Lansing, Michigan 48913

You have asked whether a police agency may issue citations to motorists for certain civil infractions and criminal traffic violations that occur on private subdivision roads accessible to the public.

The Michigan Vehicle Code (MVC), MCL 257.1 *et seq.*, sets forth requirements for the licensure and regulation of drivers and vehicles using publicly maintained streets and highways. Certain of its provisions are applicable to private roads. Section 44(2) of the MVC, as amended by 1974 PA 138, defines a private road as:

[A] privately owned and maintained road, allowing access to more than 1 residence or place of business, which is normally open to the public and upon which persons other than the owners located thereon may also travel. [MCL 257.44(2).]

Section 906, as added by 1974 PA 138, makes clear the authority of police officers on private roads:

Notwithstanding any other provision of law, a police officer may enter upon such a private road to enforce violations of this act. [MCL 257.906.]

However, this section must be read together with section 601 of the MVC, MCL 257.601, which states that the provisions of the MVC relating to the operation of vehicles refer "exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section." See *In re Forfeiture of \$5,264*, 432 Mich 242, 251; 439 NW2d 246 (1989) (each provision of an act is to be read with reference to every other provision so as to produce an harmonious whole). The term "highway[s]" refers to "way[s] publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20. A "private road" is not a publicly maintained way. MCL 257.44(2). Accordingly, while a police officer may issue citations or make arrests for violations of the MVC occurring on private roads, section 601 makes it clear that it must first be established that the section of the MVC violated applies to private roads.

The provisions of the MVC that currently set forth civil infractions and criminal traffic violations enforceable by police agencies on private roads include:

1. Authority to verify and place a notice on an abandoned vehicle on private property, MCL 257.252a;
2. Authority for removal of vehicles from private property, MCL 257.252b, 257.252c, 257.252d;

3. Failure to obey traffic control devices by driving through or upon private property, MCL 257.611(2);
4. Failure to stop, give information, render aid, and make reports as to accidents on private property, MCL 257.617(1), 257.617a(1), 257.620;
5. Transporting or possessing alcohol in an open container within the passenger compartment of a vehicle, MCL 257.624a;
6. Driving under the influence of alcohol or controlled substances, MCL 257.625(1)-(3);
7. Preliminary chemical breath analysis administration, MCL 257.625a(2);
8. Implied consent to chemical tests of blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both, MCL 257.625c;
9. Reckless driving, MCL 257.626;
10. Speed or acceleration contests or drag racing, MCL 257.626a;
11. Careless or negligent driving, MCL 257.626b;
12. Felonious driving, MCL 257.626c;
13. Driving at a speed exceeding 15 miles per hour in a mobile home park, MCL 257.627(4);
14. Failure to stop and yield to traffic when entering a highway from a private road, MCL 257.652;
15. Parking in front of a private driveway, or in places reserved for the handicapped by non-handicapped drivers, MCL 257.674(1)(b) and (s); and
16. Operating a vehicle if the person's license or registration certificate is suspended, revoked, or denied, MCL 257.904.¹

Section 951(1) of the MVC, MCL 257.951(1), authorizes a city, township, or village to adopt by reference a code or ordinance for the regulation of traffic within the municipality that has been promulgated by the Director of the Department of State Police. See 2002 MR 20, R 28.1001 *et seq.* Section 951(2) provides that a person in charge of a private road may request that the local police enforce such an ordinance on that private road:

A city, township, or village, with the consent of, or at the request of, a person who is in charge of a private road or parking lot, whether or not that road or parking lot is open to the general public, may contract with that person for the city, township, or village to enforce provisions of the uniform traffic code or ordinance

¹ Several Attorney General opinions have addressed the subject of traffic enforcement on private roads based on the provisions of the MVC in effect at the time the opinions were issued. 2 OAG, 1956, No 2757, p 746 (December 14, 1956), examined the provisions of the MVC relating to enforcement of speed limits and reckless driving laws then in force and concluded they did not apply on private roads. OAG, 1979-1980, No 5468, p 114 (March 28, 1979), addressed whether certain amendments to the MVC adopted in 1974 expanded the authority of police officers to enforce traffic violations on private roads and identified numerous provisions of the MVC made enforceable on private roads by virtue of those amendments. OAG, 1981-1982, No 6026, p 528 (January 15, 1982), determined that "[p]rovisions dealing with the posting of speed limits are not among those which may be enforced under the [MVC] . . . on private property."

Certain conclusions reached in prior opinions should be relied on with caution in light of subsequent changes in the law. For example, OAG No 2757 should be viewed as updated by this opinion as to the enforceability of reckless driving laws only. The listing of provisions of the MVC enforceable on private roads set forth in OAG No 5468 should be viewed as superseded by the legislative changes identified in this opinion to the extent of any inconsistency between the two. OAG No 6026 has been superseded by legislative changes identified in this opinion as to the enforceability of speed limits in mobile home parks.

adopted under this section on that private road or parking lot. As used in this subsection, "person" means an individual, corporation, association, partnership, or other legal entity. [MCL 257.951(2).]

It is my opinion, therefore, that the provisions of the MVC applicable to private roads authorize a police agency to issue citations to motorists for certain civil infractions and criminal traffic violations that occur on private subdivision roads accessible to the public. Even if the road is not open to the general public, section 951 of the MVC, MCL 257.951, allows a person in charge of the road to contract with a city, township, or village to enforce provisions of the uniform traffic code or ordinance adopted under that section.

MIKE COX
Attorney General

LEGISLATURE: Legislature's recall of enrolled bills

CONST 1963, ART 4, § 33:

STATUTES:

Senate Bill 393, which provides for urban high school academies, has become law pursuant to Const 1963, art 4, § 33, and should be assigned a public act number by the Secretary of State.

Opinion No. 7139

October 2, 2003

Honorable Jim Howell
State Representative
The Capitol
Lansing, MI

You have asked whether Senate Bill 393, which provides for urban high school academies, has become law pursuant to Const 1963, art 4, § 33.

Senate Bill 393 (SB 393) was enrolled on August 13, 2003,¹ and presented to the Governor for her approval on September 8, 2003, at 5:00 p.m.² On September 18, 2003, the Senate requested that the bill be returned to the Senate.³ The Governor granted the Senate's request on that same date and returned the bill to that body (without objections), where a motion was made to vacate the enrollment and the motion prevailed.⁴ On September 23, 2003, the House of Representatives approved a motion to send a letter to the Senate agreeing with the Senate's request that the Governor return SB 393.⁵ Neither the Senate nor the House Journal entries reveal any other action taken by the House of Representatives regarding the return of SB 393.

¹2003 Journal of the Senate 1589 (No. 71, August 13, 2003). SB 393 was given immediate effect. *Id.*

²2003 Journal of the Senate 1608 (No. 72, September 16, 2003).

³2003 Journal of the Senate 1636 (No. 74, September 18, 2003).

⁴2003 Journal of the Senate 1660 (No. 74, September 18, 2003).

⁵2003 Journal of the House 1692 (No. 65, September 23, 2003).

The constitutional provision that governs your inquiry is Const 1963, art 4, § 33, which provides in its entirety:

Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. *If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.* [Emphasis added.]

The Michigan Supreme Court has considered whether and how bills passed by both houses of the Legislature and presented to the Governor for approval can be recalled from the Governor. In *Anderson v Atwood*, 273 Mich 316, 319-320; 262 NW 922 (1935), the Court quoted with approval the following "well settled rule":

"Constitutional provisions regulating the presentation, approval, and veto of bills by the executive are mandatory, and the procedure as thus established cannot be enlarged, curtailed, changed, or qualified, by the legislative body." 59 C. J. p. 575.

"In the absence of a constitutional restriction the legislature may, by concurrent action of both houses, recall a bill which has been presented to the governor; but such recall will not have the effect of making the bill operative as a law, or affect the validity of the measure as finally passed and approved by the executive. The recall is effective if a bill is willingly returned upon request supported by the concurrent action of the two houses, although the request is not by means of a joint resolution; but after a bill has been passed in the legal and constitutional form by both houses of the legislature, and transmitted to the governor for his signature, neither branch of the legislature can, without the consent of the other, recall the bill for the purpose of further legislative action thereon." 59 C. J. p. 578. [Emphasis added.]

The Court in *Anderson* had under review Const 1908, art 5, § 36, a predecessor provision to Const 1963, art 4, § 33, but the constitutional language relevant to your question is not materially different between the two provisions. Const 1908, art 5, § 36, provided, in relevant part:

If he approve, he shall sign it; if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon its journal and reconsider it. . . . If any bill be not returned by the governor within 10 days, Sundays excepted, after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevents its return, in which case it shall not become a law.

The corresponding language of Const 1963, art 4, § 33, provides:

If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. . . . If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.

Neither provision specifically addresses the return of a bill upon a request by both houses of the Legislature and neither provision includes a "constitutional restriction"

on the power of the Legislature to recall bills that have been presented to the Governor. There being no material difference between the constitutional language governing the *Anderson* case, and the constitutional language now in effect, *Anderson* remains controlling law.⁶

Indeed, the well-settled rule of *Anderson* is consistent with the advice this office has provided over the past 25 years relating to the effect to be given legislative requests to return enrolled bills. As succinctly stated in Letter Opinion of the Attorney General to Senator Patrick H. McCollough, dated December 6, 1977, then Attorney General Frank J. Kelley concluded:

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the [G]overnor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.⁷

A similar conclusion was reached in the following opinions: Letter Opinion of the Attorney General to Senators Fred Dillingham and John Kelly, dated May 20, 1993; Letter Opinion of the Attorney General to Senators Arthur Miller, Jr. and John D. Cherry, dated May 5, 1992; and Informational Letter from Chief Assistant Attorney General Stanley D. Steinborn to Deputy Secretary of State Phillip T. Frangos, dated June 9, 1993 (citing cases from other jurisdictions).⁸

One basis for this rule was explained in *Opinion of the Justices*, 54 Del 164; 174 A2d 818, 819 (1961), *quoted in* Letter Opinion to Senators Dillingham and Kelly at p 2:

Any bill or joint resolution requires for passage the concurrence of a majority of all the members elected to each House. . . . The delivery of the bill to the Governor is based upon the joint action of the two houses. If any subsequent legislative action can lawfully be taken to affect the status of the bill in the Governor's hands . . . it must likewise be joint action. In our opinion one house has no such power of recall, even with the Governor's consent.

In order to determine whether SB 393 has become law, it is necessary to examine whether SB 393 was recalled by concurrent action of the House of Representatives and the Senate within the 14-day period afforded the Governor for vetoing a bill under the last sentence of Const 1963, art 4, § 33. As explained by the Address to the People, the Governor "shall have 14 days in which to consider a bill If during that period he neither approves nor returns the bill with a veto message, the legislature continuing in session, it becomes a law as if he had signed it." The 14-day period is measured "in hours and minutes from the time of presentation" to the Governor. Const 1963, art 4, § 33 (first sentence).⁹

SB 393 was presented to the Governor on September 8, 2003, at 5:00 p.m. The 14-day period afforded for consideration, measured in hours and minutes, therefore expired on September 22, 2003 at 5:00 p.m. While the Senate had acted to recall the bill within that 14-day period (on September 18, 2003), the House did not. Its action concurring in the request to recall SB 393 was not taken until September 23, 2003.

⁶For the updated sections of American Jurisprudence 2d and Corpus Juris Secundum evidencing that the settled rule stated in *Anderson* remains the rule today, see 73 Am Jur 2d Statutes, §§ 32-37, and 82 CJS Statutes §§ 43-46, p 70. For one exception, see *In re King v Cuomo*, 81 NY2d 247; 597 NYS2d 918; 613 NE2d 950 (1993).

⁷A copy of the December 6, 1977, Letter Opinion is attached as Appendix A.

⁸Copies of each of these letters are attached as Appendices B, C, and D, respectively.

⁹The 14-day period afforded the Governor to consider a bill represents a change from the 1908 Constitution. For a discussion explaining this change and the reasons for the addition of the language requiring that the 14-day period be measured in "hours and minutes," see 1 Official Record, Constitutional Convention 1961, pp 1717-1721.

In the absence of concurrent action by both houses of the Legislature within the 14-day period, SB 393 was not effectively recalled and "further legislative action thereon" was not authorized. *Anderson*, 273 Mich at 320. As concluded in Letter Opinion to Senators Dillingham and Kelly, one house of the Legislature may not vacate the enrollment of a bill. In the absence of a return of the bill with objections, SB 393 therefore became law by operation of the last sentence of art 4, § 33.

It is my opinion, therefore, that Senate Bill 393, which provides for urban high school academies, has become law pursuant to Const 1963, art 4, § 33, and should be assigned a public act number by the Secretary of State.

MIKE COX
Attorney General

APPENDIX A

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERALSTANLEY D. SEINBORN
*Chief Assistant Attorney General*FRANK J. KELLEY
ATTORNEY GENERALLANSING
48913

DEC 06 1977

Honorable Patrick H. McCollough
State Senate
The Capitol
Lansing, Michigan

Dear Senator McCollough:

House Bill No. 4368, which affects the single business tax, was enrolled on October 20, 1977 and presented to the Governor for signature on October 21, 1977. On November 3, 1977 the House requested that the bill be returned to it. This request was granted by the Governor, who returned the bill to the House (without a veto message), where the enrollment was vacated. The Senate did not participate in the request for the return of the bill.

You have therefore requested my opinion on the following questions:

- "1. Can one house of the Michigan Legislature request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the legislature?
- "2. Can the Governor return an enrolled bill to the house of origin without a veto message?
- "3. If the answer to question No. 1 is 'no' then what is the effect of the action in question No. 1 being taken on the status of the enrolled bill pursuant to Art. 4, § 33 of the Michigan Constitution?
- "4. Has House Bill 4368 become law without the Governor's signature by virtue of the fact that the Governor has not vetoed it and the statutory period for doing so has run, notwithstanding the fact, and/or because of the fact, that the Governor returned the bill to the Legislature without authority under the rules?"

Your questions will be addressed seriatim; however, before addressing them, it will be helpful to discuss the general principles involved.

APPENDIX A (continued)

Const 1963, art 4, § 33 provides:

"Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house passed the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it."

Prior to the adoption of the current Michigan constitution, the State Supreme Court considered a related question in Anderson v Atwood, 273 Mich 316; 262 NW 922 (1935). In Anderson, however, the court had under consideration the effectiveness of a bill which had been returned by the governor to the legislature upon a concurrent request of both houses for the return thereof.

Although the court did not deal with the problem of recall of a bill by only one of the legislative bodies which you have presented, its language is instructive. Furthermore, since this case involved an interpretation of a section in the 1908 constitution which contained a similar provision, the constitutional delegates may be presumed to have been aware of the holding of the court. The court in Anderson, supra, stated, inter alia:

"There is no finality in legislative enactments, enrolled and sent to the governor and, by courtesy, returned by him within ten days and before action thereon, at the request of the legislature by joint resolution of concurrent action. * * *

"The enactment, as sent to the governor, lost its identity and force by the courtesy return thereof to the legislature and, without new legislation with reference thereto, did not become a valid enactment by operation of law.

"House Bill No. 145 is not an act by operation of Constitution 1908, art. 5, § 36." Anderson v Wood, supra, p 319, 323.

APPENDIX A (continued)

Several facts are apparent from the Supreme Court statements in Anderson. First, the Supreme Court recognized that it is a courtesy for the governor to return a bill to the legislature upon its request once that bill has been enrolled. Second, while the court was concerned with a factual situation in which a concurrent resolution seeking return of the bill had been passed, it nevertheless was explicit in its statements that the request from the legislature must be a joint or concurrent action of both houses. That joint action is necessary and is strongly re-enforced by other authorities on statutes and constitutional law such as 1 Sutherland Statutory Construction (4 ed) § 16.07, Recall of Bills from the Governor:

"A few cases have raised the questions as to the effect of the return of an act by the governor to the legislature at its request before the time has expired in which the governor may approve the bill. Where the request and return is made with the concurrence of the other house the return is valid and a new presentment to the executive is necessary before the bill may become law. One house alone, however, has no authority to act without the consent of the other and a return at the request of one house alone may cause a bill to become law because of the executive's failure either to approve or veto."
(Footnotes omitted.)

Also, 82 CJS, Statutes, § 48b, Recall:

"In the absence of constitutional restriction the legislature may by concurrent resolution recall a bill after presentation to the governor; but a bill may not be recalled on request of one house acting alone so as to render it open to reconsideration by the legislature."

Based on the foregoing text authorities and the Michigan Supreme Court's decision in Anderson, it is my opinion that if this matter were presented to the court, it would answer your questions as follows:

"1. Can one house of the Michigan Legislature request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the legislature?"

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

"2. Can the Governor return an enrolled bill to the house of origin without a veto message?"

In my opinion, the governor may, upon receipt of a proper request by both houses, return an enrolled bill to the house of origin without a veto message. This action must occur prior to the expiration of the 14-day period prescribed by section 33 of Const 1963, art 4.

APPENDIX A (continued)

"3. If the answer to question No. 1 is 'no' then what is the effect of the action in question No. 1 being taken on the status of the enrolled bill pursuant to Art. 4, § 33 of the Michigan Constitution?"

The return of Enrolled House Bill No. 4368 by the Governor to the House of Representatives upon a unilateral request of that house without the concurrence of the Senate is of no effect and the bill becomes law without his signature.

"4. Has House Bill 4368 become law without the Governor's signature by virtue of the fact that the Governor has not vetoed it and the statutory period for doing so has run, notwithstanding the fact, and/or because of the fact, that the Governor returned the bill to the Legislature without authority under the rules?"

As noted in my answer to your third question, it is my conclusion that the fact that the veto period of Const 1963, art 4, § 33 has expired and the session of the legislature at which the bill was passed continues, the bill has, by operation of law, become a law, irrespective of the actions of the Governor and the House of Representatives upon that bill.

Very truly yours,

FRANK J. KELLEY
Attorney General

APPENDIX B

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL
P.O. Box 30212
LANSING
48009

May 20, 1993

Honorable Fred Dillingham
State Senator
The Capitol
Lansing, Michigan

Honorable John Kelly
State Senator
The Capitol
Lansing, Michigan

Dear Senators Dillingham and Kelly:

You have asked if the May 18, 1993, attempt by the Senate without the concurrence of the House of Representatives to recall Senate Bill No. 537 from the Governor to whom it was sent following its approval by both houses is valid.

As you know, in a December 6, 1977, Letter Opinion to Senator Patrick H. McCollough, copy attached, I concluded:

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

A similar conclusion was reached in a May 5, 1992, Letter Opinion to Senators Arthur Miller, Jr. and John D. Cherry (copy attached).

It should also be noted that the Delaware Supreme Court has held:

Any bill or joint resolution requires for passage the concurrence of a majority of all the members elected to each House. ... The delivery of the bill to the Governor is based upon the joint action of the two houses. If any subsequent legislative action can lawfully be taken to affect the status of the bill in the Governor's hands

... it must likewise be joint action. In our opinion one house has no such power of recall, even with the Governor's consent.

Opinion of the Justices, 174 A2d 818, 819 (1961).

Based upon the foregoing, it is my opinion that one house of the Legislature may not vacate the enrollment of a bill. Thus, Senate Bill No. 537 will, by operation of law, become a law if it is not vetoed by the Governor within the fourteen day period prescribed in Const 1963, art 4, § 33.

Very truly yours,


FRANK J. KELLEY
Attorney General

APPENDIX C

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

P.O. Box 30212
LANSING
48909

May 5, 1992

Honorable Arthur Miller, Jr.
State Senator
The Capitol
Lansing, Michigan

Honorable John D. Cherry
State Senator
The Capitol
Lansing, Michigan

Dear Senators Miller and Cherry:

You have asked whether one house of the Michigan Legislature may request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the Legislature.

The identical question was addressed by my office in Letter Opinion of the Attorney General to Senator Patrick H. McCollough, dated December 6, 1977, copy enclosed, which concluded, at p 4:

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

It remains my opinion that one house of the Michigan Legislature may not request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the Legislature.

Very truly yours,



FRANK J. KELLEY
Attorney General

Enc.

APPENDIX D

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINHORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

P.O. Box 30212
LANSING
48909

June 9, 1993

Mr. Phillip T. Frangos
Deputy Secretary of State
Michigan Department of State
Treasury Building
Lansing, Michigan 48918

Dear Mr. Frangos:

You have asked if the Department of State may assign a public act number to Senate Bill No. 537. As you know, the Senate, on May 18, 1993, voted to recall from the Governor and then to vacate the enrollment of Senate Bill No. 537. The House did not join in either action.

The Michigan Supreme Court has considered whether and how bills passed by both houses of the Legislature and presented to the Governor for his consideration can be recalled from the Governor. In Anderson v Atwood, 273 Mich 316; 262 NW 922 (1935), the Supreme Court termed the following statement of law "a well settled rule":

"In the absence of a constitutional restriction the legislature may, by concurrent action of both houses, recall a bill which has been presented to the governor; but such recall will not have the effect of making the bill operative as a law, or affect the validity of the measure as finally passed and approved by the executive. The recall is effective if a bill is willingly returned upon request supported by the concurrent action of the two houses, although the request is not by means of a joint resolution; but after a bill has been passed in the legal and constitutional form by both houses of the legislature, and transmitted to the governor for his signature, neither branch of the legislature can, without the consent of the other, recall the bill for the purpose of further legislative action thereon." 59 C.J. p. 578. [Emphasis added.]

273 Mich at 319-320.

A similar conclusion was reached by the Delaware Supreme Court in Opinion of the Justices, 174 A2d 818 (1961). That case in turn quoted with approval from a New York case, People v Devlin, 33 NY 269, as follows:

"This bill had passed both houses and been sent to the governor for his approval. The recall by the assembly was an infringement of parliamentary law. It was an attempt to do alone what if it could be done at all, required the joint action of both senate and assembly."

APPENDIX D (continued)

174 A2d at 819.

The Delaware Supreme Court held:

One house of the legislature may not lawfully recall from the Executive a bill duly enacted by both houses.

174 A2d at 820.

The Florida Supreme Court in a 1947 decision reached a similar conclusion:

The return of House Bill 122 by the Governor to the House of Representatives could not constitutionally confer on this Honorable Body the jurisdiction or power again to place the measure on its calendar and by a majority vote of the House reconsider the vote by which it was originally passed or to entertain a motion and by a majority vote to indefinitely postpone the bill.

State ex rel Schwartz v Bledsoe, 31 So2d 457, 460 (1947).

The Florida Supreme Court went on to hold, quoting from an earlier decision, State ex rel Florida Portland Cement Co v Hale 176 So 577, 581 (1937):

"We hold that neither the House of Representatives nor the Senate of the Legislature of Florida could by its independent resolution recall from the hands of the Governor a bill which had been duly passed by the Legislature, had been authenticated and transmitted to the Governor for his consideration, and that the action of the Governor in transmitting the bill to the House of Representatives in the instant case was a matter of courtesy and had no effect upon the validity of the act which had been duly and constitutionally passed and transmitted to him for his consideration."

31 So2d at 461.

It should also be noted that while the May 18, 1993, Senate Journal shows that the motion "requesting the return of" Senate Bill No. 537 simply "prevailed", the motion "that the enrollment be vacated" was supported by nineteen Senators. 1993 Journal of the Senate, 1193, 1198 (No. 43, May 18, 1993). Nineteen Senators is, of course, one less than Const 1963, art 4, § 26, requires to pass a bill. That section provides, in pertinent part:

No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house.

However, since the case law set forth above is clear, there is no need to resolve whether "a majority [vote] of the members elected to and serving" in the Senate was necessary.

Based on the foregoing, it is clear that Senate Bill No. 537 is now law and it should be assigned a public act number.

Very truly yours,


Stanley D. Steinborn
Chief Assistant Attorney
General

INVESTMENT: Authority of public retirement system to make investments "not otherwise qualified" under Public Employee Retirement System Investment Act

RETIREMENT:

Section 20d(1) of the Public Employee Retirement System Investment Act, MCL 38.1140d(1), does not permit a retirement system with assets of less than \$250,000,000 to invest in a small business, small business investment company, or venture capital firm located in Michigan as an investment "not otherwise qualified" under the Act.

Opinion No. 7140

October 6, 2003

Honorable Thomas M. George
State Senator
The Capitol
Lansing, MI

Honorable Alexander C. Lipsey
State Representative
The Capitol
Lansing, MI

Honorable Jacob W. Hoogendyk, Jr.
State Representative
The Capitol
Lansing, MI

Honorable Lorence Wenke
State Representative
The Capitol
Lansing, MI

You have asked if section 20d(1) of the Public Employee Retirement System Investment Act, MCL 38.1140d(1), permits a retirement system with assets of less than \$250,000,000 to invest in a small business, small business investment company, or a venture capital firm as an investment "not otherwise qualified" under the Act, and, if so, whether the retirement system's investment is subject to the 5% total assets limitation in section 20d(1) of the Act.

Your inquiry is made on behalf of the Kalamazoo County Public Employees Retirement System. According to information provided to this office, the business in which the retirement system would invest is located in Michigan. You note in your request that because the retirement system has assets of less than \$250,000,000, it is not authorized to make an investment described in section 20a(1) of the Act, MCL 38.1140a(1).

The Public Employee Retirement System Investment Act (the Act), 1965 PA 314, MCL 38.1132 *et seq*, was adopted to consolidate and codify the investment authority of public retirement systems. Section 20d(1), part of the so-called "basket clause,"¹ provides:

An investment fiduciary of a system having assets of less than \$250,000,000.00 may invest not more than 5% of the system's assets in investments *not otherwise qualified* under this act, whether the investments are similar or dissimilar to those specified in this act. [MCL 38.1140d(1); emphasis added.]

Section 20a(1) provides in pertinent part:

[A]n investment fiduciary of a system having assets of more than \$250,000,000.00 may invest not more than 2% of a system's assets in a debt, warrant, or equity interest in a small business having more than 1/2 of the small business's assets or employees within this state, or in a debt, warrant, or equity

¹"Basket clause" is a term of art widely used with respect to the Act to designate section 20d investments. The "basket clause" permits a public retirement system to invest a specified percentage of its assets in investments not otherwise qualified under the Act. It obviates the need to regularly amend the Act to authorize investment in new or hybrid investment vehicles as they are developed over time.

interest in a small business investment company or venture capital firm having its principal office or more than 1/2 of its assets within this state, [MCL 38.1140a(1).]

Responding to a question similar to yours, OAG, 1989-1990, No 6597, p 198, 203 (August 24, 1989), noted that the Legislature had not defined the term "qualified investment" in the Act and examined the legislative history of the Act and bill analyses for assistance in determining the intent of the Legislature. *Luttrell v Dep't of Corrections*, 421 Mich 93, 103; 365 NW2d 74 (1984). As a result, OAG No 6597 concluded that the term "qualified investment" means those investments specifically authorized by the Act. It also concluded that "investments not otherwise qualified," as used in section 20d(1) of the Act, are those types of investments that the Legislature has not otherwise specifically authorized in the Act.

OAG No 6597, p 204, further noted that the Legislature specifically authorized equity interest investments in small businesses in section 20a(1) but restricted them to public retirement systems with more than \$250,000,000 in assets. The opinion concluded that since an investment in a small business is an authorized investment under section 20a(1) of the Act, section 20d may not be used by a public retirement system with assets of less than \$250,000,000 to make a direct investment in a small business.

In construing a statute, the act must be read in its entirety. *Weems v Chrysler Corp*, 448 Mich 679, 699-700; 533 NW2d 287 (1995). Legislative intent can be further discerned from a reading of section 20d(5) of the "basket clause," which provides:

If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section. [MCL 38.1140d(5).]

The text and legislative history lead to the conclusion that the Legislature intended that the "basket clause" authorize an investment only when the investment is not authorized under another section of the Act. Conversely, if an investment is authorized under another section, then it must be made under that section and in compliance with all the provisions of that section. Further, OAG, 1995-1996, No 6893, p 143 (March 21, 1996), noted that while a "plain reading of section 20d(1) indicates that the Legislature intended that the 'basket clause' be available for a wide range of investments," it required that "these investments be those that are not specifically authorized by the act." Thus, because section 20a(1) of the Act authorizes the investment of the assets of a public retirement system in a small business, small business investment company, or venture capital firm located in Michigan, such an investment cannot be made pursuant to section 20d(1). If a public retirement system cannot meet the asset limitation of section 20a(1), then it is precluded from making the investment under that section.²

It is my opinion, therefore, that section 20d(1) of the Public Employee Retirement System Investment Act, MCL 38.1140d(1), does not permit a retirement system with assets of less than \$250,000,000 to invest in a small business, small business investment company, or venture capital firm located in Michigan as an investment "not otherwise qualified" under the Act.

MIKE COX
Attorney General

²The facts presented in your request, together with additional information supplied to this office, make it clear that your question involves a section 20a investment. However, given the limited information presented regarding the proposed structure of the investment and considering the potential for numerous hybrid investment structures, no opinion is rendered as to the applicability of other sections of the Act, including section 14, MCL 38.1134, the section relating to stock investments.

DISEASES: Authority to detain individuals suspected of carrying communicable diseases**EMERGENCY MEDICAL PERSONNEL:****FIREFIGHTERS AND FIRE DEPARTMENTS:****PUBLIC HEALTH CODE:**

The Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox. Only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency, such an order is subject to notice and opportunity for a hearing.

Neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox.

Opinion No. 7141

October 6, 2003

Honorable Gretchen Whitmer
State Representative
The Capitol
Lansing, MI 48913

You have asked two questions regarding the authority of emergency medical personnel and fire-fighting officials to detain an individual suspected of carrying a communicable disease.

You first ask whether licensed emergency medical services personnel have authority to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome (SARS) or smallpox, and if so, how long such an individual may be detained without a court order.

Consistent with Const 1963, art 4, § 51, the Legislature enacted the Public Health Code (Code), MCL 333.1101 *et seq*, to protect and promote the public health. Section 2453(2) of the Code, MCL 333.2453(2), provides:

A local health department or the department [of Community Health] may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238.

Sections 5201 through 5238 are found in Part 52 of the Code, entitled "Hazardous Communicable Diseases." These sections regulate the prevention and control of diseases and set forth the process that must be followed by a local health department or the Michigan Department of Community Health (MDCH) to seek a court order for the involuntary detention and treatment of individuals suspected of carrying a hazardous communicable disease.

Section 5203(1) of the Code, MCL 333.5203(1), provides that upon a determination by a local health department or the MDCH that an individual is a

"carrier" and is a "health threat to others,"¹¹ either shall issue a warning notice to the individual requiring the individual to cooperate with the local health department or the MDCH in their efforts to prevent or control the transmission of serious communicable diseases or infections. Warning notices must generally be in writing but may be oral under urgent circumstances if followed by a written statement within three days. MCL 333.5203(2). A warning notice shall be individual and specific and shall not be issued to a class of persons. MCL 333.5203(2). The warning notice must include a statement that, unless the individual takes the action requested in the warning notice, a representative of the MDCH or the local health officer "shall seek an order from the probate court, pursuant to this part."¹² MCL 333.5203(3). Further, the warning notice must state that, except in cases of emergency, the individual has the right to a hearing and has other rights before the court issues an order. MCL 333.5203(3).

If an MDCH representative or local health officer knows or reasonably believes that an individual has failed or refused to comply with a warning notice, he or she "may petition the circuit court for the county of Ingham or for the county served by the local health department" for an order. MCL 333.5205(1). Upon a finding that the allegations set forth in the petition have been proven by clear and convincing evidence, the circuit court may issue an order that may require, among other things, that the individual: undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis; participate in educational and counseling programs; notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring; and live part time or full time in a supervised setting for the period and under the conditions established by the circuit court. MCL 333.5205(6).

The Legislature has enacted expedited procedures to address an emergency situation in section 5207 of the Code, which states, in pertinent part:

To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate

¹Sec. 5201(1)(a) of the Public Health Code defines a "carrier" as:

"[A]n individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease." MCL 333.5201(1)(a).

"Health threat to others" means that "an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection." MCL 333.5201(1)(b).

Section 5101(1)(g), MCL 333.5101(1)(g), defines serious communicable disease as "a communicable disease or infection that is designated as serious by the department pursuant to this part." Pursuant to Section 5111(1)(a), MCL 333.5111(1)(a), the MDCH has promulgated rules that designate and classify serious communicable diseases. 1993 AACRS, R 325.172. This rule is a compilation of those conditions that must be reported to health authorities. According to recent information supplied to this office by State of Michigan Epidemiologist Dr. Matthew Boulton, although smallpox and SARS are not explicitly listed in this rule, both diseases would fall under subsection (s) of this rule pertaining to: "The unusual occurrence, outbreak, or epidemic of any condition, including nosocomial infections." Rule 325.172(1)(s).

²Although this section refers to the probate court, the operative sections for seeking a court order were amended by 1997 PA 57 and now require the MDCH or local health officer to seek an order from the circuit court. See MCL 333.5205 and 333.5207.

emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual. An order issued under this subsection may be issued in an ex parte proceeding upon an affidavit of a department representative or a local health officer. The court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention. [MCL 333.5207(1).]

Thus, MDCH representatives, local health officers, peace officers, and health care facilities may be authorized by court order to detain an individual determined on reasonable cause to be a carrier and a health threat to others. However, even under an emergency order, an individual may not be detained for longer than 72 hours (excluding Saturdays, Sundays, and legal holidays) without a prompt post-detention court hearing to determine if the temporary detention should continue. MCL 333.5207(3). Moreover, the individual may only continue to be detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. MCL 333.5207(5).³

Other sections of the Code define "emergency medical personnel" to include "a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator." MCL 333.20904 (4). Part 209 of the Code, entitled "Emergency Medical Services," requires that emergency medical personnel be licensed by the Department of Consumer and Industry Services, Bureau of Health Services, to provide emergency medical services. MCL 333.20950(1). The Code does not authorize emergency medical personnel to involuntarily detain individuals suspected of carrying a hazardous communicable disease.⁴ As set forth above, the involuntary detention and treatment of individuals suspected of carrying a hazardous communicable disease is regulated by sections 5201 to 5238, which only authorize

³Other parts of the Code address emergencies of a broader scale. For example, section 2251(1) of the Code, MCL 333.2251(1), empowers the Director of the MDCH, "[u]pon a determination that an imminent danger to the health or lives of individuals exists in this state," to issue orders to avoid, correct, or remove the imminent danger as defined in the statute. The order may "specify action to be taken" or prohibit the presence of individuals in locations or under conditions where the imminent danger exists. MCL 333.2251(1). Except in certain circumstances, a person who violates a rule or order of the MDCH is guilty of a misdemeanor punishable by imprisonment for not more than six months or a fine of not more than \$200 or both. MCL 333.2261. Similar authority is granted to local health officers within the area served by their local health departments. MCL 333.2451. Moreover, the MDCH Director is also vested with specified emergency powers to protect the public health in connection with epidemics. MCL 333.2253.

⁴Section 20969 of the Code specifically authorizes emergency medical personnel to involuntarily treat or transport individuals requiring emergency medical services if in "exercising professional judgment, [they] determine that the individual's condition makes the individual incapable of competently objecting to treatment or transportation . . . unless the objection is expressly based on the individual's religious beliefs." MCL 333.20969. The plain language of this section provides no indication that the Legislature intended it to apply to the situation where an individual, who has not been determined to require emergency medical services, is suspected of having a hazardous communicable disease.

the MDCH or a local health department to seek an order from the circuit court to detain and treat an individual who has been determined to be a "carrier" and is a "health threat to others." The express mention of one thing in a statute implies the exclusion of similar other things. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 572, n 8; 592 NW2d 360 (1999).⁵

It is my opinion, therefore, in answer to your first question, that the Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox. Only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency, such an order is subject to notice and opportunity for a hearing.

Your second question asks whether the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, have authority to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox, and if so, how long such an individual may be detained without court order.

As stated in answer to your first question, the Public Health Code only authorizes local health departments and the MDCH to seek court orders to detain individuals suspected of carrying communicable diseases.⁶ Since the Public Health Code does not confer that authority upon fire-fighting officials, I have also examined the Fire Prevention Code to determine if such authorization is given there.

As expressed in its title, the Fire Prevention Code, MCL 29.1 *et seq*, was enacted to "provide for the prevention of fires and the protection of persons and property from exposure to the dangers of fire or explosion." In the event of an "emergency condition dangerous to persons or property," section 7a(1) of the Fire Prevention Code, MCL 29.7a(1), provides that the state fire marshal or the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform, acting under the orders and directions of the commanding officer, may take all necessary steps and prescribe all necessary restrictions and requirements to protect persons and property until the dangerous condition is abated.

No provision in the Fire Prevention Code, however, authorizes the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease. The courts have made clear that, in construing a statute, provisions may not be added that the Legislature did not include. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565

⁵Your first question is not presented in the context of a declared state of emergency by the Governor under the Emergency Management Act, MCL 30.401 *et seq*. In the event of a declared emergency, the Governor is vested with broad authority to respond to the emergency, including the power to suspend a regulatory statute prescribing the procedures for the conduct of state business, evacuate all or a part of the population from a stricken or threatened area if necessary to preserve life, control the ingress and egress to and from a stricken or threatened area, and "direct all other actions which are necessary and appropriate under the circumstances." MCL 30.405(1)(a), (e), (g), and (j). A person who willfully disobeys or interferes with the implementation of an emergency directive of the Governor is guilty of a misdemeanor. MCL 30.405(2). See also MCL 10.31.

⁶Footnote 5 also applies to your second question.

NW2d 844 (1997). Moreover, the powers of administrative officers extend only to those expressly granted or reasonably implied. *Public Health Dep't v Rivergate Manor*, 452 Mich 495, 503; 550 NW2d 515 (1996), citing *Coffman v State Bd of Examiners in Optometry*, 331 Mich 582, 590; 50 NW2d 322 (1951).

It is my opinion, therefore, in answer to your second question, that neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox.

MIKE COX
Attorney General

SECRETARY OF STATE: Requirements for changing a name on a driver license

DRIVER LICENSES:

The Michigan Secretary of State may, but is not required to, accept an affidavit alone as sufficient legal proof to effectuate a common law name change on a person's driver license.

Opinion No. 7142

October 17, 2003

Honorable Chris Kolb
State Representative
The Capitol
Lansing, Michigan

You have asked if the Michigan Secretary of State is required to accept an affidavit alone as sufficient legal proof to effectuate a common law name change on a person's driver license.

The Michigan Vehicle Code (Code), 1949 PA 300, MCL 257.1 *et seq*, provides for the examination and licensing of operators of motor vehicles. The Secretary of State is the exclusive state agent for the administration of the Code's driver license provisions. MCL 257.202. The Secretary of State is a constitutional office created pursuant to Const 1963, art 5, § 21, and serves as the head of the Department.

Applications for driver licenses are governed by section 209 of the Code, MCL 257.209:

The department shall examine and determine the genuineness, regularity, and legality of every application for registration of a vehicle, for a certificate of title therefore, and for an operator's or chauffeur's license and of any other application lawfully made to the department, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. [Emphasis added.]

The Department advises that under its current practice, when an applicant requests issuance of a driver license in a new name at a branch office, the applicant must submit written verification of current usage of the new name. The applicant must present sufficient documentation to substantiate that the applicant has been publicly using the common law name for at least six months before application. If the branch employee is not satisfied with the information presented, management concurrence is sought and the applicant is informed that the submitted proof is not sufficient. The applicant is instructed to either bring in additional information or seek a court order changing his or her name.

The materials forwarded with your request suggest that a refusal by the Department to accept an affidavit¹ alone to establish a common law name change may conflict with OAG, 1973-1974, No 4834, p 185 (October 2, 1974).

OAG No 4834 involved nurses, who had assumed their husbands' names and wanted to use their maiden names on their nurse's licenses without resorting to judicial proceedings. The Nursing Board had a rule that: "A copy of the *legal document* authorizing the change of name shall be received in the board office before the name will be changed on the records." *Id.*, at p 186 (emphasis added). As noted in the opinion, the statutory method for changing a name at that time involved petitioning the probate court for an order. *Id.*, at p 186, *quoting* OAG, 1935-1936, No 93, p 254, 255 (July 30, 1935). The opinion observed, however, that at the common law, and in the absence of statutory restrictions, one could change his or her name without resort to legal proceedings, provided that the change was not done with a fraudulent intent.² The opinion concluded that an affidavit, and the common law right to a name change, was sufficient to meet the rule's requirement for legal documentation. *Id.*, at 186-187.

OAG No 4834 does not, however, conflict with the Secretary of State's discretion to require sufficient evidence of a name change before issuing a driver license in the new name. There is no indication in OAG No 4834 that the Nursing Board, which had asked for the opinion, was *prohibited* from requiring more than an affidavit if it determined additional documentation was necessary. Rather, the opinion endorsed the board's acceptance of something other than a court order as adequate "legal documentation."

As the opinion acknowledges, the legal effect to be given a common law name change is subject to statutory restrictions. *Id.*, at 186. The Legislature in the Michigan Vehicle Code has empowered the Department to "in all cases make investigation" and "require additional information" to satisfy itself as to the "genuineness, regularity, or legality" of any statement made in any application filed with the Secretary of State, including an application for a new driver license to reflect a name change. MCL 257.209. Clear and unambiguous statutory language must be enforced as written according to its plain meaning. *Dean v Dep't of Corrections*, 453 Mich 448, 454; 556 NW2d 458 (1996). The Code, thus, grants broad authority to the Secretary of State to investigate and require additional information if not satisfied regarding every driver license application made to the Department. The Secretary of State, therefore, may, but is not required to, accept an affidavit alone as adequate proof of a name change.

The purpose of the Department's procedures before issuing a driver license or identification card is to ensure that the applicant has, in fact, assumed a new name, and to safeguard the state personal identification system as a primary form of official documentation and identification. To address these concerns, the Legislature has enacted a comprehensive system of criminal penalties to prevent the wrongful use of driver licenses including: MCL 28.293 (a person who falsely represents information

¹The word "affidavit" is used throughout this opinion to mean a written statement acknowledged under oath, most commonly before a notary public.

²*Accord, Rappleve v Rappleve*, 183 Mich App 396; 454 NW2d 231 (1990).

upon application for an official state personal identification card is guilty of a felony); MCL 28.295 (illegal to intentionally reproduce, alter, counterfeit, forge, or duplicate an identification card); MCL 28.295a (a person who makes a false representation or false certification to obtain personal information is guilty of a felony); MCL 257.324 (illegal to display, possess, fail or refuse to surrender, use a false or fictitious name, or give false or fictitious address for an operator's or chauffeur's license); MCL 750.285 (a person shall not obtain or attempt to obtain personal identity information of another person with the intent to unlawfully use that information); and MCL 257.310 (making it a crime under certain circumstances to possess a copy of a driver license).

It is my opinion, therefore, that the Michigan Secretary of State may, but is not required to, accept an affidavit alone as sufficient legal proof to effectuate a common law name change on a person's driver license.

MIKE COX
Attorney General

TOWNSHIP ZONING ACT: Open Space Preservation Ordinances

INITIATIVE AND REFERENDUM:

If referendum petitions are filed with a township clerk within 30 days after publication of an open space preservation ordinance adopted by a township board pursuant to section 16h of the Township Zoning Act, the ordinance does not take effect until the township clerk determines that the petitions are inadequate or until the registered electors of the township approve the open space preservation ordinance by majority vote at a referendum election.

If an open space preservation ordinance is rejected at a referendum election authorized under section 12 of the Township Zoning Act, the township board may, but is not required to, subsequently adopt an open space preservation ordinance, but that subsequent ordinance is also subject to the referendum petition and election provisions of section 12 of the Township Zoning Act.

Opinion No. 7143

October 17, 2003

Honorable Beverly S. Hammerstrom
State Senator
The Capitol
Lansing, MI 48913

You have asked two questions relating to the open space preservation provisions that were added to the Township Zoning Act by 2001 PA 177. Your first question asks whether an open space ordinance adopted by a township board under the open space preservation provisions of the Township Zoning Act takes effect between the time any referendum petitions are received by the township clerk and the time a referendum election on the open space ordinance is held.

The open space preservation provisions for township ordinances are contained in section 16h of the Township Zoning Act (Act), MCL 125.286h, and require that each

qualified township¹ include a provision in its zoning ordinance that provides owners of land zoned for residential development the option of building on a portion of the developable land area the same number of dwelling units that otherwise could have been built in the entire developable area under existing ordinances, laws, and rules, provided that a specified percentage of the land area will remain in a perpetually undeveloped state and certain other conditions are met.²

The legislative history of HB 4995, which became 2001 PA 177, demonstrates that when the bill was originally introduced, the open space preservation provisions contained in the bill were mandatory on all qualified townships. A substitute for HB 4995 was later passed that, among other things, made the open space preservation provisions subject to section 12 of the Act. HB 4995, House Substitute (H-4), October 16, 2001. Subsequently, a Senate substitute for HB 4995 was passed that maintained the requirement that the open space preservation provisions are subject to section 12 of the Act, and its provisions became Enrolled HB 4995. HB 4995, Senate Substitute (S-4), November 7, 2001.

Section 12 of the Act provides:

Within 7 days after publication of a zoning ordinance under section 11a, a registered elector residing in the portion of the township outside the limits of cities and villages may file with the township clerk a notice of intent to file a petition under this section. If a notice of intent is filed, then within 30 days following the publication of the zoning ordinance, a petition signed by a number of registered electors residing in the portion of the township outside the limits of cities and villages equal to not less than 15% of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected, in the township may be filed with the township clerk requesting the submission of an ordinance or part of an ordinance to the electors residing in the portion of the township outside the limits of cities and villages for their approval. *Upon the filing of a notice of intent, the ordinance or part of the ordinance adopted by the township board shall not take effect until 1 of the following occurs:*

(a) The expiration of 30 days after publication of the ordinance, if a petition is not filed within that time.

(b) If a petition is filed within 30 days after publication of the ordinance, the township clerk determines that the petition is inadequate.

(c) If a petition is filed within 30 days after publication of the ordinance, the township clerk determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the portion of the township outside the limits of cities and villages voting thereon at the next regular election which provides reasonable time for proper notices and printing of ballots, or at any special election called for that purpose. The township board shall provide the manner of submitting an ordinance or part of an ordinance to the electors for their approval or rejection, and determining the result of the election. [MCL 125.282; emphasis added.]

Your question involves the situation where petitions have been filed with the township clerk by registered electors of the township seeking a referendum election on an open space preservation ordinance adopted by a township board under section 16h of the Act. Under this circumstance, a township's open space preservation

¹A "qualified township" is defined in section 16h(5) of the Act, MCL 125.286h(5), to mean a township that has adopted a zoning ordinance, that has a population of at least 1,800, and that has undeveloped land that is zoned for residential development at the density described in section 16h(1)(a).

²The conditions that must be met before the open space preservation provisions of the Act apply are specified in subsections (a) through (d) of section 16h but are not relevant to the questions addressed in this opinion.

ordinance may not, consistent with section 12 of the Act, take effect until either the township clerk determines that the petitions are inadequate (if the petitions are filed with the township clerk within 30 days after publication of the ordinance) or until the township's registered electors, by majority vote, approve the township's open space preservation ordinance at the referendum election. Where the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

It is my opinion, therefore, in answer to your first question, that if referendum petitions are filed with a township clerk within 30 days after publication of an open space preservation ordinance adopted by a township board pursuant to section 16h of the Township Zoning Act, the ordinance does not take effect until the township clerk determines that the petitions are inadequate or until the registered electors of the township approve the open space preservation ordinance by majority vote at a referendum election.

Your second question asks whether a township board is required to adopt a second open space preservation ordinance if an original open space preservation ordinance is rejected by a majority of the township's registered electors voting on the ordinance at a referendum election.

There is nothing in the Act that would require a township board to adopt a second open space preservation ordinance under section 16h of the Act if a previously adopted open space preservation ordinance is rejected by a majority of the township's registered electors in a referendum election authorized under section 12 of the Act. However, the Act gives a township board continuing authority to adopt, amend, or supplement zoning ordinances, subject to the referendum petition and election provisions of section 12 of the Act.

OAG, 1985-1986, No 6293, p 65 (May 10, 1985), considered the question of whether a charter township board of trustees may pass an ordinance after a referendum has been petitioned for, certified, and held and the electors of a township have rejected a virtually identical ordinance. That opinion concluded that "in the absence of restrictive legislation, a charter township board may pass an ordinance similar to the ordinance which was rejected by the electors in a previous referendum election," but also emphasized that "the similar ordinance is subject to referendum by the charter township electors." *Id.*, at 66. The conclusions reached in OAG No 6293 also apply to general law townships. See OAG, 1979-1980, No 5541, p 344 (August 14, 1979), which concludes that, because general law and charter townships are both organized townships, the referendum provisions contained in section 12 of the Act are equally applicable to each.

It is my opinion, therefore, in answer to your second question, that if an open space preservation ordinance is rejected at a referendum election authorized under section 12 of the Township Zoning Act, the township board may, but is not required to, subsequently adopt an open space preservation ordinance, but that subsequent ordinance is also subject to the referendum petition and election provisions of section 12 of the Township Zoning Act.

MIKE COX
Attorney General

INVESTMENT: Authorized investment under Public Employee Retirement System Investment Act**RETIREMENT:**

The Bay City Police and Fire Pension Plan and Retirement System Board of Trustees' investment of 20% of the system's total assets in the Advanced Investment Management Enhanced Equity Index Commingled Fund LP was not an authorized investment under the Public Employee Retirement System Investment Act.

Opinion No. 7144

November 5, 2003

Honorable Jim Barcia
State Senator
The Capitol
Lansing, MI

You have asked whether the Bay City Police and Fire Pension Plan and Retirement System Board of Trustees' investment of 20% of the system's assets in the Advanced Investment Management Enhanced Equity Index Commingled Fund was an authorized investment under the Public Employee Retirement System Investment Act.

Information supplied with your request indicates that in 2002, the Bay City Police and Fire Pension Plan and Retirement System Board of Trustees (Retirement Board) invested \$10 million, or approximately 20%, of the system's assets in the Advanced Investment Management Enhanced Equity Index Commingled Fund LP (AIM Commingled Fund).¹ The AIM Commingled Fund is a limited partnership designed to function as an enhanced index fund with a goal of providing investors with a return that tracks and outperforms the Standard and Poor's 500 Composite Stock Index (commonly referred to as the "S & P 500").² The Retirement Board divested the system of its holdings in the AIM Commingled Fund, but not before incurring a loss of approximately \$3 million.³ For the fiscal year ending June 30, 2002, the system had total assets of approximately \$45 million.

The Public Employee Retirement System Investment Act (PERSI Act), MCL 38.1132 *et seq.*, codifies the investment authority of public employee retirement systems. OAG, 1995-1996, No 6893, p 143 (March 21, 1996). The PERSI Act defines and limits the amount and type of investments that may be made by those acting as investment fiduciaries on behalf of public employee retirement systems. A public employee retirement system investment that does not conform to the PERSI Act is precluded and constitutes an unauthorized investment.

¹Investment documentation for the AIM Commingled Fund provided to this office includes a Confidential Offering Memorandum, a draft Limited Partnership Agreement, and a draft Subscription Agreement. In addition, we received various opinion letters from counsel representing Bay City and the Bay City Police and Fire Pension Plan and Retirement System.

²Materials provided to this office include an opinion that analyzes this transaction and concludes that the Retirement Board's investment was an investment in the AIM Commingled Fund's underlying portfolio of investments, which includes equities, fixed income instruments, and other types of investments. The AIM Commingled Fund is, however, a separate legal entity from the retirement system, and the underlying portfolio of investments was legally that of the AIM Commingled Fund and not its investors. Thus, as discussed later, the Retirement Board's investment resulted in its acquisition of a limited partnership interest in the AIM Commingled Fund.

³Based on information provided to this office, the investment was entered into on March 28, 2002, and the Retirement Board divested the system of the investment on September 30, 2002.

Section 12c(1) defines an "investment fiduciary" as a person who:

(a) Exercises any discretionary authority or control in the investment of a system's assets.

(b) Renders investment advice for a system for a fee or other direct or indirect compensation. [MCL 38.1132c(1).]

Accordingly, the Retirement Board serves as an investment fiduciary.⁴ As an investment fiduciary, the Retirement Board must comply with the PERSI Act and exercise the required standard of care. Section 13(3) identifies this standard of care as follows:

An investment fiduciary shall discharge his or her duties solely in the interest of the participants and the beneficiaries, and shall do all of the following:

(a) Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.

(b) Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered.

(c) Make investments for the exclusive purposes of providing benefits to participants and participants' beneficiaries, and of defraying reasonable expenses of investing the assets of the system.

(d) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the system's investments for which the investment fiduciary has responsibility; and act accordingly. For purposes of this subsection, "appropriate consideration" includes, but is not limited to, a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed, as part of the investments of the system, to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or investment course of action:

(i) The diversification of the investments of the system.

(ii) The liquidity and current return of the investments of the system relative to the anticipated cash flow requirements of the system.

(iii) The projected return of the investments of the system relative to the funding objectives of the system.

(e) Give appropriate consideration to investments that would enhance the general welfare of this state and its citizens if those investments offer the safety and rate of return comparable to other investments permitted under this act and available to the investment fiduciary at the time the investment decision is made.

(f) Prepare and maintain written objectives, policies, and strategies with clearly defined accountability and responsibility for implementing and executing the system's investments.

⁴Other individuals and firms may also serve as investment fiduciaries for the Bay City Police and Fire Pension Plan and Retirement System. Consistent with *Michigan Beer & Wine Wholesalers Ass'n v Attorney General*, 142 Mich App 294, 301; 370 NW2d 328 (1985), this opinion addresses only the legal question presented by your request and does not address the more fact-intensive question of whether a breach of fiduciary duty may have occurred in connection with the investment at issue.

(g) Monitor the investment of the system's assets with regard to the limitations on those investments pursuant to this act. Upon discovery that an investment causes the system to exceed a limitation prescribed in this act, the investment fiduciary shall reallocate assets in a prudent manner in order to comply with the prescribed limitation. [MCL 38.1133(3).]

To analyze the issue presented, it is necessary to consider if the Retirement Board's investment in the AIM Commingled Fund was a qualified investment. While not defined in the PERSI Act, the term "qualified investment" was considered in OAG, 1989-1990, No 6597, pp 198, 203 (August 24, 1989), which concluded that a "qualified investment" is one that is specifically authorized by the PERSI Act. To the extent that an investment is not specifically qualified, it may otherwise be an authorized investment under the "basket clause" provisions of the PERSI Act, as discussed later in this opinion.

According to the information supplied to this office, the AIM Commingled Fund held itself out as a limited partnership organized under the laws of the State of Delaware. Prospective investors were required to sign and agree to the terms of a limited partnership agreement. The PERSI Act includes limited partnerships within the definition of an "equity interest" in section 12b(3) as follows:

"Equity interests" means limited partnership interests and other interests in which the liability of the investor is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability of the investor. [MCL 38.1132b(3).]

The PERSI Act authorizes an investment in an equity interest or limited partnership in two circumstances, neither of which would permit the AIM Commingled Fund investment in question. Section 19(2) applies to systems that have assets in excess of \$100 million and subsection 19(2)(c) provides, in pertinent part, that an investment fiduciary of such a system may "[f]orm 1 or more limited partnerships . . . to hold title to, improve, lease, manage, develop, maintain, or operate real or personal property . . ." MCL 38.1139(2)(c). The AIM Commingled Fund was not formed for such real or personal property purposes, and the system does not have assets in excess of \$100 million, so this provision cannot be the basis for the investment in question.

Section 20a(1) allows an investment fiduciary to invest not more than 2% of a system's assets in a "debt, warrant, or *equity interest* in a small business having more than 1/2 of the small business's assets or employees within this state." (MCL 38.1140a(1); emphasis added.) Based on information provided to this office, the AIM Commingled Fund does not qualify as a small business with more than one-half of its assets or employees within Michigan. Further, section 20a limits this form of investment to systems that have assets in excess of \$250 million, which is well beyond the reported asset level of the Bay City Police and Fire Pension Plan and Retirement System, so this provision cannot be the basis for the investment in question.

A review of the Confidential Offering Memorandum and other related materials submitted to this office leads to consideration of section 20c of the PERSI Act, which relates to financial institutions, trust companies, or management companies retained as investment fiduciaries. Section 20c(1), in pertinent part, provides that:

A financial institution, a trust company, a management company qualified under section 15, or any affiliate of a person described in this section if that affiliate qualifies as an investment fiduciary under section 13(8)(a), retained to act as an investment fiduciary may invest the assets of a system in any collective investment fund, common trust fund, or pooled fund that is established and maintained for investment of those assets by the financial institution, trust company, or management company under federal or state statutes or rules or regulations. [MCL 38.1140c(1); emphasis added.]

Section 20c(1) recognizes three separate entities that could be retained as an investment fiduciary. Clearly, the AIM Commingled Fund is not established as either a financial institution or trust company. While the Retirement Board entered into a contractual relationship with the AIM Commingled Fund, a review of investment materials provided to this office does not document that the AIM Commingled Fund was a management company retained by the Board to act as an investment fiduciary as set forth in section 20c(1). Therefore, section 20c cannot serve as the basis for the investment in this matter.

A review of other sections of the PERSI Act leads to the conclusion that the Retirement Board's investment in the AIM Commingled Fund does not have a specific qualifying provision. Section 20d, MCL 38.1140d, provides limited authority to invest in investments not otherwise specifically qualified under the PERSI Act. Often referred to as the "basket clause,"⁵ section 20d states, in pertinent part, that:

(1) An investment fiduciary of a system having assets of less than \$250,000,000.00 may invest not more than 5% of the system's assets in investments not otherwise qualified under this act, whether the investments are similar or dissimilar to those specified in this act.

* * *

(5) If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section.

Since the AIM Commingled Fund investment is not otherwise qualified under the PERSI Act, section 20d(1) provides statutory authority for the investment, provided this investment, together with any other basket clause investments, is limited to no more than 5% of the system's total assets. See OAG No 6893 at p 144. Since the investment in the AIM Commingled Fund exceeded 5% of the system's total assets, section 20d(1) cannot be the basis for the investment at issue.

It is my opinion, therefore, that the Bay City Police and Fire Pension Plan and Retirement System Board of Trustees' investment of 20% of the system's total assets in the Advanced Investment Management Enhanced Equity Index Commingled Fund LP was not an authorized investment under the Public Employee Retirement System Investment Act.

MIKE COX
Attorney General

⁵ "Basket clause" is a term of art used to designate section 20d investments under the PERSI Act. The "basket clause" provides investors flexibility by authorizing investment in certain new or hybrid investment vehicles as they are introduced to the market.

LAND DIVISION ACT: Application of Land Division Act to municipalities**MUNICIPALITIES:****PLATS:****A municipality is not subject to the platting requirements of the Land Division Act that apply to proprietors.**

Opinion No. 7145

December 15, 2003

Honorable Tom Casperson
State Representative
The Capitol
Lansing, Michigan 48909

You have asked whether a municipality is subject to the platting requirements of the Land Division Act that apply to proprietors.

Your question involves the City of Kingsford. You indicate that the City of Kingsford owns tracts of unplatted land zoned for commercial and industrial use, which the city divides and sells as a means of promoting development within its city limits.

The Land Division Act (Act), 1967 PA 288,¹ MCL 560.101 *et seq.*, regulates the division of land and requires the filing of plats by certain persons under specified circumstances. OAG, 1997-1998, No 6989, p 164 (August 11, 1998). A proprietor who subdivides land is subject to the platting requirements of the Land Division Act. MCL 560.103(1). Section 102(f) of the Act defines the terms "subdivide" and "subdivision":

"Subdivide" or "subdivision" means the partitioning or splitting of a parcel or tract of land by the *proprietor* thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements of this act by sections 108 and 109. [MCL 560.102(f); emphasis added.]

Section 111(1) of the Act requires "proprietors" to make preliminary plats and submit copies to the authorities specified in the Act. MCL 560.111(l). The Act also requires "proprietors" to obtain surveys and final approvals of the preliminary plats. MCL 560.131. "Proprietor" is defined in the Act as "a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not." MCL 560.102(o). Thus, the question is whether a municipality is a "proprietor" within the meaning of the Act. The foremost rule of statutory construction is to effectuate the intent of the Legislature. *Stanton v City of Battle Creek*, 466 Mich 611, 615; 647 NW2d 508 (2002).

Your question was addressed in OAG, 1977-1978, No 5391, p 684 (November 17, 1978), which concluded that the Legislature did not intend to include a "municipality" within the definition of "proprietor" in 1967 PA 288, then known as the Subdivision Control Act. I have examined that opinion, as well as relevant cases and statutory authority, and reach the same conclusion.

¹The Land Division Act was formerly known as the Subdivision Control Act of 1967, having been renamed in 1996 PA 591, MCL 560.101.

An examination of the history of three related acts - the Plat Act of 1929, 1929 PA 172, formerly MCL 560.1 *et seq*; the Subdivision Control Act; and the Municipal Blighted Area Rehabilitation Act, 1945 PA 344, MCL 125.71 *et seq* - is instructive in determining the intent of the Legislature in 1929 and of succeeding Legislatures, and confirms their understanding that the term "proprietor" as defined by the Subdivision Control Act and the prior Plat Act did not include any city, village, or township.

The Plat Act of 1929 was the predecessor to the Subdivision Control Act. It defined "proprietor" as "either a natural person, firm, association, partnership, corporation or a combination of any of them." Plat Act of 1929, section 2. Section 4 of the Plat Act of 1929 provided:

Whenever any land in this state shall be platted into lots or blocks, the proprietor thereof shall cause a survey and three true plats thereof to be made by a registered civil engineer or surveyor.

In 1945, the Legislature adopted the Municipal Blighted Area Rehabilitation Act, which permits municipalities (including cities, villages, and townships, as well as counties) to rehabilitate blighted areas within their political boundaries. MCL 125.72(b). In 1959, the Legislature added section 5a to this act to permit municipalities, under certain circumstances, to plat or replat an area by means of an urban renewal plat. With respect to these urban renewal plats, section 5a requires that:

The plat shall be prepared, approved and recorded as provided in Act No. 172 of the Public Acts of 1929, as amended, [the Plat Act] being sections 560.1 to 560.80 of the Compiled Laws of 1948 [MCL 125.75a.]

Section 13 of the Plat Act required that the proprietor, i.e., the person holding title to the lands being platted, execute the plat dedication. Consistent with its understanding that the term "proprietor" did not include cities, villages, or townships (or counties), the Legislature in section 5a of the Municipal Blighted Area Rehabilitation Act further specifies:

[I]n lieu of the signature of the proprietor of the land the dedication shall be signed by the director of urban renewal or by the administrative officer of the municipality [MCL 125.75a.]

This history clearly demonstrates that the term "proprietor" and the requirements imposed on proprietors under the Plat Act of 1929, itself, did not apply to a city, village, or township.

In 1967, the Legislature enacted the Subdivision Control Act repealing the prior Plat Act. In the Subdivision Control Act, the Legislature again defines the term "proprietor" using these words:

"Proprietor" means a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not. [MCL 560.102(o).]

Comparison of the text of this definition with the definition in the prior Plat Act discloses no meaningful difference. In requiring the platting of land, the Subdivision Control Act (now named the Land Division Act) imposes upon "proprietor[s]" the requirement for submitting, obtaining approval of, and recording a plat. The Legislature, consistent with a reading of the term "proprietor" as not including a city, village, or township, continued in subsection 103(4) of the Subdivision Control Act the requirement that urban renewal plats made by municipalities be subject to platting requirements:

Urban renewal plats authorized by the governing body of a municipality as provided in Act No. 344 of the Public Acts of 1945, as amended, [the Municipal Blighted Area Rehabilitation Act] being sections 125.71 to 125.83 of the Compiled Laws of 1948, shall conform to this act. [MCL 560.103(4).]

Thus, the statutory provisions relevant to your question have remained essentially the same since 1978 when OAG No 5391 was issued and support the same conclusion reached there. Review of case law decided since that opinion issued, however, discloses one case requiring further consideration to determine whether a different conclusion is now warranted.

In *Capital Region Airport Authority v DeWitt Charter Twp*, 236 Mich App 576; 601 NW2d 141 (1999), the Court of Appeals addressed whether the Capital Region Airport Authority created pursuant to the Airport Authorities Act, MCL 259.801 *et seq.*, was obligated to comply with the Land Division Act. Noting that "[p]roprietors who wish to divide or subdivide land must obtain local government approval," the Court found no indication in the Land Division Act that the Legislature intended the lands of an airport authority to be exempt. The Court rejected the airport authority's argument that it was not a "proprietor," reasoning that an airport authority is a "corporation" within the Land Division Act's definition of "proprietor." 236 Mich App at 596-597.

The *Capital Region* case is distinguishable from the issue presented in your request and does not warrant any modification of the conclusion reached in OAG 5391. In particular, your question asks whether a city, village, or township is subject to the platting requirements of the Act. These municipalities are distinguishable from the airport authority in *Capital Region*.

The airport authority at issue in *Capital Region* is more akin to the entity at issue in OAG, 1997-1998, No 6989, p 164 (August 11, 1998). OAG 6989 examined the question of whether a building authority incorporated under the Building Authorities Act was exempt from the requirements of the Land Division Act pertaining to proprietors. Noting that nothing in the Land Division Act's definition of the term "proprietor" suggested that the Legislature intended to exclude from its meaning a building authority, the opinion concluded that an incorporated building authority was subject to the Land Division Act's requirements. OAG No 6989 at p 165.²

It is my opinion, therefore, that a municipality is not subject to the platting requirements of the Land Division Act that apply to proprietors.

MIKE COX
Attorney General

² Neither the *Capital Region* case nor OAG 6989 appears to have addressed the case of *Advisory Opinion re Constitutionality of PA 1966, No 346*, 380 Mich 554; 158 NW2d 416 (1967). In that case, the Michigan Supreme Court observed that the Legislature has the authority to "give corporate capacity to certain agencies in the administration of civil government," but in doing so "create neither private corporations nor municipal corporations." Such "quasi corporations" are "specific and supplemental governmental agencies designed to function in a limited sphere in the accomplishment of public purposes." 380 Mich at 568, quoting *Huron-Clinton Metropolitan Authority v Bds of Supervisors of Five Counties*, 300 Mich 1, 20; 1 NW2d 430 (1942). "The grant of corporate powers to such an agency make it a quasi corporation only." 380 Mich at 575. This opinion does not address whether the result in either *Capital Region* or OAG 6989 would have been different had this case been examined.

ADVERTISING: Validity of Liquor Control Commission rule banning certain illuminated advertising of alcoholic beverages

CONSTITUTIONAL LAW:

INTOXICATING LIQUORS:

LIQUOR CONTROL:

Rule 436.1313(1) of the Liquor Control Commission, to the extent it prohibits illuminated advertising of alcoholic beverages by certain retail licensees inside their retail establishments, violates the First Amendment to the United States Constitution and article 1, section 5 of the Michigan Constitution.

Opinion No. 7146

January 8, 2004

Honorable Beverly S. Hammerstrom
State Senator
The Capitol
Lansing, MI 48913

You have asked whether Rule 436.1313(1) of the Liquor Control Commission, to the extent it prohibits illuminated advertising of alcoholic beverages by certain retail licensees inside their retail establishments, violates the First Amendment to the United States Constitution and article 1, section 5 of the Michigan Constitution.

The Liquor Control Commission (Commission) was created by 1933 (Ex Sess) PA 8, section 5¹ upon the ratification of the Twenty-First Amendment to the United States Constitution. The Commission's duties include regulation and control of the manufacture, importation, possession, transportation, and sale of alcoholic liquors within the state. MCL 436.1201(2). The Commission is authorized to adopt rules governing the conduct of liquor-related licensees. MCL 436.1215(1). In accordance with this authority, the Commission has adopted administrative rules regulating the advertising of beer, wine, and distilled spirits.

Commission Rule 13, 2000 MR 3 and 2003 MR 11, pp 51-52, R 436.1313(1), prohibits certain retail liquor licensees from utilizing illuminated advertising signs inside licensed premises:

(1) Except as provided for in this rule, *a retail licensee shall ensure that an advertising sign for alcoholic liquor that is used inside the licensee's premises is an unilluminated sign* that does not have a total area of more than 3,500 square inches.²

(2) The total area of any other sign that is attached to, or a necessary part of, a sign is included in the 3,500 square inches limitation.

(3) A sports/entertainment venue may utilize illuminated advertising signs and advertising signs that have a total area of more than 3,500 square inches in the arena area, concourse area, or private suite areas.

(4) Any of the following entities may provide and install illuminated advertising signs and advertising signs that have a total area of more than 3,500 square inches per sign inside the arena area, concourse area, or private suite areas of a sports/entertainment venue as defined by R 436.1001(u):

¹ See now the Michigan Liquor Control Code of 1998, MCL 436.1201 *et seq.* The Commission is created in MCL 436.1209.

² No question has been raised, nor any opinion expressed, as to the validity of the limitation that a sign may not exceed a total area of 3,500 square inches.

- (a) A brewer.
- (b) A micro brewer.
- (c) A wine maker.
- (d) A small wine maker.
- (e) An outstate seller of beer.
- (f) An outstate seller of wine.
- (g) An outstate seller of mixed spirit drink.
- (h) A manufacturer of spirits.
- (i) A manufacturer of mixed spirit drink.
- (j) A vendor of spirits. [Emphasis added.]

The First Amendment, which is made applicable to the states by the Fourteenth Amendment,³ provides in pertinent part that: "Congress shall make no law . . . abridging the freedom of speech . . ." US Const, Am I. A similar guarantee is embodied in the Michigan Constitution:

Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press. [Const 1963, art 1, § 5.]

Michigan's Constitution has been interpreted as affording protections in the free expression context similar to those guaranteed under the federal constitution. *Woodland v Michigan Citizens Lobby*, 423 Mich 188, 202; 378 NW2d 337 (1985); *Michigan Up and Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 168-169; 533 NW2d 339 (1995). Thus, it is appropriate to look at both state and federal authorities in analyzing your question.

Illuminated advertising of the type prohibited by the Commission falls within a category of speech known as "commercial speech." Commercial speech is defined as speech that proposes a commercial transaction. *United States v United Foods, Inc*, 533 US 405, 409; 121 S Ct 2334; 150 L Ed 2d 438 (2001). This form of speech, while entitled to somewhat lesser protection than political or expressive speech, is nevertheless constitutionally protected from unwarranted governmental regulation. *Michigan Beer & Wine Wholesalers Ass'n v Attorney General*, 142 Mich App 294, 302-303; 370 NW2d 328 (1985), *lv den* 424 Mich 878 (1986), *cert den*, 479 US 939; 107 S Ct 420; 93 L Ed 2d 371 (1986), citing *Virginia State Bd of Pharmacy v Virginia Citizens Consumer Council, Inc*, 425 US 748, 761-762; 96 S Ct 1817; 48 L Ed 2d 346 (1976).

In *Central Hudson Gas & Electric Corp v New York Public Service Comm*, 447 US 557, 566; 100 S Ct 2343; 65 L Ed 2d 341 (1980), the United States Supreme Court established a four-step analysis for evaluating whether state action unconstitutionally infringes upon commercial speech:

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

The Supreme Court later clarified the fourth prong of *Central Hudson* in a case involving a restriction on promotional advertising in dormitories at the State University of New York. In *Bd of Trustees v Fox*, 492 US 469; 109 S Ct 3028; 106

³ *Cantwell v Connecticut*, 310 US 296; 60 S Ct 900; 84 L Ed 1213 (1940).

L Ed 2d 388 (1989), the Court found that the fourth prong assures that regulations affecting commercial speech employ a "means narrowly tailored to achieve the desired objective." *Id.*, at 480. While the Court refused to require regulators to adopt the least drastic means of achieving the government's interest, the Court cautioned that the means may not "burden substantially more speech than is necessary to further the government's legitimate interests." *Id.*, at 478, citing *Ward v Rock Against Racism*, 491 US 781, 799; 109 S Ct 2746; 105 L Ed 2d 661 (1989).

The Supreme Court applied the *Central Hudson* test when invalidating prohibitions against advertising alcoholic beverage prices adopted by the State of Rhode Island. In *44 Liquormart v Rhode Island*, 517 US 484, 490; 116 S Ct 1495; 134 L Ed 2d 711 (1996), the Court, applying the third prong of the *Central Hudson* test, rejected arguments that the restrictions significantly furthered the state's goal of limiting alcohol consumption. The Court observed that other measures, such as licensee-funded alcohol education programs, might be more effective and intrude less on First Amendment rights. *Id.*, at 490-491.

Michigan courts have adopted the *Central Hudson* test when evaluating Michigan Liquor Control Commission rules that affect commercial speech.⁴ In *Michigan Beer & Wine Wholesalers Ass'n v Attorney General*, 142 Mich App at 303, 313, the Court of Appeals concluded that a Commission rule restricting the advertisement of prices or brands of liquor, wine, and beer violated personal freedoms protected by both the state and federal constitutions. Focusing on the third part of the *Central Hudson* test, the Court determined that the rules did not directly advance the state's interest in discouraging the artificial stimulation of alcohol consumption. The Court observed that the regulations affected both licensed retailers, who have an interest in promoting lawful products, as well as consumers, who have a protected interest in receiving information on available beverages. *Id.*, at 303, citing *Virginia State Bd of Pharmacy*, *supra*, 425 US at 757. See also *Eller Media Co v Cleveland*, 161 F Supp 2d 796, 812 (ND Ohio, 2001), *aff'd* 2003 US App LEXIS 7425 (CA 6, 2003).

The Commission rules struck down in *Michigan Beer & Wine Wholesalers Ass'n* had been the subject of two Attorney General opinions concluding the rules were unconstitutional, OAG, 1981-1982, No 6051, p 607 (April 6, 1982), and OAG, 1981-1982, No 6033, p 561 (February 4, 1982), both of which were directly challenged and upheld in that case. Included among the rules determined to be invalid in OAG No 6051 was Commission Rule R 436.1515(2), which provided that: "Alcoholic liquor shall not be advertised on the licensed premises by placing the alcoholic liquor or an advertisement of alcoholic liquor in a window facing outside the licensed premises." 142 Mich App at 299. (Emphasis added.) Agreeing with OAG No 6051, the Court determined that Rule 436.1515(2) did not satisfy the requirement of the *Central Hudson* test that it directly advance the governmental interest asserted and that those seeking to have the rule upheld failed to "carry the heavy burden of justifying these restrictions on commercial speech." 142 Mich App at 309, citing *Bolger v Youngs Drug Products Corp*, 463 US 60, 91 n 20; 103 S Ct 2875; 77 L Ed 2d 469 (1983).⁵

⁴Not all regulation of commercial speech is necessarily invalid. For example, the Michigan Supreme Court upheld a city ordinance that banned occupational advertisements in residential neighborhoods, concluding that the ordinance advanced the city's interest in protecting the character of its neighborhoods. *City of Rochester Hills v Schultz*, 459 Mich 486, 496; 592 NW2d 69 (1999).

⁵Other opinions of the Attorney General have applied the *Central Hudson* test to invalidate state regulations that unduly burden commercial speech. See, e.g., OAG, 1989-1990, No 6669, p 414, 416-417 (December 18, 1990), invalidating a restriction on the advertisement of lawful bingo games.

Turning to the application of these principles to Rule 436.1313(1), it is clear that the advertisement of alcoholic liquor is, under *Central Hudson* and *Michigan Beer & Wine Wholesalers*, commercial speech protected by the First Amendment. In fact, there is no suggestion that the illuminated advertising in question is misleading or relates to unlawful activity.

Under the next step of the *Central Hudson* analysis, it must be determined whether "the asserted governmental interest is substantial." Representatives of the Liquor Control Commission have advised my staff that Rule 432.1313(1) is intended to encourage temperance and control of alcoholic beverage traffic by restricting the promotion of alcoholic liquors within licensed retail establishments. These interests are consistent with the mission of the Michigan Liquor Control Commission⁶ and have been recognized by the Supreme Court as "substantial state interests" in the context of the *Central Hudson* commercial speech analysis. See *44 Liquor Mart*, *supra*, 517 US at 490, n 4.

Assuming that the asserted governmental interest is substantial, that may not be sufficient to justify a restriction on commercial speech. The third step of the *Central Hudson* analysis requires that the challenged regulations directly advance the stated interest. 447 US at 566. A regulation "may not be sustained if it provides only ineffective or remote support for the government's purpose." *Id.*, at 564. In *44 Liquor Mart*, the Court held that the state bears the burden of showing not merely that its regulation will advance its interest, but also that it will do so "to a material degree." 517 US at 505, citing *Edenfield v Fane*, 507 US 761, 767, 771; 113 S Ct 1792; 123 L Ed 2d 543 (1993).

Several factors militate against the conclusion that Rule 436.1313(1) materially advances the state's interest in promoting temperance and controlling alcoholic beverage traffic in retail establishments. Except for size restrictions imposed only on certain licensees,⁷ the rule does not limit the use of non-illuminated advertisement to promote alcoholic liquors inside a retail establishment or the use of illuminated advertisement to promote alcoholic liquors on the outside of licensed premises. Thus, truthful, non-misleading commercial speech presented by way of an illuminated sign visible to the general public and intended to attract customers to a bar or tavern is allowed on the exterior of a retail licensee's premises; it is only when the customer crosses the threshold of the establishment that such speech is forbidden. *Michigan Beer & Wine Wholesalers* held that a rule banning advertisement of alcoholic liquors in a window facing the outside of licensed premises did not directly advance the state's interest in discouraging alcohol consumption. 142 Mich App at 309. In that Rule 432.1313(1) is an attempt to further a similar interest after the patron has entered the establishment, the effectiveness of this rule on liquor consumption is even more remote than the rule struck down in *Michigan Beer & Wine Wholesalers*, and therefore, less supportable.

Further, while Rule 432.1313(1) prohibits illuminated advertisement visible to the patrons inside certain licensed retail premises, subsections (2), (3), and (4) of the rule allow retail licensees at sports entertainment venues to erect large illuminated advertising signs that are visible to thousands of prospective consumers, including minors. Unrestricted illuminated advertisement to retailers serving large populations attending sporting events is inconsistent with the state's interest in encouraging temperance and control of alcoholic beverage traffic at retail establishments and evidences the rule's marginal support for the stated interest.

⁶The title of the Liquor Control Code of 1998 states that the Liquor Control Commission is created to "control [] the alcoholic beverage traffic within this state."

⁷Rule 436.1313(1) requires a retail licensee to ensure that an advertising sign used inside the licensee's premises is both unilluminated and possesses a total area of no more than 3,500 square inches. See n 2, *supra*.

The Liquor Control Commission cannot demonstrate that Rule 432.1313(1) directly advances the state's interest and, under the analysis set forth in *Central Hudson* and its progeny, the rule is an impermissible restriction on commercial speech.

It is my opinion, therefore, that Rule 436.1313(1) of the Liquor Control Commission, to the extent it prohibits illuminated advertising of alcoholic liquors inside certain licensed retail establishments, violates the First Amendment to the United States Constitution and article 1, section 5 of the Michigan Constitution.

MIKE COX
Attorney General

MORTGAGES: Necessity of recording mortgages before initiating foreclosure by advertisement

RECORDS AND RECORDATION:

A mortgagee cannot validly foreclose a mortgage by advertisement unless the mortgage and all assignments of that mortgage (except those assignments effected by operation of law) are entitled to be, and have been, recorded. In a foreclosure of a mortgage by advertisement, an assignee who holds the mortgage at the time the foreclosure proceedings commence must be named in the published notice of sale. If a foreclosing mortgagee or assignee does not have a recorded interest on the date the foreclosure by advertisement commences, the notice given by advertisement does not satisfy the statutory requirements for publication and may be the basis for asserting that the mortgage has not been validly foreclosed.

Opinion No. 7147

January 9, 2004

Honorable Michael D. Bishop
State Senator
The Capitol
Lansing, MI 48909

You have asked: a) whether a mortgagee initiating foreclosure of a mortgage by advertisement must have a duly recorded and complete chain of title to the mortgage being foreclosed before the mortgagee commences advertising the sale; and b) if a foreclosing mortgagee does not have a recorded interest as of the date on which foreclosure by advertisement commences, whether this omission renders any subsequent sale voidable by the mortgagor or a party claiming through the mortgagor.

The foreclosure of a mortgage by advertisement is governed by Chapter 32 of the Revised Judicature Act (RJA), MCL 600.3201 through 600.3280. MCL 600.3204 provides in pertinent part:

- (1) A party may foreclose by advertisement if all of the following circumstances exist:
 - (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
 - (b) A suit or proceeding has not been instituted, at law, to recover the debt then remaining secured by the mortgage, or any part of the mortgage; or if a suit or proceeding has been instituted, the suit or proceeding has been discontinued; or an execution upon the judgment rendered in a suit or proceeding has been returned unsatisfied, in whole or in part.
 - (c) The mortgage containing the power of sale has been properly recorded and, *if the party foreclosing is not the original mortgagee, a record chain of title exists evidencing the assignment of the mortgage to the party foreclosing the mortgage.*
 - (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage. [Emphasis added.]

MCL 600.3208 provides:

Notice that the mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county. In every case within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.

The Michigan Land Title Standards (5th Edition) published by the Land Title Standards Committee of the Real Property Law Section of the State Bar of Michigan is an authoritative source that has been relied upon by property law practitioners in Michigan for nearly 50 years. Michigan Land Title Standard 16.12 relates to your question and recites:

STANDARD: A MORTGAGE CANNOT BE VALIDLY FORECLOSED BY ADVERTISEMENT UNLESS THE MORTGAGE AND ALL ASSIGNMENTS THEREOF, EXCEPT SUCH ASSIGNMENTS AS HAVE BEEN EFFECTED BY OPERATION OF LAW, ARE ENTITLED TO BE, AND HAVE BEEN RECORDED.

The committee then illustrates how the standard applies by setting forth the following hypothetical problem, an answer to that problem, and the legal authority that supports that answer:

Problem A: Robert Brown mortgaged Blackacre to Edward Lane. Lane assigned the mortgage to Arthur Mills. The assignment was either unrecorded or, although actually recorded, was not entitled to be recorded. Mills foreclosed the mortgage by advertisement and a sheriff's deed purporting to convey Blackacre was recorded. Was the foreclosure valid?

Answer: No. To foreclose a mortgage by advertisement validly, the mortgage and all assignments thereof must be entitled to record and be recorded.

The standard cites MCL 600.3204(3) and *Dohm v Haskin*, 88 Mich 144; 50 NW 108 (1891), as support for its answer.

As the Michigan Supreme Court in *Dohm* explained, "the right to foreclose by advertisement is conferred solely by the statute, and its provisions must be strictly complied with. Under this statute, the mortgage and assignment must not only be recorded, but they must be executed in such a manner as to entitle them to record." 88 Mich at 147.

In the *Dohm* case, the assignment of the mortgage was executed in Kansas. It had only one witness. It purported to be acknowledged before a notary public. No certificate of a clerk or proper certifying officer of a court of record was attached as required by the then effective statutes. How. Stat. § 5660. As the Court indicated, the instrument "was therefore not entitled to record, and the register of deeds should have refused to record it." *Id.*

Another relevant provision of the RJA is MCL 600.3212, which states:

Every notice of foreclosure by advertisement shall include all of the following:

- (a) The *names* of the mortgagor, the mortgagee, and *the foreclosing assignee of a recorded assignment of the mortgage.*
- (b) The date of the mortgage and the date the mortgage was recorded.
- (c) The amount claimed to be due on the mortgage on the date of the notice.
- (d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.
- (e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240. [Emphasis added.]

Michigan Land Title Standard 16.18 states:

STANDARD: IN FORECLOSURE OF A MORTGAGE BY ADVERTISEMENT, AN ASSIGNEE WHO HOLDS THE MORTGAGE AT THE TIME OF FORECLOSURE MUST BE NAMED IN THE PUBLISHED NOTICE OF SALE.

This standard is explained by the committee with the following problem and answer:

Problem: A mortgage was assigned of record to Arthur Mills. Mills foreclosed it by advertisement. The published notice of sale did not set forth the assignment. Is the notice sufficient?

Answer: No. The statute requires that the assignee be named in the notice.

The committee cites MCL 600.3212 as the authority supporting this answer.

Neither of the quoted land title standards addresses directly the factual scenario where a mortgagee or a mortgagee's assignee initiates foreclosure by advertisement, but the initial published notification either fails to name the assignee, or, while naming the assignee, names an assignee who is not of record. This scenario raises the question whether a mortgagee or mortgagee's assignee under these circumstances can cure the error by recording the assignment and naming the assignee in subsequent notices published before the sheriff conducts the sale involved.

With respect to the attempt to cure the omissions in the first of the successive required publications, a faulty initial publication cannot be offered as satisfying the RJA's publication requirements. The first *correct* publication is the first publication that can be relied upon in asserting that publication has been properly accomplished for four successive weeks.

With respect to the assignment of a mortgage after the initial publication, it is my understanding that the State Bar Land Title Standards Committee, in editing Michigan Land Title Standard 16.18 for future publication, has added a "Comment C," which will recite:

The Committee expresses no opinion as to the effect of an assignment of the foreclosing assignee's interest after the publication of the initial notice of sale. In other words, the Committee's future publication will decline to address this factual scenario in the absence of sufficient statutory or case authority.

The State Bar Land Title Standards Committee's comment confirms that this is an area in need of legislative treatment. Since, as stated in *Dohm*, the right to foreclose by advertisement "is conferred solely by . . . statute," I must also defer to the legislative process to address this gap in the law. Indeed, you have indicated in your letter that you are concerned that not all mortgagees are following the same practice in this area and that you plan to deal with this and related problems by proposing appropriate legislation to bring needed clarity to the issue.

It is my opinion, therefore, that a mortgagee cannot validly foreclose a mortgage by advertisement unless the mortgage and all assignments of that mortgage (except those assignments effected by operation of law) are entitled to be, and have been, recorded. In a foreclosure of a mortgage by advertisement, an assignee who holds the mortgage at the time the foreclosure proceedings commence must be named in the published notice of sale. If a foreclosing mortgagee or assignee does not have a recorded interest on the date the foreclosure by advertisement commences, the notice given by advertisement does not satisfy the statutory requirements for publication and may be the basis for asserting that the mortgage has not been validly foreclosed.

MIKE COX
Attorney General

Editor's Note: After OAG No 7147 was released, 2004 PA 186 was enacted into law and given immediate effect (July 1, 2004). This act amended MCL 600.3204(3) to provide: "If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage." Accordingly, OAG No 7147 has been superseded by subsequent legislative action.

MINERAL RIGHTS: Application of the three-year grace period under Marketable Record Title Act**MARKETABLE RECORD TITLE ACT:****RECORDS AND RECORDATION:**

The three-year grace period for preserving certain property interests, claims, or charges provided in section 3 of the Marketable Record Title Act, MCL 565.103, applies only to the recording of notices necessary to preserve interests in minerals as defined by the Act that had not been previously barred or extinguished utilizing a 40-year look-back period.

Opinion No. 7148

January 26, 2004

Honorable Michael A. Prusi
State Senator
The Capitol
Lansing, Michigan 48913

You have requested my opinion regarding 1997 PA 154, which originated as HB 4273 and amended certain provisions of the Marketable Record Title Act, MCL 565.101 *et seq* (the Act), as well as my opinion regarding the rights of landowners and occupants to notice from parties exploiting certain mineral resources.

Your letter states:

House Bill 4273, as introduced, attempted to shorten the period required for filing claims of title from forty (40) years to twenty (20) years for those mineral interests other than sand, gravel, limestone, clay or marl. The change was intended to make the Marketable Title Act consistent with the Dormant Minerals Act of 1963, which already utilizes a twenty (20) year claim period for oil and gas minerals. The bill was also intended to clear defunct companies or deceased landowners from county records relative to mineral right ownership. The unintended consequence of the legislation may have allowed for the sale of the mineral rights to a third party during the three-year window.

As enacted, PA 154 of 1997 provides those individuals who fall within the twenty- and forty-year time frame, a three-year grace period to reassert their intent to continue a mineral rights claim. If no assertion to maintain mineral rights is submitted within the allotted grace period, the mineral rights would then revert to the surface owner.

You ask:

First, by law, if those [mineral interest holders] that fell between the twenty- and forty-year timeframe did not reassert their intent to continue mineral interests within the three-year grace period, who then would have legal claim to these mineral rights? Second, if the owner of the mineral rights did not reassert within the 3-year grace period, could a third party claim those interests and circumvent them from reverting to the surface owner? Lastly, would the mineral rights owner have the authority to perform mineral explorations without first notifying the owner of the surface rights?

Before answering your questions, an overview of some general principles of property law may be helpful. Coal, oil, gas, and other minerals may be owned in fee simple. Thus, the ownership of minerals may be held in fee separate from fee simple ownership of other rights in the land. *Rathbun v Michigan*, 284 Mich 521; 280 NW 35 (1938); *Pellow v Arctic Mining Co*, 164 Mich 87; 128 NW 918 (1910). See also, *Van Slooten v Larsen*, 410 Mich 21; 299 NW2d 704 (1980).

As our Supreme Court explained in *Rathbun v Michigan*, 284 Mich at 534: In *Walters v. Sheffield*, 75 Fla. 505, 511 (78 South. 539), it is said:

"By the common law also several sorts of estates or interests, joint or several, may exist in the same fee; as that one person may own ground or soil, another the structures thereon, another the minerals beneath the surface, and still another the trees and wood growing thereon."

Minerals in place may be severed from the remainder of the land by proper conveyances. Severance of all the minerals from the remainder of the lands may be effected by a reservation in the deed. Upon severance of the title of minerals from that of the remainder of the land, each estate may be a free-hold of an estate in fee simple. *Humphreys-Mexia Co. v. Gammon*, 113 Tex. 247 (254 S. W. 296, 29 A. L. R. 607).

"The State, having title in fee, could, like any other owner in fee, deed with reservation of the oil, coal, gas and minerals. * * *

"The State as owner of the land, could sever the estate in fee to the surface from that of fee in the oil and gas underlying the surface." *Krench v. State of Michigan*, 277 Mich. 168, 179, 180.

Mineral resources, therefore, may be exploited by the fee owner of the resources or by those parties to whom these rights have been leased.

The determination of who owns or holds an interest in lands subject to mineral exploitation requires the examination of all deeds, leases, or other instruments conveying or affecting that property recorded in the Office of the Register of Deeds for the county in which the property is located. *Erickson v Michigan Land & Iron Co*, 50 Mich 604; 16 NW 161 (1883); *Harlow v Lake Superior Iron Co*, 36 Mich 105 (1877); *Pellow, supra*. Prior to adoption of the Marketable Record Title Act, this could have involved examination of recorded instruments filed over a period of almost 200 years from the issuance and recordation of a United States land patent or confirmation of a British or French grant.

The Marketable Record Title Act was adopted to shorten the period that must be reviewed. However, it should be emphasized that it only "remedies title defects within its scope." Michigan Land Title Standards, 5th Edition,¹ STANDARD 1.1 (capital and bold lettering omitted). As Title STANDARD 1.1 explains:

The stated legislative purpose of the Marketable Record Title Act is to simplify and facilitate land title transactions by providing a statutory basis for establishing record title with reference to a period of at least 40 years (at least 20 years for certain mineral interests). The effect of the Act is to extinguish by operation of law certain interests and claims which arise out of any act, transaction, event or omission preceding the 40-year period (or the 20-year period for certain mineral interest), subject to specified exceptions and limitations. The 20-year period applies only to a mineral interest other than an interest in oil, gas, sand, gravel, limestone, clay or marl, owned by a person other than the surface owner.

An interest in land is preserved under the Act by the recording during the 40-year period (or during 20-year period for certain mineral interests) of a notice, verified by oath, setting forth the nature of the interest claimed. A mineral interest other than an interest in oil, gas, sand, gravel, limestone, clay or marl, owned by a person other than the surface owner, is also preserved by the recording within three years after December 22, 1997, of a notice setting forth the nature of the interest claimed. See also Standard 15.4 with respect to certain severed oil and gas interests.

¹The Michigan Land Title Standards (5th Edition) published by the Land Title Standards Committee of the Real Property Law Section of the State Bar of Michigan is an authoritative source that has been relied upon by property law practitioners in Michigan for nearly 50 years.

The title resulting from application of the Act's remedial provisions is a marketable record title. MCLA 565.103 Marketable record title under the Act may not be equivalent, however, to a marketable title at common law or to a commercially marketable or merchantable title, as those terms are generally used. One may have a marketable record title under the Act which is still properly subject to objection.

Interests held by the State of Michigan or the federal government are not subject to defeasance or loss under the Act. Section 4 identifies those interests that are not barred or extinguished by the Act:

This act shall not be applied to bar any lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease; or to bar any interest of a mortgagor or a mortgagee or interest in the nature of that of a mortgagor or mortgagee until after such instrument under which such interests are claimed shall have become due and payable, except where such instrument has no due date expressed, where such instrument has been executed by a railroad, railroad bridge, tunnel or union depot company, or any public utility or public service company; or to bar or extinguish any easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidences of its use; or to bar or extinguish any easement or interest in the nature of an easement, or any rights appurtenant thereto granted, excepted or reserved by a recorded instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable, by reason of failure to file the notice herein required. *Nor shall this act be deemed to affect any right, title or interest in land owned by the United States, nor any right, title or interest in any land owned by the state of Michigan, or by any department, commission or political subdivision thereof.* [MCL 565.104; emphasis added.]

See also Michigan Land Title STANDARD 1.6, Comment C.

Prior to the adoption and effective date of 1997 PA 154, interests in minerals other than oil, gas, and other hydrocarbons were subject to being extinguished where they arose out of any act, transaction, event, or omission that preceded the 40-year period. With respect to certain minerals, this time frame, sometimes referred to as a "look-back period," was shortened by 1997 PA 154 to 20 years. To afford due process of law to those whose interests would be extinguished because of the shortened period, the Act provided a three-year window within which they could assert their continuing interest in the affected minerals. The law now provides in section 1:

Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act and subject also to any interests and defects as are inherent in the provisions and limitations contained in the muniments [documents evidencing title] of which the chain of record title is formed and which have been recorded within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests. However, a person shall not be considered to have a marketable record title by reason of this act, if the land in which the interest exists is in the hostile possession of another. [MCL 565.101.]

The interests in real property subject to extinguishment by virtue of the 20-year period are defined by section 101a:

As used in this act, "mineral interest" means an interest in minerals in any land if the interest in minerals is owned by a person other than the owner of the surface of the land. Mineral interest does not include an interest in oil or gas or an interest in sand, gravel, limestone, clay, or marl. [MCL 565.101a.]

Section 2 of the Act prescribes what constitutes an unbroken chain of title:

A person is considered to have an unbroken chain of title to an interest in land as provided in section 1 when the official public records disclose either of the following:

- (a) A conveyance or other title transaction not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance or other title transaction purports to create the interest in that person, with nothing appearing of record purporting to divest that person of the purported interest.
- (b) A conveyance or other title transaction not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance or other title transaction purports to create the interest in some other person and other conveyances or title transactions of record by which the purported interest has become vested in the person first referred to in this section, with nothing appearing of record purporting to divest the person first referred to in this section of the purported interest. [MCL 565.102.]

Section 3 of the Act, in which the three-year grace period is described, provides:

Marketable title shall be held by a person and shall be taken by his or her successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to the 20-year period for mineral interests, and the 40-year period for other interests, and all interests, claims, and charges are hereby declared to be null and void and of no effect at law or in equity. *However, an interest, claim, or charge may be preserved and kept effective by filing for record within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests, a notice in writing, verified by oath, setting forth the nature of the claim.* A disability or lack of knowledge of any kind on the part of anyone does not suspend the running of the 20-year period for mineral interests or the 40-year period for other interests. For the purpose of recording notices of claim for homestead interests the date from which the 20-year period for mineral interests and the 40-year period for other interests shall run shall be the date of recording of the instrument, nonjoinder, in which is the basis for the claim. A notice may be filed for record by the claimant or by any other person acting on behalf of any claimant if 1 or more of the following conditions exist:

- (a) The claimant is under a disability.
- (b) The claimant is unable to assert a claim on his or her own behalf.
- (c) The claimant is 1 of a class but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record. [MCL 565.103; emphasis added.]

The Marketable Record Title Act should be distinguished from the Dormant Minerals Act of 1963, MCL 554.291 *et seq.*, to which you refer. The Dormant Minerals Act covers oil and gas. Where the requisite dormancy period has expired, dormant oil and gas interests are extinguished or forfeited to the surface owner. The Marketable Record Title Act does not "forfeit" any interest; rather it extinguishes the interest or claim of intent. An owner of interests in land holds them free and clear of any interest in minerals that cannot be discovered by examining records filed with a register of deeds office within the 20-year "look-back period." This means that the surface owners, as well as holders of other interests in land (including mineral

interests not extinguished), hold fee title or those other interests free from the extinguished claims. Surface interests, as well as those other interests, may, however, be subject to claims of other persons whose interests do appear on examining title within the 20-year period. The owners of mineral interests that are properly recorded within the 20-year period may, like surface owners, assert that they hold their interests free and clear of any potentially competing claims that are beyond the 20-year period.

The Marketable Record Title Act does not allow a person with no previously recorded interest and who has no predecessors in title or interest, commonly known as a "stranger to title," to establish valid entitlement to mineral interests simply by recording an instrument asserting those interests with a register of deeds office. Should a person file a claim or an instrument purporting to vest the person with a mineral interest, its validity is determined by other rules of property law pursuant to which a valid chain of title to the interest claimed is established.

Michigan Land Title Standards 1.2, 1.3, and 1.6 summarize those rules as follows:

STANDARD 1.2 ELEMENTS OF MARKETABLE RECORD TITLE

A PERSON HAS MARKETABLE RECORD TITLE IF: (1) THERE IS AN UNBROKEN CHAIN OF RECORD TITLE FOR AT LEAST 40 YEARS (AT LEAST 20 YEARS FOR CERTAIN MINERAL INTERESTS); AND (2) THERE IS NO ONE IN HOSTILE POSSESSION OF THE LAND.

STANDARD 1.3 UNBROKEN CHAIN OF RECORD TITLE

A PERSON HAS AN UNBROKEN CHAIN OF RECORD TITLE IF (1) THERE IS EITHER (A) A CONVEYANCE OR OTHER TITLE TRANSACTION WHICH PURPORTS TO CREATE AN INTEREST AND HAS BEEN A MATTER OF RECORD FOR AT LEAST 40 YEARS (AT LEAST 20 YEARS FOR CERTAIN MINERAL INTERESTS) OR (B) A SERIES OF CONVEYANCES OR OTHER TITLE TRANSACTIONS OF RECORD IN WHICH THE FIRST CONVEYANCE OR TITLE TRANSACTION HAS BEEN A MATTER OF RECORD FOR AT LEAST 40 YEARS (AT LEAST 20 YEARS FOR CERTAIN MINERAL INTERESTS), AND (2) THERE IS NOTHING OF RECORD PURPORTING TO DIVEST SUCH PERSON OF TITLE.

STANDARD 1.6 EFFECT OF THE MARKETABLE RECORD TITLE ACT ON PRIOR INTERESTS

A PERSON WHO HAS MARKETABLE RECORD TITLE HOLDS TITLE FREE FROM:

ANY INTEREST, CLAIM OR CHARGE, THE EXISTENCE OF WHICH DEPENDS IN WHOLE OR IN PART UPON ANY ACT, TRANSACTION, EVENT OR OMISSION WHICH PRECEDES AT LEAST A 40-YEAR CHAIN OF RECORD TITLE (AT LEAST A 20-YEAR CHAIN OF RECORD TITLE FOR CERTAIN MINERAL INTERESTS); PROVIDED THAT (1) THE MINIMUM 40-YEAR CHAIN (MINIMUM 20-YEAR CHAIN FOR CERTAIN MINERAL INTERESTS) INCLUDES NO REFERENCE TO SUCH INTEREST, CLAIM OR CHARGE, AND NO NOTICE OF CLAIM BASED THEREON HAS BEEN FILED PURSUANT TO SECTIONS 3 AND 5 OF THE ACT AND (2) THE INTEREST IS NOT EXCEPTED FROM THE APPLICATION OF THE ACT BY SECTION 4 THEREOF;

BUT THE TITLE IS SUBJECT TO:

ANY INTEREST, CLAIM OR CHARGE WHICH ARISES FROM, OR IS REFERRED TO IN, ANY INSTRUMENT WITHIN THE MINIMUM 40-YEAR CHAIN OF RECORD TITLE (MINIMUM 20-YEAR CHAIN FOR CERTAIN MINERAL INTERESTS).

The three-year window for filing notices of intention to retain interests in land after the effective date of 1997 PA 154 amending section 3 (December 22, 1997) should not be read as relating to interests, mineral or otherwise, already barred under the 40-year standard. It relates to those existing interests that would first be extinguished on December 22, 1997, by a 20-year "look back."

The three-year window periods avoid any argument that owners were deprived of real property interests without due process of law in 1945 when the Marketable Record Title Act was first adopted and again in 1997 when the "look-back" period was shortened from 40 to 20 years for certain mineral interests. As the United States Supreme Court noted in *Texaco Inc v Short*, 454 US 516, 532-533; 102 S Ct 781; 70 L Ed 2d 738 (1982), in sustaining the Indiana Dormant Mineral Interests Act:

In short, both the Indiana Legislature and the Indiana Supreme Court have concluded that a 2-year period was sufficient to allow property owners in the State to familiarize themselves with the terms of the statute and to take any action deemed appropriate to protect existing interests. On the basis of the records in these two proceedings, we cannot conclude that the statute was so unprecedented and so unlikely to come to the attention of citizens reasonably attentive to the enactment of laws affecting their rights that this 2-year period was constitutionally inadequate. We refuse to displace hastily the judgment of the legislature and to conclude that a legitimate exercise of state legislative power is invalid because citizens might not have been aware of the requirements of the law.

With the Act's initial adoption in 1945, the Michigan Legislature similarly provided property owners a three-year period within which to familiarize themselves with the law and take whatever action was necessary to preserve their interests. When the Legislature amended the Act again in 1997 to shorten the period of examination required to ascertain the continuing valid interests in minerals, it again provided a three-year period within which citizens were able to familiarize themselves with the effect of the law upon mineral interests and protect those interests. The 1997 amendments should not be read as permitting or facilitating the resuscitation of interests already barred, because such a construction would operate to unconstitutionally impair the obligations of contracts entered into with respect to rights or interests in land previously barred under the 40-year standard. Const 1963, art 1, § 10.

Moreover, in the time between 1945 and 1997, property and interests in property, including mineral interests, have been bought, sold, and otherwise acquired based upon a reliance on the extinguishment of competing or opposing interests not discernible by examining documents recorded during the 40-year look-back period. Generally, to retroactively permit resuscitation of interests already extinguished under the applicable law would unconstitutionally deprive owners of property or vested rights to property. A vested right has been defined as an interest that the government is compelled to recognize and protect of which the holder could not be deprived without injustice. *Detroit v Walker*, 445 Mich 682, 699; 520 NW2d 135 (1994). See also *Van Slooten v Larsen*, 410 Mich 21, *supra*; *Schoolcraft Community School Dist No 50 v Burson*, 357 Mich 682; 99 NW2d 353 (1959); and *Dodge v Detroit Trust Co*, 300 Mich 575; 2 NW2d 509 (1942).

Finally, to the extent 1997 PA 154 is subject to differing interpretations, it should be read in a way that renders it constitutional, not unconstitutional:

The general principle has repeatedly been invoked that if a legislative enactment is of such a character that it is subject to differing interpretations, one of which would result in the act being held unconstitutional and the other permitting its being upheld as valid, the latter alternative will be accepted. In other words, the presumption is that the legislature would not intend to pass an act in contravention of a constitutional restriction or otherwise invalid. [*State Bar of Michigan v Lansing*, 361 Mich 185, 195; 105 NW2d 131 (1960).]

It is my opinion, therefore, that the three-year grace period for preserving certain property interests, claims, or charges provided in section 3 of the Marketable Record Title Act, MCL 565.103, applies only to the recording of notices necessary to preserve interests in minerals as defined by the Act that had not been previously barred or extinguished utilizing a 40-year look-back period.

In specific response to your questions as quoted on page two:

(1) Identification of the party or parties holding interests in land including mineral interests and the nature of such interests is determined by the content of all instruments properly recorded within the "20-year" look-back period specified by the Marketable Record Title Act.

(2) Where a party's interest in minerals has been extinguished by failure to preserve that interest consistent within the three-year grace period provided by the Marketable Record Title Act, the identification of the owners and holders of mineral interests and the nature of their interests is again determined by the content of all instruments properly recorded within the "20-year" look-back period specified by the Marketable Record Title Act.

(3) In addition to any obligations that may be imposed on mining operations by regulatory statutes, which this opinion does not address, whether a mineral rights owner is required to notify a surface owner or occupant of proposed mining operations is determined by the content of the deed or other instruments of conveyance pursuant to which the mineral rights were acquired.

MIKE COX
Attorney General

CHILDREN AND MINORS: Parent's access to minor's mental health records**MENTAL HEALTH:**

A parent to whom a court has granted joint legal custody, but not physical custody, of a minor child may consent to the release of, and have access to, the minor child's mental health records under section 748(6) of the Mental Health Code, unless in the written judgment of the holder of the records the disclosure would be detrimental to the minor child or others.

Opinion No. 7149

February 20, 2004

Honorable Stephen Adamini
State Representative
The Capitol
Lansing, MI 48913

You have asked whether a parent to whom a court has granted joint legal custody, but not physical custody, of a minor child, may consent to the release of, and have access to, the minor child's mental health records under section 748(6) of the Mental Health Code.

Your question seeks clarification of OAG, 2001-2002, No 7092, p 58 (October 16, 2001), which addressed whether section 10 of the Child Custody Act of 1970¹ requires disclosure of a minor's mental health records to the child's noncustodial parent without the consent of the custodial parent required by section 748(6) of the Mental Health Code. That opinion, however, did not consider any distinctions between physical and legal custody in concluding that section 10 of the Child Custody Act does not require disclosure of a minor's mental health services records to the child's noncustodial parent without the consent of the custodial parent required by section 748(6) of the Mental Health Code. You advise that mental health treatment providers seek further guidance in situations where parents share joint legal custody, but not physical custody.

The Mental Health Code requires that records be maintained for recipients of mental health services and that the material in those records "shall be confidential to the extent it is made confidential by section 748." MCL 330.1746(1). Section 748(1) reiterates this confidentiality requirement and provides that the information may be disclosed "only in the circumstances and under the conditions set forth in this section or section 748a."² MCL 330.1748(1). Section 748(6) of the Mental Health Code, which describes circumstances where confidential information may be disclosed, is the focus of your inquiry. Section 748(6) states:

Except as otherwise provided in subsection (4),³ if consent is obtained from the recipient, the recipient's guardian with authority to consent, *the parent with legal custody of a minor recipient*, or the court-appointed personal representative or executor of the estate of a deceased recipient, information made confidential by this section may be disclosed to all of the following:

- (a) A provider of mental health services to the recipient.

¹Section 10 of the Child Custody Act, MCL 722.30, provides: "Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. . . ."

²Section 748a, MCL 330.1748a, deals with neglected and abused children and is not relevant to your question.

³Subsection 4 deals with adult recipients and is not relevant to your question.

(b) The recipient or his or her guardian or *the parent of a minor recipient* or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others. [MCL 330.1748(6); emphasis added.]

Thus, unless the holder of the record determines in writing that the disclosure would be detrimental to the recipient or others, section 748(6) authorizes disclosure of confidential information regarding a minor recipient if the parent with "legal custody" of the minor consents.

A cardinal rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 611; 321 NW2d 668 (1982). Meaning and effect must be given to every word and sentence of a statute, *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000), so as to produce, if possible, a harmonious result. *Weems v Chrysler Corp*, 448 Mich 679, 699-700; 533 NW2d 287 (1995). Thus, it becomes necessary to determine the meaning of "legal custody" by giving effect to both words used together.

Although the Mental Health Code does not define the term "legal custody," guidance as to its meaning is found in the Child Custody Act. "Joint custody" is provided for and defined in subsections (1) and (7) respectively of section 6a of the Child Custody Act, which state in pertinent part:

(1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child

* * *

(7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

(a) That the child shall reside alternately for specific periods with each of the parents.

(b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child. [MCL 722.26a(1) and (7).]

In *Wellman v Wellman*, 203 Mich App 277, 279 (1994), the Court of Appeals analyzed this provision:

In substance, custody disputes between parents are governed by MCL 722.26a; MSA 25.312(6a). In particular, at the request of either parent, as here, the trial court "shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request." MCL 722.26a(1); MSA 25.312(6a)(1). As used in that section, the term "joint custody" means an order that specifies either that "the child shall reside alternately for specific periods with each of the parents," or that "the parents shall share decision-making authority as to the important decisions affecting the welfare of the child," or both. MCL 722.26a(7); MSA 25.312(6a)(7). The trial court must determine whether joint custody is in the best interest of the child by considering the factors enumerated in MCL 722.23; MSA 25.312(3), and by considering whether "the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(a) and (b); MSA 25.312(6a)(1)(a) and (b).

The Court of Appeals went on to make a distinction between a grant of joint legal custody and a grant of physical custody under section 6a of the Child Custody Act:

Further, we are not convinced that it was inconsistent for the trial court to grant joint legal custody while denying joint physical custody. While the parties may have had prior disagreements over visitation, there was also evidence that it was in the children's best interests to maintain more contact with their father than

one would normally expect if the mother had sole custody and the father had nothing more than visitation rights. [203 Mich App at 280.]

Thus, the type of joint custody defined in section 6a(7)(a) of the Child Custody Act, MCL 722.26a(7)(a), is generally referred to as joint *physical* custody. The type of joint custody defined in section 6a(7)(b) of the Child Custody Act is generally referred to as joint *legal* custody. Under the Child Custody Act, however, both types are referred to as "joint custody."⁴

Indeed, the Legislature has recognized the distinction between legal and physical custody in several other provisions of the Mental Health Code. See, e.g., MCL 330.748(5) (a parent "with legal and physical custody" of a minor recipient may consent to release of confidential records to an attorney for the recipient); MCL 330.1716(1)(c) (only a parent with "legal and physical custody" can consent to surgery); MCL 330.1717(1)(b) (only a parent with "legal and physical custody" can consent to electroconvulsive therapy).

Section 748(6) of the Mental Health Code authorizes disclosure of confidential information in a minor recipient's mental health records to a parent of the minor if the parent with "legal custody" of a minor gives consent and the disclosure would not be detrimental to the recipient or others according to the holder of the records. Significantly, in contrast to other sections of the Mental Health Code in which the Legislature has required both "legal and physical" custody, section 748(6) requires only "legal custody." Under the doctrine of statutory construction holding that the express mention in a statute of one thing implies the exclusion of other similar things,⁵ the Legislature's choice to require "legal" but not "physical" custody in section 748(6) must be given effect. Thus, a parent who has "legal" custody is authorized to consent to the release of his or her minor child's mental health records, regardless of whether he or she has physical custody.

This conclusion is also supported by sound public policy. A parent who is granted legal custody of a child "share[s] decision making authority as to the important decisions affecting the welfare of the child." MCL 722.26a(7)(b). Access to a minor child's mental health records may be critical in assuring that this decision-making authority is exercised knowledgably and in accordance with the best interests of the child.

It is my opinion, therefore, that a parent to whom a court has granted joint legal custody, but not physical custody, of a minor child may consent to the release of, and have access to, the minor child's mental health records under section 748(6) of the Mental Health Code, unless in the written judgment of the holder of the records the disclosure would be detrimental to the minor child or others.

MIKE COX
Attorney General

⁴The legal forms approved by the State Court Administrative Office for use in matters involving the Friend of the Court also recognize a distinction between legal custody and physical custody. Form FOC 89, "ORDER REGARDING CUSTODY AND PARENTING TIME," identifies four different types of custody: 1) joint physical custody; 2) joint legal custody; 3) sole legal custody; or 4) sole physical custody. Form FOC 89 can be found at <http://courts.michigan.gov/scao/courtforms/domesticrelations/custody-parentingtime/foc89.pdf>.

⁵Michigan recognizes the principle of *expressio unius est exclusio alterius*. *Stowers v Wolodzko*, 386 Mich 199, 133; 191 NW2d 355 (1971).

FIRE AUTHORITIES: Whether fire authorities may adopt ordinances**MUNICIPAL EMERGENCY SERVICES ACT:****ORDINANCES:****Fire authorities incorporated under the Municipal Emergency Services Act are not empowered to adopt ordinances.**

Opinion No. 7150

March 1, 2004

Honorable Valde Garcia
 State Senator
 The Capitol
 Lansing, MI 48909

Honorable Joe Hune
 State Representative
 The Capitol
 Lansing, MI 48909

Honorable Chris Ward
 State Representative
 The Capitol
 Lansing, MI 48909

You have asked if fire authorities incorporated under the Municipal Emergency Services Act (Act), 1988 PA 57, MCL 124.601 *et seq.*, are empowered to adopt ordinances.

Generally, the title to an act is instructive as to the subjects the Legislature addresses within. See *Baker v State Land Office Bd*, 294 Mich 587, 597; 293 NW 763 (1940). The Act's title provides:

AN ACT to provide for the incorporation by 2 or more municipalities of certain authorities for the purpose of providing emergency services to municipalities; to provide for the powers and duties of authorities and of certain state and local agencies and officers; to guarantee certain labor contracts and employment rights in regard to the formation and reorganization of authorities; to provide for certain condemnation proceedings; to provide for the levy of property taxes for certain purposes; and to prescribe penalties and provide remedies.

Under the Act, two or more municipalities may incorporate an authority for the purpose of providing emergency services. MCL 124.602. The term "emergency services" is defined in section 1 of the Act as follows:

"Emergency services" means fire protection services, emergency medical services, police protection, and any other emergency health or safety services designated in the articles of incorporation of an authority. [MCL 124.601(b).]

An authority is created under the Act once the legislative bodies of the incorporating municipalities adopt the authority's articles of incorporation. It is "a body corporate" and "possesses all the powers necessary to carry out the purposes of its incorporation, and those incident to those purposes" of providing emergency services to municipalities. MCL 124.606. In addition to these general and incidental powers, the Legislature has enumerated in sections 7 through 12 of the Act, additional powers that are possessed by authorities incorporated under the Act. MCL 124.607-MCL 124.612.

A long-standing rule pertinent to your inquiry was summarized by the Michigan Supreme Court in the case of *Home Owners' Loan Corp v Detroit*, 292 Mich 511, 515; 290 NW 888 (1940), as follows:

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the

accomplishment of the declared objects and purposes of the corporation, –not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."

Review of the general and incidental powers provided in section 6 of the Act, and the additional powers provided in sections 7 through 12, fails to disclose express legislative authorization for emergency services authorities to enact ordinances. Nor does a review of the statutory powers of emergency services authorities lead to the conclusion that the power to adopt ordinances is a power that is "necessarily or fairly implied in or incident to the powers expressly granted" or "essential" or "indispensable" to the purposes for which emergency services authorities are incorporated. *Home Owners, supra*.

The Michigan Legislature has authorized authorities created under the Act to adopt "bylaws and rules of administration," MCL 124.609(a), and to enter into contracts that establish the charges for the emergency services provided by the authority, MCL 124.608. The Legislature, however, has neither expressly nor by fair implication granted authorities incorporated under the Act the power to enact ordinances.

The power to adopt ordinances is a governmental function conferred by the Legislature upon local governmental units for the governance of their local affairs. Included in a local government's ordinance authority is the power to enforce ordinances, generally by fines not to exceed \$500.00 or penalties of up to 90 days in jail. Examples of the Legislature having authorized local governmental units to adopt and enforce ordinances are contained in sections 3(k) and 4i of the Home Rule City Act, MCL 117.3(k) and MCL 117.4i; in Chap VI, sections 1 through 14 of the General Law Village Act, MCL 66.1-MCL 66.14; and in sections 1 through 7 of the Township Ordinances Act, MCL 41.181-MCL 41.187. The Legislature has not conferred similar power upon authorities incorporated under the Act.

Section 2(4) of the Act, MCL 124.602(4), does not alter this conclusion. This section provides:

The laws of this state applying to a municipality that becomes a part of an authority also shall continue to apply to the municipality and the authority after the municipality becomes a part of the authority. [MCL 124.602(4).]

In accordance with the rule of statutory construction that the language of a statute must be construed according to its plain and ordinary meaning, *Massey v Mandell*, 462 Mich 375, 380; 614 NW2d 70 (2000), this provision only assures the continued application of the laws of this State following the incorporation of an emergency services authority. See also MCL 8.3a (stating the applicable rule of construction). It does not grant any additional powers to either municipalities or authorities. To construe this provision as vesting in an authority all the powers conferred by law on municipalities, including the police power to adopt ordinances that could subject violators to criminal penalties, would not be a "fair" or "reasonable" construction of the statute. *Home Owners, supra*.

It is my opinion, therefore, that fire authorities incorporated under the Municipal Emergency Services Act are not empowered to adopt ordinances.

MIKE COX
Attorney General

PUBLIC HEALTH CODE: Authority to organize a professional service corporation to provide medical and chiropractic services**CHIROPRACTORS:****A chiropractor may not organize a professional service corporation with an allopathic or osteopathic physician for the purpose of providing medical and chiropractic services.**

Opinion No. 7151

March 9, 2004

Honorable Ken Bradstreet
State Representative
The Capitol
Lansing, Michigan 48909

You have asked if the Professional Service Corporation Act, MCL 450.221 *et seq.*, permits a chiropractor to organize a professional service corporation with an allopathic or osteopathic physician for the purpose of providing medical and chiropractic services.

The practice of chiropractic, the practice of medicine, and the practice of osteopathic medicine and surgery are all regulated under Article 15 of the Public Health Code, MCL 333.16101 *et seq.* Section 4(3) of the Professional Service Corporation Act addresses the ownership of corporations that provide professional services included within the Public Health Code as follows:

Except as otherwise provided in this subsection, if the professional corporation renders a professional service that is included within the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, then all shareholders of the corporation shall be licensed or legally authorized in this state to render the same professional service. One or more physicians and surgeons licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, may organize a professional corporation under this act with 1 or more physicians and surgeons licensed under different provisions of the public health code, 1978 PA 368, MCL 333.1101 to 333.25211. [MCL 450.224(3).]

The answer to your question requires analysis of two issues: (1) whether chiropractors are "licensed . . . to render the same professional service" as allopathic or osteopathic physicians,¹ and (2) whether chiropractors are "physicians and surgeons" as that term is used in section 4(3) of the Professional Service Corporation Act.

Section 2(c) of the Professional Service Corporation Act defines "professional service" as:

[A] type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. Professional service includes, but is not limited to, services rendered by certified or other public accountants, *chiropractors*, dentists, optometrists, veterinarians, *osteopaths, physicians and surgeons, doctors of medicine*, doctors of dentistry, podiatrists, chiroprodists, architects, professional engineers, land surveyors, and attorneys at law. [MCL 450.222(c); emphasis added.]

In determining whether chiropractors, doctors of medicine, and doctors of osteopathic medicine and surgery render the same professional service, it is necessary to examine the scope of practice of each profession. Section 16401(1)(b) of the Public Health Code defines the "practice of chiropractic" as:

¹The term "allopathic physician" refers to a person who holds a doctor of medicine degree and is licensed to practice under Article 15, Part 170, of the Public Health Code, MCL 333.17001 *et seq.*

[T]hat discipline within the healing arts which deals with the *human nervous system and its relationship to the spinal column and its interrelationship with other body systems*. Practice of chiropractic includes the following:

(i) Diagnosis, including spinal analysis, to determine the existence of *spinal subluxations or misalignments* that produce nerve interference, indicating the necessity for chiropractic care.

(ii) A chiropractic adjustment of *spinal subluxations or misalignments* and related bones and tissues for the establishment of neural integrity utilizing the inherent recuperative powers of the body for restoration and maintenance of health.

(iii) The use of analytical instruments, nutritional advice, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating *spinal subluxations or misaligned vertebrae* of the human spine. *The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the dispensing or prescribing of drugs or medicine.* [MCL 333.16401(1)(b); emphasis added.]

Section 17001(1)(d) of the Public Health Code defines the "practice of medicine" as:

[T]he diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts. [MCL 333.17001(1)(d).]

Section 17501(1)(c) of the Public Health Code defines the "practice of osteopathic medicine and surgery" as:

[A] separate, complete, and independent school of medicine and surgery utilizing full methods of diagnosis and treatment in physical and mental health and disease, including the prescription and administration of drugs and biologicals, operative surgery, obstetrics, radiological and other electromagnetic emissions, and placing special emphasis on the interrelationship of the musculoskeletal system to other body systems. [MCL 333.17501(1)(c).]

While there is some overlap between the practice of chiropractic and the practice of medicine or osteopathic medicine, the services offered by chiropractors are not the same as those offered by allopathic or osteopathic physicians. The practice of chiropractic is a limited subcategory of the practice of medicine. *Attorney General v Beno*, 422 Mich 293, 311; 373 NW2d 544 (1985); *Green v Rawlings*, 290 Mich 397, 399; 287 NW 557 (1939); *Erdman v Great Northern Life Ins Co*, 253 Mich 579, 583; 235 NW 260 (1931); *Locke v Ionia Circuit Judge*, 184 Mich 535, 542-545; 151 NW 623 (1915); OAG, 1969-1970, No 4695, p 179, 180-181 (September 16, 1970); OAG, 1961-1962, No 4046, p 452 (July 20, 1962). Since section 16401(1)(b) of the Public Health Code limits chiropractors to the treatment of spinal subluxations or misalignments and prohibits them from performing surgery or prescribing drugs, the practice of chiropractic is much narrower than either the practice of medicine or of osteopathic medicine and surgery. OAG, 1993-1994, No 6797, p 141, 142 (May 13, 1994).

In addition, after reviewing applicable case law, OAG, 1979-1980, No 5503, p 223, 225 (July 5, 1979), explained that "[c]hiropractors perform their activities in accordance with a theory of healing which is different from that which underlies the practice of medicine or the practice of osteopathic medicine and surgery" and concluded that "chiropractors are required to adhere to the tenets of their separate healing systems." Thus, "as neither a doctor of medicine nor a doctor of osteopathy renders chiropractic services, only a practitioner of the chiropractic system of healing

renders 'chiropractic services.'" *Id.*, at 226. Similarly, OAG, No 6797, at 142-143, explained that "[a]llopathic and osteopathic physicians may treat the same conditions using a similar procedure to that used by chiropractors, but, because of differences in knowledge, skill, training, approach and professional responsibility, the services rendered are not the same."

Therefore, since the scope of practice of chiropractic is limited to treatment of spinal subluxations and misalignments, and since chiropractors may not perform surgery or prescribe drugs, chiropractors are not licensed to render the same professional services as allopathic or osteopathic physicians.

The first sentence of section 4(3) of the Professional Service Corporation Act requires that shareholders be licensed to render the same professional service "[e]xcept as otherwise provided in this subsection." MCL 450.224(3). The second sentence of section 4(3) provides an exception as follows:

One or more *physicians and surgeons* licensed under the public health code . . . may organize a professional corporation under this act with 1 or more physicians and surgeons *licensed under different provisions of the public health code . . .*" [MCL 450.224(3); emphasis added.]

"Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence.'" *Levy v Martin*, 463 Mich 478, 493-494; 620 NW2d 292 (2001), quoting *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). The second sentence of section 4(3), allowing physicians and surgeons licensed under different provisions of the Public Health Code to organize a corporation, only has purpose and effect if the first sentence requires that all shareholders hold the same professional license. Accordingly, chiropractors may only organize corporations with allopathic or osteopathic physicians if they are "physicians and surgeons" within the meaning of the second sentence of section 4(3) of the Professional Service Corporation Act.

The Professional Service Corporation Act does not define the term "physician and surgeon." "The meaning to be given to the term 'physician and surgeon' must and does depend in a large measure on the context in which the term appears and the intended meaning and application of the term within such context and the subject matter." OAG, 1961-1962, No 4014, p 287, 288 (February 22, 1962). See also *Tyler v Livonia Public Schools*, 459 Mich 382, 390-391; 590 NW2d 560 (1999) (stating the rule of statutory construction).

Section 16401(1)(a) of the Public Health Code recognizes the term "chiropractic physician" as an alternate name for a chiropractor. Numerous Attorney General opinions have concluded that chiropractors are physicians as that term is used in the context of certain statutes. OAG, No 4695, at p 181 (chiropractors are physicians providing medical services under the Michigan Social Welfare Act); OAG, No 4046, at p 452 (chiropractors are physicians within the limitations of chiropractic licensure law); OAG, 1951-1952, No 1247, p 12 (July 19, 1950) (chiropractors are physicians under the act governing county public hospitals). Conversely, other opinions have concluded that chiropractors are *not* physicians in the context of other statutes. OAG, 1987-1988, No 6523, p 338 (June 9, 1988) (chiropractors are not physicians in the context of the crippled children's program); 1 OAG, 1959-1960, No 3346, p 7 (January 26, 1959) (chiropractors are not physicians under the county medical examiner act); 1 OAG, 1955-1956, No 1894, p 2 (January 7, 1955) (chiropractors are not physicians under an administrative rule requiring physical examinations of students engaged in interscholastic activities); OAG, 1941-1942, No 23051, p 552 (March 18, 1942) (chiropractors are not physicians under the act regulating boxing and wrestling).

Assuming chiropractors are physicians for some purposes, this does not mean that they are "physicians and surgeons" within the context of the Professional Service Corporation Act. Every word of a statute must be given purpose and effect. *Levy v Martin*, 463 Mich at 493-494. It must be presumed that the Legislature used the

phrase "physician *and surgeon*," rather than "physician" alone, for a reason. In addition, the conjunctive "and" should be read literally, as long as an "accurate reading does not render the sense dubious." *Indenbaum v Michigan Bd of Medicine*, 213 Mich App 263, 272; 539 NW2d 574 (1995). Thus, the phrase "physician and surgeon" indicates a physician who can perform surgery. While many allopathic and osteopathic physicians do not perform surgery, the general categories of licensed health professionals to which they belong are legally authorized to do so. Since section 16401(1)(b)(iii) of the Public Health Code specifically prohibits chiropractors from performing surgery, they are not "physicians and surgeons."

Information supplied with your request indicates that the Department of Consumer and Industry Services, Bureau of Commercial Services, accepts for filing articles of incorporation for professional service corporations organized by podiatrists and allopathic or osteopathic physicians. There is no inconsistency between this policy and the Bureau's refusal to allow chiropractors to incorporate with allopathic or osteopathic physicians. Unlike chiropractors, podiatrists are authorized to perform surgery and are considered "physicians and surgeons" under the Public Health Code. See Public Health Code sections 18001(1)(a) and (b), 18011, 18012(1), and 18033(1). MCL 333.18001(1)(a) and (b), MCL 333.18011, MCL 333.18012(1), and MCL 333.18033(1). See also OAG, 1961-1962, No 4014, p 287 (February 22, 1962) (holding that chiropodists, i.e., podiatrists, are physicians and surgeons under a licensing statute preceding the Public Health Code).

The legislative analysis of House Bill 4944, which became 1997 PA 139 and which added the second sentence to section 4(3) of the Professional Service Corporation Act, explains the history behind the Bureau's policy of allowing podiatrists to incorporate with allopathic and osteopathic physicians:

The Professional Service Corporation Act permits professionals such as attorneys, physicians, and accountants to incorporate as professional service corporations (PCs). Under the act, one or more licensed persons may organize to become a shareholder or shareholders of a PC. A professional corporation may render one or more professional services, but each shareholder must be licensed in one or more of the professional services rendered by the PC. However, under the act, if a PC renders a professional service that is included within the Public Health Code, all of its shareholders must be licensed or legally authorized to render the same professional service.

Historically, the Corporation and Securities Bureau within the Department of Consumer and Industry Services interpreted the phrase "render the same professional service" as requiring that all the shareholders in a PC hold the same license. For instance, a dentist may form a PC with another dentist, but not with a chiropractor. This was also interpreted as meaning that a doctor of medicine (MD) could not form a PC with an osteopath (DO) or a podiatrist (DPM).

In response to requests, the bureau reviewed the statutory language and issued Release 94-1-C in February of 1994. In the directive, the bureau concluded that the act's definition of "professional service" did "not necessarily require that the shareholders possess the same license, but rather that the person be licensed to provide the same professional service." The act defines "professional service" in part as including, but not limited to, "services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, professional engineers, land surveyors, and attorneys at law." The directive went on to point out that though the definition specifically mentioned MDs, DOs, and DPMs, it also specified physicians and surgeons as a category. Since MDs, DOs, and DPMs may be denoted as physicians and surgeons under administrative rules and provisions of the Bureau of Occupations and Professional Regulation, the director of the Corporation and Securities Bureau ruled that "surgeons and physicians possessing any of the

specific licenses may be shareholders in a professional service corporation where the professional services are to be rendered by physicians and surgeons."

Since the release of the directive, doctors of medicine, osteopaths, and podiatrists have been permitted to form professional service corporations with each other. However, some physicians and surgeons have expressed a concern that the statutory language remains ambiguous and have requested that the law be amended to more clearly reflect the bureau's current practice. [House Legislative Analysis, HB 4944, October 8, 1997.]

The legislative analysis goes on to state that "[t]he bill would therefore permit persons licensed to practice medicine (MDs), osteopathic medicine and surgery (DOs), and podiatric medicine and surgery (DPMs) to form professional corporations with each other." *Id.*

Thus, the legislative history of 1997 PA 139 confirms that, by choosing the terms "physicians and surgeons" when it added the second sentence to section 4(3) of the Professional Service Corporation Act, the Legislature only intended to allow podiatrists, allopathic physicians, and osteopathic physicians to incorporate with one another.

It is my opinion, therefore, that a chiropractor may not organize a professional service corporation with an allopathic or osteopathic physician for the purpose of providing medical and chiropractic services.

MIKE COX
Attorney General

FIREARMS: License to purchase pistols**LICENSES:**

A local unit of government may not require an applicant for a license to purchase a pistol to provide his or her fingerprints before issuing the license. Where an applicant's identity is reasonably called into question, a local law enforcement official who is unable for that reason to determine that the applicant has demonstrated the existence of all the circumstances necessary to deem that applicant "qualified" may deny the application. If the applicant chooses to provide his or her fingerprints, the local law enforcement official may accept them to attempt to resolve the matter.

Opinion No. 7152

March 29, 2004

Honorable John Garfield
State Representative
The Capitol
Lansing, Michigan

You have asked whether a local unit of government may require an applicant for a license to purchase a pistol to provide his or her fingerprints before issuing the license.

The Legislature has established the circumstances under which a person may obtain a license to purchase a pistol, commonly referred to as a "pistol purchase permit." Section 2(3) of the Firearms Law, 1927 PA 372, MCL 28.422(3), provides that "[t]he commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department . . . shall with due speed and diligence issue licenses to purchase, carry, or transport pistols to qualified applicants" unless the local official has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. The statute provides that an applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network pursuant to [seven specified statutes].

(b) The person is 18 years of age or older or, if the seller is licensed pursuant to section 923 of title 18 of the United States Code, 18 U.S.C. 923, is 21 years of age or older.

(c) The person is a citizen of the United States and is a legal resident of this state.

(d) A felony charge against the person is not pending at the time of application.

(e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.224f of the Michigan Compiled Laws.

(f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.

(g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does not apply to a person who has had his or her legal capacity restored by order of the court.

(i) The person correctly answers 70% or more of the questions on a basic pistol safety review questionnaire approved by the basic pistol safety review board and provided to the individual free of charge by the licensing authority. . . . [MCL 28.422(3)(a)-(i).]

Applications for licenses must be signed by the applicant under oath on forms provided by the Department of State Police. MCL 28.422(4). Under MCL 28.422(11), a person who forges any matter on an application for a license under this section is guilty of a felony. As you observe in your letter, however, no provision of MCL 28.422 requires that an applicant provide his or her fingerprints in order to receive a license to purchase a pistol or authorizes a local law enforcement officer to impose such a requirement.¹

MCL 28.422 differs in this respect from section 5b of the Firearms Law, MCL 28.425b, which describes the process for obtaining a license to carry a concealed pistol. Section 5b(9), MCL 28.425b(9), states in pertinent part: "An individual, after submitting an application and paying the fee prescribed under subsection (5), shall request and have classifiable fingerprints taken by the county sheriff or a local police agency if that local police agency maintains fingerprinting capability. . . . The county sheriff or local police agency shall take the fingerprints within 5 business days after the request." The fingerprints must be taken on forms and in a manner prescribed by the Department of State Police. MCL 28.425b(10). They are then forwarded to the Department of State Police for comparison with fingerprints already on file with the department, which then forwards the fingerprints to the Federal Bureau of Investigation. MCL 28.425b(10). Under this section, the concealed weapon licensing board may deny a license if an individual's fingerprints are not "classifiable" by the Federal Bureau of Investigation. MCL 28.425b(10).²

In construing a statute, the primary task is to discern and give effect to the intent of the Legislature. *Dan De Farms Inc v Sterling Farm Supply Inc*, 465 Mich 872; 633 NW2d 824 (2001). Provisions that the Legislature did not include may not be added into a statute. *In re Wayne County Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998). In the absence of a statutory provision authorizing a local law enforcement agency to impose such a requirement, as here, one cannot be read into the statute.

¹ A review of the current form the Department of State Police provides law enforcement officers for their use in processing applications for a license to purchase a pistol reveals no provision requiring an applicant to provide fingerprints or authorizing a law enforcement officer to impose such a requirement. This opinion should not be read to foreclose the state police from making a change in the form to add such a requirement. This opinion only addresses the authority of a local unit of government or its officers to impose such a requirement in the absence of such a form.

In addition, administrative rules promulgated by the Department of State Police, 1979 AC, R 28.91 and R 28.92, do not apply here. Each of these rules was adopted pursuant to authority in MCL 28.422 and MCL 28.426. The latter of these statutes was repealed by 2000 PA 381. The rules, while they remain in effect, appear to address circumstances that do not apply to your question.

² For other statutes in which the Legislature has expressly authorized or required the taking of fingerprints under certain circumstances, see, e.g., MCL 207.1056 (application for license under Motor Fuel Tax Act); MCL 256.604(1) (application for license to engage in driver training school business); MCL 257.248f(2) (applications for vehicle dealer or salvage vehicle agent license under Michigan Vehicle Code); MCL 257.307 (application for operator's or chauffeur's license under Michigan Vehicle Code); MCL 338.1710 (application for license under Forensic Polygraph Examiners Act); MCL 451.602 (application for registration under Uniform Securities Act); MCL 600.949 (application for admission to state bar); and MCL 711.1 (petition for name change under Probate Code).

Further support for this conclusion is found in MCL 123.1102, which provides:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, *or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols* or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, *except as otherwise provided by federal law or a law of this state.* [Emphasis added.]

While this section refers to a "local unit of government" and not individual local officers, its meaning is plain. The Legislature has occupied the field of firearm regulation and has authorized local regulation in this area only to the extent expressly provided by law. *Michigan Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich App 401, 418; 662 NW2d 864 (2003).

It is important to emphasize, however, that section 2(3) of the Firearms Law, MCL 28.422(3), confers discretion on the law enforcement officials specified in that section to deny an application for a license to purchase a pistol where he or she has probable cause to believe the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate the law. Moreover, if the official processing an individual's application reasonably believes the applicant has falsified his or her identity such that the official cannot adequately determine that the applicant has demonstrated the existence of all the necessary circumstances establishing that the applicant is "qualified," such a belief would also justify denying the application. Under these circumstances, if the applicant chooses to provide his or her fingerprints, the local law enforcement official may accept them to attempt to resolve the matter.

It is my opinion, therefore, that a local unit of government may not require an applicant for a license to purchase a pistol to provide his or her fingerprints before issuing the license. Where an applicant's identity is reasonably called into question, a local law enforcement official who is unable for that reason to determine that the applicant has demonstrated the existence of all the circumstances necessary to deem that applicant "qualified" may deny the application. If the applicant chooses to provide his or her fingerprints, the local law enforcement official may accept them to attempt to resolve the matter.

MIKE COX
Attorney General

ELECTIONS: Recall of intermediate school district board members**RECALL:****INTERMEDIATE SCHOOL DISTRICTS:**

A member of a board of an intermediate school district who was elected by a body composed of one member of the board of each constituent school district pursuant to section 614 of the Revised School Code, MCL 380.614, is subject to recall pursuant to section 1105 of the Code, MCL 380.1105.

In order to recall an intermediate school district board member, the petitions for recall must be signed by registered and qualified electors equal to not less than 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the constituent school districts that comprise the intermediate school district.

If a member of the board of an intermediate school district who has been elected by school board members of the constituent districts is recalled, the vacancy is filled by the remaining members of the intermediate school board. If the vacancy is not filled within 30 days after it occurs, the vacancy shall be filled by the State Board of Education.

Opinion No. 7153

March 30, 2004

Honorable Mike Bishop
State Senator
The Capitol
Lansing, MI 48909-7536

You have asked several questions relating to the election of intermediate school district board members. Your first question asks whether a member of a board of an intermediate school district who has been elected by a body composed of one member of the board of each constituent school district pursuant to section 614 of the Revised School Code is subject to recall.¹

Section 601 of the Revised School Code (Code), MCL 380.601, provides:

An intermediate school district shall be governed by this part [Part 7] and by those provisions of articles 2, 3, and 4 which relate specifically to intermediate school districts, intermediate school boards, and intermediate superintendents.

Pursuant to the Code, an individual can be elected to an intermediate school board in one of two ways. First, under section 614, MCL 380.614, intermediate school board members may be elected by a body composed of one member of the school board of each constituent district. A candidate for election to the intermediate school board under section 614 must either be nominated by petitions that are signed by a specified

¹Recent amendments to the Revised School Code, MCL 380.1 *et seq.*, and the Michigan Election Law, MCL 168.1 *et seq.*, substantially revise the laws applicable to school elections. 2003 PA 299, effective January 1, 2005, repeals the portion of the Revised School Code concerning elections, MCL 380.1001-MCL 380.1106, including the specific provision discussed in this opinion concerning the recall of intermediate school district board members, MCL 380.1105. 2003 PA 302, effective March 30, 2004 (and September 1, 2004, regarding the dates on which certain elections are to be held), adds a chapter XIV to the Michigan Election Law in which, in section 4(b), "[s]chool board member" is defined in a way that would also impact the analysis and conclusion of this opinion. Thus, the conclusions reached in this opinion apply only to the Revised School Code in force before the effective dates of 2003 PA 299 and 2003 PA 302.

number of school electors of the combined constituent school districts or pay a nonrefundable filing fee. MCL 380.614(4) and (6). Second, if the electors of the constituent districts comprising the intermediate school district choose by popular election to do so, intermediate school board members may be elected by the electors of the constituent districts that make up the intermediate school district. MCL 380.615-MCL 380.617.

The recall of school board members, including intermediate school board members, is addressed in section 1105 of the Code, MCL 380.1105, a provision of article 2:

Each member of a board of a school district, a local act school district, or an intermediate school district is subject to recall by the school electors of the respective district in the manner prescribed in sections 951 to 976 of Act No. 116 of the Public Acts of 1954, as amended, being sections 168.951 to 168.976 of the Michigan Compiled Laws.

Thus, although the Legislature has created two different mechanisms for electing intermediate school board members in MCL 380.614-MCL 380.617, the Legislature has made no such distinction when providing for their recall.

Turning to your question, it is a well established rule of statutory construction that the words of a statute are to be applied as plainly expressed. As recently noted by the Michigan Supreme Court, "[o]ur most fundamental principle of statutory construction [is] that there is no room for judicial interpretation when the Legislature's intent can be ascertained from the statute's plain and unambiguous language." *Jones v Dep't of Corrections*, 468 Mich 646, 657; 664 NW2d 717 (2003), citing *People v Hawkins*, 468 Mich 488; 668 NW2d 602 (2003). When construing a statute, provisions cannot be added that the Legislature did not include. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997).

Section 1105 plainly and unambiguously provides that "[e]ach member of a board of . . . an intermediate school district is subject to recall by the school electors of the respective district" without reference to how the board member was elected. The term "school elector" is defined in the Code as a person who is a resident of the intermediate school district on or before the 30th day before the next ensuing annual or special school election and qualifies as an elector under the Michigan Election Law. See MCL 380.6(2).

Consideration of your question would not be complete without examination of section 951 of the Michigan Election Law, MCL 168.951, which provides in part that "[e]very elective officer in the state, except a judicial officer, is subject to recall." This section follows the command of Const 1963, art 2, § 8, which states in part: "Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record" It is acknowledged that the methods for selecting intermediate school district board members set forth in MCL 380.614 to MCL 380.617 are either by direct popular election or election by representatives of the constituent school districts and that the courts have characterized the method of election by school district representatives as more "appointive" in nature than "elective." See *Sailors v Kent Bd of Ed*, 387 US 105, 109; 87 S Ct 1549; 18 L Ed 2d 650 (1967); *Bd of Ed v DeVries*, 34 Mich App 542, 544; 192 NW2d 58(1971).²

²Cases interpreting Const 1963, art 2, § 8, and the "one person one vote" principle of election law based on equal protection guarantees are not applicable to your question. Your question is one of straightforward statutory construction. In that exercise, I am guided by the clear direction of the Michigan Supreme Court to avoid "an invitation to . . . lawmaking" and instead focus "on what the Legislature *said* through the text of the statute," and not on what some might argue "the Legislature *must really have meant* despite the language it used." *People v McIntire*, 461 Mich 147, 156, n 2, 157; 599 NW2d 102 (1999). (Emphasis in original.)

However, MCL 380.1105 makes clear that "each" member of an intermediate school district board is subject to recall "in the manner" prescribed in the Michigan Election Law. The Legislature's choice of these words is significant. The common and approved usage of the word "each"³ conveys a meaning of "every one of two or more considered separately" and the words "in the manner" convey the intent that only "the manner" of election shall be as described in the Michigan Election Law, and not more substantive matters such as the officers who are subject to recall. See *Viculin v Dep't of Civil Service*, 386 Mich 375, 397; 192 NW2d 449 (1971). Thus, the Legislature's reference to the Michigan Election Law in MCL 380.1105 provides additional support for the conclusion reached in this opinion.

It is my opinion, therefore, in answer to your first question, that a member of a board of an intermediate school district who was elected by a body composed of one member of the board of each constituent school district pursuant to section 614 of the Revised School Code, MCL 380.614, is subject to recall pursuant to section 1105 of the Code, MCL 380.1105.

Your second question asks about the number of signatures that must be submitted in order to trigger a recall in compliance with section 955 of the Michigan Election Law, MCL 168.955.

Section 1105 of the Revised School Code provides for the recall of intermediate school district board members in the manner prescribed in sections 951 to 976 of 1954 PA 116, as amended, MCL 168.951-MCL 168.976. These sections are included in the chapter of the Michigan Election Law, MCL 168.1 *et seq.*, related to recall.

The initial step in the process to recall a board member involves circulating petitions that describe the reasons for the recall. MCL 168.952. Section 955 of the Michigan Election Law prescribes the number of signatures that must be collected. Circulators must accumulate signatures from "registered and qualified electors equal to not less than 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the electoral district of the officer sought to be recalled." MCL 168.955. In the case of an intermediate school district board member, the "electoral district of the officer sought to be recalled" is the territory made up of the constituent districts that comprise the intermediate school district. MCL 380.615. The language of section 955 is clear and unambiguous and must, therefore, be interpreted according to its plain meaning. *Jones, supra*, 468 Mich at 657.

It is my opinion, therefore, in answer to your second question, that in order to recall an intermediate school district board member, the petitions for recall must be signed by registered and qualified electors equal to not less than 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the constituent school districts that comprise the intermediate school district.

In your third question you ask what mechanism is used to fill a vacancy on an intermediate school district board created in the event of a successful recall of an intermediate school district board member.

The Revised School Code directly addresses your question. Section 614 of the Code describes the mechanism for filling a vacancy on the intermediate school district board when the board has been elected by school board members of the intermediate school district's constituent school districts:

³MCL 8.3a states the rule that words used in a statute shall be construed and understood according to the "common and approved usage of the language." For a dictionary definition of the word "each," see *Webster's New World Dictionary, Third College Edition* (1988).

A vacancy shall be filled by the remaining members of the intermediate school board until the next biennial election at which time the vacancy shall be filled for the balance of the unexpired term. Notice of the vacancy shall be filed with the state board within 5 days after the vacancy occurs. If the vacancy is not filled within 30 days after it occurs, the vacancy shall be filled by the state board. [MCL 380.614(3).]

It is my opinion, therefore, in answer to your third question, that if a member of the board of an intermediate school district who has been elected by school board members of the constituent districts is recalled, the vacancy is filled by the remaining members of the intermediate school board. If the vacancy is not filled within 30 days after it occurs, the vacancy shall be filled by the State Board of Education.

MIKE COX
Attorney General

EDUCATION: Enrollment in public school districts upon leaving public school academies after pupil membership count day**PUBLIC SCHOOL ACADEMIES:****SCHOOLS AND SCHOOL DISTRICTS:**

A public school academy is not a "school district" for purposes of section 1147 of the Revised School Code, MCL 380.1147. Rather, section 1147 applies to general powers school districts and first class school districts, which, in accordance with the clear language of that section, must enroll students who reside in the district.

A public school district is obligated under section 1147 of the Revised School Code to enroll a student who elects to leave a public school academy and who resides in the district regardless of when in the school year the student chooses to enroll.

If, after the pupil membership count day, a general powers school district enrolls former public school academy students, the district is entitled to receive a portion of the per pupil funds attributable to those students if the enrollment satisfies the statutory requirements described in section 25b of the State School Aid Act of 1979, MCL 388.1625b.

A public school district must enroll a child who is qualified by age and residence and the district may not treat such a student who has exercised an educational option, such as attending a public school academy, as if that student were a nonresident of the district.

Opinion No. 7154

March 31, 2004

Honorable Wayne Kuipers
State Senator
The Capitol
Lansing, MI 48909

Honorable Barbara Vander Veen
State Representative
The Capitol
Lansing, MI 48909

Honorable Bill Huizenga
State Representative
The Capitol
Lansing, MI 48909

You have asked several questions regarding the situation that arises when students leave public school academies and enroll in public school districts after the pupil membership count day.

You first ask whether a public school academy is a "school district" for purposes of the State School Aid Act of 1979 and the Revised School Code, particularly section 1147 of the Revised School Code, MCL 380.1147. The Revised School Code (Code), MCL 380.1 *et seq.*, provides that a public school academy is a public school for purposes of Const 1963, art 8, § 2, and a public school district for purposes of Const 1963, art 9, § 11. MCL 380.501(1). Const 1963, art 8, § 2, provides that the Legislature shall maintain and support a system of free public elementary and secondary schools. Const 1963, art 9, § 11, establishes a state school aid fund, which provides funds to support K-12 education in Michigan.

Public school academies are included in the definition sections of both the Code and the State School Aid Act of 1979 (State School Aid Act). The definition of "public school" in the Code includes public school academy corporations, MCL 380.5(5), and the definition of "district" in the State School Aid Act includes public

school academies, with certain enumerated statutory exceptions. MCL 388.1603(6). The Michigan Supreme Court has confirmed that public school academies are public schools, subject to the general supervision of the State Board of Education. *Council of Organizations and Others for Education About Parochial v Governor*, 455 Mich 557, 583-584; 566 NW2d 208 (1997). The Court held that public school academies meet the qualifications established by the Legislature for state funding and do not offend any constitutional provision. Accordingly, public school academies qualify as public schools under the Code and the State School Aid Act. *Id.*, at 573-574. This does not mean, however, that a public school academy is a "school district" for all purposes of the Code, particularly for purposes of section 1147.

Section 1147 creates a statutory right for all school age children to attend public school in the school district in which the child resides:

A person, resident of a school district not maintaining a kindergarten and at least 5 years of age on the first day of enrollment of the school year, shall have a right to attend school in the district. [MCL 380.1147(1).]

Under section 1147, any child who is a resident of a school district has the right to attend school in the district and is entitled to enroll in the district. *Snyder v Charlotte Public School Dist*, 421 Mich 517, 533; 365 NW2d 151 (1984). ("By couching § 1147 in terms of a child's 'right' and 'entitlement' to attend school, the Legislature wished to prevent public school districts from arbitrarily refusing admission to children who live in the district and meet the age requirements." *Id.*, at 528, n 3.)

The primary rule of statutory construction is to effectuate the intent of the Legislature. *Sun Valley Foods v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). If the language of the statute is unambiguous, the Legislature is presumed to have intended the clear meaning it expressed. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Additionally, when interpreting statutory language, all words and phrases are to be construed and understood in accordance with the common usage of the language. *Massey v Mandell*, 462 Mich 375, 380; 614 NW2d 70 (2000). Finally, every word should be given meaning and, if possible, no word should be treated as surplusage or rendered nugatory. *Pittsfield Charter Twp v Washtenaw County*, 468 Mich 702, 714; 664 NW2d 193 (2003).

General powers school districts, MCL 380.11a(1), and first class school districts, MCL 380.401, occupy territory within defined geographical boundaries and have residents who live within those boundaries. See MCL 380.626. Public school academies, in contrast, have no defined geographical territory assigned to them.¹ Accordingly, section 1147, which gives a school-aged person who is a "resident of a school district" the right to attend school in that district, has no application to public school academies.

It is my opinion, therefore, in answer to your first question, that a public school academy is not a "school district" for purposes of section 1147 of the Revised School Code. Rather, section 1147 applies to general powers school districts and first class school districts, which, in accordance with the clear language of that section, must enroll students who reside in the district.

You next ask whether a public school district is obligated to enroll a student who elects to leave a public school academy after the fall count date, even though the school district does not receive the per pupil foundation allowance for that student, which remains with the public school academy.

State school aid payments are made on the basis of the number of pupils in membership in the district or public school academy as defined in section 6(4) of the State School Aid Act. MCL 388.1606(4). The number of pupils in membership in

¹ While an academy may hold real property for educational purposes, MCL 380.504a, a public school academy may not levy *ad valorem* property taxes or any other tax for any purpose. MCL 380.503(8).

the district is determined by a weighted formula that considers the number of full-time equated pupils enrolled and in regular daily attendance in the district or public school academy on two count days. The count days are defined in the Act as the "pupil membership count day," which is the fourth Wednesday in September, except for a district maintaining school for an entire school year, MCL 388.1606(7), and the "supplemental count day," which is the second Wednesday in February. MCL 388.1606a. Districts and public school academies receive funds based on a per membership pupil foundation allowance calculated as provided in section 20 of the State School Aid Act, MCL 388.1620.

Section 1147 provides that any school-aged child who is a resident of a school district has the right to attend school in the district. MCL 380.1147. Nothing in the Code provides that by choosing to enroll in and attend a public school academy, a student relinquishes the right to leave the public school academy and enroll in and attend school in his or her district of residence. Rather, under section 1147, the statutory right to attend school in the student's district of residence exists regardless of whether the student was previously enrolled in a public school academy and regardless of when in the school year the student chooses to enroll. To read section 1147 as containing those limitations would impermissibly impose restrictions not mandated by the Code. *Feaster v Portage Public Schools*, 451 Mich 351, 357; 547 NW2d 328 (1996).

It is my opinion, therefore, in answer to your second question, that a public school district is obligated under section 1147 of the Revised School Code to enroll a student who elects to leave a public school academy and who resides in the district regardless of when in the school year the student chooses to enroll.

Your next question assumes that the public school district must enroll the former public school academy student after the fall count date to be in compliance with section 1147 and asks whether the district is entitled to receive the per membership pupil foundation allowance, or a prorated share of the foundation allowance, based on the length of time the student will be enrolled in the public school district.

In section 25b of the State School Aid Act, MCL 388.1625b, the Legislature has provided a mechanism by which a general powers school district,² called the educating district, may recover a portion of the foundation allowance when pupils who reside in the district were counted in membership on the pupil membership count day by a public school academy or other district and enroll in the educating district after that date.

Section 25b permits an educating district to recover funds only if the following conditions apply: (1) the pupil transfers from one of three other districts (which include public school academies³), specified by the educating district and enrolls after the pupil membership count day; (2) the pupil was counted in membership in the district or public school academy from which the pupil transferred; (3) the pupil was a resident of the educating district on the pupil membership count day or met other eligibility criteria to be counted in membership in the educating district on the count day; and (4) the total number of pupils described above who transferred from one of the three other districts or public school academies and enrolled in the educating district is at least equal to the greater of 25 or 1% of the educating district's membership. MCL 388.1625b(1).

If these conditions are met, the educating district reports this to the Department of Education and the district or public school academy that counted the pupil in membership. The public school academy or district then must pay the educating district an amount equal to the per pupil foundation allowance or payment calculated under section 20 of the State School Aid Act, prorated according to the number of

²Section 25b expressly excludes first class school districts. MCL 388.1625b(1).

³See MCL 388.1603(6).

days that the pupil attends school in the educating district as compared with the number of days that the pupil was enrolled in the district or public school academy that counted the pupil in membership. If the district or public school academy that counted the pupil in membership does not make the payment within 30 days of receiving the report, the Department of Education must calculate the amount owed and deduct that amount from the district or public school academy's state school aid payments for the balance of the fiscal year and pay this amount to the educating district. MCL 388.1625b(2).

It is my opinion, therefore, in answer to your third question, that if, after the pupil membership count day, a general powers school district enrolls former public school academy students, the district is entitled to receive a portion of the per pupil funds attributable to those students if the enrollment satisfies the statutory requirements described in section 25b of the State School Aid Act, MCL 388.1625b.

Your final question also assumes that the public school district of residence must enroll the former public school academy student after the fall count day and asks whether the district may treat the former public school academy student as it would any other student seeking enrollment from another school district; that is, you ask whether the public school district of residence may require the family or student to follow the district's procedures, such as "schools of choice" procedures, for enrolling a student from another school district during the school year.

To answer this question, it is helpful to review the background and history of Michigan's statutes that have created increased educational options for students. As described above, section 1147 of the Code continues Michigan's long-standing policy that children have the right to attend school in the school district in which they reside. If a child wants to attend school in a district other than his or her district of residence, the Code provides that each school district has the discretionary authority to admit nonresident students; however, if the school district does so, it must charge tuition for that nonresident student. MCL 380.1401. See *Jones v Grand Ledge Public Schools*, 349 Mich 1, 10; 84 NW2d 327 (1957), interpreting section 340.582, the predecessor provision in the School Code of 1955; OAG, 1985-1986, No 6316, pp 151, 152 (September 25, 1985). Additionally, in order to count and receive state school aid funds for the nonresident student, the State School Aid Act provides that the nonresident, educating school district must have the approval of the student's district of residence. MCL 388.1606(4)(b).

In recent years, the Legislature has enacted statutory exceptions to these long-standing policies and has created educational options that allow students to attend schools other than their district of residence public schools without paying tuition or obtaining approvals from their resident district. For example, public school academies were created as an alternative to traditional public schools. MCL 380.501 *et seq.* A student may choose to attend a public school academy without paying tuition and a public school academy may count a student in membership and receive state school aid for the student without the approval of the student's district of residence. MCL 388.1606(6)(c).

In 1996, the Legislature created another option commonly referred to as "schools of choice." Established under section 105 of the State School Aid Act, MCL 388.1705, "schools of choice" is a procedure by which school districts may choose to open their enrollment to nonresident students and receive state aid funds for those students without the approval of the student's district of residence. The "schools of choice" option under section 105 is limited to situations in which both the enrolling "choice" district and the resident district are located in the same intermediate school district.

In 1999, through 1999 PA 119, the Legislature added section 105c to the State School Aid Act to extend "schools of choice" to situations in which the enrolling district and the resident district are contiguous but are located in different intermediate school districts. MCL 388.1705c. Section 105c establishes a procedure

by which school districts may choose to open their enrollment to nonresident students who live in a contiguous school district located in another intermediate school district and receive state school aid funds for those students, without the approval of the student's district of residence.

By enacting the statutes described above, the Legislature has created options that allow students to attend schools other than the schools in their district of residence, including public school academies, without paying tuition or obtaining approval from their resident district. The Legislature has never provided that students who choose to exercise these options relinquish the statutory right established in section 1147 to attend school in their district of residence. Rather, the clear language in section 1147 provides students the right and entitlement to attend schools in their district of residence and creates a mandatory duty on school districts to enroll students who are qualified by age and residence upon enrollment by a parent or legal guardian. *Snyder, supra*, 421 Mich at 528. See also, OAG, 1987-1988, No 6467, p 196 (September 16, 1987).

It is my opinion, therefore, in answer to your fourth question, that a public school district must enroll a child who is qualified by age and residence and the district may not treat such a student who has exercised an educational option, such as attending a public school academy, as if that student were a nonresident of the district.

MIKE COX
Attorney General

EDUCATION: Quorum for transaction of business by public school academy board**PUBLIC SCHOOL ACADEMIES:****NONPROFIT CORPORATION ACT:**

The board of directors of a public school academy may transact business on behalf of the academy at a meeting of the board so long as a majority of the members of the board of directors then in office is present, unless the academy's articles of incorporation or bylaws require a larger number, regardless of whether the board at that time consists of fewer members than specified in the articles of incorporation, bylaws, authorizing resolution, or contract issued by the authorizing body.

At a meeting at which a quorum is present, action may be taken by a vote of the majority of members present unless a larger number is required by the public school academy's articles of incorporation or bylaws.

Opinion No. 7155

April 19, 2004

Mr. Thomas Watkins
Superintendent of Public Instruction
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909

You have asked whether the board of directors of a public school academy may meet to transact business, and make decisions on behalf of the academy, when the number of directors then in office on the board is less than the minimum number of directors specified in the academy's authorizing resolution and contract.

Public school academies are public schools, subject to the general supervision of the State Board of Education. *Council of Organizations and Others for Education About Parochial v Governor*, 455 Mich 557, 583-584; 566 NW2d 208 (1997). Public school academies are authorized to operate as public schools by contracts issued by authorizing bodies. MCL 380.501(2)(d). Under section 502 of the Revised School Code, public school academies are organized and administered under the direction of a board of directors in accordance with provisions of the Code and with bylaws that are adopted by the board of directors. MCL 380.502.

Section 502 of the Revised School Code further provides that public school academies shall be organized under the Nonprofit Corporation Act, 1982 PA 162, MCL 450.2101-MCL 450.3192. When issuing a contract to operate a public school academy, the authorizing body must adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of the public school academy. MCL 380.503(4). The Revised School Code does not, however, specify the minimum number of board members required to establish a quorum or to take action on behalf of the academy.

With regard to the number of members of the board of directors necessary for the transaction of business, section 523 of the Nonprofit Corporation Act provides:

A majority of the members of the board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business, provided that the articles of incorporation or bylaws may provide for a larger number, and provided further that in any corporation where there are more than 7 directors, the articles of incorporation or bylaws may provide that less than a majority, but in no event less than 1/3 of the directors, may constitute a quorum of the board. The vote of the majority of members present at a meeting at which

a quorum is present constitutes action of the board or of the committee, unless the vote of a larger number is required by this act, the articles, or the bylaws. [MCL 450.2523.]

Accordingly, for the purpose of transacting business, the Nonprofit Corporation Act defines a quorum as a majority of the members of the board of directors "then in office" unless a "larger number" is required by the articles of incorporation or bylaws.¹ In the absence of such a provision in the articles or bylaws, section 523 of the Nonprofit Corporation Act provides that business may be transacted if a majority of the members of the Board then in office is present, regardless of whether the board of directors at that time consists of fewer board members than specified in the articles of incorporation, bylaws, authorizing resolution, or contract issued by the authorizing body. MCL 450.2523. Moreover, decisions may be made by a vote of the majority of members present at a meeting at which a quorum is present, unless a larger number is required by the public school academy's articles or bylaws.

It is my opinion, therefore, that the board of directors of a public school academy may transact business on behalf of the academy at a meeting of the board so long as a majority of the members of the board of directors then in office is present, unless the academy's articles of incorporation or bylaws require a larger number, regardless of whether the board at that time consists of fewer members than specified in the articles of incorporation, bylaws, authorizing resolution, or contract issued by the authorizing body.

At a meeting at which a quorum is present, action may be taken by a vote of the majority of members present unless a larger number is required by the public school academy's articles of incorporation or bylaws.

MIKE COX
Attorney General

¹As noted above, where the board consists of more than seven directors, the articles of incorporation or bylaws may provide for a quorum that is less than a majority, but in no event less than 1/3 of the directors. MCL 450.2523.

INCOMPATIBILITY: Positions of township clerk and member of local school board of education

The offices of township clerk and member of a board of education of a local school district will become incompatible on January 1, 2005, the effective date of 2003 PA 302, an amendment to the Michigan Election Law, 1954 PA 116, MCL 168.1 et seq, which provides that local school boards must reimburse townships for conducting a school district's regular or special elections.

Opinion No. 7156

June 1, 2004

Honorable Tom Meyer
State Representative
The Capitol
Lansing, MI 48913

You ask whether the offices of township clerk and member of a board of education of a local school district will become incompatible after the effective date of 2003 PA 302, an amendment to the Michigan Election Law (Election Law), 1954 PA 116, MCL 168.1 *et seq*, which provides that local school boards must reimburse townships for conducting a school district's regular or special elections.

The Incompatible Public Offices Act (Act), 1978 PA 566, MCL 15.181 *et seq*, prohibits public officers and employees from holding "2 or more incompatible offices at the same time." MCL 15.182. Section 1(b) of the Act defines "incompatible offices":

"Incompatible offices" means public offices held by a public official¹ which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.
- (iii) A breach of duty of public office. [MCL 15.181(1)(b).]

OAG, 1995-1996, No 6918, p 211 (October 2, 1996), concluded that the offices of township clerk and member of a board of education are not incompatible, with certain exceptions. The first exception, which is not relevant to the factual situation presented in your question, arises out of provisions contained in the Revised School Code, MCL 380.1 *et seq*, and relates to a township clerk's duty to file a certified copy of a resolution of the local board of education certifying the taxes to be levied within the district. See MCL 380.1213 and 380.1801. The second exception arises when the two offices are placed on opposite sides of a proposed contract. In this situation, the offices of township clerk and school board member are incompatible under section 1(b)(iii) of the Act because a person holding both offices would not be able to protect, advance, or promote the interests of both offices simultaneously, thereby resulting in a breach of duty. *Macomb County Prosecutor v Murphy*, 464 Mich 149, 164; 627 NW2d 247 (2001); OAG, 1997-1998, No 6931, p 5 (February 3, 1997); OAG, 1995-1996, No 6903, p 172 (May 28, 1996); OAG, 1979-1980, No 5626, p 537, 543 (January 16, 1980).² Abstention from voting on the proposed contract between the two public bodies does not eliminate the incompatibility, since

¹ Although the statute does not define the term "public official," it has been construed to include both "public officers" and "employees." *Macomb County Prosecutor v Murphy*, 464 Mich 149, 151, 157-158, 161-162; 627 NW2d 247 (2001); OAG, 1979-1980, No 5626, p 537 (January 16, 1980).

² The fact that a breach of duty may occur in the future or that a potential conflict exists does not establish incompatible offices. *Macomb County Prosecutor*, 464 Mich at 162-163. Rather, an actual breach of duty is required under the Act. *Id.*

abstention under these circumstances is itself a breach of duty. The public official must vacate one of the two public positions. *Contesti v Attorney General*, 164 Mich App 271, 281; 416 NW2d 410 (1987); *Wayne County Prosecutor v Kinney*, 184 Mich App 681, 684-685; 458 NW2d 674, *lv den* 436 Mich 887 (1990); OAG, 1997-1998, No 6967, p 97 (January 27, 1998).

As noted in OAG, No 6918:

There are several matters in particular on which townships and school districts might contract. *A township and school district can enter into a contract allowing the township clerk to conduct school elections under section 1053 of the Revised School Code. . . .* While these are specific matters on which townships and school districts may contract, any contractual negotiation or contract between a township and a school district will create an incompatibility between the offices of township clerk and school board member. [*Id.*, at p 214; emphasis added.]

Section 1053 of the Revised School Code provided that a school board and a township could agree to have the township conduct the school district's special or regular election, and that the school board would pay the township's "necessary expenses" as agreed upon by the board. MCL 380.1053(2). This section was recently repealed, effective January 1, 2005, by 2003 PA 299. 2003 PA 299 further amended the Revised School Code by adding section 1206, also effective January 1, 2005, which provides that the Election Law governs election procedures for a school district. MCL 380.1206. More specifically, subsection 1206(2) states:

A school district . . . regular school election or special school election shall be administered and conducted as provided in chapter XIV of the Michigan election law, MCL 168.301 to 168.315. A school district . . . may use general operating funds to reimburse units of local government involved in administering or conducting a regular school election or special school election for the school district . . . as required under the Michigan election law. [MCL 380.1206(2).]

Chapter XIV of the Election Law was added, effective January 1, 2005, by 2003 PA 302. 2003 PA 302 is one of several recent acts amending the Election Law to consolidate and reorganize the election process.³ This chapter requires city and township clerks to conduct school elections if the school district is wholly contained within the boundaries of the city or township. MCL 168.4(e) and MCL 168.301(2). If the school district falls within two or more local jurisdictions, the county clerk is required to administer the school district's election unless certain exceptions apply. MCL 168.4(e), 168.301(2) and 168.305(4).⁴ Relevant to your inquiry, the chapter provides that:

(1) A school district shall pay to each county, city, and township that conducts a regular or special election for the school district an amount determined in accordance with this section.

(2) If a school district's regular or special election is held in conjunction with another election conducted by a county, city, or township, the school district shall pay the county, city, or township 100% of the actual additional costs attributable to conducting the school district's regular or special election. If a school district's regular or special election is not held in conjunction with another election conducted by a county, city, or township, the school district shall pay the county, city, or township 100% of the actual costs of conducting the school district's regular or special election.

(3) The county, city, or township shall present to a school district a verified account of actual costs of conducting the school district's regular or special

³ The other related acts are 2003 PA 298, 299, 300, 301, 303, 304, 305, and 306.

⁴ The analysis of the incompatibility issue applies equally to city or county clerks who serve as members of a board of education of a local school district.

election not later than 84 days after the date of the election. The school board shall pay or disapprove all or a portion of the verified account within 84 days after the school district receives a verified account of actual costs under this subsection.

(4) If the school board disapproves all or a portion of a verified account of actual costs under subsection (3), the school board shall send a notice of disapproval along with the reasons for the disapproval to the county, city, or township. Upon request of a county, city, or township whose verified account or portion of a verified account was disapproved under this section, the school board shall review the disapproved costs with the county, city, or township.

(5) A school board, county, city, or township shall use the agreement made between the department of treasury and the secretary of state, as required by section 487,⁵ as a basis for preparing and evaluating verified accounts under this section. The secretary of state shall assist a school board, county, city, or township in preparing and evaluating a verified account under this section. If a county, city, or township and a school board cannot agree on the actual costs of an election as prescribed by this section, the secretary of state shall determine those actual costs. [MCL 168.315.]

Thus, this section now mandates that the school district reimburse a township for conducting an election for the district and specifies how the amount to be paid should be calculated. Because reimbursement is mandatory and the amount to be paid essentially non-negotiable, the school board and township are not "negotiating" or entering into a contractual relationship by holding and paying for an election. Therefore, under these circumstances, the board of education and township are not placed on opposite sides of any proposed contract for purposes of finding the offices incompatible.

However, an incompatibility may arise "by virtue of a noncontractual issue coming before one or both of the offices a person holds, if the two public bodies have competing interests on the issue." OAG, No 6918 at p 214 (emphasis added), citing OAG, 1995-1996, No 6885, p 124 (January 11, 1996); OAG, 1995-1996, No 6903, p 172, 174 (May 28, 1996) ("[a] non-contractual matter can also result in a breach of duty, creating an incompatibility, if a person's interest in and/or duty to one office could affect his or her action on behalf of the other office").

2003 PA 302 provides that the township shall be reimbursed 100% of its "actual additional costs," if the school election is held in conjunction with another election, or 100% of its actual costs of holding a school election, and refers to section 487 of the Election Law for guidance. MCL 168.315. Section 487 does not define "actual costs" but does provide a few examples of what is not a "reimbursable cost," stating "[r]eimbursable costs do not include salaries of permanent local officials, the cost of reusable supplies and equipment, or costs attributable to local special elections held in conjunction with the statewide special election." MCL 168.487(2).

⁵Section 487 is MCL 168.487 of the Election Law, which provides, in part:

(1) If a statewide special election is called to submit a proposed constitutional amendment to the electors of this state, this state shall reimburse each county, city, and township for the cost of conducting the special election as provided in this section. The reimbursement shall not exceed the verified account of actual costs of the special election. This state shall reimburse each county, city, and township under this section notwithstanding that the county, city, or township also holds a local special election in conjunction with the statewide special election.

(2) Payment shall be made upon presentation and approval of a verified account of actual costs to the department of treasury, local government audit division, after the department of treasury and the secretary of state agree as to what constitutes valid costs of conducting an election. Reimbursable costs do not include salaries of permanent local officials, the cost of reusable supplies and equipment, or costs attributable to local special elections held in conjunction with the statewide special election.

Other than these few examples, the statutes appear to give townships discretion to determine the actual costs associated with holding an election. It is unnecessary to delve into all of the costs associated with holding an election, and sufficient to note that there are many costs, including the payment of poll workers and the printing of ballots, over which the township will have discretion. Notably, particular problems may arise when a township exercises its discretion in determining its "additional actual costs," since it may be difficult to assess costs solely attributable to holding the additional school election. After a township has determined its actual costs associated with holding a school election, it presents a verified account to the school board for approval. MCL 168.315(3). Under the Election Law, the school board then must choose to pay or disapprove all or a part of the verified account. MCL 168.315(3).

These circumstances result in incompatibility between the offices of township clerk and member of a local board of education. As a member of the school board, the township clerk would have to approve or disapprove the costs of an election submitted by his or her own office, and regarding which the township had considerable discretion to incur. This presents an issue of "competing interests" between the township and the local board of education. A township will seek to maximize its recovery of costs, and a school board will want to minimize the costs it must pay for an election. Indeed, the Election Law recognizes the conflicting positions of a township clerk and local board of education regarding costs as it provides for a review process and ultimate approval of costs by the Secretary of State. MCL 168.315(4)-(5).⁶

It is my opinion, therefore, that the offices of township clerk and member of a board of education of a local school district will become incompatible on January 1, 2005, the effective date of 2003 PA 302, an amendment to the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq*, which provides that local school boards must reimburse townships for conducting a school district's regular or special elections.

MIKE COX
Attorney General

⁶Moreover, if dissatisfied with the election administration of the township clerk, the remedies of the school board include making complaints to the Secretary of State, who supervises elections through the Bureau of Elections in the Michigan Department of State. MCL 168.21.

EXECUTIVE DIRECTIVES: Operation of the Michigan Public Safety Communications System**GOVERNOR:****MICHIGAN STATE POLICE:****COMMUNICATIONS:**

While the Department of Information Technology has responsibility for the day-to-day technical operations of the Michigan Public Safety Communications System (MPSCS), the Director of the Michigan Department of State Police is responsible for MPSCS public safety policy and program direction under the Michigan Public Safety Communications System Act.

An executive directive issued in the exercise of the Governor's supervisory authority under Const 1963, art 5, § 8, does not have the force and effect of law and cannot amend a state statute consistent with the separation of powers doctrine embodied in Const 1963, art 3, § 2. Executive Directive 2003-13 simply communicates internal policy and procedure regarding the operation of the Michigan Public Safety Communications System by the Director of the Michigan State Police "consistent with . . . MCL 28.281 to 28.283." It does not purport to amend or have the effect of amending a law and, accordingly, does not violate Const 1963, art 3, § 2.

The responsibilities of the Director of the Michigan State Police described in Executive Directive 2003-13 are consistent with the then current management and operation of the Michigan Public Safety Communications System; accordingly, the Governor did not by executive directive attempt to effectuate an interdepartmental transfer of functions within the executive branch requiring an executive order under Const 1963, art 5, § 2.

Executive Directive 2003-13 replaces Executive Directive 2003-12 as originally issued in its entirety and supersedes the initial directive.

Executive Directive 2003-13 provides for a governmental public safety agency's assumption of liability for any damage caused by the agency's equipment to the Michigan Public Safety Communications System, but it does not preclude modification of this provision or more detailed implementation of the directive's general policy by mutual written agreement of the parties.

The provision of Executive Directive 2003-13 defining the meaning of "governmental public safety agency" and "Agency" as used in the directive to be the same as "governmental public safety agency" under the Michigan Public Safety Communications System Act merely establishes that the directive intends the meaning of the terms to be consistent. In that executive directives represent the exercise of the Governor's supervisory authority and do not acquire the force and effect of law, any confusion as to the meaning of the terms used in the directive can best be resolved between the Governor and the parties over whom the supervisory authority is exercised.

Opinion No. 7157

June 2, 2004

Honorable Michael Bishop
State Senator
The Capitol
Lansing, MI 48909

You have asked a number of questions concerning Executive Directives 2003-12 (ED 2003-12) and 2003-13 (ED 2003-13). The Governor issued the executive directives to modify the policy of the executive branch regarding the utilization of the Michigan Public Safety Communications System (MPSCS or System) by governmental public safety agencies (Agencies).

ED 2003-12,¹ issued April 17, 2003, in section A directs "[r]esponsible department directors and autonomous agency heads" to permit any Agency "to install public safety communications equipment upon MPSCS towers and related facilities" consistent with the requirements detailed in the directive. ED 2003-13, issued August 6, 2003, amended ED 2003-12 to clarify several of the prior directive's provisions.²

BACKGROUND

An historical review of the MPSCS and the state agency and departments involved in its operation and evolution is helpful in responding to your questions.

In the 1980s, the Legislature evaluated studies of the then current Michigan State Police radio communications system as provided for under the Radio Broadcasting Stations Act, 1929 PA 152, MCL 28.281 *et seq.*, and concluded that it was outdated and inadequate. *Bryne v Michigan*, 463 Mich 652, 653; 624 NW2d 906 (2001). This led the Department of Management and Budget (DMB), on behalf of the Department of State Police, to enter into a contract in 1994 to design and construct the MPSCS for approximately \$187,000,000. The System's purpose was to modernize communications for the Michigan State Police and link law enforcement and public safety agencies throughout the State. *Id.*, at 654. Construction of the MPSCS infrastructure began in 1996. Homeowners who did not want the MPSCS communication towers placed in their communities challenged the construction of the MPSCS. *Bryne v Michigan*, *supra*. To address these legal challenges and facilitate the construction of the MPSCS, the Legislature, through 1996 PA 538, amended MCL 28.281 to 28.283 of the Radio Broadcasting Stations Act (MPSCS Act).

Construction of the MPSCS infrastructure was completed in 2003. The result is a state-of-the-art public safety wireless mobile communications system consisting of a network of 181 interrelated communications towers sites and supporting facilities across the state. MSP developed an agreement entitled "Michigan's Public Safety Communications System (MPSCS) Membership Agreement" to provide a mechanism for Agencies to join the MPSCS. Under these agreements, a "member" is defined as a:

[P]ublic safety agency, including but not limited to a general government agency (local, state, or federal), its authorized employees, personnel (paid and/or volunteer), and its service provider, participating in and using MPSCS under a Membership Agreement. [Form Membership Agreement, paragraph II(E).]

The System was financed with bonds issued by the State Building Authority (SBA). The SBA is an autonomous state agency created by the Legislature under 1964 PA 183, MCL 830.411 *et seq.* (SBA Act), as a "body corporate, separate and distinct from the state." MCL 830.412(1). In accordance with the requirements of section 6 of the SBA Act, the SBA retains ownership of the System and leases it to the State. MCL 830.416. The System, therefore, is owned and operated through the relationship between the SBA as owner/lessor and DMB as the lessee.

¹Generally, executive directives have evolved by historical tradition as one means by which a governor may choose to exercise supervisory authority over the executive branch of state government consistent with Const 1963, art 5, § 8. As discussed more fully later in this opinion, unlike executive orders, which acquire the force of law under Const 1963, art 5, § 2, executive directives are internal policy statements that are distributed to state departments to provide guidance and not filed with the Secretary of State. See *Hendrickson v Wilson*, 374 F Supp 865, 876 (WD Mich, 1973) and http://www.michigan.gov/gov/0,1607,7-168-21975_22515---.00.html (Governor's website).

²In that ED 2003-13 restates the text of ED 2003-12 in its entirety except for the amended provisions, this opinion will refer to the final statement of the Governor's policy as ED 2003-13, rather than as ED 2003-12, as amended.

The MPSCS Act placed the MPSCS and all of its real and personal property in the Department of Michigan State Police (MSP or Michigan State Police). MCL 28.281. The MPSCS Act gave the directors of MSP and DMB joint responsibility for the construction, implementation, operation, and maintenance of the MPSCS. MCL 28.282(1). MCL 28.282(2) vests sole responsibility for the siting of MPSCS facilities in the MSP Director and provides a process for resolving tower-siting issues.

The MPSCS Act imposes on the MSP the duty to broadcast over its System police dispatches and reports that have a reasonable relation to or connection with the apprehension of criminals, the prevention of crime, or the maintenance of peace, order, and public safety. MCL 28.283(1). The MSP Director "may authorize any governmental public safety agency to utilize the [MPSCS]." MCL 28.283(2).

In October 1997, pursuant to their joint responsibility under MCL 28.282(1), the directors of DMB and the Michigan State Police entered into a memorandum of understanding regarding the MPSCS. The memorandum of understanding authorized the Michigan State Police to coordinate the real estate activities associated with the construction of Michigan's MPSCS.

The MSP Director maintained responsibility for the technical operation of the MPSCS from 1997 to 2002. In 2001, the Department of Information Technology (DIT) was created by Executive Order 2001-3 (EO 2001-3) under the authority of Const 1963, art 5, § 2,³ to organize existing information technology management functions into a new principal state department to promote a unified approach to information technology for executive branch agencies. Some of its duties are to "oversee the expanded use and implementation of project and contract management principles as they relate to information technology projects within the executive branch" and to act as a contract manager for, and provide services to, state agencies. EO 2001-3, section II.D, E, and F. EO 2001-3, sections III and IV, specify the functions and personnel transferred to DIT. Except as specifically provided in section IV relating to what was transferred from the DMB, section III generally states what functions and duties were transferred to DIT:

[A]ll the authority, powers, duties, functions, responsibilities, personnel, equipment and budgetary resources involved in or related to the *provision of information technology services* currently located within any executive branch department or agency [EO 2001-3, section III.A; emphasis added.]

EO 2001-3, in section I.D defined "information technology services":

"Information Technology Services" means services involving all aspects of managing and processing information including, but not limited to:

- application development and maintenance;
- desktop computer support and management;
- mainframe computer support and management;
- server support and management;
- local area network support and management;
- information technology contract, project and procurement management;
- information technology planning and budget management, and;
- telecommunication services, security, infrastructure and support.

Significantly, EO 2001-3 makes no mention of the MPSCS or the MPSCS Act. Nor, based on the stated purpose of EO 2001-3 and its definitions of information technology services, is it clear that the MPSCS, a public safety communication system integral to public safety and crime prevention, was included within the definition of "Information Technology Services" as used in EO 2001-3.

³ As explained more fully later in this opinion, Const 1963, art 5, § 2, authorizes the Governor to "make changes in the organization of the executive branch or in the assignment of functions among its units."

We are advised that in October 2002, however, during the time EO 2001-3 continued to be implemented throughout state government, the MSP Director, along with others within DIT, agreed upon an implementation plan whereby the day-to-day operation of the MPSCS, including service, maintenance, and related management functions, came under the control of the DIT. While DIT assumed the responsibility of the day-to-day technical operations and maintenance of the System, the MSP Director retained public safety program management responsibility over MPSCS policy matters, including the authority to determine which entities may utilize the MPSCS.

A second executive order relevant to the operation of the MPSCS was issued in November 2002. Executive Order 2002-20 (EO 2002-20)⁴ consolidated within one principal department, DMB, statewide real estate functions in order to promote a unified approach to real estate and improve the management, investment, and sales of real property. It applies to executive branch agencies such as the MSP and DIT that are not vested with independent real estate authority.

In 2003, in order to update their 1997 memorandum of understanding in light of changes effectuated by EO 2002-20, the DMB and MSP consummated a memorandum addendum, with the concurrence of DIT, to authorize DIT to coordinate the disposal of certain old communication sites no longer utilized by the Michigan State Police in connection with the MPSCS. The memorandum of understanding, as amended, remains in effect.

It is against this backdrop of statutory provisions, executive orders, and a memorandum of understanding that ED 2003-12 was first issued by the Governor. It directed the "[r]esponsible department directors and autonomous agency heads" to change their former policy regarding the utilization of the MPSCS. The former policy had required Agencies to become members of the MPSCS pursuant to a membership agreement that granted the Agency access to the statewide communications network. Under the former policy, an Agency was not permitted to install its own equipment on MPSCS towers to enhance its ability to utilize a telecommunications system owned by the Agency unless it was a member. ED 2003-13 amended ED 2003-12 to clarify and further modify the policy of the executive branch regarding the use of the MPSCS by Agencies and Agency access to MPSCS towers and facilities. Under ED 2003-13, the Director of the Michigan State Police "is directed . . . to permit an Agency to use the MPSCS by installing public safety communications equipment upon MPSCS towers and related facilities" if certain conditions are satisfied.

1.

You first ask what department or state agency has responsibility for the operation of the MPSCS. You note that EO 2001-3 transferred all the powers, duties, and responsibilities related to the provision of information technology services located within any executive branch agency to the DIT and that EO 2002-20 transferred all the powers, duties, and responsibilities related to the acquisition and management of certain executive branch facilities to the DMB. You also observe that, in the fourth introductory "whereas clause" of ED 2003-13, the Governor characterizes EO 2001-3 as having transferred the MPSCS to the DIT.⁵ To the extent ED 2003-13 purports to re-convey from DIT or DMB to the Michigan State Police Director management authority over the MPSCS that would allow an Agency to install its equipment on the

⁴EO 2002-20 is codified at MCL 18.321 and, based on the numbering system utilized by the Legislative Service Bureau, is there referred to as Executive Reorganization Order No. 2002-13.

⁵That clause states: "WHEREAS, all of the powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources involved in or related to the provision of information technology services located within any executive branch department or agency, including the MPSCS, were transferred by Executive Order 2001-3 to the Department of Information Technology." (Emphasis added.)

MPSCS towers, you ask whether the Governor may use an executive directive to effectuate a transfer of functions between executive branch agencies.

Throughout ED 2003-12, as originally issued, an Agency seeking to use the MPSCS was instructed to demonstrate to "the department or agency responsible for the operation of the MPSCS" that its proposed use of the MPSCS met the directive's requirements. See ED 2003-12, section A, subsections 3, 4, 5, 6, and 7, and section E. ED 2003-13, however, now states more clearly which department operates the MPSCS. Through ED 2003-13, the Governor directs the "Director of the Department of State Police" to take certain actions relating to Agency access to the MPSCS upon a showing that specified conditions are satisfied and also identifies the DMB or DIT by name where those agencies play a role in the process.

The Governor's view as expressed in the amended directive that the Michigan State Police is responsible for implementing policy for the MPSCS is supported by the history recounted above. The Legislature, in section 2(1) of the MPSCS Act, vested responsibility for construction, implementation, operation, and maintenance of the MPSCS, jointly, in the MSP and DMB. MCL 28.282(1). This is consistent with the Management and Budget Act, 1984 PA 431, MCL 18.1101 *et seq.*, which prescribes the power and duties of the DMB, and includes responsibility for state "facilities." Structures owned or leased through a building authority by the State, such as the MPSCS, are included in the definition of facility. MCL 18.1114. In addition, the MSP's management of the MPSCS is subject to the SBA Lease. Section 6.1 of the SBA Lease requires the SBA's approval of any proposed sublease or use agreement, such as the agreement contemplated between an Agency and the State described in section A.7 of ED 2003-13.

The MSP has also assumed DMB's former real estate responsibilities for the MPSCS. As previously mentioned, in 1997 DMB delegated its responsibilities relating to real estate activities associated with the operations of the MPSCS to the MSP pursuant to the memorandum of understanding. The memorandum of understanding was amended on September 29, 2003, for the purpose of delegating additional responsibility for the coordination of the disposal of surplus property and to acknowledge DIT's responsibilities in the daily technical operation of the MPSCS. At that time, the parties to the memorandum of understanding agreed that all other terms and conditions of the original memorandum of understanding were to remain in effect. Thus, the MSP has assumed full responsibility for non-surplus real estate functions related to the MPSCS.

DMB, however, maintains its support of the MPSCS in the administration of non-delegated DMB functions under the DMB Act because DMB is the department authorized to permit, by lease or license, use of property under the jurisdiction of the MSP. MCL 18.1221. This support includes DMB's role in implementing the provisions in the directive regarding the agreement between an Agency and the State described in section A.7.

To summarize, from 1997 to 2002 the MSP managed and operated the MPSCS pursuant to the memorandum of understanding and the SBA Lease. The MSP's technical operation of the MPSCS's infrastructure was transferred from the MSP's Communications Division to the DIT in October 2002. Following this transfer, we are informed that the Director of MSP retained public safety policy and program responsibility for the MPSCS under MCL 28.283 and the DIT assumed responsibility for the day-to-day technical operations of the System. In other words, DIT provides technical management services for the MPSCS infrastructure pursuant to MSP's public safety policy and program direction.

It is my opinion, therefore, in answer to your first question, that while the Department of Information Technology has responsibility for the day-to-day technical operations of the Michigan Public Safety Communications System, the Director of the Michigan Department of State Police is responsible for MPSCS public safety policy and program direction under the Michigan Public Safety Communications System Act.

2.

Your second question asks whether the Governor has the authority to amend an existing substantive statute by executive directive consistent with the separation of powers doctrine of Const 1963, art 3, § 2. Your inquiry focuses on the provision in ED 2003-12, as originally issued, that "mandates" that responsible department directors and agency heads "shall permit any governmental public safety agency to install public safety communications equipment upon the MPSCS towers and related facilities," whereas the MPSCS Act uses discretionary language stating that the MSP Director "may authorize any governmental public safety agency to utilize the Michigan public safety communications system." Compare ED 2003-12, section A with MCL 28.283(2). (Emphasis added.)

The Governor issued ED 2003-12 and 2003-13 pursuant to her power under Const 1963, art 5, § 8, which provides that: "[e]ach principal department shall be under the supervision of the governor unless otherwise provided by this constitution."⁶ As stated earlier, "executive directives" are not provided for as such in the constitution, but rather they have been used historically by governors as one means by which they exercise their supervisory authority under Const 1963, art 5, § 8, in the form of internal policy statements.

In contrast to executive *directives*, executive *orders* are specifically provided for in Const 1963, art 5, § 2. This provision was new in the 1963 Constitution and was adopted to facilitate efficiency within the executive branch. *Soap & Detergent Ass'n v Natural Resources Comm*, 415 Mich 728, 745-746; 330 NW2d 346 (1982). The Governor, through the use of executive orders, may "make changes in the organization of the executive branch or in the assignment of functions among its units." Const 1963, art 5, § 2. Unless disapproved in each house of the Legislature, executive orders acquire the force and effect of law.⁷ For this reason, art 5, § 2 has been described as expressly vesting "legislative power" in the Governor without running afoul of Const 1963, art 3, § 2. *Soap & Detergent Ass'n, supra*, 415 Mich at 752; *House Speaker v Governor*, 443 Mich 560, 578; 506 NW2d 190 (1993).

Const 1963, art 3, § 2, provides for the separation of governmental powers, stating that "[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch *except as expressly provided by this constitution*." (Emphasis added.) No provision of the constitution vests legislative power in the Governor with respect to executive directives. Accordingly, in the absence of a constitutional provision like art 5, § 2 expressly conferring legislative power on the Governor, executive directives cannot amend substantive law.

Research has disclosed no occasion on which the Attorney General has been asked for an opinion interpreting the terms of an executive *directive*, as opposed to an executive *order*. Generally speaking, the agencies identified in an executive directive can be expected to carry out the policies of the administration as communicated in the directive to the extent its directions are consistent with applicable law. To the extent any confusion or questions may arise as to the meaning of any of the directive's terms or provisions, such questions are best resolved by seeking the guidance of the Governor.

On the other hand, to the extent a question of the *legality* of an executive directive arises, an opinion of the Attorney General is the appropriate means for addressing such a question.

⁶The language "unless otherwise provided by this constitution" was added to this section by the framers to make clear that the Governor's supervisory authority under this provision did not extend to certain agencies, including those departments headed by elected officials, such as the Attorney General and Secretary of State. 2 Official Record, Constitutional Convention 1961, p 1895; Const 1963, art 5 § 21 (providing for election of Attorney General and Secretary of State).

⁷For example, Executive Orders 2001-3 and 2002-20 were issued in a previous administration, acquired the force and effect of law, and have not been amended or rescinded.

Applying these general principles to your particular question, the MSP Director is appointed by, and serves at the pleasure of, the Governor. MCL 16.252. Thus, the MSP Director, like other non-elected executive department heads, can be expected to carry out policies of the administration as communicated in this executive directive to the extent its directions are consistent with applicable law.

ED 2003-12, as originally issued, used the mandatory "shall" in connection with allowing the installation of Agency equipment upon MPSCS towers, whereas MCL 28.283(2) uses the permissive "may." See *Roberts v Mecosta County Gen Hosp*, 466 Mich 57, 65; 642 NW2d 663 (2002); *MSEA v Michigan Liquor Control Comm*, 232 Mich App 456, 468; 591 NW2d 353 (1998) (indicating "shall" usually designates a mandatory provision and "may" ordinarily designates a permissive one). The Governor cannot, by executive directive under Const 1963, art 5, § 8, or by executive order under Const 1963, art 5, § 2, change substantive law that does not directly relate to the exercise of her *reorganization* authority. Changing a duty from one involving the exercise of discretion to one purporting to remove such discretion would change substantive law and exceed the Governor's authority.

ED 2003-12, however, was superseded by ED 2002-13. ED 2003-13 no longer uses the mandatory "shall" found in ED 2002-12. ED 2003-13 directs the MSP Director to permit an Agency to use the MPSCS "consistent with . . . MCL 28.281 to 28.283" and, thus, on its face, does not purport to alter the provisions of substantive law relating to the operation of the MPSCS.

It is my opinion, therefore, in response to your second question, that an executive directive issued in the exercise of the Governor's supervisory authority under Const 1963, art 5, § 8, does not have the force and effect of law and cannot amend a state statute consistent with the separation of powers doctrine embodied in Const 1963, art 3, § 2. Executive Directive 2003-13 simply communicates internal policy and procedure regarding the operation of the Michigan Public Safety Communications System by the Director of the Michigan State Police "consistent with . . . MCL 28.281 to 28.283." It does not purport to amend or have the effect of amending a law and, accordingly, does not violate Const 1963, art 3, § 2.

3.

Your third question relates to a provision of ED 2003-12, as originally issued, stating that certain determinations are subject to review under the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq (APA). This provision was not retained in the amended version of ED 2003-12, however. Accordingly, this issue has been rendered moot and no answer is necessary to your third question.⁸

4. and 5.

Your fourth and fifth questions ask whether the Governor has the authority to effectuate by executive directive, instead of by executive order, interdepartmental transfers of the Michigan Public Safety Communications System powers or duties away from the Department of Information Technology or the Department of Management and Budget to the Michigan State Police. You also ask, in the absence of such authority, what effect is to be given the unauthorized sections of the executive directive.

Your questions relate to the sections in ED 2003-13 which refer to Executive Orders 2001-3 and 2002-20. Both of these executive orders were issued in a previous administration, acquired the force and effect of law, and have not been amended or rescinded.

⁸ It should be noted that ED 2003-13 provides that certain determinations "may be appealed to the extent provided under Section 631 of the Revised Judicature Act of 1961 [RJA], 1961 PA 236, MCL 600.631." (Emphasis added.) By using the emphasized language, ED 2003-13 does not purport to expand the remedies available to a person; it simply reiterates that relief is available, if at all, to the extent it would otherwise be available under section 631 of the RJA.

The DIT was created by Executive Order 2001-3 under the authority of Const 1963, art 5, § 2, to organize existing information technology management functions into a new principal state department. As noted earlier, Executive Order 2001-3 makes no mention of the MPSCS. Nor, based on the stated purpose of EO 2001-3 and its definitions of information technology services, does it appear that the MPSCS, a public safety communication system, was contemplated within the definition of "Information Technology Services" as used in EO 2001-3.

In October 2002, during the time EO 2001-3 continued to be implemented throughout state government, we are informed that the MSP Director, along with others within DIT, agreed upon an implementation plan whereby the public safety policy and program management responsibilities pertaining to the MPSCS were separated from the technical and operational side. The service, maintenance, and technical functions of the MPSCS were transferred to DIT. The MSP, however, retained and has continued to maintain responsibility for the public safety policy and program management, as vested in the MSP by the MPSCS Act.

Executive Order 2002-20 was also issued pursuant to Const 1963, art 5, § 2. The purpose of this executive order was to consolidate within one principal department, DMB, statewide real estate functions in order to promote a unified approach to real estate and improve the management, investment, and sales of real property. It applies to executive branch agencies such as the MSP and DIT that are not vested with independent real estate authority.

These real estate functions, as they related to the construction, implementation, operation, and maintenance of the MPSCS, however, were previously delegated by DMB to the MSP. As previously discussed, in 1997 the directors of DMB and the MSP entered into a memorandum of understanding in which DMB delegated and the MSP assumed sole responsibility for the real estate-related activities of the MPSCS. In 2003, DMB and the Michigan State Police amended the memorandum of understanding to delegate additional real estate responsibilities relating to the MPSCS to the MSP and DIT. The memorandum of understanding, as amended, remains in effect and was not superseded by ED 2003-13. This type of delegation is contemplated in section III.C of Executive Order 2002-20, which provides: "[f]acility does not include an existing state owned and managed buildings[sic] or structures[sic] that is mutually agreed to be excluded by the department and the state agency having jurisdiction over the building or structure."

Thus, as implemented with respect to the information technology functions and real estate-related functions of the MPSCS, Executive Orders 2001-3 and 2002-20 did not transfer policy and program management responsibility for the MPSCS from the MSP to DIT and DMB. At the time ED 2003-12 and ED 2003-13 were issued by the Governor, the MSP was the agency responsible for implementing public safety policy relating to the MPSCS and, accordingly, the Governor did not effectuate a transfer of functions by executive directive, instead of by executive order, contrary to the mandates of Const 1963, art 5, § 2.⁹

It is my opinion, therefore, in answer to your fourth and fifth questions, that the responsibilities of the Director of the Michigan State Police described in Executive Directive 2003-13 are consistent with the then current management and operation of

⁹It must be acknowledged that ED 2003-13 states in its fourth "whereas" clause that the powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources relating to the provision of information technology services "including the MPSCS" was transferred to DIT by EO 2001-3 and in its fifth "whereas" clause that certain other transfers of executive branch facilities to the DMB was effectuated in EO 2002-20. No "whereas" clause is included in ED 2003-13, however, that recounts the history of the MPSCS described in detail in this opinion that explains how certain authority for the MPSCS was retained by the MSP. Whether this was an inadvertent omission or otherwise, the operative paragraphs of ED 2003-13 correctly recognize that the managerial authority relating to the MPSCS was vested in the MSP at the time the executive directive issued; thus, a transfer was neither necessary nor effectuated by the Governor.

the MPSCS; accordingly, the Governor did not by executive directive attempt to effectuate an interdepartmental transfer of functions within the executive branch requiring an executive order under Const 1963, art 5, § 2.

6.

Your sixth question asks whether ED 2003-13 replaces ED 2003-12 in its entirety or only to the extent of any conflicting language between the two.

On August 6, 2003, the Governor issued ED 2003-13, which states that she deemed it "necessary to amend" ED 2003-12 and "order[s] that Executive Directive 2003-12 be amended to read as follows." Further, the title of ED 2003-13 characterizes it as an "amendment of Executive Directive 2003-12."

A comparison of the two directives reveals that ED 2003-13 restates the text of ED 2003-12 to clarify a number of its provisions. It also changes responsibilities and requirements in the implementation of the policy by the now named state departments. ED 2003-13, however, does not merely provide the text of the amended portions of ED 2003-12; it restates the text of ED 2003-12 in its entirety except for the amended portions. Thus, ED 2003-13 contains the complete recitation of the amended policy. Research discloses no legal basis upon which to construe this unambiguous language other than in accordance with its plain meaning.

It is my opinion, therefore, in answer to your sixth question, that Executive Directive 2003-13 replaces Executive Directive 2003-12 as originally issued in its entirety and supersedes the initial directive.

7.

Your seventh question asks whether an Agency must pay for damages to the Michigan Public Safety Communications System facilities caused by the Agency's equipment even if state personnel, engaging in tasks involving the Agency's equipment, cause the damage.

Your question relates to section A.2 of ED 2003-13 which states: "[t]he governmental public safety agency seeking to utilize the MPSCS agrees to pay any damages to the MPSCS caused by the agency's public safety agency communications equipment or by the installation or maintenance of the equipment."

Section A.2 is one of several requirements to which an Agency seeking to use the MPSCS under this directive must agree in order to install its own communication equipment on MPSCS facilities. The directive as written does not provide an exception for the scenario described in your question. Section A.2, however, provides that the Agency's use of the MPSCS will be subject to an agreement governing the "cost, installation, and priority of equipment." The directive's general expression of policy does not appear to be meant to cover all questions and scenarios regarding an Agency's use of the MPSCS. Thus, specific situations that may arise involving risks and liabilities appear intended to be resolved within the requirements of the contemplated agreement.

It is my opinion, therefore, in answer to your seventh question, that Executive Directive 2003-13 provides for a governmental public safety agency's assumption of liability for any damage caused by the agency's equipment to the MPSCS, but it does not preclude modification of this provision or more detailed implementation of the directive's general policy by mutual written agreement of the parties.

8.

Your eighth question refers to section F of Executive Directive 2003-13, which states that, as used in the directive, "the terms 'governmental public safety agency' or 'Agency' have the same meaning as the term 'governmental public safety agency' under [the MPSCS Act]." You ask what the legal effect of this provision is in light of the Legislature not having defined the specified term in the MPSCS Act.

ED 2003-13 simply establishes that a consistent meaning is intended between the terms "Agency" and "governmental public safety agency" as used in the directive and

the term "governmental public safety agency" as used in the MPSCS Act. As explained above in answer to your fourth and fifth questions, an executive directive does not have the force and effect of law, but rather it represents the exercise of the Governor's general supervisory authority over the executive branch. Thus, the directive's provisions explaining the meaning of certain terms used in the directive is of primary significance to those within the executive branch expected to carry out its directions. To the extent any confusion may arise in this regard, such questions are best resolved between the Governor and the Director of the MSP.

It is my opinion, therefore, in answer to your eighth question, that the provision of Executive Directive 2003-13 defining the meaning of "governmental public safety agency" and "Agency" as used in the directive to be the same as "governmental public safety agency" under the Michigan Public Safety Communications System Act merely establishes that the directive intends the meaning of the terms to be consistent. In that executive directives represent the exercise of the Governor's supervisory authority and do not acquire the force and effect of law, any confusion as to the meaning of the terms used in the directive can best be resolved between the Governor and the parties over whom the supervisory authority is exercised.

MIKE COX
Attorney General

AUDITOR GENERAL: Auditor General access to local records

CONSTITUTIONAL LAW:

SCHOOL DISTRICTS:

The State Board of Education and the Superintendent of Public Instruction may not delegate their authority to examine school records to the Auditor General to enable the Auditor General to review those records in order to conduct a performance audit of the Department of Education.

The Auditor General's office may utilize its subpoena power to compel the production of local school records sought in connection with audits of state agencies. Generally, in recognition of the Auditor General's responsibilities for state agency audits under Const 1963, art 4, § 53, local school officials may provide such records to the Auditor General upon oral or written request without the formal service of a subpoena.

Opinion No. 7158

June 29, 2004

Mr. Thomas D. Watkins, Jr.
Superintendent of Public Instruction
Michigan Department of Education
Lansing, MI 48909

You have asked two questions regarding the Auditor General's ability to examine school records in order to conduct a performance audit of a state department.

You first ask whether the State Board of Education or the Superintendent of Public Instruction may delegate their authority to examine school records to the

Auditor General to enable the Auditor General to review those records in order to conduct a performance audit of the Center for Educational Performance and Information.

Under section 1281 of the Revised School Code (Code), MCL 380.1281(2), the State Board of Education¹ has the authority to examine and audit the official records and accounts of school districts, public school academies, and intermediate school districts in Michigan. In order to receive state school aid funds under the State School Aid Act of 1979 (State School Aid Act), school districts, public school academies, and intermediate school districts must allow the Department of Education or the department's designee to audit all records related to a program for which it receives funds. MCL 388.1768. The Superintendent of Public Instruction is the principal executive officer of the Michigan Department of Education. Const 1963, art 8, § 3; *Straus v Governor*, 459 Mich 526, 538; 592 NW2d 53 (1999).

Section 94a of the State School Aid Act creates the Center for Educational Performance and Information (CEPI) within the office of the State Budget Director in the Department of Management and Budget. MCL 388.1694a. CEPI is responsible for coordinating and collecting all data required by state and federal law from all entities receiving funds under the State School Aid Act. MCL 388.1694a. You have advised my staff that the Auditor General, in order to audit the accuracy and completeness of computer-stored data maintained by CEPI, seeks to examine school records located at school districts, public school academies, and intermediate school districts under the authority conferred on the State Board of Education or Superintendent of Public Instruction by the provisions of the Code and the State School Aid Act.

The office of the Auditor General was created through Const 1963, art 4, § 53, which provides:

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law

He shall be assigned no duties other than those specified in this section.

Under the prior constitution, the Auditor General was an elected officer of the executive branch and the Legislature was given complete authority to establish the scope of the Auditor General's powers. Const 1908, art 6, § 1. The 1963 Constitution provides for a new Auditor General, an official appointed by the Legislature with specified powers. Under Const 1963, art 4, § 53, the Legislature cannot confer any additional duties upon the Auditor General. OAG, 1963-1964, No 4284, p 278, 279 (February 18, 1964).

In interpreting Const 1963, art 4, § 53, the Attorney General has consistently concluded that the Auditor General does not have the authority to audit local units of government. See OAG, 1997-1998, No 6970, p 108 (January 28, 1998); OAG, 1983-1984, No 6225, p 303, 310 (May 7, 1984); Letter Opinion of the Attorney General to Auditor General Albert Lee, dated December 17, 1975. This conclusion is supported by the debates of the Constitutional Convention, which demonstrate that the framers of the 1963 Constitution intended that the Auditor General would audit only state agencies, departments, and institutions and would not audit local units of government. The constitutional debates expressly mention that school districts are not subject to audits by the Auditor General. 1 Official Record, Constitutional Convention 1961, pp 1681-1682.

¹ All of the administrative statutory powers, duties, functions, and responsibilities of the State Board of Education set forth in MCL 380.1281 were transferred in Executive Order 1996-12, section 1(*ll*), to the Superintendent of Public Instruction by a Type II transfer, as defined by MCL 16.103.

OAG No 6970 examined a provision in the fiscal year 1996-1997 appropriations act for the Michigan Department of Transportation (MDOT) that required the Auditor General to "perform audits and make investigations of the disposition of all state funds received by county road commissions . . . and cities and villages for transportation purposes to determine compliance with the terms and conditions" of the applicable law by MDOT. The appropriations act directed the local units of government to make the pertinent records available to the Auditor General for this review. The opinion notes that the Auditor General interpreted this provision to simply allow an examination of records of local governmental units in conjunction with a performance audit of a state department and not as authorization to audit the local governmental unit.

The Attorney General rejected this interpretation of the statute, reasoning that the plain language of the appropriations act does not "merely allow the Auditor General to access a local governmental unit's records in the course of auditing state agencies; it affirmatively *requires* that the Auditor General audit local governmental units." OAG, No 6970, at 111. (Emphasis added.) The Attorney General concluded:

County road commissions and other local governmental units are not entities "of the state" as that term is used in Const 1963, art 4, § 53, even when they are using state funds allocated under 1951 PA 51. Accordingly, legislation requiring the Auditor General to audit such local governmental units is unconstitutional. *Id.*

Thus, the Attorney General opined that the statutory provision in the appropriations act violated Const 1963, art 4, § 53, to the extent it required the Auditor General to audit local units of government.

You advise that the Auditor General now seeks to access school records under the authority conferred on the State Board of Education or the Superintendent of Public Instruction in the Revised School Code or the State School Aid Act to examine the records and accounts of school districts, public school academies, and intermediate school districts. The powers of governmental officers and state agencies, however, are limited by the constitution and statutes that confer those powers and may not be extended by implication beyond what may be necessary for the reasonable execution of the power. *Coffman v State Bd of Examiners in Optometry*, 331 Mich 582, 590; 50 NW2d 322 (1951). No provision of the State School Aid Act or the Revised School Code authorizes the Superintendent or the State Board of Education to delegate their authority to examine records to the Auditor General.

Moreover, since the State Board of Education, the Superintendent of Public Instruction, and the Department of Education are part of the executive branch of government, *Straus v Governor*, 459 Mich at 538, and the Auditor General is part of the legislative branch of government, neither the State Board of Education nor the Superintendent of Public Instruction may delegate, and the legislative branch may not exercise, a power conferred by the Legislature on these officers and this agency of the executive branch. To do so would violate the doctrine of separation of powers. Const 1963, art 3, § 2.

It is my opinion, therefore, in answer to your first question, that the State Board of Education and the Superintendent of Public Instruction may not delegate their authority to examine school records to the Auditor General to enable the Auditor General to examine those records in order to conduct a performance audit of the Department of Education.

Your second question assumes that this delegation is permitted and asks whether such a delegation of authority would make the Auditor General an agent of the State Board of Education or the Superintendent of Public Instruction. In light of my answer to your first question, it is not necessary to answer your second question.

While executive branch authority to examine records described above may not be delegated to the Auditor General and his staff, other provisions of law relevant to the Auditor General's authority to examine records should be addressed. Section 1(3) of 2003 PA 1, MCL 13.101(3) provides:

Upon demand of the auditor general, deputy auditor general, or any person appointed by the auditor general to make the audits and examinations provided in this act, the officers and employees of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of this state shall produce for examination all books, accounts, documents, and records of their respective branch, department, office, board, commission, agency, authority, and institution and truthfully answer all questions relating to their books, accounts, documents, and records of their respective activities and affairs. [Emphasis added.]

Moreover, MCL 13.101(4) grants the Auditor General subpoena power to compel the production of records when conducting audits and examinations of state agencies. That statute provides:

In connection with audits and examinations described in this act, the auditor general, deputy auditor general, or any person appointed to make audits and examinations may issue subpoenas, direct the service of the subpoena by any police officer, and compel the attendance and testimony of witnesses; may administer oaths and examine any person as may be necessary; *and may compel the production of books, accounts, papers, documents, and records.* The orders and subpoenas issued by the auditor general, deputy auditor general, or any person appointed with the duty of making the examinations provided in this subsection may be enforced upon application to any circuit court as provided by law. [MCL 13.101(4); emphasis added.]

The subpoena power conferred by the emphasized language above is not limited to records maintained by state agencies.² The Auditor General's office has subpoena power to require the production of records of such entities as local school districts, public school academies, and intermediate school districts, provided those records are sought "[i]n connection with audits" of state agencies performed by the Auditor General's office. Thus, if necessary, the Auditor General's office may issue subpoenas to compel the production of local school documents it must examine in connection with an audit of a state agency, such as CEPI.³ In recognition of the Auditor General's responsibilities for state agency audits under Const 1963, art 4, § 53, local school officials and others may provide such records to the Auditor General upon oral or written request without the formal service of a subpoena. However, the obligations described in subsections 1(3) and (4) of 2003 PA 1 may be affected by state or federal laws restricting or prohibiting the disclosure of certain records. See, e.g., the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g.

It is my further opinion, therefore, that the Auditor General's office may utilize its subpoena power to compel the production of local school records sought in connection with audits of state agencies. Generally, in recognition of the Auditor General's responsibilities for state agency audits under Const 1963, art 4, § 53, local school officials may provide such records to the Auditor General upon oral or written request without the formal service of a subpoena.

MIKE COX
Attorney General

²Where statutory language is unambiguous, governing rules of statutory construction require that "we presume that the Legislature intended the meaning [it] clearly expressed." *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000).

³In addition, the Auditor General may, in the discharge of his duties to audit state agencies, access public records of local units of government under the Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq.* OAG, No 6970, p 111.

COUNTY CLERKS: Duties of county clerks regarding military discharge records

VETERANS RECORDS:

A county clerk must enter upon the county's record book all military service discharges presented for recording to the county clerk, including discharges presented by a veteran's service officer to aid the veteran, surviving spouse, or dependent in applying for benefits available to the veteran, surviving spouse, or dependent.

If requested by the veteran, a person with the veteran's permission, or the surviving heirs of the veteran, a county clerk is required to provide for the viewing and reproduction of a military service discharge record that has been entered upon the county's record book.

If requested by the persons designated by MCL 35.32(2)(b)(iv) and if access to the document is necessary to aid the veteran, surviving spouse, or dependent in applying for benefits available to the veteran, a county clerk is required to provide for the viewing and reproduction of a military service discharge record that has been entered upon the county's record book.

A county clerk must provide a certified copy of a military discharge record on file with the county clerk at the request of a person designated in MCL 35.32(2)(b)(i)-(iv).

Opinion No. 7159

June 29, 2004

Honorable Patricia L. Birkholz
State Senator
The Capitol
Lansing, MI 48909

You have asked two questions about the duties of county clerks regarding military discharge records under 1867 PA 83, MCL 35.31 *et seq* (the Act).

You first ask:

Must a county clerk record a military service discharge record that may be presented by a veteran's service officer if recording the document is necessary to aid the veteran, or surviving spouse or dependent, in applying for benefits available to the veteran, surviving spouse or dependent?

Section 2(1) of the Act provides in relevant part:

A county clerk shall enter upon the record book all discharges of soldiers, sailors, marines, nurses, and members of women's auxiliaries that may be presented to the clerk for recording. [MCL 35.32(1).]

Under the rules of statutory construction, where the language of the statute is clear, no interpretation is necessary; the statute must be enforced as written according to its plain meaning. *Piper v Pettibone Corp*, 450 Mich 565, 571-572; 542 NW2d 269 (1995).

Section 2 of the Act clearly states that all military discharges¹ that are presented to the clerk for recording are to be recorded by the county clerk in the county's military discharge record book. The statute does not limit the class of persons who

¹OAG, 1975-1976, No 4829, p 76 (May 2, 1975), determined that the "discharges" referred to in MCL 35.32 include reports of separation and military service records. The opinion noted that this construction assured that the vital information needed in supporting documentation to secure veterans' claims and benefits would be available as intended by the Legislature.

may present these discharges for recording or the purpose for which the recording is intended.

It is my opinion, therefore, in answer to your first question, that a county clerk must enter upon the county's record book all military service discharges presented for recording to the county clerk, including discharges presented by a veteran's service officer to aid the veteran, surviving spouse, or dependent in applying for benefits available to the veteran, surviving spouse, or dependent.

Your second question asks:

Must a county clerk provide for the viewing or reproduction of a certified copy of a military service discharge record previously recorded if the document is necessary to aid the veteran, or surviving spouse or dependent, in applying for benefits available to the veteran, surviving spouse or dependent?

Section 2(1) of the Act states that "[t]he military service discharge record [in the record book of the county clerk] of a person is confidential and may be viewed or copied only pursuant to subsection (2)." MCL 35.32(1).

Section 2(2) of the Act provides:

Each county clerk may do 1 or more of the following:

(a) Make available to the general public information in a record described in subsection (1) that is not less than 70 years old and that includes only the name, rank, unit of military service, dates of military service, and medals and awards conferred upon each individual identified in that record.

(b) Pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403,² provide for the viewing or reproduction of a military service discharge record of a veteran by any of the following:

(i) The veteran.

(ii) A person with the veteran's permission.

(iii) The surviving heirs of the veteran.

(iv) A veteran's service officer, the Michigan veterans trust fund, or a person employed by the county department of veterans' affairs who provides counseling for veterans, if access to that record is necessary to aid the veteran, or the surviving spouse or a dependent of the veteran in applying for benefits available to the veteran.

(c) Charge members of the public for discharge records of veterans discharged 70 or more years ago. However, a person described in subdivision (b) shall not be charged for the discharge records of that veteran. [MCL 35.32(2)(a), (b), and (c).]

The answer to your second question turns on whether the language stating that the clerk "may" make these records available to certain classes of people listed in section 2(2) should be read in this context as meaning "shall" or "must." In *DeBeausseaert v Shelby Twp*, 122 Mich App 128, 131-132; 333 NW2d 22 (1982), the Court concluded that "may" meant "shall" in reviewing a statute that provided that a civil service commission "may" reject applicants who did not meet the physical requirements for service as a fire fighter:

Plaintiff argues that the use of the word "may" gives the commission discretion. However, "may" does not always grant such discretion; it is often interpreted to mean "shall". In *Kment v Detroit*, 109 Mich App 48, 61-62; 311 NW2d 306, 311 (1981), this Court stated:

² These sections specify the media, such as a photocopy, that certain government officials or entities may use to create reproductions of records.

"Ordinarily, use of the word 'shall' indicates that the doing of a particular thing is mandatory while use of the word 'may' grants discretion. * * * This is not always the case, however, and it has often been held in the context of particular statutes that the term 'shall' is not mandatory and that the term 'may' is. * * * 'Although the form of the verb used in a statute, i.e., whether it says something "may" or "shall" or "must" be done, is the single most important textual consideration bearing on whether a statute is mandatory or directory, it is not the sole determinant and what it usually connotes can be overcome by other considerations.' 2A Sutherland, *Statutory Construction* (4th ed), § 57.03, p 415. Chief among such 'other considerations' is, of course, the intent of the Legislature. * * * In determining the intent of the Legislature, certain generalities may be added concerning specific types of statutes and it has been said as a general rule that 'the permissive word "may" is interpreted as mandatory when the duty is imposed upon a public official and his act is for the benefit of a private individual'. 1A Sutherland, *Statutory Construction* (4th ed), § 25.04, p 301."

Smith v City Comm of Grand Rapids, 281 Mich 235, 242-243; 274 NW 776 (1937), further supports the word "may" being interpreted as mandatory:

"Statutes which confer upon a public body or officer power to act for the sake of justice, or which clothe a public body or officer with power to perform acts which concern the public interests or the rights of individuals, are generally regarded as mandatory, although the language is permissive merely, since they are construed as imposing duties rather than conferring privileges.' 59 CJ, pp 1076, 1077."

The Act clearly imposes duties upon county clerks for the benefit of veterans. *Black's Law Dictionary, Revised 4th Edition* (1968), p 1131, in its definition of "may," notes that "courts not infrequently construe 'may' as 'shall' or 'must' to the end that justice may not be the slave of grammar." Therefore, the term "may" used to describe the clerk's role in making military discharge records available for viewing and reproduction must be read in this context as meaning "shall."

Finally, section 5 of the Act provides that certified copies of discharge records "shall be received as evidence of the contents of the original discharge, in all cases where such evidence may be required." MCL 35.35. Section 2129(1) of the Revised Judicature Act of 1961 describes the duties of the officer holding certain records as follows:

Whenever a certified copy of any affidavit, record, document or paper, is declared by law to be evidence, such copy shall be certified by the clerk or officer in whose custody the same is by law required to be, to have been compared by him with the original, and to be a correct transcript therefrom, and of the whole of such original; and if such officer have any official seal by law, such certificate shall be attested by such seal; and if such certificate be given by the clerk of any county, in his official character as such clerk, it shall be attested by the seal of the court of which he is clerk. [MCL 600.2129(1).]

Accordingly, the veteran, a person with the veteran's permission, and the surviving heirs of the veteran are entitled, upon request, to receive a certified copy of the veteran's military service discharge records entered upon the record of the county clerk. The veterans' officials designated in MCL 35.32(2)(b)(iv)³ are also entitled, upon request, to receive a certified copy of the veteran's military service discharge

³Benefits are afforded to veterans under both state and federal law. For the requirements imposed by federal law regarding who may act as an agent for the preparation, presentation, or prosecution of any claim for benefits, see 38 USC 5901 and 38 USC 5902(a)(1) and (b). See also 38 USC 5903.

records entered upon the record book, with or without the permission of the veteran,⁴ if the copy is needed to aid the veteran, surviving spouse, or dependent in applying for benefits available to the veteran.

It is my opinion, therefore, in answer to your second question, that if requested by the veteran, a person with the veteran's permission, or the surviving heirs of the veteran, a county clerk is required to provide for the viewing and reproduction of a military service discharge record that has been entered upon the county's record book. If requested by the persons designated by MCL 35.32(2)(b)(iv) and if access to the document is necessary to aid the veteran, surviving spouse, or dependent in applying for benefits available to the veteran, a county clerk is required to provide for the viewing and reproduction of a military service discharge record that has been entered upon the county's record book. A county clerk must provide a certified copy of a military service discharge record on file with the county clerk at the request of a person designated in MCL 35.32(2)(b)(i)-(iv).

MIKE COX
Attorney General

MARRIAGE: Validity of out-of-state same-sex marriages in Michigan

ADOPTION:

FULL FAITH AND CREDIT: US Const, art IV, § 1

A marriage contracted between persons of the same sex in a state that recognizes same-sex marriages is not valid in the State of Michigan.

Couples of the same sex who marry in a state that recognizes same-sex marriages as valid are not legally authorized to adopt children in Michigan as a couple; one member of a same-sex couple may adopt a child in Michigan as a single person.

Opinion No. 7160

September 14, 2004

Honorable Bill Hardiman
State Senator
The Capitol
Lansing, MI

You have asked two questions regarding the validity in Michigan of marriages performed between persons of the same sex in Massachusetts, a state that recognizes same-sex marriages, and the applicability of Michigan's adoption statutes in such instances.

You first ask whether, in light of Michigan law governing marriage, the State or local units of government may recognize as valid those marriages that are performed between persons of the same sex in Massachusetts.

⁴The access afforded to the veterans' officials designated by MCL 35.32(2)(b)(iv) is not conditioned on a showing that it be sought with the permission of the veteran. The applicable rules of statutory construction do not permit adding a requirement into the statute that the Legislature has not seen fit to include. See *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997).

The Legislature has declared the public policy of this State with respect to marriage in chapter 551 of the Michigan Compiled Laws:

Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. *A marriage contracted between individuals of the same sex is invalid in this state.* [MCL 551.1; emphasis added.]

Chapter 551 further defines "marriage" as follows:

So far as its validity in law is concerned, *marriage is a civil contract between a man and a woman*, to which the consent of parties capable in law of contracting is essential. Consent alone is not enough to effectuate a legal marriage on and after January 1, 1957. Consent shall be followed by obtaining a license as required by section 1 of Act No. 128 of the Public Acts of 1887, being section 551.101 of the Michigan Compiled Laws, or as provided for by section 1 of Act No. 180 of the Public Acts of 1897, being section 551.201 of the Michigan Compiled Laws, and solemnization as authorized by sections 7 to 18 of this chapter. [MCL 551.2; emphasis added.]

In addition, sections 3 and 4 of chapter 551 specify:

A man shall not marry . . . another man. [MCL 551.3.]

A woman shall not marry . . . another woman. [MCL 551.4.]

Your question, however, pertains to a marriage legally performed in the Commonwealth of Massachusetts. 1939 PA 168, section 1, as amended by 1996 PA 334, recognizes as valid in Michigan those marriages validly performed in another state, with the exception of marriage contracted between individuals of the same sex. MCL 551.271. Section 2 of 1939 PA 168 was added by 1996 PA 334, and states:

This state recognizes marriage as inherently a unique relationship between a man and a woman, as prescribed by section 1 of the chapter 83 of the Revised Statutes of 1846, being section 551.1 of the Michigan Compiled Laws, and therefore *a marriage that is not between a man and a woman is invalid in this state regardless of whether the marriage is contracted according to the laws of another jurisdiction.* [MCL 551.272; emphasis added.]

The Supreme Judicial Court of Massachusetts has declared that, under Massachusetts law, citizens of that state of the same sex may not be excluded from the institution of civil marriage. *Opinions of the Justices to the Senate*, 440 Mass 1201, 1209; 802 NE2d 565, 571 (2004). Under article IV, section 1 of the United States Constitution, the states must generally give full faith and credit to the public acts and records of other states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

However, this provision does not require Michigan to recognize as valid, marriages between individuals of the same sex for two reasons.

First, the Full Faith and Credit Clause, by its terms, authorizes Congress to prescribe its applicability to the states. In 1996, in response to an attempt to recognize same-sex marriages in Hawaii,¹ Congress passed the Defense of Marriage Act, which states:

No State . . . shall be required to give effect to any public act, record, or judicial proceeding of any other State . . . respecting a relationship between

¹H.R. Rep. No. 104-664, at 1 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905, 2906.

persons of the same sex that is treated as a marriage under the laws of such other State[s] [28 USC 1738C.]

Thus, Congress has authorized the states to decline to give effect to same-sex marriages under the Full Faith and Credit Clause.

Second, the Full Faith and Credit Clause is not inflexible. An exception exists for those instances, such as same-sex marriage, where one state's law would contradict the public policy of another state. The United States Supreme Court has examined the Full Faith and Credit Clause on numerous occasions. In a case involving a state court's order of a money judgment, *Baker v General Motors Corp*, 522 US 222; 118 S Ct 657; 139 L Ed 2d 580 (1998), the Supreme Court reviewed prior decisions and noted a distinction between court judgments and a state's laws for purposes of applying the Full Faith and Credit Clause:

Our precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments. . . . The Full Faith and Credit Clause does not compel "a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins Co v Industrial Accident Comm'n*, 306 US 493, 501, 83 L Ed 940, 59 S Ct 629 (1939); see *Phillips Petroleum Co v Shutts*, 472 US 797, 818-819, 86 L Ed 2d 628, 105 S Ct 2965 (1985). Regarding judgments, however, the full faith and credit obligation is exacting. [522 US at 232-233.]

While Massachusetts now allows marriage contracts between its citizens of the same sex as a result of a state court order, the court's decision is an interpretation of Massachusetts law and not a judgment that must be given full faith and credit in other states. The United States Supreme Court offered an even clearer statement regarding the proper application of US Const, art IV, § 1, in *Nevada v Hall*, 440 US 410, 422; 99 S Ct 1182; 59 L Ed 2d 416 (1979), quoting *Pacific Employers Ins Co v Industrial Accident Comm'n*, 306 US at 502-503:

"It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy. . . . And in the case of statutes, the extrastate effect of which Congress has not prescribed, as it may under the constitutional provision, we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events."

According to the Court in *Nevada v Hall*, the Full Faith and Credit Clause "does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." 440 US at 423-424, quoting *Pacific Employers Ins Co*, 306 US at 504-505.

Michigan case law also recognizes the public policy exception to the Full Faith and Credit Clause. The Michigan Supreme Court in *In re Miller's Estate*, 239 Mich 455, 457; 214 NW 428 (1927), held that, were the Michigan Legislature to declare a type of out-of-state marriage to be invalid as a matter of public policy, it would be invalid in Michigan, even if valid in the state where contracted. The Legislature's declaration in MCL 551.1 that "[a] marriage contracted between individuals of the same sex is invalid in this state" falls squarely within this public policy exception.

It is my opinion, therefore, in answer to your first question, that a marriage contracted between persons of the same sex in a state that recognizes same-sex marriages is not valid in the State of Michigan.

Your second question asks whether couples of the same sex who marry in a state that recognizes same-sex marriages are legally authorized to adopt children in Michigan as a couple.

The Michigan Adoption Code, 1998 PA 474, MCL 710.21 *et seq*, provides in section 24 that adoption shall be by a person or a married couple. MCL 710.24. The Michigan Court of Appeals confirmed that "it has been held inconsistent with the general scope and purpose of adoption statutes to allow two unmarried persons to make a joint adoption." *In re Adams*, 189 Mich App 540, 544; 473 NW2d 712 (1991).

The answer to your first question is determinative in answering your second question. Since a marriage contract entered into by two people of the same sex in a state that recognizes same-sex marriages is invalid in Michigan, such individuals are not recognized to be a married couple in Michigan. Therefore, they cannot adopt a child together in Michigan. Under MCL 710.24, however, one of them may adopt a child as a single person.

It is my opinion, therefore, in answer to your second question, that couples of the same sex who marry in a state that recognizes same-sex marriages as valid are not legally authorized to adopt children in Michigan as a couple; one member of a same-sex couple may adopt a child in Michigan as a single person.

MIKE COX
Attorney General

TOWNSHIPS: Compatibility of membership on township planning commission and county planning commission

COUNTIES:

INCOMPATIBILITY:

The offices of member of a township planning commission and member of a county planning commission are compatible and may be held simultaneously by the same person. Due to intervening legislation, OAG, 1995-1996, No 6837, p 19 (February 23, 1995), no longer expresses the opinion of the Attorney General.

Opinion No. 7161

September 15, 2004

Honorable Lauren M. Hager
State Representative
The Capitol
Lansing, Michigan

You have asked whether 2001 PA 263, which amends 1959 PA 168, MCL 125.321 *et seq*, commonly known as the Township Planning Act, and 2001 PA 264, which amends 1945 PA 282, MCL 125.101 *et seq*, commonly known as the County Planning Act, eliminate the incompatibility between the public offices of township planning commissioner and county planning commissioner, allowing a person to simultaneously hold both positions.

Section 2 of the Incompatible Public Offices Act, 1978 PA 566, MCL 15.181 *et seq*, states that "a public officer or public employee shall not hold 2 or more incompatible offices at the same time." MCL 15.182. Section 1(b) defines "incompatible offices" as:

[P]ublic offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:

- (i) The subordination of 1 public office to another.
- (ii) The supervision of 1 public office by another.
- (iii) A breach of duty of public office. [MCL 15.181(b).]

In order to answer your question, an examination of the duties and powers of the two public offices is necessary. A township planning commission is comprised of between five and nine members who have been appointed by the township supervisor with the approval of the township board. MCL 125.324. The township planning commission is responsible for adopting a basic development plan for the township. MCL 125.326. The township planning commission has the responsibility to adopt and carry out a development plan through the powers granted in the Township Planning Act. MCL 125.323(1).

The county planning commission is comprised of between five and eleven members appointed by the county board of commissioners. MCL 125.102. The county planning commission is responsible for adopting a development plan for the county. MCL 125.101. The County Planning Act was enacted to, among other things, provide for a county plan to promote public health, safety, general welfare, and to encourage reasonable use of resources for all residents of the county. MCL 125.104.

When originally enacted, both the Township Planning Act and the County Planning Act required township planning commissions to send all plans to the county planning commission for review and approval. This created a supervisory/subordinate relationship between township planning commissions and the county planning commission, causing incompatibility.

Because of the incompatibility, OAG, 1995-1996, No 6837, p 19 (February 23, 1995), determined that where a township planning commission was formed under the Township Planning Act, a member of a township planning commission may not simultaneously hold a position on the county planning commission. The opinion determined that if an individual simultaneously held a position on both planning commissions, then the member would essentially be "passing on his work" because the township planning commission was required to submit township plans to the county planning commission for review and approval. OAG No 6837 at p 20.¹

However, intervening legislation has changed the situation. The Legislature, through 2001 PA 263 and 264, amended the Township Planning Act and the County Planning Act to allow the county planning commission to serve only as a coordinating agency for all planning commissions within the county. The amended legislation altered the role of the county planning commission. The Township Planning Act now provides:

Before preparing a plan, a township planning commission shall mail . . . a notice, explaining that the planning commission intends to prepare a plan and requesting the [county planning commission's] cooperation and comment. [MCL 125.327a (2).]

and:

(2) After preparing a proposed plan, the township planning commission shall submit the proposed plan to the township board for review and comment.

(3) If the township board approves the distribution of the proposed plan, it shall notify the secretary of the planning commission and the secretary of the township planning commission shall submit a copy of the proposed plan, for review and comment to [the county planning commission].

* * *

¹Despite this, the opinion did conclude that a member of a township planning commission would not be precluded from serving on an advisory council to the county planning commission, as permitted under MCL 125.107.

(6) The statements provided for [by the county planning commission] are *advisory only*. [MCL 125.327b; emphasis added.]

Thus, the plans of township planning commissions are no longer subject to "approval" by the county planning commission. Instead, township planning commissions are required only to submit the township plan to the county planning commission for "review and comment." This establishes a purely *advisory* role for the county planning commission.²

Because the county planning commission now has only an advisory role in reviewing township plans, there is no longer a supervisory/subordinate relationship present. Even though the Legislature has not expressly authorized a member of the township planning commission to serve on the county planning commission, the fact that the role of the county planning commission has changed to strictly advisory allows a person to simultaneously occupy both offices without violating sections 1(b)(i) and (ii) of the Incompatible Public Offices Act.

The only remaining inquiry to be resolved is whether a "breach of duty of public office" violating section 1(b)(iii) of the Incompatible Public Offices Act would result if a member simultaneously held positions in the two public offices. A breach of duty generally occurs when a member of two public offices is unable to protect, advance, and promote the interests of both positions at the same time. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 164; 627 NW2d 247 (2001). The sole duty that would be applicable here is the task of the county planning commission to review and make comments on the township plans. Since this role of the county planning commission is advisory only, a member of both offices would not breach any duty owed to either public office. See OAG, 1999-2000, No 7033, p 65 (September 16, 1999).

It is my opinion, therefore, that the offices of member of a township planning commission and member of a county planning commission are compatible and may be held simultaneously by the same person. Due to intervening legislation, OAG, 1995-1996, No 6837, p 19 (February 23, 1995), no longer expresses the opinion of the Attorney General.

MIKE COX
Attorney General

²The conclusion reached in this opinion is similar to OAG, 1999-2000, No 7060, p 142 (August 28, 2000). That opinion dealt with a township planning commission created under the Municipal Planning Act, 1931 PA 285, MCL 125.31 *et seq*, which was significantly different than that of the Township Planning Act before the 2001 amendments, effective January 9, 2002.

WATER SUPPLY: Regulation of waters of the State**POLICE POWER:****CONST 1963, ART 4, § 51:****CONST 1963, ART 4, § 52:**

The Legislature has the authority under Const 1963, art 4, §§ 51 and 52, to regulate the withdrawal and uses of the waters of the State, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the State from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. That authority extends to all waters within the territorial boundaries of the State.

Opinion No. 7162

September 23, 2004

Honorable Patricia Birkholz
State Senator
The Capitol
Lansing, MI 48909

You have asked the following question regarding regulation of State waters:

Does the Legislature have the authority to regulate the withdrawal and uses of the waters of the state, including both surface and groundwater, under the Michigan Constitution or general police powers and public trust, given any existing rights to the waters of the state? Additionally, what are the boundaries of these waters of the state for purposes of allowable regulation?

The police power is an inherent attribute of state sovereignty. *Pollard v Hagan*, 44 US 212; 11 L Ed 565 (1845); *Clements v McCabe*, 210 Mich 207; 177 NW 722 (1920). As explained by the Michigan Supreme Court in *People v Brazee*, 183 Mich 259, 262; 149 NW 1053 (1914):

The "police power" is said to be a power or organization of a system of regulations tending to the health, order, convenience, and comfort of the people and to the prevention and punishment of injuries and offenses to the public. It is the expression of an instinct of self-preservation and characteristic of every living creature, an inherent faculty and function of life, attributed to all self-governing bodies as indispensable to their healthy existence and to the public welfare. It embraces all rules and regulations for the protection of life and the security of property. It has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number." Courts have consistently and wisely declined to set any fixed limitations upon subjects calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction. [Citation omitted.]

Const 1963, art 4, § 51, imposes on the Legislature a broad directive to enact laws to protect the public health, safety, and welfare:

The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Numerous judicial decisions and opinions of the Attorney General have recognized the importance of a clean and ample supply of water to the preservation of the public health and welfare. *City of Columbus v Mercantile Trust & Deposit Co*, 218 US 645; 31 S Ct 105; 54 L Ed 1193 (1910); *Hudson County Water Co v*

McCarter, 209 US 349; 28 S Ct 529; 52 L Ed 828 (1908), quoted in *Obrecht v Nat'l Gypsum Co*, 361 Mich 399; 105 NW2d 143 (1960); *Palmer Park Theater Co v Highland Park*, 362 Mich 326; 106 NW2d 845 (1961); *Attorney General ex rel Wyoming Twp v Grand Rapids*, 175 Mich 503; 141 NW 890 (1913); 1 OAG, 1959-1960, No 3327, p 154 (August 5, 1959); OAG, 2001-2002, No 7117, p 115 (September 11, 2002).

Moreover, Const 1963, art 4, § 52, recognizes the State's paramount interest in the protection of water and other natural resources from pollution, impairment, and destruction:

The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

This constitutional provision imposes a duty on the Legislature to protect the water and other natural resources from pollution, impairment, and destruction. See OAG, 1969-1970, No 4590, p 17, 19-27 (January 27, 1969), for a discussion of the debates of the Constitutional Convention of 1961 relative to the mandatory character of art 4, § 52.

Your letter also refers to the common law public trust doctrine as a source of legislative authority to protect and conserve the waters of the State. The common law public trust doctrine emanates from the ancient mandate that navigable waterways are public highways forever held in trust for the people, and that the sovereign has a duty to preserve these waterways for the benefit of the people. Under this doctrine, the State and its Legislature have not only the authority, but an affirmative obligation to protect the public interest in navigable waters. *Illinois Central Ry Co v Illinois*, 146 US 387; 13 S Ct 110; 36 L Ed 1018 (1892); *Obrecht v Nat'l Gypsum Co*, *supra*; *Collins v Gerhardt*, 237 Mich 38; 211 NW 115 (1926); OAG, 1961-1962, No 4040, p 381 (May 7, 1962). In *Nedtweg v Wallace*, 237 Mich 14, 17-20; 208 NW 51 (1927), the Michigan Supreme Court explained the history and scope of the common law public trust doctrine in upholding a statute that permitted leasing of certain Great Lakes bottomlands:

The trust is a common-law one; it prevailed in England long before the American Revolution; it was in the Virginia cession of the territory northwest of the River Ohio; it continued during the period the United States held the Northwest Territory and passed as the same trust to the State of Michigan at her admission to the Union; it has not changed in character or purpose and is an inalienable obligation of sovereignty. But at common law the crown and parliament recognized the distinction between the governmental power essential to be retained to carry out the trust and the mere proprietary interest possible of being parted with, without at all preventing governmental control. The State may not, by grant, surrender such public rights any more than it can abdicate the police power or other essential power of government. But this does not mean that the State must, at all times, remain the proprietor of, as well as the sovereign over, the soil underlying navigable waters. . . .

* * *

The State is sovereign of the navigable waters within its boundaries, bound, however, in trust, to do nothing in hindrance of the public right of navigation, hunting and fishing. The State may separate the *jus privatum* [the State's proprietary title] from the *jus publicum* [the State's title held on behalf of all the people] by sale of the former, but can never, by sale or otherwise, grant away the *jus publicum*.

Pursuant to Const 1963, art 4, §§ 51 and 52, and in fulfillment of its common law sovereign responsibility to protect the public rights in navigable waterways, the Legislature has enacted laws that regulate the waters of our State for the benefit of the public, including the preservation and protection of water for domestic use,

navigation, recreation, aesthetics, fishing, agriculture, commerce, and industry. See, e.g., Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq*; Part 127 of the Public Health Code (Water Supply and Sewer Systems), MCL 333.12701 *et seq*; and Part 301 (Inland Lakes and Streams), MCL 324.30101 *et seq*. See also, NREPA: Part 17 (Michigan Environmental Protection Act), MCL 324.1701 *et seq*; Part 303 (Wetland Protection), MCL 324.30301 *et seq*; Part 305 (Natural Rivers), MCL 324.30501 *et seq*; Part 313 (Surplus Waters), MCL 324.31301 *et seq*; Part 325 (Great Lakes Submerged Lands), MCL 324.32501 *et seq*; Part 327 (Great Lakes Preservation), MCL 324.32701 *et seq*; Part 341 (Irrigation Districts), MCL 324.34101 *et seq*; Part 451 (Fishing from Inland Waters), MCL 324.45101 *et seq*; and Part 781 (Michigan State Waterways Commission), MCL 324.78101 *et seq*.

Consideration of your question is not complete, however, without reference to the international and interstate aspects concerning Great Lakes water use. Perhaps the most important international agreement in this area is the Boundary Waters Treaty of 1909, 12 Bevans 319, the first of many modern treaties with Canada (originally the United Kingdom) governing use of Great Lakes waters. Among other things, this treaty governs "uses or obstructions or diversions" of all boundary waters between Canada and the United States, including the Great Lakes. The Treaty also resulted in the establishment of the International Joint Commission, a bilateral agency charged with reviewing diversions, resolving disputes, and studying issues affecting the Great Lakes.

Also significant is the interstate relationship between the Great Lakes States. Several consent decrees that were entered in the original action filed in the United States Supreme Court by Michigan and other Great Lakes States against Illinois, *Wisconsin v Illinois*, 281 US 179; 50 S Ct 266; 74 L Ed 799 (1930), have successfully limited Chicago's diversion of Lake Michigan water by reversing the flow of the Chicago River. In this case, in which the Court exercises ongoing jurisdiction, the most recent consent decree was entered in 1980. The consent decrees specify a limit on the amount of water that can be diverted by Chicago and generally provide how that diversion is to be measured. See also, amendments to the Water Resources Development Act of 1986, 42 USC §1962d-20 (prohibiting diversion or exportation of water from the Great Lakes basin without the approval of the governors of all the Great Lakes states).

Under state law, surface water and groundwater are both expressly subject to regulation. For example, the Water Resources Act, 1929 PA 245, now Part 31 of NREPA, originally covered only surface water. When the scope of the Water Resources Commission's authority was expanded to include groundwater by 1949 PA 117, its validity was readily recognized. See *L.A. Darling Co v Water Resources Comm*, 341 Mich 654, 662; 67 NW2d 890 (1955); OAG, 1949-1950, No 1040, p 322 (August 23, 1949). Part 31 now contains this broad definition:

"Waters of the state" means groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state. [MCL 324.3101(y).]

Your question also asks about the regulation of water withdrawals "given any existing rights to the waters of the state." Michigan law does recognize certain rights to use of surface and groundwater by owners of property adjoining or overlying such water sources. In *Hilt v Weber*, 252 Mich 198, 225; 233 NW 159 (1930), a case involving the Great Lakes, the Court identified the following four riparian rights: (1) the right to use water for "general purposes, as bathing, domestic use, etc."; (2) the right to "wharf out"; (3) the right to access navigable waters; and (4) the right to accretions. In *Thompson v Enz*, 379 Mich 667, 686; 154 NW2d 473 (1967), the Court further divided these rights into two categories of uses: (1) for "natural purposes," which are only those uses "absolutely necessary for the existence of the riparian proprietor and his family, such as to quench thirst and for household purposes"; and (2) for "artificial purposes," which "merely increase one's comfort

and prosperity and do not rank as essential to his existence, such as commercial profit and recreation." The former uses were described as "preferred" as against other users, and the latter were described as "correlative" and subject to the test of reasonableness. *Id.*, at 686-687. See also, *Schenk v City of Ann Arbor*, 196 Mich 75; 163 NW 109 (1917) (describing the right to use percolating waters as a "qualified right," subject to the "rule of reasonable user").

Michigan law does not recognize absolute rights in or "ownership" of water in its natural state. In *People v Hulbert*, 131 Mich 156, 160-173; 91 NW 211 (1902), the Court surveyed cases explaining this "usufructuary" interest in water:

Flowing water, as well as light and air, are in one sense 'publici juris' [owned by the public]. They are a boon from Providence to all, and differ only in their mode of enjoyment. Light and air are diffused in all directions, flowing water in some. When property was established, each one had the right to enjoy the light and air diffused over, and the water flowing through, the portion of the soil belonging to him. The property in the water itself was not in the proprietor of the land through which it passes, but only the use of it, as it passes along, for the enjoyment of his property and as incidental to it. The law is laid down by Chancellor Kent, in 3 Comm. 439, thus: 'Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water. * * * He has no property in the water itself, but a simple usufruct as it passes along.' [Quoting *Wood v Waud*, 3 Exch. 748.]

* * *

While he does not own the running water, he has the right to a reasonable use of it as it passes by his land. As all other owners upon the same stream have the same right, the right of no one is absolute, but is qualified by the right of the others to have the stream substantially preserved in its natural size, flow, and purity, and to protection against material diversion or pollution. This is the common right of all, which must not be interfered with by any. [Quoting *Strobel v Kerr Salt Co*, 164 NY 303; 58 NE 142 (1900).]

Thus, it is difficult to precisely define the nature and extent of any private rights in water, which the courts have described as matters of fact and degree. See, e.g., *Attorney General ex rel Wyoming Twp v Grand Rapids*, 175 Mich at 542. However, it is well established that the use or exercise of property, or any other rights, may be limited through the reasonable exercise of the police power. For example, in *People v Litvin*, 312 Mich 57, 64; 19 NW2d 485 (1945), the Michigan Supreme Court outlined the breadth of the police power, relying on cases dating back to the 1920s:

In *Parkes v. Judge of Recorder's Court*, 236 Mich. 460 (47 A.L.R. 1128), we said:

"The constitutional guaranty of life, liberty and of property is subject to such restraints as are reasonably necessary for the public good. As a member of organized society the individual citizen has no right to do those things which are injurious to the common welfare."

In *Kelley v. Judge of Recorder's Court of Detroit*, 239 Mich. 204, 214 (53 A.L.R. 273), we quoted with approval from *Crowley v. Christensen*, 137 U.S. 86 (11 Sup. Ct. 13, 34 L. Ed. 620):

¹ See also, *Preston v Clark*, 238 Mich 632, 639; 214 NW 226 (1927), quoting *Hoy v Sterrett*, 2 Watts (Pa.) 327 (1834) ("But our law annexes to the riparian proprietors the right to the use in common, as an incident to the land; and whoever seeks to found an exclusive use must establish a rightful appropriation in some manner known and admitted by law"); *Hart v D'agostini*, 7 Mich App 319, 321; 151 NW2d 826 (1967) ("The right to enjoyment of the subterranean water beneath a person's land cannot be stated in the terms of an absolute right."); *Thompson v Enz, supra*; *Schenk v Ann Arbor, supra*. Sax, *The Public Trust Doctrine In Natural Resource Law: Effective Judicial Intervention*, 68 Mich L Rev 471, 485 (1970).

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community."

Similarly, the United States Supreme Court described the police power as "one of the most essential powers of government, one that is the least limitable." *Hadacheck v Sebastian*, 239 US 394, 410; 36 S Ct 143; 60 L Ed 348 (1915).

Therefore, the existence of potential property rights that may be impacted by the exercise of the police power does not, in itself, limit the State's authority to act in the public interest. For example, limiting riparian use of water for purposes of sewage or manufacturing discharge has been upheld as a legitimate exercise of the police power due to their impacts on public health and other riparian rights. See *Attorney General ex rel Wyoming Twp, supra* (determining that sewage discharges by the City of Grand Rapids constituted a public nuisance); OAG, 1952-1954, No 1872, p 457 (December 13, 1954) (concluding that the Water Resources Commission could order limits on further discharges by paper mills on the Kalamazoo River: "Riparian rights are property rights. All property is held subject to the superior power of the state to regulate the use under the police power").

Of course, the exercise of any governmental authority will be subject to constitutional protections provided by the United States and Michigan Constitutions against arbitrary or unreasonable government action and the taking of property without just compensation. See, e.g., *L.A. Darling Co*, 341 Mich at 664-665 (determining that an order of the Water Resources Commission failed to provide adequate due process under the Due Process Clauses of the United States and Michigan Constitutions, US Const, Am 14 and Mich Const 1908, art 2, § 16). The reasonableness of any regulation will be evaluated against the recognized, albeit qualified, rights to use of water for certain purposes.

You also ask about the boundaries of the waters of the State for purposes of regulation. The territorial boundaries of the State define the limits of the State's jurisdiction. The Enabling Act of June 15, 1836, c. 99, 5 Stat 49, one of the statutes providing for admission of the State of Michigan to the Union, expressly provided:

Provided always, and this admission is upon the express condition, that the said State shall consist of and have jurisdiction over all the territory included within the following boundaries, and over none other, to wit: Beginning at the point where the above described northern boundary of the State of Ohio intersects the eastern boundary of the State of Indiana, and running thence with the said boundary line of Ohio, as described in the first section of this act, until it intersects the boundary line between the United States and Canada, in Lake Erie; thence, with the said boundary line between the United States and Canada through the Detroit river, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence, in a direct line through Lake Superior, to the mouth of the Montreal river; thence through the middle of the main channel of the said river Montreal, to the middle of the Lake of the Desert; thence, in a direct line to the nearest head water of the Menomonie river; thence, through the middle of that fork of the said river first touched by the said line, to the main channel of the said Menomonie river; thence, down the centre of the main channel of the same, to the centre of the most usual ship channel of the Green bay of Lake Michigan; thence, through the centre of the most usual ship channel of the said bay to the middle of Lake Michigan; thence, through the middle of Lake Michigan, to the northern boundary of the State of Indiana, as that line was established by the act of Congress of the nineteenth of April, eighteen hundred and sixteen; thence, due east, with the north boundary line of the said State of Indiana, to the northeast corner thereof; and thence, south, with the east boundary line of Indiana, to the place of beginning.

These territorial and jurisdictional boundaries extend into and encompass over 38,000 square miles of the Great Lakes. 1945 PA 78, sections 1 and 2, MCL 2.1 and

2.2; Michigan Manual 2003-2004, MICHIGAN'S KEY FACTS page. The State's boundaries within the Great Lakes have been confirmed and further delineated through compacts, treaties, and court orders. See, e.g., MCL 2.201 (codifying a 1947 compact between Michigan, Wisconsin, and Minnesota); *Michigan v Wisconsin*, 272 US 398; 47 S Ct 114; 71 L Ed 315 (1926) (resolving a boundary dispute between Michigan and Wisconsin). As sovereign, the State may regulate activities within those boundaries, including the Great Lakes. *Lake Carriers Ass'n v Kelley*, 527 F Supp 1114 (ED Mich, 1981). As noted above, Part 31 of NREPA already broadly defines the extent of the waters of the State to include "groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state." MCL 324.3101(y).

It is my opinion, therefore, that the Legislature has the authority under Const 1963, art 4, §§ 51 and 52, to regulate the withdrawal and uses of the waters of the State, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the State from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. That authority extends to all waters within the territorial boundaries of the State.

MIKE COX
Attorney General

CONST 1963, ART 5, § 5: Manufactured Housing Commission as examining or licensing board of a profession under Const 1963, art 5, § 5

MANUFACTURED HOUSING COMMISSION:

The Manufactured Housing Commission established under the Mobile Home Commission Act, MCL 125.2301 *et seq*, is not an "appointed examining or licensing board of a profession" within the meaning of Const 1963, art 5, § 5.

Opinion No. 7163

September 28, 2004

Honorable Valde Garcia
State Senator
The Capitol
Lansing, MI 48918

You have asked whether the Manufactured Housing Commission established under the Mobile Home Commission Act is an appointed examining or licensing board of a profession within the meaning of Const 1963, art 5, § 5, and if so, what professions the Commission regulates.

Const 1963, art 5, § 5, provides:

A majority of the members of an appointed examining or licensing board of a profession shall be members of that profession.

Your question requires consideration of whether the Manufactured Housing Commission is an appointed board, whether it exercises examining or licensing authority, and whether the activities over which any such authority is exercised constitute a "profession" within the meaning of Const 1963, art 5, § 5.

The Legislature created the Manufactured Housing Commission¹ (Commission) in the Mobile Home Commission Act (Act), 1987 PA 96, MCL 125.2301 *et seq.*, within the then Department of Commerce.² MCL 125.2303(1). Section 3(2) of the Act, MCL 125.2303(2), provides that each of the Commission's 11 members are appointed by the Governor with the advice and consent of the Senate, making clear that the Commission is an "appointed board" within the meaning of art 5, § 5. Membership of the Commission must include each of the following:

- (a) A representative of an organization whose membership consists of mobile home residents.
- (b) A representative of financial institutions.
- (c) Two operators of a licensed mobile home park having 100 or more sites and 1 operator of a licensed mobile home park having less than 100 sites.
- (d) A representative of organized labor.
- (e) An elected official of a local government.
- (f) A licensed mobile home dealer.
- (g) One resident of a licensed mobile home park having 100 or more sites and 1 resident of a licensed mobile home park having less than 100 sites.
- (h) A manufacturer of mobile homes. [MCL 125.2303(3).]

Regarding whether the Commission exercises "examining or licensing" authority within the meaning of Const 1963, art 5, § 5, the title to the Act provides an indication of its scope and is generally indicative of legislative intent regarding the matters for which licensing is required:³

AN ACT to create a mobile home commission; to prescribe its powers and duties and those of local governments; to provide for a mobile home code and the licensure, regulation, construction, operation, and management of mobile home parks, the licensure and regulation of retail sales dealers, warranties of mobile homes, and service practices of dealers; to provide for the titling of mobile homes; to prescribe the powers and duties of certain agencies and departments; to provide remedies and penalties; to declare the act to be remedial; to repeal this act on a specific date; and to repeal certain acts and parts of acts. [Emphasis added.]

The Act provides for three types of licensing powers – to grant or deny initial licensure, to revoke or suspend an existing license, and to renew an existing license. The Act divides these powers between the Commission and the Department of Labor and Economic Growth (DLEG). Generally speaking, under section 16 of the Act, the DLEG grants or denies initial licenses and renewals for mobile home parks. MCL 125.2316(2) and (3). Section 21 of the Act authorizes the Commission to grant, deny, or renew licenses of individuals seeking to engage in certain specified occupations:

- (1) A mobile home dealer shall not engage in the retail sale of a mobile home without a license.
- (2) *A mobile home dealer, mobile home installer, or repairer may obtain an initial or renewal license by filing with the commission an application together with consent to service of process in a form prescribed by the commission pursuant to section 35.*

¹The Legislature created the "Mobile Home Commission" in section 3(1) of the Mobile Home Commission Act, MCL 125.2303(1), which was renamed the Manufactured Housing Commission in Executive Order 1997-12, ¶ C.1.

²The Department of Commerce was renamed the Department of Consumer and Industry Services (DCIS) in Executive Order (EO) 1996-2, ¶ I.1. In paragraph II.3 of EO 1996-2, all the statutory authority, duties, functions, and responsibilities of the Commission were transferred from the Department of Commerce to the Director of the DCIS by a Type II transfer. One year later, however, the same authority, powers, duties, functions, and responsibilities, with the exception of rulemaking authority, were transferred back to the Commission by EO 1997-12, ¶ C.1. The DCIS was renamed the Department of Labor and Economic Growth in EO 2003-18, ¶ IIA.1.

³See *House Speaker v Governor*, 443 Mich 560, 591 n 37; 506 NW2d 190 (1993).

* * *

(6) A licensed mobile home dealer, mobile home installer, or repairer may file an application for the license of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. *The commission may grant or deny the application.* [MCL 125.2321(1), (2), and (6); emphasis added.]

It is clear from reading the Act as a whole that the Commission is statutorily empowered to engage in licensing of three distinct occupations: retail sellers of new and used mobile homes; installers of mobile homes; and repairers or servicers of mobile homes.⁴ Moreover, the Commission has exclusive authority to impose penalties on licensees including censure, denial of new licensure, and revocation of an existing license, MCL 125.2343(1). Accordingly, the Commission is an "examining or licensing board"⁵ within the meaning of Const 1963, art 5, § 5.

It must next be determined whether the Commission is a licensing board "of a profession" as that term is used in Const 1963, art 5, § 5. In *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971), the Michigan Supreme Court stated the primary rule of constitutional construction:

[When a] case requires the construction of a constitution, [] the technical rules of statutory construction do not apply. *McCulloch v. Maryland* (1819), 17 U.S. (4 Wheat) 316, 407 (4 L Ed 579).

The primary rule is the rule of "common understanding" described by Justice Cooley:

"A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people,* and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding,* and ratified the instrument in the belief that that was the sense designed to be conveyed.' (Cooley's Const Lim 81)." (Emphasis added.)

In *House Speaker v Governor*, 443 Mich 560, 580-581; 506 NW2d 190 (1993), after endorsing the rule of common understanding, the Court described a second rule of constitutional construction:⁶

[T]he second important rule of constitutional construction . . . requires consideration of "the circumstances surrounding the adoption of the constitutional provision and the purpose sought to be accomplished" *Soap & Detergent*, 415 Mich 745, quoting *Traverse City School Dist, supra*, 384 Mich 405. Of course, the most instructive tool for discerning the circumstances surrounding the

⁴The Mobile Home Code is a set of rules governing a wide array of activities associated with manufactured housing promulgated under MCL 125.2305. Under certain provisions of the Code, 2003 MR 14, R 125.1214g and 125.1214i, applications for licensure as a mobile home retailer and as a mobile home installer and servicer are to be submitted on forms "prescribed by the department." Those forms indicate that completed applications "will be presented for approval to the Manufactured Housing Commission at its next regularly scheduled meeting."

⁵There is no constitutional distinction between a board and a commission. *Civil Service Comm v Dep't of Labor*, 424 Mich 571, 599; 384 NW2d 728 (1986).

⁶There are other rules that apply in special circumstances not present here. In *Silver Creek Drain Dist v Extrusions Division*, 468 Mich 367, 375; 663 NW2d 436 (2003), the Court stated that, if "the constitutional language has no plain meaning, but is a technical, legal term, we are to construe those words in their technical, legal sense. Moreover, in that undertaking, we are to rely on the understanding of the terms by those sophisticated in the law at the time of the constitutional drafting and ratification."

adoption of the provision is the floor debates in the Constitutional Convention record. However, we have noted previously that consideration of the debates is limited because "[t]hey are individual expressions of concepts as the speakers perceive them (or make an effort to explain them). Although they are sometimes illuminating, affording a sense of direction, they are not decisive as to the intent of the general convention (or of the people) in adopting the measures." *Regents of the Univ of Michigan v Michigan*, 395 Mich 52, 59-60; 235 NW2d 1 (1975). Nevertheless, we have said that they are particularly helpful "when we find in the debates a recurring thread of explanation binding together the whole of a constitutional concept." *Id.* at 60.

Most recently, in *People v Nutt*, 469 Mich 565, 574 n 7; 677 NW2d 1 (2004), the Court emphasized that the meaning to be ascribed to the Constitution is the meaning that the people understood in 1963 when the Constitution was ratified ñ even if a different meaning might be preferred today:

Additionally, our task is not to impose on the constitutional text at issue . . . the meaning we as judges would prefer, or even the meaning the people of Michigan today would prefer, but to search for contextual clues about what meaning the people who ratified the text in 1963 gave to it. [*Mich. United Conservation Clubs v. Secretary of State (After Remand)*, 464 Mich. 359, 375; 630 N.W.2d 297 (2001) (Young, J., concurring) (emphasis in original).]

Applying these rules of constitutional construction, OAG, 1975-1976, No 4899, p 181, 183 (October 23, 1975), summarized the purpose sought to be accomplished by art 5, § 5, as expressed by the delegates to the Constitutional Convention of 1961:

As indicated by the record of the *Constitutional Convention 1961*, Official Record, Vol II, pp 1893-1895, Const 1963, art 5, § 5 was enacted in part for the purpose of assuring that a majority of one "profession" could not control a licensing or examining board of another "profession" -- thereby controlling the "profession" itself. Special note was made of the fact that the healing arts were separate and distinct sciences and could not satisfactorily be governed by a competitive school of healing.

While the delegates discussed this provision as redressing a problem that could arise in the healing arts, they did not discuss what was, or was not, embraced within the word "profession."⁷ Nor has any court defined the scope of the word in the context of art 5, § 5.⁸

⁷ The language that became art 5, § 5 was not originally included in Proposal 71 from the committee on the executive branch. 1 Official Record, Constitutional Convention 1961, p 1766. The framers perceived a need for such a provision during discussion of the section that would impose a limit of 20 principal departments in state government. *Id.*, at 1767-1768. The reasons offered in support of the 20-department limitation included comment that it "would not prohibit the creation, for purposes of professional regulation, of professional or quasi-professional licensing boards, made up in whole or in part of members of the profession, in a department of professional standards or of licensing such as now exist in several states." *Id.*, at 1768. See also, 2 Official Record, Constitutional Convention 1961, pp 1839-1840, 1893. The language in question was added to Proposal 71 to limit the authority of the Legislature by requiring that a majority of the members of an appointed professional examining or licensing board be members of the profession.

⁸ *Nemer v Michigan State Bd of Registration for Architects, Professional Engineers and Land Surveyors*, 20 Mich App 429, 434; 174 NW2d 293 (1969), applied the provision based upon an assumption that architects, professional engineers, and land surveyors are members of a profession under art 5, § 5, and rejected an attempt by the Legislature to declare them to be members of the same profession under that provision. The Court did not address what constitutes a "profession." That issue has, however, been addressed in opinions of the Attorney General. See, e.g., OAG, 1975-1976, No 4899, p 181 (October 23, 1975), *supra*, and Letter Opinion of the Attorney General to Representative Bobby D. Crim, dated March 5, 1974, *infra*.

In *Michigan Rd Builders Ass'n v Dep't of Management and Budget*, 197 Mich App 636, 644-645; 495 NW2d 843 (1992), the Court endorsed the use of a dictionary to arrive at the common meaning of language in the constitution:

A provision creating and defining a right or power should be read according to its natural, common, and most obvious meaning, and consideration of dictionary definitions is appropriate. *People v Bissonette*, 327 Mich 349, 356-357; 42 NW2d 113 (1950); *Syntex Laboratories, Inc v Dep't of Treasury*, 188 Mich App 383, 386; 470 NW2d 665 (1991).

See also *Durant v Michigan*, 456 Mich 175, 208; 566 NW2d 272 (1997) (relying on a dictionary definition to construe a constitutional term).

The United States Supreme Court relied upon the common dictionary meaning of the word "profession" in *United States v Laws*, 163 US 258, 266; 16 S Ct 998; 41 L Ed 151 (1896), quoted in OAG No 4899:

One definition of a profession is an "employment, especially an employment requiring a learned education, as those of divinity, law and physic." (Worcester's Dictionary, title profession.) In the Century Dictionary the definition of the word "profession" is given, among others, as "A vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, either in advising, guiding, or teaching them, or in serving their interests or welfare in the practice of an art founded on it. Formerly, theology, law, and medicine were specifically known as the professions; but as the applications of science and learning are extended to other departments of affairs, other vocations also receive the name. The word implies professed attainments in special knowledge as distinguished from mere skill. A practical dealing with affairs as distinguished from mere study or investigation; and an application of such knowledge to uses for others as a vocation, as distinguished from its pursuit for its own purposes."

Webster's New Collegiate Dictionary, 2nd Edition (1956), p 674, provided a similar definition of the term:

The occupation, if not commercial, mechanical, agricultural, or the like, to which one devotes oneself; a calling; as, . . . the learned professions, of theology, law and medicine.

And *Webster's Third New International Dictionary* (1968), p 1811, defined "profession":

[A] calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service.

While these definitions do not convey precise, measurable boundaries that outline the scope of the term "profession," they do describe the characteristic attributes of those fields of endeavor that were commonly understood to constitute professions.

OAG No 4899 considered whether the word "profession" as used in art 5, § 5 includes all licensed occupations and concluded:

[W]here the legislature creates a regulatory board with power to license and regulate an occupation, that occupation becomes a profession within the meaning of Const 1963, art 5, § 5. [*Id.*, at pp 183-184.]

That conclusion is not consistent with the common meaning of the word "profession" as shown above, nor by the common meaning of the word "occupation":

That which occupies, or engages, the time and attention; one's principal business; vocation. [*Webster's New Collegiate Dictionary, 2nd Edition* (1956), p 581.]

Webster's Third New International Dictionary (1968), p 1560, provides a similar definition of "occupation":

[T]he principal business of one's life: a craft, trade, profession or other means of earning a living.

The word "occupation" is broader in scope than the word "profession." All professions are occupations, but not all occupations are professions. Licensing alone does not transform an occupation into a "profession" for purposes of art 5, § 5. To the extent it reaches a contrary conclusion, OAG No 4899 no longer expresses the opinion of the Attorney General.⁹

Applying the applicable rules of constitutional construction, in order to determine whether any particular occupation is also a profession under art 5, § 5, it is necessary to assess the particular attributes of the occupation and compare them to the commonly understood meaning of "profession" discussed above. The constitution initially imposes that duty on the Legislature. The Legislature is free to require that a majority of an occupational licensing board be comprised of members of the occupation, even if it is not required to do so by art 5, § 5. The broad discretion of the Legislature is only restrained by art 5, § 5 if the members of an appointed board are authorized to examine or license a "profession" as that term was commonly understood when the constitution was adopted.

With regard to the composition of the Commission that licenses the occupations of manufactured housing dealer, installer, or repairer, the Legislature has determined it is not restricted by art 5, § 5. The Mobile Home Commission Act does not require that a majority of the Commission be members of those occupations. MCL 125.2303(3). That legislative judgment is subject to "the well-established rule that a statute is presumed to be constitutional unless its unconstitutionality is clearly apparent." *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999).

Indeed, the Legislature's determination in that regard is consistent with a 1974 opinion of the Attorney General, which applied art 5, § 5 to mobile home-related occupations. The Letter Opinion of the Attorney General to Representative Bobby D. Crim, dated March 5, 1974 (the Crim Letter), addressed the constitutionality of HB 5666, which provided for the creation of an eight-member Mobile Home Commission, only four of whom were to be affiliated with the mobile home industry.¹⁰ Noting that art 5, § 5 was relevant only if the manufacture and sale of mobile homes and the operation of mobile home parks were "professions," the opinion reviewed a number of definitions of the term and concluded that a person engaged in these activities was not a member of a profession within the meaning of art 5, § 5:

In view of these authorities, it is my opinion that a person engaged in the sale and manufacture of mobile homes and the operation of mobile home parks is not a member of a profession within the scope of art 5, § 5. These activities are conducted primarily for financial gain and are properly characterized as the production and sale of goods and related services. [Crim Letter, dated March 5, 1974.]

The Legislature's determination finds additional support in the laws that govern the activities licensed by the Commission in the manufactured housing area. The relevant provisions of the Mobile Home Commission Act indicate that a manufactured housing dealer, installer, or repairer seeking to obtain a license must file an application with consent to service of process. MCL 125.2321(2). The

⁹This opinion will not discuss those opinions decided after OAG 4899, which essentially followed its approach. See, e.g., OAG, 1985-1986, No 6412, p 449 (December 26, 1986), and OAG, 1989-1990, No 6592, p 166 (July 10, 1989).

¹⁰House Bill 5666 was introduced during the 1973-1974 session of the Legislature, but it was not enacted into law. House Bill 4181, however, was introduced in the 1975-1976 session and was enacted into law as 1976 PA 419. Subsections 3(1) to (3) of 1976 PA 419 [then MCL 125.1103(1) to (3)] created a Mobile Home Commission in the then Department of Commerce consisting of 11 members appointed by the Governor identical in composition to that required under present MCL 125.2303(3).

license may be issued for not more than one year, MCL 125.2321(3), and certain fees must be paid. MCL 125.2321(4) and (5). In addition, a surety bond must be posted by manufactured housing dealers under MCL 125.2322. These licensing requirements do not involve the extended training or specialized education commonly associated with professions. Based on those requirements and the commonly understood meaning of the word "profession," the Legislature's judgment that these occupations are not "professions" under art 5, § 5 is legally sound.

The Legislature, therefore, is not constitutionally *required* to assure that membership on the Commission is comprised of a majority of people in the manufactured housing industry. It is worth emphasizing, however, that the Legislature commonly creates boards and commissions with licensing and examining authority whose membership is comprised of those with knowledge and expertise in the field they regulate. This can represent wise public policy. Nothing in this opinion should be read to discourage the Legislature from so exercising its discretion, nor from employing any other organizational structure that it determines will most effectively advance the public interest, consistent with the limitations of art 5, § 5.

It is my opinion, therefore, that the Manufactured Housing Commission established under the Mobile Home Commission Act, MCL 125.2301 *et seq*, is not an "appointed examining or licensing board of a profession" within the meaning of Const 1963, art 5, § 5.

MIKE COX
Attorney General

SUMMER RESORT CORPORATIONS VOTING: Vote required for assessment of dues by summer resort owners corporation

Section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, requires an affirmative vote of a majority of a summer resort corporation's members for the assessment of annual dues.

A summer resort corporation's bylaw authorizing the assessment of annual dues against its members by a vote of fewer than a majority of its members is inconsistent with section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, and is therefore unenforceable.

Opinion No. 7164

October 7, 2004

Honorable Shirley Johnson
State Senator
The Capitol
Lansing, MI 48909

You have asked two questions involving what are commonly referred to as summer resort corporations or associations. You first ask whether section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, requires an affirmative vote of a majority of the corporation's members, or only a majority of those members voting, for the assessment of annual dues.

The Summer Resort Owners Corporation Act (Act), 1929 PA 137, MCL 455.201 *et seq*, provides for the formation of a corporation by summer resort owners. Under section 1, ten or more freeholders of land may act to establish a summer resort

owners corporation. MCL 455.201. Those persons associating are to subscribe and verify articles of association stating the "number of trustees to manage the affairs of said corporation, their terms of office, the names of the trustees for the first year or until the annual meeting of the corporation" and other matters relating to the corporation. MCL 455.202. Those "persons so associating . . . shall become and be a body politic and corporate, under the name assumed in their articles of association and shall have and possess all the general powers and privileges and be subject to all of the liabilities of a municipal corporation and become the local governing body." MCL 455.204. Section 6 of the Act, MCL 455.206, specifies that persons who are "eligible to membership" in the corporation must be freeholders of land in the county in which the corporation is organized.

Section 12 of the Act lists the specific jurisdictional powers the corporation may exercise over the corporation's lands and members by enactment, repeal, or amendment of the bylaws:

The board of trustees shall have the authority to enact by-laws, subject to repeal or modification by the members at any regular or special meeting, calculated and designed to carry into effect the following jurisdiction over the lands owned by the corporation and its members, viz.: To keep all such lands in good sanitary condition; to preserve the purity of the water of all streams, springs, bays or lakes within or bordering upon said lands; to protect all occupants from contagious diseases and to remove from said lands any and all persons afflicted with contagious diseases; to prevent and prohibit all forms of vice and immorality; to prevent and prohibit all disorderly assemblies, disorderly conduct, games of chance, gaming and disorderly houses; to regulate billiard and pool rooms, bowling alleys, dance halls and bath houses; to prohibit and abate all nuisances; to regulate meat markets, butcher shops and such other places of business as may become offensive to the health and comfort of the members and occupants of such lands; to regulate the speed of vehicles over its streets and alleys and make general traffic regulations thereon; to prevent the roaming at large of any dog or any other animal; to compel persons occupying any part of said lands to keep the same in good sanitary condition and the abutting streets and highways and sidewalks free from dirt and obstruction and in good repair. [MCL 455.212.]

Section 19 of the Act authorizes the assessment of annual dues and special assessments to carry out the corporation's powers:

The corporation may assess annual dues and special assessments against its members, by a vote of a majority thereof, for the purpose of carrying into effect any of the powers herein contained and may prescribe the time and manner of payment and manner of collection, and in case of delinquencies, may provide that such dues and assessments shall become a lien upon the land of the delinquent member and may provide the manner and method of enforcing such lien. [MCL 455.219; emphasis added.]

Thus, analysis of your question requires determining what is meant by the word "thereof" in the statutory phrase "a vote of a majority thereof."

Statutes are to be interpreted to effectuate the intent of the Legislature. *AFSCME v Detroit*, 468 Mich 388, 399; 662 NW2d 695 (2003). If the language of a statute is clear and unambiguous, it is to be assumed the Legislature intended its plain meaning. *Id.* Unless a technical or peculiar meaning applies, every word or phrase of a statute not otherwise defined is to be ascribed its plain and ordinary meaning. MCL 8.3a; *Western Mich Univ Bd of Control v Michigan*, 455 Mich 531, 538-539; 565 NW2d 828, 831 (1997).

The words of the statute, "[t]he corporation may assess annual dues and special assessments against its members, by a vote of the majority thereof," are clear and unambiguous and must be enforced as written. The word "thereof" refers to "its

members." The word "its" refers to the preceding noun, "corporation." Thus, a "vote of the majority thereof" means a vote of a majority of the corporation's members.¹

Additional support for this conclusion is found by comparing section 19 to another section of the Act that authorizes voting. Section 8 of the Act provides for the election of trustees at an annual meeting, which "shall be by ballot and choice of trustees shall be by a majority of *all votes cast*." MCL 455.208. (Emphasis added.) In contrast, section 19 makes no reference to "votes cast"; rather, it authorizes a corporation to assess annual dues and special assessments against its members by "a vote of the majority thereof." MCL 455.219. In each section, the Legislature used plain language to accomplish its purpose.

It is my opinion, therefore, in answer to your first question, that section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, requires an affirmative vote of a majority of a summer resort corporation's members for the assessment of annual dues.

You next ask whether a bylaw of a summer resort corporation stating that annual dues may be assessed by a vote of "*a majority of its voting members*" would violate section 19 of the Summer Resort Owners Corporation Act, MCL 455.219.

As noted in OAG, 1975-1976, No 5065, p 731, 734 (December 17, 1976), section 123(1) of the Business Corporation Act, MCL 450.1123(1), provides that the Business Corporation Act applies to summer resort associations:

Unless otherwise provided in, or inconsistent with, the act under which a corporation is or has been formed, this act applies to deposit and security companies, summer resort associations, . . .

Section 231 of the Business Corporation Act states that the bylaws of a corporation "may contain any provision for the regulation and management of the affairs of the corporation *not inconsistent with law* or the articles of incorporation." MCL 450.1231. (Emphasis added.) As concluded in the answer to your first question, a bylaw adopted by a summer resort corporation authorizing the corporation to assess annual dues by a vote of fewer than a majority of all the members of the corporation is inconsistent with section 19 of the Act.

It is my opinion, therefore, in answer to your second question, that a summer resort corporation's bylaw authorizing the assessment of annual dues against its members by a vote of fewer than a majority of its members is inconsistent with section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, and is therefore unenforceable.

MIKE COX
Attorney General

¹OAG, 1975-1976, No 5065, p 731 (December 17, 1976), which addressed whether the Act permitted proxy voting on certain issues, is consistent with the above interpretation. It described the vote that authorizes a summer resort corporation to assess annual dues and special assessments as a vote by "a majority vote of the membership." *Id.*, at p 734.

OPEN MEETINGS ACT: Application of Open Meetings Act to medical control authorities

PUBLIC HEALTH CODE:

Local medical control authorities are subject to the Open Meetings Act.

Opinion No. 7165

December 27, 2004

Mr. Larry J. Burdick
Isabella County Prosecuting Attorney
200 North Main Street
Mt. Pleasant, MI 48858

You have asked whether local medical control authorities created under the Public Health Code, MCL 333.1101 *et seq.*, are public bodies subject to the Open Meetings Act (OMA), MCL 15.261 *et seq.*

Local medical control authorities (MCAs)¹ are created pursuant to Part 209 of the Public Health Code, entitled Emergency Medical Services. MCL 333.20901 *et seq.* Section 20910(1)(a) provides that the Department of Community Health (Department)² shall "[b]e responsible for the development, coordination, and administration of a statewide emergency medical services system." Section 20918(1) provides that the "department shall designate a medical control authority for each Michigan county or part of a county"³ as part of a statewide emergency medical services system to "supervise emergency medical services" in their designated geographical regions. See OAG, 2001-2002, No 7072, p 5 (January 18, 2001).

The Michigan Court of Appeals described the authority of MCAs in *DenBoer v Lakola Medical*, 240 Mich App 498, 500-501; 618 NW2d 8 (2000):

The statewide emergency medical services system is governed by local MCAs, which are organized and administered by local hospitals within each geographic region. Each person licensed under the [emergency medical services] act is accountable to their local MCA in the provision of emergency medical services. . . . The MCAs have statutory power and authority to supervise emergency medical services and to govern the practice of licensed medical services personnel . . . [Citations omitted.]

The Court further stated that the former Department of Public Health (now Department of Community Health) "is responsible for developing, coordinating, and administering a statewide emergency system, but supervision of emergency medical services is the responsibility of the local MCAs." *Id.*, at 502, citing MCL 333.20920(1)(a) and 333.20906. See also, OAG, 1991-1992, No 6727, p 170 (August 21, 1992) (stating that "the Legislature has established these medical control authorities as local units").

In addition, MCAs are empowered to establish written protocols, which are defined by section 20908(9) of the Public Health Code:

¹"Medical control authority" is defined as "an organization designated by the department under section 20910(1)(g) to provide medical control." MCL 333.20906(5). "Medical control" involves "supervising and coordinating emergency medical services through a medical control authority, as prescribed, adopted, and enforced through department-approved protocols, within an emergency medical services system." MCL 333.20906(4).

²Formerly known as the Department of Public Health.

³This section goes on to provide: "[E]xcept that the department may designate a medical control authority to cover 2 or more counties if the department and affected medical control authorities determine that the available resources would be better utilized with a multiple county medical control authority." MCL 333.20918(1).

"Protocol" means a patient care standard, standing orders, policy, or procedure for providing emergency medical services that is established by a medical control authority and approved by the department under section 20919. [MCL 333.20908(9).]

Specifically, MCL 333.20919(1)(a)-(c) provides that the protocols shall include all of the following:

(a) The acts, tasks, or functions that may be performed by each type of emergency medical services personnel licensed under this part.

(b) Medical protocols to ensure the appropriate dispatching of a life support agency based upon medical need and the capability of the emergency medical services system.

(c) Protocols for complying with the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067.

In order to implement emergency medical services in their geographic regions, MCAs are required to submit written drafts of proposed protocols to the Department for review and approval prior to adoption and implementation. MCL 333.20919(1) and 333.20919(3)(a)-(d).

In summary, the MCAs are local units connected with participating hospitals that are created and empowered under Part 209 of the Public Health Code to supervise the delivery of emergency medical services and to govern the practice of licensed emergency medical services personnel in an area designated by the Department.

The Open Meetings Act provides that a "state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function" constitutes a "public body" subject to the OMA. MCL 15.262(a). As evidenced by its title, the OMA applies only to public bodies. OAG, 1977-1978, No 5207, p 157 (June 24, 1977).

The purpose of the OMA is "to promote a new era in governmental accountability" and to foster "openness in government as a means of promoting responsible decision making." *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993). Toward that end, the OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public" and "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public [with limited exceptions]." MCL 15.263(2) and (3). "Decision" means "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy." MCL 15.262(d).

Although the OMA's definition of public body is comprehensive, those bodies that are not empowered by law to exercise governmental or proprietary authority fall outside its scope. *Arnold Transit Co v City of Mackinac Island*, 415 Mich 362; 329 NW2d 712 (1982); *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459; 425 NW2d 695 (1988). Prior opinions of this office have consistently concluded that the definition of public body does not include advisory boards or committees of a public body that do not exercise governmental or proprietary authority. OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG, 1981-1982, No 6053, p 616 (April 13, 1982); OAG, 1979-1980, No 5505, p 221 (July 3, 1979); OAG, 1977-1978, No 5183, pp 21, 40 (March 8, 1977).

In *Lansing Mercy Ambulance Service v Tri-County Emergency Medical Control Auth*, 893 F Supp 1337, 1345 (WD Mich, 1995), the Court determined that "the functions performed by [an MCA] are governmental in nature, as it is regulating the provision of EMS [emergency medical services] in the region, not just developing better methods of providing services, and such regulation is mandated by Michigan statute, and its decisions and protocols have the force of law."

While a primary function of the MCAs is to develop protocols that are subject to Department approval, the statutory procedures established for the development, adoption, and enforcement of those protocols clearly indicate that the MCAs are assigned more than an advisory role in that process. Responsibility for the implementation and enforcement of protocols is placed squarely upon the MCAs. The Public Health Code authorizes and requires MCAs to make governmental decisions and to take actions to regulate and control the provision of emergency medical services. MCL 333.20919.

It is my opinion, therefore, that local medical control authorities are subject to the Open Meetings Act.

MIKE COX
Attorney General

EXECUTIVE ORDERS: Legislature's time for disapproving executive reorganization orders

CONSTITUTIONAL LAW:

LEGISLATURE:

CONST 1963, ART 5, § 2:

Where fewer than 60 calendar days remain in the regular session of a Legislature sitting in an even-numbered year upon submission of an executive reorganization order of the Governor, the requirement of Const 1963, art 5, § 2 that the Legislature "shall have 60 calendar days of a regular session" to disapprove the order cannot be satisfied. Assuming the Legislature does not adopt a resolution disapproving an executive order submitted under these circumstances, the order may only take effect upon the expiration of 60 calendar days commencing in the next regular session of the Legislature.

Opinion No. 7166

December 28, 2004

Honorable Ken Sikkema
State Senator
The Capitol
Lansing, MI 48909

You ask a question regarding the Legislature's time for disapproving executive reorganization orders submitted by the Governor under Const 1963, art 5, § 2.

You advise that, on November 12, 2004, the Governor submitted to the 2004 regular session of the Legislature Executive Order 2004-35 (EO 2004-35), bearing an effective date of January 30, 2005.¹ The Legislature is scheduled to adjourn *sine die*

¹EO 2004-35 seeks to make a change in the organization of the executive branch by renaming the Family Independence Agency as the Department of Human Services. Pursuant to standard procedure, a copy of your request was provided to the Governor's office. Subsequently, on December 9, 2004, the Governor issued Executive Order 2004-37, which rescinded Executive Order 2004-35 in its entirety. On that same date, the Governor issued Executive Order 2004-38, which is identical in substance to EO 2004-35, except that it bears an effective date of March 15, 2005. It is recognized that Executive Order 2004-38 now affords the 2005 Legislature a full 60-day disapproval period for considering this new order. This opinion nevertheless provides the requested guidance to address a question of first impression that may recur.

(without day) on December 29, 2004, allowing a period of only 47 calendar days in the 2004 regular session of the Legislature to consider this order. Your letter indicates that an additional period of 18 calendar days could be available for consideration of EO 2004-35 (from January 12, 2005, the constitutionally required date for the convening of the 2005 session of the Legislature, through the order's effective date of January 30, 2005) if consideration of EO 2004-35 may be carried over to the 2005 regular session.

Const 1963, art 5, § 2, provides that the Legislature "shall have 60 calendar days of a regular session" to disapprove an executive reorganization order submitted by the Governor. You ask whether the 60-day requirement must be satisfied within a single regular session or whether, where fewer than 60 calendar days remain in the regular session to which the order is submitted, the requisite days may be counted by extending the disapproval period into the next regular session.

Analysis of your question begins with the language of Const 1963, art 5, § 2, which states in relevant part:

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. *Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order.* Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor. [Emphasis added.]

The primary rule for interpreting Michigan's constitution is to construe the provision in "the sense most obvious to the common understanding," the one that "reasonable minds, the great mass of people themselves, would give it." *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971), quoting Cooley's Const Lim 81 (emphasis deleted from original). If the language of the provision is plain, it is that plain meaning that courts give to it. *Phillips v Mirac*, 470 Mich 415, 422; 685 NW2d 174 (2004); *Michigan Coalition of State Employee Unions v Michigan Civil Service Comm*, 465 Mich 212, 222; 634 NW2d 692 (2001); *Bond v Ann Arbor School Dist*, 383 Mich 693, 699; 178 NW2d 484 (1970). Consideration may also be given to the circumstances surrounding the adoption of the constitutional provision and the purpose sought to be accomplished. *Bolt v Lansing*, 459 Mich 152, 160; 587 NW2d 264 (1998). One of the most instructive tools for discerning the circumstances surrounding the adoption of a constitutional provision is the floor debates in the Official Record of the Constitutional Convention to the extent they reveal a "recurring thread of explanation." *House Speaker v Governor*, 443 Mich 560, 581; 506 NW2d 190 (1993) (citation omitted). Though not controlling, the "Address to the People" is also relevant in interpreting the constitution. *People v Nash*, 418 Mich 196, 209; 341 NW2d 439 (1983).

Research has disclosed no court case or opinion of the Attorney General construing the precise constitutional language at issue in your question. The text of art 5, § 2, however, plainly provides that the Legislature "shall"² have one of two alternative periods of time within which to disapprove an executive order: 1) 60 calendar days of a regular session; or 2) a "full" regular session if the regular session is one whose duration is shorter than 60 calendar days.

The constitution itself provides the meaning of the term "regular session" at Const 1963, art 4, § 13:

²The courts have long held that the popular and common understanding of the word "shall" denotes that which is mandatory. *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982), citing *Smith v School Dist No 6, Fractional, Amber Twp*, 241 Mich 366, 369; 217 NW 15 (1928).

The legislature shall meet at the seat of government on the second Wednesday in January of each year at twelve o'clock noon. Each regular session shall adjourn without day, on a day determined by concurrent resolution, at twelve o'clock noon. Any business, bill or joint resolution pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session. [See also *Mason's Manual of Legislative Procedure*, § 203, p 163 (2000 edition) (houses of state legislatures "convene at the date fixed by the constitution and continue in session until adjournment sine die").]

According to this section, a "regular session" of the Legislature convenes at twelve o'clock noon on the second Wednesday in January of each year and continues until twelve o'clock noon of the day fixed by concurrent resolution for *sine die* or final adjournment.

The term "calendar day" as used elsewhere in the 1963 Constitution has also been defined. Addressing a question involving Const 1963, art 11, § 5, and employing the "common understanding" rule of constitutional construction, OAG, 1981-1982, No 6048, p 595 (March 18, 1982), concluded that the term means "the time from midnight to midnight" or "the space of time between two consecutive or successive midnights." *Id.*, at pp 595-596.

The remaining language of the provision at issue, "or a full regular session if of shorter duration," represents an alternative object of the verb "have"; in other words, the Legislature shall have either 60 calendar days of a regular session to disapprove an executive reorganization order or it shall have a "full" regular session to disapprove an executive reorganization order if that session is of shorter duration than 60 calendar days. Again, while research has uncovered no court case or opinion of the Attorney General examining this language, the words used are clear and unambiguous and must be interpreted according to their plain meaning. While in the years since adoption of the 1963 Constitution it does not appear that any regular session has been of shorter duration than 60 calendar days, nothing in the language of Const 1963, art 4, § 13 quoted above precludes this result.³ Indeed, information provided to this office documenting the session days of previous legislatures indicates that the regular sessions of the 1948, 1946, 1944, 1942, 1934, and 1932 Legislatures, among others, consisted of fewer than 60 days. See also Michigan Manual 2003-2004, p 292.

This experience presumably prompted the framers to address this possible contingency with respect to executive reorganization.⁴

³ This is also true of the Legislature's current rules of procedure. Joint Rule 26 governs the Final Adjournment of Regular Sessions and provides: "In the regular session in each year, this rule for adjournment shall govern. The Majority Floor Leader of the Senate and/or the Majority Floor Leader of the House of Representatives shall introduce a concurrent resolution providing for an adjournment schedule for that regular session."

⁴ Art 5, § 2 originated as Proposal 71 of the Committee on the Executive Branch. As first offered, the sentence now at issue read: "The Legislature shall have 60 days of a regular session, or a full session if of shorter duration, to disapprove these executive orders." 1 Official Record, Constitutional Convention 1961, p 1766, column 2. While there was considerable debate on other aspects of art 5, § 2, a search of the Official Record has uncovered no proposed amendments or discussion addressing the language at issue in your question. It was twice changed, however, after referral to the Committee on Style and Drafting. On third reading, the following changes were incorporated as indicated by capitalized additions and bracketed deletions: "THEREAFTER, the legislature shall have 60 CALENDAR days of a regular session, or a full session if of shorter duration, to disapprove [these] EACH executive order[s]." 2 Official Record, Constitutional Convention 1961, p 3057, column 1, lines 27-30. The Committee on Style and Drafting reported the final version with the word "regular" inserted after the word "full." *Id.*, at p 3292, column 1, and the delegates adopted this version.

In that your request does not involve a regular session of fewer than 60 calendar days, the question becomes whether the 60 calendar days that must be afforded the Legislature to consider EO 2004-35 may be counted by continuing the constitutional disapproval period into the 2005 session of the Legislature. Although not dispositive, art 5, § 2 uses the singular "a regular session," suggesting that the 60 calendar days must be available to the Legislature within a single regular session. Nor does any other language of art 5, § 2 appear to authorize or contemplate the carryover of executive orders *between* legislative sessions.⁵

While the framers did not discuss the issue presented in your letter, the convention thoroughly debated the nature and extent of the power granted to the Governor in art 5, § 2, particularly in the context of what restraints should be placed on the Governor's exercise of the power. *Soap & Detergent Ass'n v Natural Resources Comm*, 415 Mich 728, 747; 330 NW2d 346 (1982). See also *House Speaker v Governor*, 443 Mich 560, 581-586; 506 NW2d 190 (1993). In connection with a proposed amendment that would have allowed an executive reorganization plan to be disapproved by a majority of *either* house, instead of both, one delegate commented that the traditional system of giving the Legislature the lawmaking function regarding executive reorganization and the Governor a veto was being turned upside down. *Soap & Detergent Ass'n*, 415 Mich at p 747, n 10. In construing art 5, § 2, the Court in *Soap & Detergent* cited the "vigorously debated checks deemed necessary to restrain the broad grant of power," and emphasized the importance of the legislative veto: "Recognition of the broad powers of reorganization granted is found in the provisions for legislative veto of the Governor's reorganization executive orders." *Id.* Thus, in ascertaining whether the requisite disapproval period has been achieved, a construction should be favored that gives full effect to the Legislature's veto power.

In addition, the provisions of Const 1963, art 4, § 13 must be considered. As stated above, the pertinent part of this section provides that "[a]ny business, bill or joint resolution pending at the final adjournment of a regular session *held in an odd numbered year* shall carry over with the same status to the next regular session." (Emphasis added.) By its terms, this section does not authorize the carry-over of any business pending in an even-numbered year and, accordingly, does not authorize carry-over of the disapproval period for executive reorganization orders submitted near the end of an even-numbered year. See OAG, 1981-1982, No 6114, pp 779-780 (December 22, 1982) ("Bills pending upon a final adjournment in an even-numbered year do not . . . carry over to the next regular legislative session").

It is my opinion, therefore, that, where fewer than 60 calendar days remain in the regular session of a Legislature sitting in an even-numbered year upon submission of an executive reorganization order of the Governor, the requirement of Const 1963, art 5, § 2 that the Legislature "shall have 60 calendar days of a regular session" to disapprove the order cannot be satisfied. Assuming the Legislature does not adopt a resolution disapproving an executive order submitted under these circumstances, the order may only take effect upon the expiration of 60 calendar days commencing in the next regular session of the Legislature.

MIKE COX
Attorney General

⁵The Address to the People concerning the relevant language of art 5, § 2 does not address this question. It only states that the Governor's proposed changes in the executive branch "become effective unless they are disapproved within 60 days by a majority of the members in both houses of the legislature." 2 Official Record, Constitutional Convention 1961, p 3379. Contrast the Address to the People explaining the provisions of Const 1963, art 5, § 6 relating to the Senate's advice and consent power. 2 Official Record, Constitutional Convention 1961, p 3379 (stating "[i]f fewer than 60 session days remain for consideration after submission of an appointment, the time available for possible disapproval will be extended into the next regular or special session for the balance of the specified period."). The record of the constitutional convention similarly fails to specifically address this question.

RETIREMENT AND PENSIONS: Payment of pension to retirant upon return to state employment

Assuming a bona fide termination of employment, there is no legal basis for the State Employees' Retirement System to suspend the Tier 1 pension of a retirant who returns to State employment and is entered upon the payroll on or after December 1, 2002, as a "qualified participant" in the Tier 2 plan pursuant to section 13(3)(f) of the State Employees' Retirement Act.

Opinion No. 7167

December 29, 2004

Mr. Mitch Irwin, Director
Department of Management and Budget
Lewis Cass Building
Lansing, Michigan 48909

Mr. Chris DeRose, Director
Office of Retirement Services
Department of Management and Budget
Lewis Cass Building
Lansing, MI 48909

You have asked if, assuming a bona fide termination of employment, there is a legal basis for the State Employees' Retirement System to suspend the Tier 1 pension of a retirant who returns to state employment and is entered upon the payroll on or after December 1, 2002, as a qualified participant pursuant to section 13(3)(f) of the State Employees' Retirement Act (Act), 1943 PA 240, MCL 38.1 *et seq.*, as amended by 2002 PA 743.

Historically, a public employee's pension was not considered a contractual obligation or a vested right. See *Brown v Highland Park*, 320 Mich 108, 114; 30 NW2d 798 (1948). However, this position was reversed with the adoption of Michigan's Constitution in 1963. Const 1963, art 9, § 24 prohibits the impairment of a state pension:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

In *Ass'n of Professional & Technical Employees v Detroit*, 154 Mich App 440; 398 NW2d 436 (1986), the City of Detroit proposed to increase the minimum age at which a person could retire, thereby delaying receipt of a city pension. The Court held that the framers intended Const 1963, art 9, § 24 "to protect pension benefits related to work already performed by current employees." *Id.*, at 446. As a result, the Court concluded that the city's proposed imposition of a minimum age requirement directly diminished and impaired plaintiffs' accrued financial benefits in violation of art 9, § 24. Thus, a retirant may not be unilaterally denied a retirement allowance for work previously performed unless the denial is based upon some provision in the law in effect when the retirant earned his or her service credit. *Id.*, at 446-447. See also OAG, 1967-1968, No 4365, p 55 (June 26, 1967).

MCL 38.13(1) states in pertinent part: "Except as otherwise provided in this act, membership in the retirement system consists of state employees occupying permanent positions in the state civil service." MCL 38.16(4) states: "If a member becomes a retirant or dies, he or she ceases to be a member." OAG, 1991-1992, No 6693, p 71 (August 16, 1991), relied on OAG, 1945-1946, No O-4106, p 675 (April 23, 1946),¹ to conclude that:

[W]here a retiree is receiving an allowance under the Act and returns to state service and, therefore, again becomes a "member" under the Act, the person's allowance is suspended during the period of subsequent state employment.

¹In reaching this conclusion, OAG No 6693 also relied on language in the Act to the same effect as the current language in MCL 38.16(4), as did OAG No O-4106.

Prior to the enactment of 1996 PA 487, all "members" were covered by the Act's defined benefit plan.² The defined benefit plan provides a fixed pension allowance based upon the employee's age, years of service, and final average compensation. MCL 38.20. 1996 PA 487 amended the Act to provide that all employees hired on or after March 31, 1997, are "qualified participants" in a defined contribution plan in which the State contributes an amount equal to 4% of the participant's compensation and will match up to an additional 3% of the participant's contributions.³ MCL 38.63. No fixed retirement allowance is provided by the State under this plan.

MCL 38.13(3), as added by 2002 PA 743, provides in pertinent part:

Membership in the [Tier 1] retirement system does not include any of the following:

* * *

(d) An individual who is first employed and entered upon the payroll on or after March 31, 1997 for employment for which the individual would have been eligible for membership under this section before March 31, 1997. An individual described in this subdivision is eligible to be a qualified participant in Tier 2 subject to sections 50 to 69.

* * *

(f) A retirant who again becomes employed by the state and is entered upon the payroll on or after December 1, 2002, for employment for which the retirant would have been eligible for membership under this section before December 1, 2002. A retirant described in this subsection shall be a qualified participant in Tier 2 subject to sections 50 to 69.

Thus, a state retirant who returns to state employment on or after December 1, 2002, does not again become a "member" in the retirement system upon reemployment. Rather, the retirant becomes a "qualified participant" in the Act's defined contribution plan. MCL 38.13(3)(f). In other words, at the time the retirant returns to work, he or she becomes a participant in a different retirement plan than the plan from which he or she draws a retirement allowance. MCL 38.16(4) provides no authority for the retirement system to suspend a retirant's Tier 1 pension in that instance.⁴ The Act does not provide any prohibition against continuing to pay the Tier 1 pension of a retiree who returns to state employment on or after December 1, 2002, as a "qualified participant" in the Tier 2 plan. The conclusions reached in OAG No 6693 and OAG No O-4106 do not, therefore, apply to the instant situation.

Your question assumes a "bona fide termination of employment." In Internal Revenue Service (IRS) Revenue Ruling 56-693, 1956-2 CB 282, the IRS discussed the receipt of retirement benefits absent a bona fide termination of employment, ruling that:

[A] pension plan which permits the participants, prior to any severance of employment (e.g. retirement; disability or death) to withdraw all or a part of the

²The Act's defined benefit plan is now also known as "Tier 1." MCL 38.1i(3) defines "Tier 1" to mean:

[T]he retirement plan available to a member under this act who was first employed and entered upon the payroll before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

³The Act's defined contribution plan is also known as "Tier 2." MCL 38.1i(4) defines "Tier 2" to mean:

[T]he retirement plan established pursuant to section 401(k) of the internal revenue code that is available to qualified participants under sections 50 to 69.

⁴This opinion does not address whether a suspension of retirement benefits can be imposed as a condition of reemployment.

funds accumulated on their behalf is inconsistent with the accepted concept of a pension plan which meets all of the requirements of section 401(a) of the [Internal Revenue] Code.

This conclusion was reaffirmed in IRS Revenue Ruling 74-254, 1974-1 CB 91. More recently, in IRS Information Letter 2000-0245 (September 6, 2000), the IRS concluded that, while there is no definitive rule prohibiting the rehiring of an employee who has received a distribution from the employee's retirement 401(k) plan, the plan may not make such a distribution unless there is a "bona fide termination of employment in which the employer/employee relationship is *completely severed*." According to the IRS letter, if an employee terminates employment with the intent to be reemployed by the employer on a part-time or contingent basis, there is no severance of employment.

MCL 38.49(1), as added by 1995 PA 176, establishes the Legislature's intention that the State Employees' Retirement System be maintained as a qualified pension plan under the Internal Revenue Code:

This section is enacted pursuant to section 401(a) of the internal revenue code, 26 USC 401, that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill this intent.

26 USC 401(a) and 26 CFR 1.401-1 define a qualified pension plan as a plan established and maintained by an employer primarily to provide for payments to employees after retirement.

Where there has been a bona fide severance of a retirant's employment, payment of a pension allowance to the retirant during his or her reemployment with the State would be consistent with the intent of MCL 38.49 to maintain the qualified status of the plan under 26 USC 401. If, however, there has been no bona fide termination of employment prior to the rehiring of a retirant, payment of a pension allowance to such an individual could jeopardize the qualified status of the plan and present issues regarding that individual's entitlement to payment of that allowance.⁵

It is my opinion, therefore, that, assuming a bona fide termination of employment, there is no legal basis for the State Employees' Retirement System to suspend the Tier 1 pension of a retirant who returns to State employment and is entered upon the payroll on or after December 1, 2002, as a "qualified participant" in the Tier 2 plan pursuant to section 13(3)(f) of the State Employees' Retirement Act.

MIKE COX
Attorney General

⁵ This conclusion would not apply in the case of a deferred retirement option plan. For a discussion of deferred retirement plans, see OAG, 2003-2004, No 7122, p 1 (January 14, 2003). The Act does not currently provide for a deferred retirement option plan.

DEPARTMENTAL REPORTS

EXECUTIVE OFFICE

Carol L. Isaacs
Chief Deputy Attorney General

The Executive Office, headed by the Chief Deputy Attorney General, consists of executive level staff whose duties include implementing policy and management decisions, performing special assignments for the Attorney General, responding to public speaking requests and preparing speeches for the Attorney General, responding to news media requests for information and Attorney General position statements, and liaison with the Legislature. The office researches and coordinates legal issues that concern all divisions.

Homeland Security and Special Projects

Robert Ianni
Senior Deputy Director

Attorney General Mike Cox has received national recognition for his leadership in the area of emergency planning and response. In recent years, his staff has developed training programs on legal issues that would arise during an emergency and has provided a series of lectures on the subject to thousands of first responders and government leaders. In July 2004, he was appointed Chairperson of the National Association of Attorneys General Homeland Security Committee. He has appointed a staff member as his Homeland Security Director to advise him on homeland security legal issues. In December 2004, Attorney General Cox developed and presented, in collaboration with the Michigan Supreme Court, a unique emergency judicial legal exercise for the Michigan judiciary.

Attorney General Cox has developed and distributed legal manuals to lawyers and judges throughout the state to help them cope with legal issues that may arise during a public health emergency.

In order to assist other states in developing emergency legal response plans and prepare themselves to respond to a future emergency, Attorney General Cox will be convening a national conference in April 2005 for Attorneys General of each state and other lawyers who work on emergency response issues. The conference will present legal information, offer the participants an opportunity to participate in an emergency tabletop exercise, and will provide each participant with legal materials that they can use in their home states.

Appellate Division

Thomas L. Casey, Solicitor General
Assistant in Charge

The Appellate Division consults with Assistant Attorneys General concerning potential appellate issues arising in the conduct of trials and post-trial proceedings; determines whether to appeal orders and judgments; and provides assistance to all divisions within the Department of Attorney General in appeals to state and federal courts of appeal and supreme courts. The Appellate Division's primary function is to review, edit, and approve all documents filed in appellate courts in order to assure compliance with court rules, consistency among all divisions, and quality of

presentation of legal arguments. In addition to supervising the appellate activity of cases assigned to other divisions, the Appellate Division takes over responsibility for writing briefs and presenting oral arguments in several such cases each year. The Appellate Division also reviews requests from other states asking us to join amicus briefs in significant cases, particularly cases in the United States Supreme Court; reviews proposed amicus briefs; and makes recommendations to the Chief Deputy Attorney General whether the State of Michigan should join the briefs (approximately 112 cases for the 2003-2004 period).

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
Circuit	1	0	0	1	0	0	1
US Courts							
6th Circ Ct of Appls	1	0	1	0	0	0	0
U.S. Supreme Court	0	0	0	0	2	0	2
Total	1	0	1	0	2	0	2
Other Significant Division Activity:					2003	2004	
Pleadings reviewed					1147	1224	
Consultations with Assistant Attorneys General					1356	1582	

Opinions and Municipal Affairs Division

Susan I. Leffler, Assistant Attorney General for Law
Assistant in Charge

The Opinions and Municipal Affairs Division is a new division created by the merger on November 8, 2004, of the former Freedom of Information and Municipal Affairs (FOIMA) Division and the Opinions Unit of the Executive Division.

The Opinions and Municipal Affairs Division is responsible for assigning, coordinating, and reviewing all formal and informal legal opinions prepared on behalf of the Attorney General and for handling special assignments as directed by the Chief Deputy and Attorney General. The Assistant in Charge serves as the Chair of the Attorney General's Opinion Review Board.

The division also provides advice and counsel to all state agencies and officials regarding Michigan's Freedom of Information Act and Open Meetings Act, as well as representing state agencies in lawsuits brought pursuant to these acts. The division provides legal counsel to the Children's Ombudsman and the Auditor General. The division also assists the Attorney General in responding to citizen inquiries.

During most of the reporting period, the staff previously assigned to the FOIMA Division served as counsel to and represented the State's Adjutant General, the Department of Military and Veterans Affairs, and its boards and agencies, such as the State Military Board, the Veterans' Trust Fund Board, and the Veterans' Facility Board.

The division represents the Local Audit and Finance Division of the Michigan Department of Treasury. In addition, division attorneys serve as special counsel to the Attorney General on public finance and sit as the designee of the Attorney General on the boards of the State Employees' Retirement System, the Judges' Retirement System, and the Michigan State Police Retirement System.

The division acts as counsel to the Michigan State Boundary Commission, which hears petitions for annexations, incorporations, and consolidations of local units of government. The division also reviews proposed city and village charters, charter amendments, and certain interlocal agreements under the Urban Cooperation Act. MCL 124.501 *et seq.*

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	0	0	0	0	0	0	0
Circuit Court	34	10	34	10	19	17	12
Court of Claims	0	0	0	0	0	0	0
Court of Appeals	2	3	2	3	2	3	2
Supreme Court	0	0	0	0	1		1
Total	36	13	36	13	22	20	15

US Courts

District Court
6th Circ Ct of Appeals
USSC
U.S. Bankruptcy Ct.
Total

Admin. Actions

Monies Paid To/By the State:	2003	2004
All Judgments/Settlements paid TO State	0	0
All Judgments/Settlements paid BY State	5,518	6,232.78
Fees/Fines paid BY State	28,000	68,567.22

Other Significant Division Activity:	2003	2004
Number of Opinion Requests	242	221
City and village charters	5	6
Charter amendments	104	168
Interlocal agreements	9	9
Processed FOIA requests	199	355
Citizen letters reviewed & edited	6,334	4,078
Citizen responses prepared	692	636

CHILD AND FAMILY SERVICES BUREAU

Wanda M. Stokes
Bureau Chief

The Child & Family Services Bureau includes the following five divisions: Children and Youth Services Division, Child Support Division, Education and Social Services Division, Community Health Division, and the Health Care Fraud Division. As stated in the following narratives, these divisions uniquely focus on the Department's goals of protecting Michigan's families and children through legal representation in civil abuse and neglect cases involving our youth; improving child support collections through criminal prosecution; and providing legal advice and representation to state agencies and officials to ensure state activities comply with the law in the area of education, health care, and social services. The Bureau is also responsible for proactively investigating and prosecuting abuse, neglect, and fraud complaints in residential care facilities on behalf of vulnerable adults; and initiating and defending lawsuits at the request of state agencies and offices to enforce public compliance with state law. The Bureau Chief provides administrative oversight for

each division, clarifies policy issues, and works closely with the Assistant in Charge of the division to ensure that goals and objectives are accomplished. The Bureau has a Senior Executive Management Assistant (SEMA) who works closely with the divisions' support staff regarding policy matters and resources.

Child Support Division

Peter L. Plummer, Acting Assistant in Charge

Attorney General Mike Cox created the Child Support Division in April 2003 as the first statewide effort to attack the billion-dollar child support arrearage accumulation in Michigan. The Child Support Division investigates and prosecutes felony non-support cases throughout the state of Michigan. The division acts as legal counsel for the Office of Child Support's Central Enforcement Unit (CEU) when CEU's efforts to freeze and apply assets of non-payers to child support arrearages are challenged in court. The Child Support Division takes selected cases with important issues relating to child support enforcement to the Michigan appellate courts in an effort to establish the appropriate legal framework to support child support collection and prosecution efforts.

Funding for the Child Support Division is provided, in part, by federal IV-D grant money administered in Michigan by the Family Independence Agency, Office of Child Support.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	0	3	0	3	11	14	0
Circuit Court	0	188	19	169	1145	283	1031
Court of Appeals	0	3	0	3	0	3	0
Total	0	194	19	175	1156	300	1031

U.S. Courts

District Court	0	1	0	1	0	1	0
Total	0	1	0	1	0	1	0

Other Significant Division Activity:

	2003	2004
Number of investigations:	848	3,684
Number of warrants issued:	182	1,143
Number of arrests made:	117	838
Amount of child support collected:	\$1,537,423.64	\$8,838,805.79
Number of children helped:	82	1209
Number of citizen letters:	952	968
Extraditions:	22	172

Children and Youth Services Division

Rebekah Mason Visconti, Assistant in Charge

The Children and Youth Services Division provides legal advice and representation to the Michigan Family Independence Agency in civil litigation and appellate work involving child abuse and neglect cases in Wayne County. The division also provides training and representation in special cases in other counties when requested by the Family Independence Agency.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court							
Circuit Court	8,019	5,763	6,961	6,821	3,930	3,794	6,957
Court of Appeals	205	167	250	122	140	184	78
Supreme Court	2	6	8	0	3	3	0
Total	8,226	5,936	7,219	6,943	4,073	3,981	7,035

Other Significant Division Activity:

In 2004, the Children & Youth Services Division represented the Family Independence Agency with regard to 2,105 petitions, involving 3,930 children. Total trials completed were 1,314 with a 96.4% success rate. To accomplish the above results, the Children & Youth Services Division attorneys worked 5,129.8 excess hours in 2004.

Community Health Division

Ronald J. Styka, Assistant in Charge

The Community Health Division provides legal advice and representation to public health programs within the Department of Community Health, Family Independence Agency, and the Office of Services to the Aging. It also acts as general counsel to the Department of Community Health and provides legal advice and representation on the public and mental health codes. The division enforces laws through administrative and court actions against nursing homes, hospitals, homes for the aged, substance abuse service providers, emergency medical services, medical waste producers, certain licensed and certified care providers and grocery stores which serve as vendors in nutritional food programs. Also, the division is involved with health planning through representation of the Certificate of Need Program and Medicaid reimbursement issues with regard to mental health services. It provides legal services with regard to the collection and preservation of vital statistics and health records and the administration of medical services for crippled children. The division represents the Department of Community Health, its officers, and employees in litigation arising out of the public provision of health services which includes claims of deprivation of constitutional and civil rights, contract actions, and dismissal of employees. Additionally, the division may represent the Department of Community Health in administrative matters before the Department of Civil Service, and in administrative hearings to determine the financial liability of recipients of services, as well as in appeals to the courts from these and other administrative decisions. Finally, the division is on call to provide legal services to state agencies that must deal with bioterrorism and other health emergencies.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	1	0	0	1	0	0	1
Circuit Court	30	25	24	31	21	29	23
Court of Claims	0	2	0	2	0	2	0
Court of Appeals	3	1	1	3	4	4	3
Supreme Court	1	0	1	0	3	1	2
Probate Court	12	5	1	16	7	10	13
Total	47	33	27	53	35	46	42
US Courts							
District Court	13	6	6	13	2	5	10
Out-of-State Court	0	2	1	1	0	1	0
Total	13	8	7	14	2	6	10
Admin. Actions	84	51	77	58	55	71	42
Monies Paid To/By the State:				2003		2004	
All Judgments/Settlements paid TO State:				\$1,449,004.44		\$2,447,927.35	
All Judgments/Settlements paid BY State:				\$51,156.33		-0-	

Other Significant Division Activity:

The division provides legal expertise to state agencies on the Health Insurance Portability and Accountability Act (HIPAA) through the Attorney General's HIPAA Workgroup. It also interacts with the Federal Food and Drug Administration with regard to health care fraud, especially the Michigan Health Fraud Task Force.

The division successfully defended the state in four multi-million dollar products liability cases involving the anthrax vaccine and former U.S. military personnel. Also, the division participated in and acted as a resource for homeland security bioterrorism preparedness exercises.

Education and Social Services Division

Robert S. Welliver, Assistant in Charge

The Education & Social Services Division was created when the Education Division and the Social Services Division were merged in July 2003. The Education & Social Services Division represents and acts as legal counsel to the Family Independence Agency and the several independent boards and commissions within that Agency. The legal services provided arise out of the State's statutory responsibilities for the administration of the various state and/or federal welfare programs, including the cash grant and food stamp programs. The Family Independence Agency also administers many programs concerning children and youth services, juvenile delinquency, adoption, adult and children protective services and disability services. The Education & Social Services Division further represents and acts as legal counsel to the Office of Child and Adult Licensing within the Family Independence Agency. The Office licenses and regulates child foster care homes and organizations, adoption agencies, day care homes and institutions, and adult foster care homes/facilities.

The Education & Social Services Division also represents and acts as legal counsel for the Department of Community Health for the Medicaid program and other state health payment programs.

Lastly, the Education & Social Services Division represents and acts as legal counsel to the Michigan Department of Education, the State Board of Education, the Superintendent of Public Instruction, the State Tenure Commission, and the Michigan Merit Award Board. The division also represents the Michigan School for the Blind and Deaf, the Department of Treasury in matters relating to the State School Bond Loan Fund, the Department of Career Development in matters relating to community colleges, and the Center for Educational Performance & Information in the Department of Management & Budget. As counsel to these entities, the division provides representation in all litigation and provides ongoing legal advice not only to these agencies, but also to the Department of Management & Budget and the Department of State Police regarding school finance and education law issues.

The Education & Social Services Division also responds to a large number of opinion and information requests from legislators, public officials, local officials, client agency personnel, and the public.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
Probate Court	22	6	6	22	8	4	26
District Court	14	3	6	11	16	1	26
Circuit Court	415	153	197	371	167	92	446
Court of Claims	10	2	8	4	2	1	5
Court of Appeals	34	10	11	33	9	12	30
Supreme Court	11	4	4	11	3	7	7
Total	506	178	232	452	205	117	540
US Courts							
District Court	26	9	15	20	15	8	27
6th Circ Ct of Appls.	7	2	3	6	2	1	7
USSC	1	0	0	1	1	1	1
U.S. Bankruptcy Ct.	26	2	13	15	11	22	4
Total	60	13	31	42	29	32	39
Out-of-State Courts							
State	9	2	4	7	3	2	8
Federal	2	1	1	2	2	0	4
Total	11	3	5	9	5	2	12
Admin. Actions	293	113	157	249	177	37	389
Gen. Assignment	21	36	39	18	17	11	24
Tracking	1	0	1	0	0	0	0
Monies Paid To/By the State:				2003		2004	
All Judgments/Settlements paid TO State:				\$947,737.00		\$2,075,161.00	
All Judgments/Settlements paid BY State:				\$122,821.00		\$125,187.00	

Health Care Fraud Division

Wallace T. Hart, Assistant in Charge

The Health Care Fraud Division investigates and prosecutes Medicaid provider fraud and resident care facility resident abuse and neglect. The Health Care Fraud Division is one of 49 federally certified Medicaid Fraud Control Units. It is a self-contained investigation and prosecution division with attorneys, auditors, and investigators on staff. Medicaid fraud investigations and prosecutions can include false billings, unlawful delivery of controlled substances, practicing medicine without a license, kickbacks, and bribery schemes. Abuse and neglect investigations and prosecutions include physical assault, criminal sexual conduct, identity theft, theft of residents' property and funds, and harmful neglect in Michigan resident care facilities. The division also initiates civil actions, including asset forfeiture and claims for Medicaid overpayments. In conducting its activities, the division also works closely with other agencies such as the Federal Bureau of Investigation, Drug Enforcement Administration, Department of Justice, Michigan State Police, state regulatory agencies, local law enforcement agencies, and private health insurance companies.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	33	55	37	51	61	29	83
Circuit Court	30	30	32	28	23	23	28
Court of Appeals	3	2	5	0	4	2	2
Supreme Court	2	0	2	0	0	0	0
Total	68	87	76	79	88	54	113
US Courts							
U.S. Bankruptcy Ct.	1	0	0	1	0	0	1
Total	1	0	0	1	0	0	1

Other Significant Division Activity:

Number of Complaints Received	6033	
Number of Arrests	124	
Number of Convictions	59	
	2003	2004
Criminal Restitution Ordered	\$423,015.22	\$26,063.97
Civil Restitution Ordered	\$0.00	\$145,000.00
Criminal Fines Imposed	\$1,462,813.60	\$1,060.00
Investigation Costs Awarded	\$1,803,897.74	\$3,186,412.98
Restitution Amounts Identified to Medicaid for Collection	\$0.00	\$0.00
Out-of-Court Settlements	\$4,518,985.65	\$10,962,675.79
TOTAL	\$8,208,712.21	\$14,321,212.74

CONSUMER PROTECTION AND CRIMINAL PROSECUTIONS BUREAU

A. Michael Leffler
Bureau Chief

The Consumer Protection and Criminal Prosecutions Bureau was created in January 2005 and includes five divisions: Consumer Protection Division; Criminal Prosecutions Division; Criminal Appellate Division; Alcohol and Gambling Enforcement Division; and Environment, Natural Resources, and Agriculture Division. The Bureau's primary civil responsibilities include the protection of consumers and businesses from unscrupulous commercial practice and the protection of Michigan's natural resources. Criminal prosecutions are brought primarily in areas related to child protection, cold cases, public corruption, and gun-related violence. Attorneys in the Bureau practice in virtually all state and federal courts as well as state administrative tribunals. The Bureau also serves as house-counsel for the Departments of Agriculture, Environmental Quality, and Natural Resources.

Alcohol and Gambling Enforcement Division

John M. Cahill, Assistant in Charge (beginning May 2004)
And State Public Administrator (beginning March 2003)
Eric J. Egan, Assistant in Charge (2003-March 2004)

The Alcohol and Gambling Enforcement Division advises and represents the Michigan Gaming Control Board and the Michigan State Police Gaming Section on matters pertaining to casino gambling authorized under the Michigan Gaming Control and Revenue Act, 1996 initiated law, as amended, 1997 PA 69. These activities include legal assistance to Gaming Control Board and State Police investigators conducting background investigations on casino-related license applicants. The division also represents the State's interests in Gaming Control Board licensing and disciplinary actions, attends Board meetings, and drafts opinions and memoranda of law on questions related to casino gambling in Michigan. The division handles casino-related criminal prosecutions in Detroit.

The division also acts as primary legal counsel to the Michigan Bureau of State Lottery and the Michigan Office of the Racing Commissioner. The division advises and represents these state agencies in matters involving the licensing and regulation of gambling activities permitted under the Horse Racing Law of 1995, the Lottery Act, and the Bingo Act.

The division is also charged with providing legal advice and representation to the Michigan Liquor Control Commission. The division drafts violation complaints against licensees and represents the Commission at administrative violation and appeal hearings. The division represents the Commission in lawsuits at all levels of state and federal courts. The division is also responsible for pursuing legal action against out-of-state alcohol sellers who ship alcohol illegally to Michigan residents.

In March 2003, this division also took over public administration responsibilities upon the appointment of John M. Cahill as State Public Administrator. This responsibility involves the probate of estates in which the heirs are unknown, and in guardianship and conservatorship proceedings in which the protected person has no presumptive heirs. The State Public Administrator supervises local county public administrators in the administration of decedent estates in the 83 Michigan counties. Litigation in this area involves determining the validity of questionable wills, determining heirs in estates, resisting fraudulent claims, and ensuring distributions as provided by law. The State Public

Administrator also provides legal services for the Department of Treasury's Abandoned and Unclaimed Property Division.

In November 2003, the division took over tax enforcement functions for the Department of Treasury from the Criminal Division. The tax enforcement cases deal with civil forfeiture actions under the Tobacco Products Tax Act, jeopardy tax assessments, and criminal prosecutions.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	136	198	169	165	269	233	201
Probate Court	0	468	58	410	181	233	358
Circuit Court	74	175	153	96	144	151	89
Court of Claims	0	2	0	2	1	1	2
Court of Appeals	7	11	9	9	7	6	10
Tribunal	0	2	0	2	0	0	2
Supreme Court	1	2	1	2	3	3	2
Total	218	858	390	686	605	625	664
US Courts							
District Court	4	0	2	2	3	2	3
6th Circ Ct of Appeals	4	1	0	5	2	1	6
USSC	0	0	0	0	2	1	1
U.S. Bankruptcy Ct.	5	4	3	6	0	0	6
Total	13	5	5	13	7	4	16
Admin. Actions	402	2,516	2,400	518	2,372	2,411	479
Monies Paid To/By the State:					2003		2004
<u>Amounts paid TO State:</u>							
Judgments					9,560.76		0
Fees/Fines from liquor violations					1,033,990.00		1,006,971.00
Fees/Fines from gambling violations/convictions					277,036.25		574,222.50
Restitution/Forfeitures					118,213.53		152,189.00
Alcohol Assurances of Discontinuance penalties					10,869.34		0*
Public Administration-Moneys Escheated					1,149,495.78		361,824.79
<u>Amounts paid BY State:</u>					0		0
Other Significant Division Activity*:							
Notices of Intended Action filed by Alcohol					7		0
Alcohol Assurances of Discontinuance filed:					14		0

*Notices of Intended Action and Assurances of Discontinuance were temporarily suspended pending the resolution of the U.S. Supreme Court case of *Granholtz, et al v Heald, et al*, Case No. 03-1116.

Consumer Protection Division

Katharyn Barron, Assistant in Charge (beginning November 2004)
Stewart H. Freeman (May 2003 – November 2004)

The principal function of the Consumer Protection Division is investigating and mediating consumer complaints and encouraging compliance with consumer protection and antitrust laws. The division administers or enforces more than 35 state statutes. Under many of these statutes, the Consumer Protection Division has exclusive or primary compliance and enforcement jurisdiction.

By statutory prescription, the division issues licenses to charities and professional fund raisers acting on their behalf; registers charitable trusts, public safety organizations and their fund raisers; and is a necessary party to many probate estates having a residuary devise to a charitable entity. Franchisors must provide the division with notice of their intent to offer or sell franchises. Those offering for sale a "business opportunity" must also provide the division with notice. The division also enforces consumer laws against offerors of product-based pyramid scams. The division educates consumers through speeches, seminars, workshops, coalitions, and task forces.

The former Special Projects Division and the Special Litigation Division are now part of the Consumer Protection Division. The Consumer Protection Division, therefore, now also is lead counsel in disputes involving the national tobacco settlement. The division additionally provides representation to the public at large, and the State of Michigan as a consumer, in utility rate proceedings before the Michigan Public Service Commission and the courts. During 2003-2004, the division appeared in all significant administrative and judicial proceedings involving the rates and services of the State's largest utilities and in proceedings involving several smaller utilities. In addition, the division has the responsibility of representing the consumer interest in utility energy cost recovery proceedings conducted by the Public Service Commission pursuant to 1982 PA 304. Finally, the division also handles miscellaneous matters at the direction of the Attorney General.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	1	1	1	0	0	0	0
Circuit Court	67	6	59	14	15	4	11
Court of Claims	0	0	0	0	0	0	0
Court of Appeals	11	7	4	14	7	8	13
Supreme Court	5	0	5	0	3	0	3
Probate Court	188	32	49	171	39	102	108
Total	272	46	122	199	64	114	135
US Courts							
District Court	11	0	9	2	0	2	0
6th Circ Ct of Appeals	10	0	8	2	2	2	2
USSC	5	1	5	1	1	2	3
U.S. Bankruptcy Ct.	3	12	10	5	7	9	3
Total	29	13	27	10	10	15	8
Admin. Actions	163	549	624	88	52	52	88

*Pending 12/31/02 figures include the merger of cases from the former Special Projects and Special Litigation Divisions.

Other Significant Division Activity:

	2003	2004
Consumer complaints	18,987	18,444
Money recovered for consumers	\$2,561,548.92	3,044,535.67
Civil penalties, investigative, and other costs/income	\$734,652.01	\$819,928.67
Franchise registrations	1,063	1,180
Business opportunity registrations	24	20
Franchise fees	\$270,000.00	\$300,000.00

Antitrust civil penalties, state recoveries and <i>cy pres</i> distributions	\$11,351,911.59	\$3,792,712.04
Antitrust recoveries for consumers		\$2,139,226.19

Tobacco

Monies paid to the State	\$326,021,477.90	273,595,641.25
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Charitable Trust

Files opened for determination of applicability of charitable trust and solicitation requirements	959	854
Nonprofit corporate dissolutions closed	212	202
Charitable solicitation licenses issued	4684	4592
Charitable solicitation professional fundraiser licenses issued	271	167
Public safety registrations issued	69	82
Public safety professional fundraiser registrations issued	13	14
Registered charitable trusts	9051	9335

**Effective May 11, 2003, the Special Projects Division was merged into the Consumer Protection Division, and January 1, 2005, the Special Litigation Division was merged into the Consumer Protection Division. The figures for the three divisions are being reported as the Consumer Protection Division for the 2003-2004 report.

Criminal Appellate Division

Brenda E. Turner, Assistant in Charge

The Criminal Appellate Division was formed in July 2003 by a merger of the former Habeas Corpus Division and the Prosecuting Attorneys Appellate Service.

The Criminal Appellate Division represents the various state prison wardens in federal court actions for writs of habeas corpus filed by state prisoners claiming their federal constitutional rights were violated in their state criminal proceedings.

The Criminal Appellate Division also represents the People of the State of Michigan in the Michigan Court of Appeals and the Michigan Supreme Court in appeals from felony convictions obtained in the 56 counties which have a population of 75,000 or less. Additionally, the division appears as special appellate counsel where appointed by the court and provides assistance at the appellate level to other counties and divisions within the Department.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
Court of Appeals	150	85	114	121	128	110	139
Supreme Court	32	48	61	19	46	41	24
Total	182	133	175	140	174	151	163
US Courts							
District Court	621	347	470	498	560	434	624
6th Circ Ct of Appeals	269	358	341	286	305	316	275
USSC	1	4	1	4	4	7	1
Total	891	709	812	788	869	757	900

Criminal Division

Thomas Furtaw, Assistant in Charge

The Criminal Division investigates and prosecutes criminal cases based on the Attorney General's common law and statutory duties as Michigan's chief law enforcement officer and his statutory responsibility to supervise Michigan's 83 prosecuting attorneys.

One of the division's primary functions is to investigate alleged criminal activity, including inquiry into allegations of public official misconduct and crimes against the State of Michigan. In addition, major criminal investigations are conducted independently or in cooperation with local, state, and federal law enforcement agencies.

The Criminal Division consists of a number of sub-units or sections, each representing a particular focus of the division's responsibility. One such sub-unit is the Office of Special Investigations (OSI), which is based in East Lansing. The OSI is primarily responsible for the investigation and prosecution of public corruption and cold case homicides. The unit is also involved in the investigation of MIOSHA criminal violations as well as Workers Compensation and Insurance fraud issues.

Attorneys and investigators working within the OSI have specialized training and experience that is applied in cases all over the state. The OSI may provide a supportive role to local law enforcement in certain circumstances, or it will initiate a case and proceed independently throughout.

The Child and Public Protection Unit (CPPU), another component of the Criminal Division, is located in Livonia. The CPPU is responsible for the investigation and prosecution of crimes such as on-line child solicitation and distribution of child pornography. The CPPU also provides training for prosecutors, investigators, and others in cyber crime issues and acts as a clearinghouse for information and assistance to prosecutors and investigators handling computer crimes cases.

Two other sub-units are based in Detroit. The first of these is the Welfare Fraud Section (WFS), which has prosecuted all welfare recipient fraud cases in Wayne County since 1978. Most recipient fraud is discovered through wage match programs and is investigated and referred for prosecution by the Michigan Family Independence Agency, Office of Inspector General.

The second sub-unit based in Detroit is the Gun Violence Unit (GVU). The GVU is responsible for implementing the Attorney General's community prosecution initiative known as the Joshua Project. The Joshua Project was in response to a 30 percent increase of non-fatal and fatal shootings that occurred in the City of Detroit during the first half of 2004 compared to the same period in 2003. The Attorney General commenced the Joshua Project to address this problem. Several Assistant Attorneys General have been assigned to this initiative in order to provide assistance in the criminal investigation and prosecution of firearm-related assaults and shootings in the First and Third Precincts within the City of Detroit.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	52	117	122	47	168	101	114
Circuit Court	213	171	238	146	142	125	163
Court of Claims	1	1	2	0	0	0	0

Court of Appeals	17	13	24	6	7	8	5
Supreme Court	4	7	8	3	3	5	1
Tribunal Court	2	0	2	0	0	0	0
Total	289	309	396	202	320	239	283
US Courts							
District Court	38	1	36	3	3	3	3
6th Circ Ct of Appeals	1	1	2	0	0	0	0
USSC	0	0	0	0	0	0	0
U.S. Bankruptcy Ct.	0	0	0	0	0	0	0
Total	39	2	38	3	3	3	3
Admin. Actions	9	2	11	0	0	0	0
Criminal Investigations	123	115	172	66	126	91	101
Monies Paid To/By the State:				2003	2004		
All Judgments/Settlements paid TO State				N/A	N/A		
All Judgments/Settlements paid BY State				N/A	N/A		
Other Significant Division Activity:				2003	2004		
Citizen Correspondence Answered				982	1,130		
Special Prosecutor Designations Opened				184	198		
Extraditions Reviewed				219	*95		
Michigan State Police Questioned Orders				289	*142		
Petitions to Set Aside Convictions Reviewed				1,581	*1,058		
Welfare Fraud Diversions Restitution Ordered				\$1,072,048	\$945,826.30		
Welfare Fraud Diversions Opened				545	623		
(Welfare fraud felonies are included with court statistics above)							

*Extraditions Reviewed, MSP Questioned Orders, and Requests to Set Aside Convictions Reviewed reported through August 2004. Reassigned to Corrections Divisions at that time.

Environment, Natural Resources, and Agriculture Division*

Mark W. Matus, Assistant in Charge

The Environment, Natural Resources, and Agriculture Division advises and represents the Michigan Department of Natural Resources, the Michigan Department of Environmental Quality, and the Michigan Department of Agriculture in matters involving civil and criminal enforcement of the various state and federal agricultural and environmental statutes, natural resources management, and the management of oil and gas. The division also represents the Michigan Department of Labor and Economic Growth regarding Land Division Act matters. Negotiation and litigation on behalf of the State in matters involving Native American treaty rights, as well as assisting other divisions with Native American law issues, are included as duties of the division. In addition to those primary functions, the division also advises state environmental officials and boards regarding the legality of rules, permits, documents, and other administrative actions. Staff attorneys serve as legal counsel to the Agriculture Commission, Natural Resources Commission, Mackinac Island State Park Commission, and Waterways Commission. Additionally, staff attorneys serve as the Attorney General's representative on the Great Lakes Commission, Great Lakes Fishery Trust, and the Federal-State Environmental Crimes Task Force.

Division Caseload:

	Pending 12/31/02*	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
Tribal Court	1	0	0	1	0	0	1
Probate Court	0	1	0	1	1	0	2
District Court	14	15	19	10	34	30	14
Circuit Court	287	148	209	226	145	168	203
Court of Claims	7	7	4	10	1	6	5
Court of Appeals	42	40	51	31	18	27	22
Supreme Court	11	24	23	12	13	14	11
Total	362	235	306	291	212	245	258
US Courts							
District Court	18	3	5	16	9	4	21
6th Circ Ct of Appls.	17	2	9	10	3	6	7
USSC	0	2	0	2	1	1	2
U.S. Bankruptcy Ct.	21	8	5	24	8	7	25
Total	56	15	19	52	21	18	55
Admin. Actions	128	46	35	139	43	43	139
Client Case Referrals	231	165	190	206	135	164	177

*Pending 12/31/02 figures include the merger of cases from the former Agriculture and Native American Affairs Divisions.

Monies Paid To/By the State:

	2003	2004
All Judgments/Settlements paid TO State:	\$10,300,771.59	\$11,604,275.20
All Judgments/Settlements paid BY State:	\$216,517.67	\$880,991.58

*Effective November 2002, the Agriculture Division was merged into the Natural Resources and Environmental Quality Division. In May 2003, the Native American Affairs Division was also merged. The three divisions now form the Environment, Natural Resources, and Agriculture Division with Mark W. Matus as the Assistant in Charge.

ECONOMIC DEVELOPMENT AND OVERSIGHT BUREAU

Deborah Anne Devine
Bureau Chief

The Economic Development and Oversight Bureau provides all the legal services needed by its multifaceted client agencies to carry out their constitutional and statutory mandates. In addition to the defense and prosecution of the state's interests, the Bureau's divisions are essential to the efficient operation of the state's legal and financial transactions; the integrity of the state's budget; its economic development; the preservation of the credit rating of the state and its authorities; the maintenance of the solvency and financial soundness of the state's financial institutions and insurers; the procurement of goods and services; real estate transactions; the collection of tax revenues; and the regulation of certain professions, occupations, and services for the protection of the public. It represents a total of 12 State departments and their various agencies and programs, 14 finance authorities, 58 boards and commissions, and the Governor. The Bureau also represents the legislative and judicial branches in certain matters.

Finance Division

Terrence P. Grady, Assistant in Charge

The Finance Division serves as general counsel, as well as transactional, financial, tax, securities, and issuers' counsel, on all bond or note issuances by the State or any of its agencies, departments, authorities, or instrumentalities. The division also provides legal services in connection with state surplus funds and state pension fund investments. The division prepares loan, grant, and investment documentation, bond documents, financial assurance documentation, and generally any and all types of documentation necessary or appropriate to the transactional, investment, and borrowing needs of the State.

The authorities served by the Finance Division consist of the Michigan State Housing Development Authority, Michigan Strategic Fund, State Building Authority, Michigan Higher Education Assistance Authority, Michigan Higher Education Student Loan Authority, Michigan Higher Education Facilities Authority, Michigan Municipal Bond Authority, Michigan State Hospital Finance Authority, Michigan Underground Storage Tank Financial Assurance Authority, Michigan Public Educational Facilities Authority, Michigan Broadband Development Authority, and the Michigan Land Bank Fast Track Authority.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04	
Michigan Courts								
District Court	0	0	0	0	0	0	0	
Circuit Court	0	0	0	0	0	0	0	
Court of Claims	1	0	0	1	0	1	0	
Court of Appeals	0	0	0	0	0	0	0	
Supreme Court	1	0	0	1	0	1	0	
State Out of State	0	0	0	0	0	0	0	
Total	2	0	0	2	0	2	0	
US Courts								
District Court	0	0	0	0	0	0	0	
6th Circ Ct of Appls.	0	0	0	0	0	0	0	
USSC	0	0	0	0	0	0	0	
U.S. Bankruptcy Ct.	1	0	0	1	0	0	1	
Total	1	0	0	1	0	0	1	
Admin. Actions	0	0	0	0	0	0	0	
Monies Paid To/By the State:					2003			2004
All Judgments/Settlements paid TO State:					0			0
All Judgments/Settlements paid BY State:					0			0
Other Significant Division Activity:								
Financial Transactions:					447			441
Principal Amount:					\$8,936,485,637	\$8,249,602,892		

Insurance and Banking Division

E. John Blanchard, Assistant in Charge

The Insurance and Banking Division provides representation and counsel to State departments in matters involving banking, insurance, and securities. The division acts as general counsel to the Office of Financial and Insurance Services (OFIS) of the Department of Labor & Economic Growth. The Insurance and Banking Division works to enforce the Michigan Insurance Code, Patient's Right to Independent Review Act, Blue Cross Act (Nonprofit Health Care Corporation Reform Act), Banking Code of 1999, Mortgage Brokers, Lenders & Servicers Licensing Act, Consumer Financial Services Act, Uniform Securities Act, and numerous other consumer finance-related laws. This includes the regulation of Blue Cross Blue Shield of Michigan, HMOs, state-chartered banks, domestic insurance companies, foreign insurance companies, state-chartered credit unions, consumer finance lenders, insurance agents, securities agents, and securities agents and broker-dealers.

The Insurance and Banking Division acts as counsel to the Commissioner of OFIS in receivership, rehabilitation, and liquidation proceedings involving insurance companies, health maintenance organizations, banks, and other regulated entities.

The Insurance and Banking Division also provides representation to the Corporation Division of the Bureau of Commercial Services within the Department of Labor & Economic Growth. The division provides services that enable corporations, limited partnerships, limited liability companies, and limited liability partnerships to be formed, and for foreign entities to obtain a certificate of authority to transact business in the state, as required by Michigan law.

The Insurance and Banking Division provides guidance and assistance in reviewing agency documents and reviews insurance companies' articles of incorporation and amendments to articles of incorporation. The Insurance and Banking Division assists and advises the public in consumer-related matters involving insurance, banking, and securities issues.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	0	19	6	13	1	13	1
Out-of-State District	0	2	0	2	0	0	2
Circuit Court	22	29	18	33	20	18	35
Court of Claims	0	2	1	1	0	1	0
Court of Appeals	8	9	11	6	3	5	4
Supreme Court	1	5	3	3	3	3	3
Total	31	66	39	58	27	40	45
US Courts							
District Court	0	1	0	1	1	1	0
6th Circ Ct of Appeals	0	0	0	0	1	0	1
U.S. Bankruptcy Ct.	1	1	1	1	1	2	0
Total	1	2	1	2	3	3	1
Admin. Actions	12	14	15	11	1	6	6

Other Significant Division Activity:

Supervision/Rehabilitation/Liquidation of Insurance Companies
and Receiverships
Health Maintenance Organizations
Patient's Right to Independent Review Act
Mortgage Brokers, Lenders & Servicers Licensing Act
Banking Code of 1999
Insurance Companies, Banks, Credit Unions
Blue Cross and Blue Shield of Michigan
Multiple Employer Welfare Arrangements
No-Fault Automobile Insurance
Articles of Incorporation

Licensing and Regulation Division

Howard C. Marderosian, Assistant in Charge

The Licensing and Regulation Division was created in October 2004 as a result of the merger of the Health Professionals Division and the Occupational Regulation Division.

The division represents the Department of Community Health (DCH), Bureau of Health Services, and the 17 health regulatory agencies within the Bureau. Among the health regulatory agencies are the Board of Medicine, Board of Osteopathic Medicine & Surgery, and Board of Pharmacy. The division represents the Bureau in administrative disciplinary proceedings against health providers. Many of the disciplinary cases involve healthcare providers who have injured patients are incompetent, have sexually abused patients, prescribed excessive amounts of controlled substances, and other similar conduct.

Also the division represents the Department of Labor and Economic Development (DLEG), Bureau of Commercial Services, and the 30 regulatory licensing agencies within the Bureau. The occupational regulation agencies include residential builders, real estate sales persons, and other similar licensing boards. The division represents the Bureau in administrative disciplinary proceedings against individuals holding occupational licenses.

The division also represents the DLEG's Construction Lien Fund. This Fund was created by the Construction Lien Act to protect the rights of lien claimants to receive payment for labor and materials, and to protect homeowners from paying twice for the same services. During 2004 the division defended 167 claims for construction liens made against the Homeowners Construction Lien Recovery Fund (Fund). The lien claims totaled approximately \$3,339,192.95. The total payout from the Fund was \$117,418.61.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	1	0	0	1	0	0	1
Circuit Court	131	197	215	113	166	133	146
Court of Claims	0	0	0	0	0	0	0
Court of Appeals	7	10	9	8	4	12	0
Supreme Court	3	2	2	3	1	3	1
Total	142	209	226	125	171	148	148

US Courts

District Court	0	1	1	0	0	0	0
6th Circ Ct of Appeals	0	0	0	0	0	0	0
USSC	0	0	0	0	0	0	0
U.S. Bankruptcy Ct.	1	0	0	1	2	2	1
Total	1	1	1	1	2	2	1

Admin. Actions **311** **401** **413** **299** **466** **450** **315**

Monies Paid To/By the State:

					2003		2004
All Judgments/Settlements paid TO State							286,006.17
All Judgments/Settlements paid BY State				767,364.34			117,418.61
Fines assessed against licensed health care professionals				168,550.00			115,300.00

Other Significant Division Activity:

Investigative files received					184		211
Investigative files closed					153		191
Memorandum of Advice					138		204
Citizen letters					454		438

Public Service Division

David A. Voges, Assistant in Charge

The Public Service Division provides legal counsel and representation to the Michigan Public Service Commission (MPSC) in the Michigan circuit courts, Court of Appeals, and Supreme Court; and the federal District Court, Circuit Courts (primarily the D.C. Circuit and Sixth Circuit), and Supreme Court. The division also represents both the State of Michigan and the MPSC in proceedings before federal agencies, including the Federal Energy Regulatory Commission, Federal Communications Commission, Federal Highway Administration, and in appeals from these agencies to the federal courts. The Public Service Division also represents the Michigan Public Service Commission staff in administrative proceedings.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court		0	0	0	0	0	0
Circuit Court	3	4	3	4	7	7	4
Court of Claims	1	0	1	0	2	0	2
Court of Appeals	32	20	22	30	14	26	18
Supreme Court	11	17	19	9	16	15	10
Total	47	41	45	43	39	48	34
US Courts							
District Court	6	1	4	3	4	1	6
US Cts of Appeals	15	46	13	48	5	45	8
USSC	0	1	1	0	8	5	3
U.S. Bankruptcy Ct.	0	2	1	1	0	1	0
Total	21	50	19	52	17	52	17
Admin. Actions	198	263	268	193	271	286	178

Monies Paid To/By the State:	2003	2004
All Judgments/Settlements paid TO State	\$41,250	\$12,900

Revenue and Collections Division*

Russell E Prins, Assistant in Charge

The Revenue and Collections Division acts as legal counsel to the Department of Treasury in all matters pertaining to the administration of state taxes and supervision of local taxes. It also represents all state departments in the collection of delinquent accounts throughout the State of Michigan and in all other states of the United States.

The above representation of state interests includes the prosecution and defense of matters in both state and federal courts, as well as the Michigan Tax Tribunal, and involves state taxes for which the state annually receives in excess of \$20.95 billion. The division also represents the State Tax Commission which, since the Executive Organization Act of 1965, has acted as a State Board of Equalization of local property tax assessments and as the State Board of Assessors, centrally appraising and taxing railroad, telephone, and telegraph companies. Additionally, the Commission administers the statutes that grant tax exemptions for industrial and commercial facilities, water and air pollution, control facilities, and energy conservation devices. The total monies raised by local property taxes annually exceed \$10 billion.

This division also represents the State Treasurer in actions brought in 51 counties as the foreclosing unit of government for delinquent real property taxes and in defense of claims brought against the State arising from foreclosure actions.

The figures reported below include not only substantive tax cases, but also those involved with the collection of delinquent state accounts. The pending cases that involve substantive tax issues represent claims against the State in judicial and administrative proceedings in excess of \$409 million. During the biennium, \$20,452,934.10 was collected on delinquent accounts. Additionally, \$3,126,908.71 was collected during the period on prisoner reimbursement accounts. The amount of claims for tax and other delinquencies for which payment is sought by the State of Michigan in judicial or quasi-judicial proceedings currently exceeds \$224 million.

* Effective November 1, 2002, the Revenue Division was merged with the Collections Division. The two divisions now form the Revenue and Collections Division. Each of these two division's reports was separately published in the prior biennial report, 2001-2002 OAG, pp 136 and 156.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	1,153	501	627	1,027	726	792	961
Circuit Court	755	476	401	831	549	343	1,037
Court of Claims	354	40	77	317	89	63	343
Court of Appeals	82	33	50	65	38	26	77
Supreme Court	15	6	11	10	4	8	6
Total	2,359	1,056	1,165	2,250	1,406	1,232	2,424

US Courts

District Court	23	9	16	16	11	5	22
6th Circ Ct of Appeals	7	3	3	7	2	2	7
USSC	2	1	1	2	1	1	2
U.S. Bankruptcy Ct.	3,669	2,516	1,763	4,422	1,896	1,627	4,690
Total	3,701	2,529	1,783	4,447	1,910	1,635	4,721

Admin. Actions **239** **85** **99** **225** **89** **84** **230**

Monies Paid To/By the State:

					2003	2004
All Judgments/Settlements paid TO State						
Tax and State Agency Accounts					\$10,145,145.90	\$10,307,788.20
Prisoner Reimbursement					\$1,098,284.74	\$2,028,623.97
Total					\$11,243,430.64	\$12,336,412.17

State Operations Division

Thomas F. Schimpf, Assistant in Charge

The State Operations Division has the most diverse responsibility of any Attorney General division. State Operations provides legal counsel for seven state departments: the Department of Management and Budget, the Department of Information Technology, the Department of State, the Department of Labor and Economic Growth (for adult education and job training matters), the Department of Natural Resources (for real estate matters), the Department of Military and Veterans' Affairs (for real estate matters) and the Department of History, Arts and Libraries. In addition, we provide counsel to the Michigan Education Trust and Michigan Education Savings Program within the Department of Treasury, the Michigan Economic Growth Authority, Michigan Strategic Fund, Michigan Next Energy Authority, and Land Bank Fast Track Authority (for real estate matters) within the Department of Labor and Economic Growth, the Michigan State Public Safety Communications System, and the Department of Environmental Quality's Small Business Pollution Prevention Loan Program.

Our Retirement Section provides legal counsel for the State Employees Retirement System, the Public Schools Employees Retirement System, the Judges Retirement System, the State Police Retirement System, the Legislative Retirement System, and the State Social Security Administrator. We also provide litigation representation for the Executive Office, the State Administrative Board, the Legislature, the State Court Administrative Office, the Department of Agriculture (State Fair), and for the clients of the Finance Division, in particular, the Michigan State Housing Development Authority and the Department of Treasury's Bureau of Investments. We also serve as the Department's point of contact with the Michigan Economic Development Corporation.

The State Operations Division was created in June 2003 by the merger of the State Affairs and Economic Development & Retirement Divisions.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	2	1	3	0	6	4	2
Circuit Court	85	90	97	78	172	97	153
Court of Claims	6	10	9	7	6	4	9
Court of Appeals	21	23	19	25	16	19	22
Supreme Court	6	4	3	7	9	3	13
Total	120	128	131	117	209	127	199

US Courts

District Court	1	5	2	4	2	3	3
6th Circ Ct of Appeals	1	0	0	1	2	1	2
USSC							
U.S. Bankruptcy Ct.	4	2	1	5	3	1	7
Total	6	7	3	10	7	5	12

Admin. Actions	Pending	Opened	Closed	Pending	Opened	Closed	Pending
	12/31/02	2003	2003	12/31/03	2004	2004	12/31/04
Bureau of Retirement Sys.	94	80	80	94	68	80	82
Consumer and Ind. Srv.	0	21	13	8	0	6	2
DMB Office of Budget	1	0	0	1	0	0	1
Histories, Arts, and Lib	0	1	0	1	0	0	1
Total	95	104	93	106	68	86	88

Monies Paid To/By the State:	2003	2004
All Judgments/Settlements paid TO State	\$506,735.00	\$542,732.04
All Judgments/Settlements paid BY State	\$72,000.00	\$300,000.00

Other Significant Division Activity:

	Pending	Opened	Closed	Pending	Opened	Closed	Pending
	12/31/02	2003	2003	12/31/03	2004	2004	12/31/04
Lease Reviews	6	62	53	15	72	74	13
Title Opinions	8	33	36	5	49	41	13

GOVERNMENTAL AFFAIRS BUREAU

Gary P. Gordon
Bureau Chief

The Bureau of Governmental Affairs was created in January 2003; it now oversees and coordinates seven divisions of the Department of Attorney General that primarily engage in the practice of civil law: Civil Rights and Civil Liberties Division; Corrections Division; Driver License Restoration Section; Highway Negligence Division; Labor Division; Public Employment, Elections, and Tort Division; and Transportation Division. Attorneys in those divisions practice in a wide range of legal fields and specialties, appearing in all levels of state and federal courts and an array of administrative tribunals. The Bureau handles a heavy load of civil litigation, specialized areas of criminal law, regulatory matters and general legal counsel activities, the details and statistics for which are provided by division in this biennial report.

Civil Rights and Civil Liberties Division

Ron D. Robinson, Assistant in Charge

The Civil Rights and Civil Liberties Division advises and represents the Michigan Civil Rights Commission (MCRC) and the Michigan Department of Civil Rights (MDCR) and cooperates with other state departments and agencies in addressing civil rights and civil liberties related matters.

The division prepares and files formal charges by the MDCR alleging civil rights violations and represents the MDCR at formal administrative hearings and in appeals taken. In cases which the Attorney General determines present issues of major significance to the jurisprudence of the State and in which the MCRC is not a party, the division represents the MCRC as an intervener or amicus curiae.

The division brings court proceedings to enforce orders issued by the MCRC or the MDCR and seeks injunctive relief in cases of unlawful discrimination in the areas of housing and public accommodation.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	0	1	0	1	2	2	0
Circuit Court	5	18	11	7	16	11	5
Court of Claims	0	1	1	0	2	0	2
Court of Appeals	0	4	2	2	4	2	2
Supreme Court	0	1	1	0	3	1	2
Total	5	25	15	10	27	16	11
Federal Courts							
District Court	0	6	3	3	4	3	1
Bankruptcy Court	0	1	0	1	1	0	1
6th Circ Ct of Appeals	0	1	1	0	0	0	0
Supreme Court	0	3	3	0	1	0	1
Total	0	11	7	4	6	3	3
Admin. Action	2	5	2	3	7	3	4
Other Significant Division Activity:							
Legal Review Cases	10						
Law Enforcement Cases	31						
Monitor	9		7	2	2		4

Corrections Division

Leo H. Friedman, Assistant in Charge

The Corrections Division provides legal advice and representation to the Michigan Department of Corrections and the Michigan Parole Board. While the majority of the workload consists of the representation of the Department of Corrections and the Michigan Parole Board and their employees in the federal and state court systems, the division also provides legal advice and consultation regarding employment issues, contracts, etc., as well as interpretation of state and federal constitutions, statutes, and rules; agency decisions, policies, and procedures. Commencing June 1, 2004, the division assumed the review of all extraditions and interstate rendition requests received by the Governor's Office. Additionally, commencing August 16, 2004, the Corrections Division assumed the review of all petitions to set aside conviction (expungements) filed with the state courts pursuant to MCL 780.621 *et seq.* and the representation of the Michigan State Police (MSP) concerning the litigation of orders for setting aside convictions that the MSP contests.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
Municipal Court	0	0	0	0	1	1	0
District Court	5	1	3	3	372	207	168
Probate Court	5	1	1	5	8	9	4
Circuit Court	1065	591	1197	459	956	849	566
Court of Claims	28	11	19	20	8	16	12

Court of Appeals	138	110	166	82	87	114	55
Supreme Court	44	36	50	30	26	39	17
Total	1285	750	1436	599	1458	1235	822

US Courts

District Court	285	176	183	278	189	194	273
6th Circ Ct of Appeals	82	79	63	98	84	88	94
USSC	4	4	3	5	2	5	2
U.S. Bankruptcy Ct.	0	0	0	0	0	0	0
Total	371	259	249	381	275	287	369

Admin. Actions	4	15	14	5	26	27	4
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Monies Paid To/By the State:		2003	2004
All Judgments/Settlements paid TO State		36,888.60	34,709.29
All Judgments/Settlements paid BY State		268,978.28	2,057,577.89

Detroit Office/Driver License Restoration Section

Ron D. Robinson, Assistant in Charge

The Detroit Office provides general administrative supervision to all Detroit-based divisions, sections, and satellite offices. The office also acts as a liaison to local governmental and civil entities in southeastern Michigan. In addition to the above functions, the office provided direct supervision of the Driver License Restoration Section. The Driver License Restoration Section represents the Michigan Secretary of State in driver license restoration matters in Wayne, Oakland, and Washtenaw Counties, and handles out-county appeals referred by the Secretary of State.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
Circuit Court	4075*	554	2073	2556	475	441	2590
Court of Appeals	28	15	28	15	3	4	14
Supreme Court	2	0	1	1	1	0	2
Total	4105	569	2102	2572	479	445	2606

Monies Paid To/By the State:		2003	2004
All Judgments/Settlements paid TO State:		0	0
All Judgments/Settlements paid BY State:		0	0

*This number represents pending cases after calculating previously unavailable closed cases from 2002.

Highway Negligence Litigation Division

Vincent J. Leone, Assistant in Charge

The Highway Negligence Litigation Division represents the Michigan Department of Transportation (MDOT) in tort litigation where it is alleged that a highway defect contributed to injuries to persons or property. The highway defect exception to governmental immunity provides that MDOT shall "repair and maintain" "in reasonable repair" "the improved portion of the highway designed for vehicular travel." The division also represents MDOT against claims for defective buildings and the negligence operation of motor vehicles by its employees. Also, the

division advises and defends MDOT regarding employment/discrimination claims. In addition to this primary function, the division brings lawsuits against persons who have damaged MDOT property.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	4	26	10	20	59	23	56
Circuit Court	2	24	8	18	22	18	22
Court of Claims	47	29	28	48	26	36	38
Court of Appeals	16	9	13	12	7	10	9
Supreme Court	2	4	6	0	7	1	6
Total	71	92	65	98	121	88	131
US Courts							
District Court	1	1	1	1	2	1	2
6th Circ Ct of Appeals	0	0	0	0	1	0	1
USSC	0	0	0	0	0	0	0
U.S. Bankruptcy Ct.	0	0	0	0	0	0	0
Total	1	1	1	1	3	1	3
Admin. Actions	0	0	0	0	0	0	0

Monies Paid To/By the State:

	2003	2004
All Judgments/Settlements paid TO State	\$571,433.01	\$842,240.29
All Judgments/Settlements paid BY State	\$445,500.00	\$2,274,200.00

Other Significant Division Activity:

The Highway Negligence Litigation Division has taken the responsibility for collecting monies from insurance companies or uninsured drivers who have damaged highway surfaces or appurtenances. Most often this can be done without litigation. In 2003, the amount collected without litigation was \$719,084.56. In 2004, the amount collected without litigation was \$667,611.55.

The division has initiated lawsuits against over 40 uninsured motorists who have damaged MDOT property for at least \$1,700. This initiative has been commenced in part to determine if it is cost effective to pursue uninsured motorists for this loss.

Labor Division

Ray W. Cardew, Jr., Assistant in Charge

On November 1, 2002, three divisions in the Department, the Labor Division, the Workers' Compensation Division, and the Unemployment Division, were combined to form the Labor Division in its current form. Three subdivisions, including the Labor Unit, the Unemployment Unit, and the Workers' Compensation Unit, make up the present division. Collectively, the units provide legal advice and representation to various agencies and offices in the Department of Labor & Economic Growth on issues that arise under labor-related statutes that the client agencies or offices administer.

Primarily, the Labor Unit enforces the Payment of Wages and Fringe Benefits Act, 1978 PA 390; the Minimum Wage Law of 1964, 1964 PA 154; the Michigan Occupational Safety and Health Act, 1974 PA 154; and the State Construction Code Act of 1972, 1972 PA 230. The unit also provides advice and representation to the

state Civil Service Commission, the Department of Civil Service, and the State Personnel Director with respect to Const 1963, art 11, § 5, the Civil Service rules and regulations, and other Civil Service matters involving the state classified service. On occasion, the unit represents other state agencies named in a challenge to a Civil Service Commission's decision regarding the employment practices of the named agency.

The Unemployment Unit is counsel to the Unemployment Insurance Agency and represents its Office of Trust Fund, Tax & Employer Compliance and its Office of Benefits Services in all civil actions maintained in state and federal courts. The unit represents the UIA as statutory party to all actions arising under the Michigan Employment Security Act, 1936 PA Ex Sess, No1, as amended. In tax collection and benefit restitution actions, the unit sues to recover delinquent unemployment taxes or improperly received unemployment benefits and defends the agency's proofs of claim filed in federal bankruptcy courts, in probate courts, and in circuit courts.

The Workers' Compensation Unit is counsel to all state departments in matters of the administration of the Workers' Disability Compensation Act of 1969, as amended, and enforces compliance with the WDC Act on behalf of the Workers' Compensation Agency. The unit also represents the state workers' compensation funds created by the Legislature: Compensation Supplement Fund; Medical Benefits Fund; Second Injury Fund; Self-Insurers' Security Fund; and Silicosis, Dust Disease, and Logging Industry Compensation Fund.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	2337	848	1912	1273	811	864	1220
Circuit Court	290	388	312	366	367	371	362
Court of Claims	2	1	1	2	1	1	2
Court of Appeals	33	33	36	30	28	35	23
Supreme Court	11	16	15	12	15	12	15
Total	2673	1286	2276	1683	1222	1283	1622
US Courts							
District Court	6	6	6	6	2	3	5
6th Circ Ct of Appeals	3	3	2	4	1	3	2
USSC	0	0	0	0	1	1	0
U.S. Bankruptcy Ct.	313	99	253	159	112	79	192
Total	322	108	261	169	116	86	199
Admin. Actions	1407	1408	1414	1401	1451	1368	1484
Out-of-State Courts	33	14	9	38	12	9	41
Monies Paid To/By the State:					2003	2004	
Fines/penalties paid TO State (Workers' Comp Administrative Revolving Fund				\$258,603.99		\$358,694.36	
Monies paid TO State (Self-Insurers' Security Fund)				\$16,376.00		\$2,311,709.27	
Other Significant Division Activity:							
Citizen Letters	68	470	441	97	355	354	98
Actual monies collected by Labor Unit:							
Wages & Interest				\$103,495.56		\$114,430.37	
Costs				\$810.40		\$921.22	
Fees				\$3,406.70		\$4,991.61	
Total				\$107,712.66		\$120,343.20	

Actual monies collected by Unemployment Unit:

Restitution	\$508,703.27	\$639,215.30
Contribution	\$100,211.34	\$164,715.81
Employer Bankruptcy	\$478,361.53	\$626,070.56
Total	\$1,087,276.14	\$1,430,001.67

Public Employment, Elections and Tort Division

Patrick J. O'Brien, Assistant in Charge

The Public Employment, Elections, and Tort Division advises and represents the Office of State Employer with respect to collective bargaining and other employment matters relating to the State classified civil service. The division also represents all branches of state government and state departments and agencies in employment discrimination cases.

The division advises and represents the Secretary of State and Board of State Canvassers in all election-related matters, including the Michigan Campaign Finance Act and Lobby Registration Act, and provides informal assistance to local officials throughout the State who are charged with election-related responsibilities. The division provides legal advice and representation, in state and federal courts, to state agencies, excluding Corrections and Transportation, and their officers and employees when sued in civil lawsuits alleging injury or property damage.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	87	35	96	26	5	9	22
Circuit Court	171	111	157	125	94	103	116
Court of Claims	53	29	39	43	32	33	42
Court of Appeals	62	32	37	57	21	51	27
Supreme Court	9	9	11	7	17	10	14
Out-of-State	2	0	2	0	0	0	0
Total	384	216	342	258	169	206	221

US Courts

District Court	52	66	46	72	68	67	73
6th Circ Ct of Appeals	25	12	10	27	15	27	15
USSC	1	2	3	0	0	0	0
Out-of-State	4	2	5	1	1	1	1
Total	82	82	64	100	84	95	89

Admin. Actions	9	3	2	10	3	1	12
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Monies Paid To/By the State:

	2003	2004
All Judgments/Settlements paid TO State	\$28,007.40	\$6,870.17
All Judgments/Settlements paid BY State	\$2,454,272.00	\$456,695.98

Other Significant Division Activity:

Due to the litigation expertise in the Public Employment, Elections, and Tort Division, the division has handled special assignments involving constitutional challenges to state statutes, policies, and procedures. Issues include state employee drug testing policies, operation of the state sex offender registry, same sex benefits prohibition, State Police Matrix information program, defense of child support enforcement statute, defense of Supreme Court administrative orders, internet pornography cases, and others.

In addition, the division provides daily support to the Office of State Employer and human resource departments regarding employer-employee issues. Due to the employment and labor law expertise, the division provides legal analysis and lectures for litigation coordinator and human resource personnel seminars.

Transportation Division

Patrick F. Isom, Assistant in Charge

With the exception of two areas - highway negligence litigation and municipal bonding - the Transportation Division advises and represents the Michigan Department of Transportation (MDOT), Michigan State Transportation Commission, the Mackinac Bridge Authority, the International Bridge Administration, the Aeronautics Commission, and the Michigan Truck Safety Commission, each of which has constitutional and/or statutory responsibilities in an area of transportation.

MDOT constructs and maintains state trunkline highways throughout the State and administers a comprehensive transportation program involving travel by watercraft, bus, railroad car, aircraft, rapid transit vehicle, or other means of public conveyance. In addition, MDOT administers numerous funding and grant programs under which municipalities, local transit agencies, and others carry out transportation programs. MDOT's regulatory responsibilities include the areas of highway advertising, driveways, and rail safety. This division represents MDOT and each of its agencies in lawsuits; assists in the development, review, and interpretation of contracts; and advises in the interpretation of state and federal laws. The division also represents MDOT in all its condemnation litigation combining the work of staff attorneys and support personnel with that of Special Assistant Attorneys General.

Division Caseload:

	Pending 12/31/02	Opened 2003	Closed 2003	Pending 12/31/03	Opened 2004	Closed 2004	Pending 12/31/04
Michigan Courts							
District Court	2	0	2	0	0	0	0
Circuit Court	63	18	33	48	21	26	43
Court of Claims	9	8	9	8	9	6	11
Court of Appeals	11	5	11	5	7	4	8
Supreme Court	3	6	5	4	4	5	3
Total	88	37	60	65	41	41	65
US Courts							
District Court	3	0	2	1	1	2	0
6th Circ Ct of Appeals	1	0	1	0	0	0	0
USSC	0	1	1	0	0	0	0
U.S. Bankruptcy Ct.	0	0	0	0	0	0	0
Out-of-State	0	1	0	1	0	1	0
Total	4	2	4	2	1	3	0
Admin. Actions	28	24	40	12	20	24	8
Monies Paid To/By the State:				2003		2004	
All Judgments/Settlements paid TO State				1,881,64		770,753	
All Judgments/Settlements paid BY State				2,073,331		8,028,447	

Other Significant Division Activity:

Contract review for 2003 and 2004

2003: Approximately 1,876 contracts -- 837 construction contracts totaling approximately \$1,064,295,913; approximately 1039 contracts from Real Estate, Maintenance Division, Design, Planning and Multimodal

2004: Approximately 1,757 contracts -- 794 construction contracts totaling approximately \$1,157,339,127; approximately 963 contracts from Real Estate, Maintenance Division, Design, Planning and Multimodal

REPORT OF PROSECUTIONS**Alcohol & Gambling Enforcement Division – Prosecutions 2003 - 2004**

PEOPLE v AHMED ABO-HASSAN, Wayne Circuit, 04/14/2003, charged with 8 counts for felony use of another's financial transaction device. Judgment, pled guilty to 1 count of theft of another's financial transaction device and 2 counts of use of another's financial transaction device. Sentenced to 2 years probation, \$330 costs, \$202 restitution, and supervision fees.

PEOPLE v KHALID YOUNIS ABOONA, 36th District Court, 09/11/2003, charged with misdemeanor larceny over \$200, less than \$1,000. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year non-reporting probation and \$200 court costs.

PEOPLE v KAMAL TMATTI AKRAWA, 36th District Court, 5/19/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$3,560 in winnings turned over to the State Compulsive Gambling Fund, \$200 fine, and \$200 court costs.

PEOPLE v ALETHA CHARLENE ALLEN, Wayne Circuit, 05/23/2003, charged with felony uttering and publishing and resisting and obstructing. Judgment, pled guilty to uttering and publishing. Sentenced to 1-14 years imprisonment.

PEOPLE v STUART MARTIN ALTER, 36th District Court, 08/13/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to misdemeanor trespass by a disassociated person. Sentenced to 13 days in jail with credit for time served with costs/fees waived.

PEOPLE v MAYKIL JEBRAIL ALYAS, 36th District Court, 06/05/2003, charged with a misdemeanor of underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 1 year non-reporting probation and \$200 fines/costs.

PEOPLE v ERICA ARMSTRONG, Wayne Circuit, 4/21/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 45 days in jail with credit for time served.

PEOPLE v MICHAEL EARL ARNOLD, 36th District Court, 9/7/2004, charged with misdemeanor 2nd degree retail fraud. Judgment, pled guilty to 2nd degree retail fraud. Sentenced to 15 days in the Wayne County Jail with credit for time served.

PEOPLE v LAITH YOUSIF ASMAR, 36th District Court, 1/28/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation, \$90 fine, \$10 court costs, \$50 Crime Victims fee, \$45 joint state assessment fee, and \$1,200 in winnings turned over to the State Compulsive Gambling Prevention Fund.

PEOPLE v DARYL BRICE ATCHISON, 36th District Court, 1/20/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to disorderly conduct. Sentenced to \$100 court costs and \$100 fine.

PEOPLE v CAROL AUDETTE, Van Buren Circuit, 12/15/2003, charged with 3 counts obstruction of justice. Judgment, pled guilty to 3 counts of obstruction of justice. Sentenced to 1 year probation, 100 hours community service, \$5,000 fine, and \$1,670 costs/fees.

PEOPLE v STANLEY AUSTIN JR., 36th District Court, 01/06/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to 1 count of trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, and

\$200 court costs.

PEOPLE v MIKA LORRAINE BAILEY, Wayne Circuit, 5/12/2004, charged with felony uttering and publishing and identity theft (possession of another's financial transaction device). Judgment, pled guilty to 2 counts of uttering and publishing and Habitual 4th. Defendant was sentenced to 3 years probation, \$2,000 restitution to the casino, \$165/year court costs, and \$120/year supervision fees.

PEOPLE v JONATHAN SCOTT BAKER, 36th District Court, 10/21/2004, charged with 1 count of felony larceny in a building and 1 count of misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year reporting probation, \$300 fine, and assessed court costs.

PEOPLE v KEVIN JONATHAN BALDWIN, 36th District Court, 3/15/2004, charged with 2 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to 1 count of misdemeanor trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, and \$200 court costs.

PEOPLE v BONNIE LEE BALLOG, 36th District Court, 6/28/2004, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 10 months non-reporting probation, \$200 in court costs, and \$200 fine.

PEOPLE v EDWARD LEANORD BANKS, Wayne Circuit, 01/31/2003, charged with 3 counts of felony uttering and publishing and 1 count conspiracy to utter and publish. Judgment, pled guilty to 2 counts of uttering and publishing. Sentenced to 18 months probation, \$60 Crime Victims fee, and \$200 court costs.

PEOPLE v SUSAN ALITA BANOSKI, Wayne Circuit, 10/21/2004, charged with 3 counts of felony uttering and publishing. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 2 years probation with the first 120 days in an inpatient drug treatment program, \$4,500 restitution, \$60 state fees, \$60 Crime Victims fee, \$240 supervision fees, and \$330 court costs.

PEOPLE v KATHY MARIE BARLEY, Wayne Circuit, 08/25/2003, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 1 year probation, \$60 Crime Victims fee, \$120 supervision fees, \$165 court courts, and attorney fees.

PEOPLE v JARED MICHAEL BAUER, 36th District Court, 6/16/2004, charged with misdemeanor underage gambling. Judgment, pled guilty to disorderly person. Sentenced to 6 months non-reporting probation and \$200 court costs.

PEOPLE v DAVID ALAN BAZZY, 36th District Court, 01/08/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to misdemeanor trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, \$200 court costs, \$2,250 in winnings turned over to the Michigan Compulsive Gambling Fund, and \$5,600 in cheques returned to the casino.

PEOPLE v HARRY DENNIS BELL, 36th District Court, 07/15/2003, charged with misdemeanor embezzlement and misdemeanor possession of marijuana. Judgment, pled guilty to one count of possession of marijuana. Sentenced to 6 months non-reporting probation, \$200 fine, \$200 court costs, \$50 Crime Victims fee, and \$62 restitution to the casino.

PEOPLE v LARRY ANTHONY BELL, Wayne Circuit, 12/23/2004, charged with felony larceny in a building and larceny under \$200. Judgment, pled guilty to misdemeanor larceny less than \$200. Sentenced to 6 months probation, \$50 Crime Victims fee, \$82.50 court costs, and \$225 attorney fees.

PEOPLE v DWAYNE ROBERT BENSON, Wayne Circuit, 03/27/2003, charged with felony uttering and publishing a false instrument and conspiracy to utter and

publish. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year probation, \$826 restitution, and \$600 court costs.

PEOPLE v ROBERT ALAN BERLOW, 36th District Court, 12/16/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 6 months probation, \$150 court costs, and \$97 of winnings turned over to the State's Compulsive Gambling Prevention Fund.

PEOPLE v KEITH LARSEN BERRY, Wayne Circuit, 08/21/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 1 year probation, \$60 Crime Victims fee, \$120 supervision fees, \$165 court costs, and attorney fees.

PEOPLE v MICHAEL ALLIE BERRY, 36th District Court, 11/9/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation and \$200 fine.

PEOPLE v JAMES DEAN BIGELOW, 36th District Court, 5/7/2003, charged with misdemeanor malicious destruction of property. Judgment, pled guilty to disorderly conduct. Sentenced to 1 year non-reporting probation, \$550 restitution, and \$200 court costs.

PEOPLE v SANDRA JOY BILLINGSLEA, 36th District Court, 10/7/2004, charged with felony fraudulent presentation of insufficient funds checks at the MotorCity Casino. Judgment, pled guilty to felony fraudulent presentation of insufficient funds checks. Sentenced to 6 months probation, \$300 restitution to the casino, and \$200 court costs.

PEOPLE v CHARLES BLUNT, Wayne Circuit, 4/23/2004, charged with felony casino cheating. Judgment, pled guilty to casino cheating. Sentenced to 2 years probation, all chips and money taken upon arrest returned to the casino, \$60 costs, \$60 Crime Victims fee, \$240 supervision fees, \$600 court costs, and \$300 attorney fees.

PEOPLE v NORVILL A BOLDEN, Wayne Circuit, 2/17/2004, charged with a felony of 2 counts casino cheating for capping bets and habitual offender, 2nd notice. Judgment, pled guilty to attempted capping a bet. Sentenced to 1-1/2 to 5 years imprisonment.

PEOPLE v LAKESHA LOUISE BOLDING, 36th District Court, 01/29/2003, charged with felony embezzlement over \$1,000, but less than \$20,000. Judgment, pled guilty to attempted embezzlement. Sentenced to 1 year probation, \$500 attorney fees, \$600 court costs, and \$60 Crime Victims fee.

PEOPLE v KEITH JEROME BOND, 36th District Court, 10/07/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year reporting probation, \$300 fine, \$200 court costs, \$50 Crime Victims fee, and probation oversight fees.

PEOPLE v JAMILA TAMESHA BOUNDS, 36th District Court, 04/24/2003, charged with felony capping a bet at Casino War, or in the alternative misdemeanor larceny less than \$200. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year non-reporting probation, \$20 in chips returned to the casino, and \$100 court costs.

PEOPLE v ERICA CAMILLE BRANCH-CUNNINGHAM, Wayne Circuit, 07/25/2003, charged with a felony of embezzlement by employee or agent over \$20,000 and conspiracy to obtain money under false pretenses. Judgment, pled

guilty to embezzlement by an agent or employee over \$20,000 charge. Sentenced to 3 years probation, \$61,305 restitution to the casino, and 30 hours of community service a year.

PEOPLE v DEBBIE BRAZILL, Wayne Circuit, 11/04/2003, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation and \$330 court costs.

PEOPLE v MARQUITA LATRICE BRIDGES, 36th District Court, 3/29/2004, charged with 2 counts of misdemeanor of obtaining money under false pretenses greater than \$200 or more, but less than \$1,000. Judgment, pled guilty to false pretenses under \$1,000. Sentenced to 6 months probation and \$200 court costs.

PEOPLE v AARON BURR BROWN IV, Wayne Circuit, 12/03/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to 1 count of aiding and abetting the crime of uttering and publishing. Sentenced to 90 days in jail as part of a 1 year probation, \$60 Crime Victims fee, \$120 supervision fees, \$120 court costs, and attorney fees.

PEOPLE v KELLY DENISE BRYANT, 36th District Court, 6/17/2004, charged with misdemeanor larceny less than \$1,000. Judgment, pled guilty to larceny under \$200. Sentenced to 90 days non-reporting probation, \$860 restitution to the casino, and \$200 court costs.

PEOPLE v WILLIE FRANKLIN BRYANT JR., Wayne Circuit, 07/23/2003, charged with felony pinching a bet at craps, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year probation, 50 hours of community service, \$150 restitution, and \$600 court costs.

PEOPLE v ROBERT JAMES BUSH, Wayne Circuit, 06/04/2003, charged with felony cheating at craps, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 18 months probation, \$200 court costs, and \$20/month supervision fees.

PEOPLE v CHRISTOPHER CAFFEE, Wayne Circuit, 8/30/2004, charged with felony attempted larceny in a building. Judgment, pled guilty to attempted larceny in a building. Sentenced to 1 year probation, \$60 Crime Victims fee, \$60 state fee, and \$150 supervision fees.

PEOPLE v CLEVELAND CALDWELL JR., Wayne Circuit, 04/02/2003, charged with 1 count of felony uttering and publishing a false instrument. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 5 years probation, \$1,050 restitution, \$600 supervision fees, and \$50 Crime Victims fee.

PEOPLE v RICHARD JOHN CALLEWAERT, Wayne Circuit, 06/03/2003, charged with 3 counts of felony past posting at craps. Judgment, pled guilty to attempted past posting at craps. Sentenced to 18 months probation, \$600 restitution to the casino, \$630 court costs, \$180 supervision fees, and \$60 Crime Victims fee.

PEOPLE v ERNESTO CANTU JR., 58th District Court, 12/14/2004, charged with felony violation of the Income Tax Act (tax fraud). Judgment, pled guilty to a one-year misdemeanor count of income tax evasion. Sentenced to 18 months probation, \$250 in court costs, attorney fees, and \$7,000 restitution.

PEOPLE v TARNETTA LAKISHA CARTER, 36th District Court, 12/6/2004, charged with misdemeanor embezzlement. Judgment, pled guilty to misdemeanor embezzlement. Sentenced \$200 court costs.

PEOPLE v RANDY ALLEN CAVALLO, 36th District Court, 4/26/2004, charged with misdemeanor larceny. Judgment, pled guilty to the misdemeanor larceny. Sentenced to serve 93 days in jail.

PEOPLE v THERESA MARIE CERDA, 36th District Court, 06/10/2003, charged with a high court misdemeanor of assault and infliction of serious injury and resisting and obstructing an officer. Judgment, pled to aggravated assault. Sentenced to 1 year probation, \$250 fines/costs, and \$35/month supervision fees.

PEOPLE v CURTIS HENRY CHATFIELD, Wayne Circuit, 2/25/2003, charged with felony past posting at craps, in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 6 months probation and \$250 fine.

PEOPLE v KELVIN TAROD CHATMAN, 36th District Court, 10/09/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$200 fine, \$200 court costs, and \$50 Crime Victims fee.

PEOPLE v WENXIU CHEN, 36th District Court, 04/04/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 1 year non-reporting probation and \$100 court costs.

PEOPLE v LINDA DENEST CHISM, Wayne Circuit, 4/19/2004, charged with felony embezzlement over \$1,000, less than \$20,000. Judgment, pled guilty to attempted embezzlement. Sentenced to 1 year probation, \$1,700 restitution to the casino, \$60 state costs, \$60 Crime Victims fee, \$300 supervision fees, and \$165 court costs.

PEOPLE v KYOO-BON CHO, Jackson Circuit, 09/10/2003, a Department of Corrections employee, working as probation agent in Jackson County, accepted bribes in exchange for leniency and probation discharge in excess of \$4,000. Verdict - Jury, found guilty on 2 counts of misconduct in office by the jury and not guilty on the Count 3 of misconduct in office. Sentenced to 365 days in the county jail, \$3,000 court costs, \$60 Crime Victims fee, and a DNA fee.

PEOPLE v ROB MICHAEL CIHY, Wayne Circuit, 3/22/2004, charged with felony pinching a bet at blackjack, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year probation and \$600 court costs with time in Wayne County Jail until court costs were paid.

PEOPLE v ALLEN COLBERT JR., Wayne Circuit, 05/23/2003, charged with felony pinching a bet at blackjack, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 18 days in jail, with credit for time served.

PEOPLE v IVY COLEMAN, Wayne Circuit, 5/11/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$60 costs/fines, \$60 Crime Victims fee, \$160 court costs, and \$120/year supervision fees.

PEOPLE v LAKISHA RASHAUNDR A COLEMAN, Wayne Circuit, 06/11/2003, charged with felony obtaining money under false pretenses of \$1,000, but less than \$20,000. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 18 months probation, 75 hours of community service, \$1,413.03 restitution, \$60 Crime Victims fee, \$750 court costs, \$247 supervision fees, and attorney fees.

PEOPLE v AARON COLLINS a/k/a GEORGE HELMS, Wayne Circuit, 10/7/2004, charged with 1 count of felony uttering and publishing and 1 count of attempted uttering and publishing for trying to pass a forged check. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 2 years probation and \$3,000 in restitution.

PEOPLE v LAQUNA LEANEEA CONLEY, Wayne Circuit, 10/1/2004, charged with felony fraudulent presentation of insufficient funds checks. Judgment, pled

guilty to attempted fraudulent presentation of insufficient funds checks. Sentenced to 1 year probation, \$60 state fee, \$60 Crime Victims fee, \$120 supervision fees, \$175 court costs, and \$600 attorney fees.

PEOPLE v BETTY JEAN COOPER, Wayne Circuit, 05/29/2003, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 1-4 years at the Michigan Department of Corrections.

PEOPLE v REGINALD ABE CRAIG, Wayne Circuit, 04/03/2003, charged with felony past posting at roulette, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year probation and \$300 court costs.

PEOPLE v LAVELLE DIONNE CRIMES, Wayne Circuit, 04/28/2003, charged with felony conspiracy to embezzle \$1,000, but less than \$20,000. Judgment, pled guilty to attempted embezzlement. Sentenced to 18 months probation, \$2,000 restitution, \$330 court costs, \$300 supervision fees, and attorney fees.

PEOPLE v DORION DARVON CURRIE, 36th District Court, 09/29/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 1 year probation and \$200 in fines/costs.

PEOPLE v BILLY JOE CURTIS, 36th District Court, 12/20/2004, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 6 months non-reporting probation and \$100 court costs.

PEOPLE v BENNETT DANTZLER, Wayne Circuit, 3/4/2004, charged with felony fraudulent check conspiracy. Judgment, pled guilty to uttering and publishing. Sentenced to 1-14 years at the Michigan Department of Corrections' State Prison of Southern Michigan.

PEOPLE v JOSEPH DERRICK DAVIS, Wayne Circuit, 6/17/2004, charged with felony obtaining money under false pretenses and conspiracy to obtain money under false pretenses. Judgment, pled guilty to attempted obtaining money under false pretenses less than \$20,000. Sentenced to 3 years probation with the last 6 months of his probation in the Wayne County Jail, \$60 state fees, \$60 Crime Victims fee, \$360 supervision fees, \$500 court costs, and \$400 attorney fees.

PEOPLE v MARY ELIZABETH DAVIS, Wayne Circuit, 12/02/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 2 years probation, 100 hours of community service, \$500 fine, and \$60 Crime Victims fee.

PEOPLE v STEVEN JOHN DEGREGORY, Macomb Circuit, 8/11/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment, pled guilty to a felony violation of the Tobacco Products Tax Act. Sentenced to 1 year in the Macomb County Jail with credit for one day served, \$60 court costs, and \$60 Crime Victims fee.

PEOPLE v FRANK LEROY DEWITT, Wayne Circuit, 12/15/2003, charged with felony obtaining money under false pretenses over \$1,000 and conspiracy to obtain money under false pretenses. Judgment, pled guilty to obtaining money under false pretenses over \$1,000. Sentenced to 18 months probation, \$1,700 restitution, and \$165 court costs.

PEOPLE v EDWARD YALDA DINHA, Wayne Circuit, 02/20/2003, charged with felony conspiracy to make a payment to a casino employee to alter the outcome of a gambling game and 2 counts of failure to pay losing wagers. Judgment, pled guilty to 1 count of knowingly failing to pay losing wagers with the intent to defraud. Sentenced to 1 year probation, \$60 Crime Victims fee, \$1,000 court costs, and \$120

supervision fees.

PEOPLE v STEPHEN JAMAL DIXON, 36th District Court, 6/16/2004, charged with 2 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation, \$454 in winnings turned over to the Compulsive Gambler Prevention Fund, \$100 fine, and \$200 court costs.

PEOPLE v JEROME DONIVER, 36th District Court, 3/22/2004, charged with 3 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to 1 count of trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, \$200 court costs, supervision fees, and \$10 in winnings seized upon arrest turned over to the Michigan Compulsive Gambling Prevention Fund.

PEOPLE v CHRISTINA LAWAN DOUGLAS, Wayne Circuit, 03/31/2003, charged with felony uttering and publishing. Judgment, pled guilty to uttering and publishing. Sentenced to 2 years probation and 10 weekends of Alternative Work Force.

PEOPLE v ERIC ARNELL DREW, Wayne Circuit, 9/30/2004, charged with felony uttering and publishing at the MGM Grand Casino. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 18 months probation, \$200 court costs, a \$60 Crime Victims fee, \$20/month supervision fees, and \$400 attorney fees.

PEOPLE v HORACE FITZGERALD DREW, Wayne Circuit, 02/26/2003, charged with felony 2 counts of capping at blackjack. Judgment, pled guilty to one count of capping at blackjack. Sentenced to 2 years probation, 10 days on the Alternative Work Force, \$60 Crime Victims fee, \$600 court costs, and \$600 attorney fees.

PEOPLE v MICHELLE LEE DUNN, Wayne Circuit, 9/1/2004, charged with felony embezzlement by an agent, over \$1,000, less than \$20,000. Judgment, pled guilty to attempted embezzlement. Sentenced to 2 years probation, \$4,540 restitution, \$165/year court costs, and \$20/month supervision fees.

PEOPLE v DEON MARLIN EDWARDS, 36th District Court, 11/14/2003, charged with misdemeanor malicious destruction of property. Judgment, pled guilty to malicious destruction of property over \$200, less than \$1,000. Sentenced to 6 months non-reporting probation, \$200 fine, \$200 court costs, and \$235 restitution.

PEOPLE v SHEILA ELLIOTT, Wayne Circuit, 12/6/2004, charged with 2 counts of felony uttering and publishing. Judgment, pled guilty to 2 counts of attempted uttering and publishing. Sentenced to 2 years probation, \$200 in court costs, \$150 supervision fees, attorney fees to be determined, and \$1,800 restitution.

PEOPLE v DWAYNE ANTHONY ELSTON, 36th District Court, 07/01/2003, charged with misdemeanor of opening or attempting to open a coin box. Judgment, pled guilty to opening or attempting to open a coin box. Sentenced to 6 months probation, \$200 fine, \$200 court costs, \$60 Crime Victims fee, and supervision fees.

PEOPLE v CURTIS JAMES EVANS, Wayne Circuit, 11/12/2004, charged with felony fraudulent presentation of insufficient funds checks. Judgment, pled guilty to attempted fraudulent presentation of insufficient funds checks. Sentenced to time served as currently serving a prison sentence on a drug conviction.

PEOPLE v STEPHEN ALBERT FALANGA, Wayne Circuit, 07/21/2003, charged with felony collection of an amount greater than that which was won, or alternatively, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 22 days in jail, with credit for time served.

PEOPLE v WISSAM HASSAN FARHAT, 36th District Court, 04/08/2003, charged with misdemeanor larceny. Judgment, pled guilty to attempted larceny. Sentenced

to 1 year probation, \$200 fine, \$200 court costs, and \$50 Crime Victims fee.

PEOPLE v DAVID SCOTT FEINBERG, Ingham Circuit, 5/7/2004, an attorney charged with possession of less than 25 grams of cocaine. Judgment, pled guilty to possession of cocaine. Sentenced to 6 months probation, 30 days in jail with credit for 1 day, \$60 fine, \$60 Crime Victims fee, \$500 court costs, and \$30/month oversight fee.

PEOPLE v PHILLIP JOSEPH FERRISE, Berrien Circuit, 5/28/2004, charged with 2 felony counts of willful evasion of the Michigan Tax Code. Judgment, pled guilty to 2 counts of willful evasion of the Michigan Tax Code. Sentenced to 2 years probation, \$2,226 restitution, \$700 fines/costs, and \$40/month supervision fees.

PEOPLE v KRISTY MARIE FITZGERALD, 36th District Court, 12/08/2003, charged with misdemeanor underage gambling and underage consumption of alcohol. Judgment, pled guilty to underage gambling. Sentenced to 6 months reporting probation and \$200 fine.

PEOPLE v JAMES CLINTON FOXHALL, Wayne Circuit, 2/2/2004, charged with felony uttering and publishing. Judgment, pled guilty to uttering and publishing. Sentenced to 2 years probation, 90-120 days in the Target City drug treatment program, \$60 Crime Victims fee, \$60 joint state assessment fees, \$330 court costs, \$240 supervision fees, and attorney fees.

PEOPLE v PATRICIA GARDNER, 36th District Court, 7/20/2004, charged with felony claimed, collected, or taken, or aided and abetted another in claiming, collecting or taking, an amount of money or thing of value of greater value than the amount won; conspiracy to commit a legal act in an illegal manner; and larceny over \$200, but less than \$1,000. Judgment, pled guilty to larceny, \$200-\$1,000. Sentenced to 1 year probation, \$250 court costs, and \$1,600 restitution.

PEOPLE v ROBIN EARLENE GARDNER, Wayne Circuit, 6/17/2004, charged with felony aiding and abetting uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 6 months probation, \$60 Crime Victims fee, \$120 supervision fees, and \$200 court costs.

PEOPLE v JAIME GASCA, 36th District Court, 07/01/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 1 year probation, \$200 fine, \$200 court costs, \$60 Crime Victims fee, and supervision fees.

PEOPLE v SHERRIE LYNN GERHAUSER, 36th District Court, 2/9/2004, charged with misdemeanor tobacco tax violation. Judgment, pled guilty to violation of the Tobacco Products Tax Act. Sentenced to 1 year non-reporting probation, \$200 fine, and \$200 court costs.

PEOPLE v ELVIS CRAIG GHOLSTON, 36th District Court, 10/02/2003, charged with misdemeanor larceny by conversion. Judgment, pled guilty to disorderly conduct. Sentenced to \$200 court costs and \$251 returned to the casino.

PEOPLE v MARYANN CATHERINE GONZALEZ, Wayne Circuit, 07/23/2003, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$330/year court costs, \$60 Crime Victims fee, \$60 DNA screening, and \$240 supervision fees.

PEOPLE v ANDRE LAMONT GORDON, 36th District Court, 2/19/2003, charged with a felony of 2 counts casino cheating for capping bets. Judgment, pled guilty to misdemeanor larceny. Sentenced a \$200 fine.

PEOPLE v LEON GRAHAM, 36th District Court, 5/19/2004, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling.

Sentenced to 1 year non-reporting probation, \$200 fine, and \$200 court costs.

PEOPLE v LADONNA MARIE GREEN, Wayne Circuit, 10/20/2004, charged with 2 counts of felony uttering and publishing. Judgment, pled guilty to 2 counts of uttering and publishing. Sentenced to 3 years probation with the first 7 months in the Wayne County Jail, \$60 Crime Victims fee, \$360 supervision fees, and \$400 attorney fees.

PEOPLE v TIM MARTIN GRENANCO (ANCHOR BAY MEATS), Macomb Circuit, 11/30/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment, pled guilty to attempted felony violation of the Tobacco Products Tax Act. Sentenced to 1 year probation, \$120 supervision fees, \$420 court costs, \$60 state costs, and \$60 Crime Victims fee.

PEOPLE v ANGELA ROSE GUARINO, 36th District Court, 01/10/2003, charged with allowing a minor to make a wager. Judgment, pled guilty to disorderly person. Sentenced to 1 year probation and \$100 fines/costs.

PEOPLE v KRYSTAL DIANE GUARINO, 36th District Court, 01/10/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to disorderly person. Sentenced to 1 year probation and \$100 fines/costs.

PEOPLE v BRENDA GUMINSKI, Van Buren Circuit, 12/15/2003, charged with 2 counts obstruction of justice and 1 count conspiracy to obstruct justice. Judgment, pled guilty to 1 count of felony obstruction of justice. Sentenced to 1 year probation, 100 hours of community service, \$1,000 fine, \$50 Crime Victims fee, and \$40 state fee.

PEOPLE v LENA GUMINSKI, Van Buren Circuit, 12/15/2003, charged with 2 counts obstruction of justice and 1 count conspiracy to obstruct justice. Judgment, pled guilty to neglect of duty by a public officer. Sentenced to 1 year of probation, 100 hours of community service, \$1,000 fine, \$60 Crime Victims fee, \$60 state fee, and \$480 supervision fees.

PEOPLE v KEVIN EUGENE GUNNERY, 36th District Court, 4/22/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year reporting probation, \$200 fines/costs.

PEOPLE v LATANYA DANIELLE HALL, Wayne Circuit, 11/30/2004, charged with felony uttering and publishing of a State Treasury Warrant. Judgment, pled guilty to uttering and publishing a State Treasury Warrant. Sentenced to 1 year probation, \$492 restitution, \$450 fine, and \$285 court costs.

PEOPLE v MICHELLE TELICE HALL, 36th District Court, 09/29/2003, charged with misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 6 months probation, \$70 restitution, \$100 fine, \$100 court costs, \$50 Crime Victims fee, and supervision fees.

PEOPLE v RAYMOND DAVID HAMAMA, 36th District Court, 10/11/2004, charged with 5 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 90 days in jail and 5 years of probation.

PEOPLE v ABUDL MASEEH HANA, 36th District Court, 9/30/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation and \$200 court costs.

PEOPLE v DENVARD EDWARD HANELINE, Wayne Circuit, 09/29/2003, charged with felony uttering and publishing and habitual fourth. Judgment, pled

guilty to uttering and publishing. Sentenced to 2-3 years with the Department of Corrections.

STATE OF MICHIGAN, DEPT OF TREASURY v MOHAMMED HAQUE, Macomb Circuit (2 cases), 1/21/2004, charged with 4 counts of Tobacco Products Tax Fraud. Judgment, pled guilty to 1 count of violating the Tobacco Products Tax Act. Sentenced to 18 months probation, \$500 fine, \$60 state fees, \$60 Crime Victims fee, and assessed outstanding taxes.

PEOPLE v HASSAN MOHSEN HARB, Wayne Circuit, 10/21/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment, pled guilty to attempted violation of the Tobacco Products Tax Act. Sentenced to 1 year probation, \$150 restitution, \$60 state court costs, \$60 Crime Victims fee, \$500 supervision fees, and \$165 court costs.

PEOPLE v MICHELE DONYALE HARBIN, Wayne Circuit, 04/29/2003, charged with a felony of 1 count of uttering and publishing and 1 count of attempted uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 3 years probation, \$600 supervision fees, and \$600 court costs.

PEOPLE v KEITH GARRETT HARDESTY, Livingston Circuit, 9/29/2004, charged with 3 counts of felony state tax fraud-filing a false Michigan Income Tax Return. Judgment, pled guilty to 1 count of false information in a tax return. Defendant sentenced to 18 months probation, \$60 state court costs, \$25/month supervision fees, \$180 court costs, \$60 Crime Victims fee, and assessed penalties and interest by the Department of Treasury.

PEOPLE v CEDRIC HARDY, Wayne Circuit, 09/08/2003, charged with felony past posting at roulette, or in the alternative, misdemeanor larceny. Judgment, pled guilty to the misdemeanor larceny. Sentenced to 2 months in the Wayne County Jail with credit for 1 day served.

PEOPLE v DIANNE HARRIS, Wayne Circuit, 11/20/2003, charged with felony non-sufficient funds of \$500 or more. Judgment, pled guilty to misdemeanor attempted non-sufficient funds. Sentenced to 1 year probation, \$285 fines/costs, and court-appointed attorney fees.

PEOPLE v PORTIA PATRICE HARRIS, Wayne Circuit, 06/04/2003, charged with felony tampering with a slot machine bill validator, or in the alternative misdemeanor larceny. Judgment, pled guilty to disorderly conduct. Sentenced to 18 months probation, \$60 Crime Victims fee, and \$25/month court costs.

PEOPLE v ANTHONY JAKE HATCHETT, 36th District Court, 07/24/2003, charged with 1 count of misdemeanor underage gambling. Judgment, pled guilty as charged to underage gambling. Sentenced to 1 year non-reporting probation, \$200 fine, and \$200 court costs.

PEOPLE v CARILYN MADISON HAYNES, Wayne Circuit, 12/09/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 1 year probation, \$200 in court costs, and \$240 supervision fees.

PEOPLE v ANTHONY HERNTON, 36th District Court, 01/06/2003, charged with misdemeanor malicious destruction of property. Judgment pled guilty to the malicious destruction of property. Sentenced to 1 year probation, \$120 restitution to the casino, and 5 days of community service.

PEOPLE v ANTHONY NEAL HICKS, 36th District Court, 12/16/2004, charged with 2 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to 1 count of trespass by a disassociated person. Sentenced to 6 months probation, \$150 court costs, and \$30/month supervision fees.

PEOPLE v TELISA RACHELLE HICKS, Wayne Circuit, 7/23/2004, charged with felony uttering and publishing an altered instrument. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$60 state fees, \$60 Crime Victims fee, \$120/year supervision fees, \$165 court costs, and \$400 court-appointed attorney fees.

PEOPLE v MARY ALICE HINES, Wayne Circuit, 6/23/2004, charged with felony uttering and publishing. Judgment, pled guilty to uttering and publishing. Sentenced to 3 years probation with the first 4 months on a tether, \$60 state fee, \$60 Crime Victims fee, \$360 supervision fees, \$495 court costs, and attorney fees.

PEOPLE v TONY YOUSIF HORMEZ, 36th District Court, 5/27/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$300 fine, and \$200 court costs.

PEOPLE v DIANNA HUBBARD, Wayne Circuit, 5/26/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 18 months probation, 60 hours of community service, \$180 supervision fees, and \$60 Crime Victims fee.

PEOPLE v MARIO KIM HUNTER, 36th District Court, 9/30/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$150 fine, and \$25 court costs.

PEOPLE v QUANG TU HUYNH, Wayne Circuit, 3/11/2004, charged with felony conspiracy and 2 counts of payment of money to a casino employee to influence the outcome of a gambling game. Judgment, pled guilty to attempted payment of money to a casino employee to influence the outcome of a gambling game. Sentenced to 18 months probation, \$165/yr. court costs, \$15/month supervision fees, and \$5,900 in cash and \$1,200 in chips seized upon arrest returned to the casino.

PEOPLE v LORAI IVORY, 47th District Court, 10/30/2003, charged with 1 count continuing criminal enterprises and 2 counts of income fraud. Judgment, pled guilty to 1 count of felony embezzlement/larceny by conversion. Sentenced to 2 years probation, 1 day in jail with credit for time served, \$600 court costs, \$60 Crime Victims fee, \$60 state costs, and \$3,240 supervision fees.

PEOPLE v ROBERT W. JACKSON, 36th District Court, 9/15/2004, charged with misdemeanor larceny and misdemeanor possession of marijuana. Judgment, pled guilty to possession of marijuana. Sentenced to 6 months non-reporting probation and \$200 court costs.

PEOPLE v DAVID ELISHA JAJO a/k/a SABAH KLISHA JAJO, Wayne Circuit, 02/22/2003, charged with felony pinching a bet and capping a bet at Carribean Stud Poker. Judgment, pled guilty to casino cheating. Sentenced to 2 years probation, \$1,000 court costs, \$500 fine, \$240 supervision fees, and \$60 Crime Victims fee.

PEOPLE v DENOLIUS JAMES, 36th District Court, 10/5/2004, charged with felony resisting and obstructing a police officer and disturbing the peace. Judgment, pled guilty to disturbing the peace. Sentenced \$150 court costs, \$45 justice system fee, and \$75 attorney fees.

PEOPLE v SOHAIL SALEM JARADAT, 36th District Court, 10/20/2004, charged with misdemeanor malicious destruction of property. Judgment, pled guilty to malicious destruction of property. Sentenced to 6 months non-reporting probation, \$1,500 restitution to the casino, and \$200 court costs.

PEOPLE v WILLIAM JEFFERSON, 36th District Court, 9/15/2004, charged with misdemeanor 2nd degree retail fraud over \$200, less than \$1,000. Judgment, pled

guilty to misdemeanor 2nd degree retail fraud. Sentenced to 60 days in the Wayne County Jail.

PEOPLE v TAMMI M. JEFFRIES, Wayne Circuit, 10/22/2004, charged with 7 counts of felony uttering and publishing. Judgment, pled guilty to 5 counts of uttering and publishing. Sentenced to 3 years probation, \$5,600 restitution, \$300 state costs, \$60 Crime Victims fee, and \$400 attorney fees.

PEOPLE v CARMEN LENORE MCGEE JETER, Wayne Circuit, 2/27/2004, charged with felony possession of another's financial transaction device with intent to use. Judgment, pled guilty to attempted possession of another's financial transaction device with intent to use. Sentenced to 1 year probation, 60 hours of community services, \$120 court costs, and \$160 fees.

PEOPLE v AMY BUTROS JINDO, 36th District Court, 02/03/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to allowing an underage person to make a wager. Sentenced to 1 year probation, \$100 fines/costs, and \$25/month supervision fees.

PEOPLE v JESSICA JINDO, 36th District Court, 02/03/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 2 years probation, \$100 fines/costs, and \$25/month supervision fees.

PEOPLE v GERROD MARQUIS JOHNSON, 36th District Court, 5/27/2004, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 1 year non-reporting probation, \$200 fine, and \$200 court costs.

PEOPLE v LILLIE FORSTINE JOHNSON, Wayne Circuit, 2/13/2004, charged with felony conspiracy to utter and publish a false or fraudulent check and uttering and publishing a false or fraudulent check. Judgment, pled guilty to uttering and publishing. Sentenced to 1 year probation, treatment at Target City's drug rehabilitation program, and \$16.50/month court costs.

PEOPLE v RENE JOHNSON, 36th District Court, 12/03/2003, charged with misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny \$200 or more, but less than \$1,000. Sentenced to 6 months non-reporting probation, \$200 fine, court costs of \$200, and \$505 returned to the casino.

PEOPLE v WESTLEY DONELL JOHNSON, Wayne Circuit, 10/6/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$60 state fee, \$60 Crime Victims fee, \$240 supervision fees, and \$330 court costs.

PEOPLE v DEBRA ANN JONES, Wayne Circuit, 5/21/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to serve 41 days in jail.

PEOPLE v MAURICE DEDRICK JONES, Wayne Circuit, 05/30/2003, charged with felony aiding and abetting uttering and publishing, conspiracy to utter and publish, and misdemeanor escape of lawful custody. Judgment, pled guilty to 1 count of aiding and abetting in the crime of uttering and publishing. Sentenced to 3 years probation (the 1st year to be served in the Wayne County Jail), \$60 Crime Victims fee, \$120 supervision fees per year, \$200 a year court costs, and court-appointed attorney fees.

PEOPLE v WILLIE KEITH JONES, 36th District Court, 7/29/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation and 30 days of community service.

PEOPLE v VERNETTA MICHELLE JORDAN, Wayne Circuit, 11/11/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$240 supervision fees, and \$60 felony fee.

PEOPLE v TOMA JUNCAJ, Wayne Circuit, 02/26/2003, charged with felony past posting a bet at craps, and in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny under \$200. Sentenced \$500 court costs.

PEOPLE v FARAJ KANONA, Wayne Circuit, 01/06/2004, charged with delivery/manufacture of marijuana, possession of alprazolam, and felony firearm. Judgment, pled guilty to the felony firearm charge. Sentenced to serve 2 years in jail.

PEOPLE v WILLIAM HAROLD KEHOE, Wayne Circuit, 11/03/2003, charged with felony pinching and capping wagers. Judgment, pled guilty to attempted pinching at wagers. Sentenced to 1 year probation, \$60 Crime Victims fee, \$500 supervision fees, and \$200 court costs.

PEOPLE v MALIK KHALIQUE, 36th District Court, 01/09/2003, charged with 3 counts of misdemeanor embezzlement less than \$200. Judgment pled guilty to 1 count misdemeanor embezzlement. Sentenced to 1 year probation, \$500 restitution to the casino, and \$150 fines/costs.

PEOPLE v GABRAIL KHEMORO, 36th District Court, 11/8/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 6 months probation, \$50 fine, and \$20 fees.

PEOPLE v NAEL GEORGE KIMINAIA, 36th District Court, 6/29/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 6 months non-reporting probation and \$200 court costs.

PEOPLE v STEVEN ANTHONY KIZY, 36th District Court, 11/18/2003, charged with 2 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to 1 count of trespass by a disassociated person. Sentenced to 6 months probation, \$200 court costs, and \$200 fees.

PEOPLE v RICHARD J. KOLL, 36th District Court, 7/15/2004, charged with 3 counts of felony capping bets at blackjack. Judgment, pled guilty to a misdemeanor of placing a bet for a minor. Sentenced a \$3,500 fine.

PEOPLE v JOSEPH PAUL KOPCHIA, 36th District Court, 2/26/2004, charged with misdemeanor larceny less than \$200. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year probation, \$200 court costs, and \$50 Crime Victims fee.

PEOPLE v TONIA ANN KORHONEN, Wayne Circuit, 03/20/2003, charged with felony tampering with a slot machine and conspiracy to violate state gambling laws. Judgment, pled guilty to attempted tampering with a slot machine. Sentenced to 1 year probation, \$60 Crime Victims fee, \$240 supervision fees, \$600 court costs, and \$500 in attorney fees.

PEOPLE v JEFFERSON ELVIS KUMAAT, 36th District Court, 02/26/2003, charged with felony past posting at roulette, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny less than \$200. Sentenced to 6 months probation, \$500 attorney fees, \$25 supervision fee, \$100 court costs, and \$60 Crime Victims fee.

PEOPLE v BURIM KUSARI, Wayne Circuit, 07/23/2003, charged with 2 counts of felony casino cheating by capping a bet on Caribbean Stud Poker. Judgment, pled guilty to 1 count of attempted capping at Caribbean Stud Poker. Sentenced to 6 months probation, \$500 fine, and \$200 costs/fees.

PEOPLE v ROBERT JOHN LAWSON, Wayne Circuit, 02/26/2003, charged with felony past posting a bet at craps, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny under \$200. Sentenced \$500 court costs.

PEOPLE v ROBERT JOHN LAWSON, Wayne Circuit, 04/02/2003, charged with felony past posting at craps, or in the alternative misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 90 days in jail, \$200 in restitution, and \$800 fines/costs.

PEOPLE v LONNY JOE LEACH, 36th District Court, 4/29/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation, \$200 court costs, \$200 fine, and money seized as winnings upon arrest turned over to the Michigan Compulsive Gambling Prevention Fund.

PEOPLE v CHARLES LEE, 36th District Court, 01/06/2004, charged with a misdemeanor malicious destruction of personal property less than \$200. Judgment, pled guilty to malicious destruction of property. Sentenced to 1 year non-reporting probation, \$100 fine, \$200 court costs, and \$70 restitution to the casino for the cost of the broken slot machine glass.

PEOPLE v DAVID ELMER LEPPALA, 36th District Court, 2/26/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$200 fine, \$200 court costs, a \$50 Crime Victims fee, and \$4,000 seized at arrest turned over to the Michigan Compulsive Gambling Prevention Fund.

PEOPLE v DAWN LEANN LIPKIN, Wayne Circuit, 11/19/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled to felony uttering and publishing and conspiracy to utter and publish. Sentenced to 6 months probation with the first 45 days to be served in the Wayne County Jail, \$165 court costs, and \$120 supervision fees.

PEOPLE v JOYCE ANN LITTLE, Wayne Circuit, 12/9/2004, charged with 2 counts of felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$1,800 restitution to the MotorCity Casino, \$900 restitution to the MGM Grand Casino, \$200 court costs, \$400 attorney fees, and \$15/month supervision fees.

PEOPLE v MICHAEL ANTHONY LONG, Wayne Circuit, 8/11/2004, charged with 2 counts of felony casino cheating of capping at blackjack. Judgment, pled guilty to 2 counts of capping at blackjack and habitual offender, 4th offense notice. Sentenced to 6 months in the Wayne County Jail.

PEOPLE v SHARON DENISE LOVE-MACK, Wayne Circuit, 5/6/2004, charged with felony possession with intent to use the financial transaction device of another. Judgment, pled guilty to attempted possession with intent to use another's financial transaction device. Sentenced to 1 year probation, \$60 Crime Victims fee, \$60 state fee, \$120 supervision fees, \$165 court costs and \$60 fine.

PEOPLE v RAYMOND NAVARRO LOWE, Wayne Circuit, 4/8/2002, charged with felony larceny over \$1,000, less than \$20,000. Judgment, pled guilty to attempted larceny. Sentenced to 18 months probation and \$180 court costs.

PEOPLE v KATHY LYNN MADDEN, Wayne Circuit, 8/25/2004, charged with 5 counts of felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation with the first year to be served in the Wayne County Jail, 200 hours of community service, \$1,200 restitution, \$500 fine, and \$60 Crime Victims fee.

PEOPLE v JOHN MAI, 36th District Court, 10/18/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to misdemeanor trespass by a disassociated person. Sentenced to 1 year probation, \$100 fine, and \$200 court costs.

PEOPLE v ROSE MARY MALLET, Wayne Circuit, 05/29/2003, charged with misdemeanor assault, misdemeanor resisting and obstructing a police officer, and misdemeanor criminal trespass. Judgment, pled guilty to assault and battery. Sentenced to 1 year probation, \$50 Crime Victims fee, \$200 costs, and attorney fees.

PEOPLE v NEVRUS MALOUSHA, Wayne Circuit, 02/24/2003, charged with a felony of 3 counts of illegal collection of losing or tie wagers. Judgment, pled guilty to 1 count of illegal collection of losing or tie wagers. Sentenced to 2 years probation, 10 days on Alternative Work Force, \$740 restitution, \$60 Crime Victims fee, and \$30/month supervision fees.

PEOPLE v KENNETH DONELL MANN, Wayne Circuit, 10/12/2004, charged with felony uttering and publishing and providing false information. Judgment, pled guilty to attempted uttering and publishing and to 1 count of falsely presenting information upon application for an official state personal identification. Sentenced to 1 year in the Dickerson facility, 2-1/2 years probation, \$60 Crime Victims fee, \$60 state fee, \$240 supervision fees, \$330 court costs, and \$650 attorney fees.

PEOPLE v MAZIN MANNI, Wayne Circuit, 8/11/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment, pled to a charge of attempted felony violation of the Tobacco Products Tax Act. Sentenced to 3 months in the Wayne County Jail or \$700 fine.

PEOPLE v SEVAG MEHRAN MANOUKIAN, 36th District Court, 05/21/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, \$200 court costs, \$75 attorney fees, and \$50 Crime Victims fee.

PEOPLE v ANDRE DEON MANSON, 36th District Court, 06/09/2003, charged with 3 counts of felony uttering and publishing a false instrument and 1 count conspiracy to utter and publish. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 1 year probation, \$1,794.20 restitution, \$240 supervision fees, \$165 court costs, and \$60 Crime Victims fee.

PEOPLE v SYLVIA PAMELA MARTIN, Wayne Circuit, 8/25/2004, charged with felony uttering the publishing a counterfeit instrument and altering a financial transaction device with intent to defraud and felony uttering and publishing. Judgment, pled guilty to altering a financial transaction device. Sentenced to 1 year probation, 25 hours of community service, credit for 1 day of jail time, \$60 Crime Victims fee, \$60 state fee, \$120 in supervision fees, and \$165 court costs.

PEOPLE v KERI LYNN MARTINEZ, 36th District Court, 11/9/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$200 fine, and \$4,924 forfeited upon arrest turned over to the State Compulsive Gambling Fund.

PEOPLE v JAMES DANIEL MASCIOTRA, Wayne Circuit, 07/07/2003, charged with felony collection of slot machine tokens in excess of the amount actually won. Judgment, pled guilty to attempted collection of slot tokens in excess of the amount actually won. Sentenced to 1 year probation, \$165 court costs, \$120 supervision fees, and \$60 Crime Victims fee.

PEOPLE v ALBERT EUGENE MASSEY, Wayne Circuit, 8/10/2004, charged with 2 counts of felony possession of another's financial transaction device with intent to use or deliver. Judgment, pled guilty to 1 count of possession of a financial

transaction device with intent to defraud. Sentenced to 3 years probation, 50 hours community service/year, \$60 Crime Victims fee, \$200/year supervision fees, \$247 court costs, and assessed restitution.

PEOPLE v PATRICIA ANN MATTISON, Wayne Circuit, 8/5/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 120 days in the Wayne County Jail with credit for 67 days, release upon payment of \$1,000 court costs.

PEOPLE v LENA TERESA MCBRIDE, Wayne Circuit, 08/11/2004, charged with 2 counts of felony uttering and publishing. Judgment, pled guilty to 2 counts of uttering and publishing. Sentenced to 2 years probation, \$1,500 restitution, \$120 state fee, a \$120 Crime Victims fee, \$600 supervision fees, \$330 court costs, and \$800 court-appointed attorneys fees.

PEOPLE v ELAINE CAROL MCCAFFREY, 36th District Court, 10/14/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to misdemeanor trespass by a disassociated person. Sentenced to 1 year probation and to continue treatment at the Maplegrove Program for her gambling addiction.

PEOPLE v TINA MARIE MCCLELLAN, Wayne Circuit, 06/13/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled to attempted uttering and publishing. Sentenced to 2 years probation with the first 90-120 days at the Sherwood Clinic.

PEOPLE v GARY MARK MCCUISTION, 36th District Court, 5/17/2004, charged with misdemeanor larceny. Judgment, pled guilty of misdemeanor larceny. Sentenced to 1 year non-reporting probation, \$200 fine, \$200 court costs, and \$60 Crime Victims fee.

PEOPLE v MARK ANTHONY MCDONALD, Wayne Circuit, 10/17/2003, charged with felony conspiracy, casino cheating, and acceptance of a payment for the purpose of altering the outcome of a gambling game. Judgment, pled guilty to attempted casino cheating. Sentenced to 3 years probation, \$200/year court costs, \$20/month supervision fees, and restitution to be determined by the probation department and the casino.

PEOPLE v LISA BETH MELDRUM, Wayne Circuit, 07/03/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to uttering and publishing. Sentenced to 1 year probation (first 40 days to be served in the Wayne County Jail), \$165 in court costs, and \$15/month supervision fees.

PEOPLE v JOHN ALLEN MERCER, Wayne Circuit, 7/1/2004, charged with felony pinching a bet and misdemeanor larceny under \$200. Judgment, pled guilty to misdemeanor larceny. Sentenced to pay \$500 fine, \$400 attorney fees, and probation until costs and fees are paid.

PEOPLE v FAY MERIDETH, Wayne Circuit, 1/9/2004, charged with felony of uttering and publishing. Judgment, pled guilty to attempt uttering and publishing. Sentenced to 18 months probation and \$200 supervision fees.

PEOPLE v VERNON JAMES MERRELL, 36th District Court, 06/13/2003, charged with misdemeanor embezzlement. Judgment, pled guilty to misdemeanor embezzlement. Sentenced to 1 year probation, \$100 restitution, and \$200 fines/costs.

PEOPLE v KEISHON LAMAR MIDCALF, Wayne Circuit, 3/3/2004, charged with felony aiding and abetting uttering and publishing and conspiracy. Judgment, pled guilty to aiding and abetting uttering and publishing. Sentenced to 18 months probation, the first 129 days in jail, with credit for time service, \$330 court costs, \$60 Crime Victims fee, and attorney fees.

PEOPLE v LISA RENEE MIDDLEBROOKS, 36th District Court, 06/02/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 2 years probation, \$120 supervision fees, \$165 court costs, and attorney fees.

PEOPLE v IVY MILLER A.K.A. AMMIE TILLMAN, Wayne Circuit, 11/10/2004, charged with 2 counts felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to one count of uttering and publishing. Sentenced to 2 years probation, \$330 court costs, \$450 attorney fees, and \$200 restitution.

PEOPLE v MEGHAN KATHERINE MITCHELL, 36th District Court, 9/21/2004, charged with misdemeanor underage gambling. Judgment, pled guilty to misdemeanor underage gambling. Sentenced to 1 year non-reporting probation and \$200 court costs.

PEOPLE v JAMES RICHARD MONTROY, 36th District Court, 4/7/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation and \$150 fines/costs.

PEOPLE v ALEF KARIM MOORE, 36th District Court, 12/8/2004, charged with misdemeanor assisting a minor to gamble. Judgment, pled guilty to allowing an underage person to gamble. Sentenced to 1 year non-reporting probation and \$200 court costs.

PEOPLE v YOLANDA FAYE MORTON, 36th District Court, 03/24/2003, charged with misdemeanor embezzlement of \$500. Judgment, pled guilty of misdemeanor embezzlement. Sentenced to pay \$259 in fines/costs and \$500 restitution.

PEOPLE v CHARLES MOSS, Wayne Circuit, 7/21/2004, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 18 months probation, 6 months on a tether, \$60 Crime Victims fee, \$480 supervision fees, \$165 court costs, and \$400 court-appointed attorney fees.

PEOPLE v SHAMBA LEE MURRELL, Wayne Circuit, 10/09/2003, charged with felony larceny of \$1,000 or more, but less than \$20,000. Verdict by the Court, found guilty of misdemeanor larceny less than \$1,000. Sentenced to 2 years probation and supervision fees.

PEOPLE v SHAWN MYATT, 36th District Court, 11/03/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation, \$100 fine, \$100 court costs, \$180 supervision fees, and \$155 turned over the Michigan Compulsive Gaming Prevention Fund.

PEOPLE v DAVID MICHAEL MYERS, Wayne Circuit, 02/13/2003, charged with 2 counts of felony past posting in the casino game. Judgment, pled guilty to one count of past posting. Sentenced to 18 months probation, 10 days on the Alternative Work Force, \$60 Crime Victims fee, \$20/month supervision fees, \$600 court costs, \$600 attorney fees, and \$80 restitution to the casino.

STATE OF MICHIGAN, DEPT. OF TREASURY v FRANK W. NEDOCK, Oakland Circuit, 9/9/2004, dentist charged with not withholding taxes from his employee. Verdict - Jury, convicted of 2 counts of failing to file withholding taxes on the employee of his dental practice. Sentenced to 228 days in the Oakland County Jail with credit for 228 days served, 2 years probation, \$1,447 restitution, \$60 Crime Victims fee, \$240 supervision fees, and \$600 court costs.

PEOPLE v ROBERT NELSON JR., Wayne Circuit, 4/17/2003, charged with felony possession of a financial transaction device of another. Judgment, pled guilty to

possession of another's financial transaction device. Sentenced to 2 years probation and \$1,200 court costs.

PEOPLE v NEW CENTER HAULING & RECYCLING INC., Wayne Circuit, 5/28/2004, charged with felonies of obtaining money under false pretenses, filing a false tax return, and knowingly providing false information in an application to the Michigan Gaming Control Board. Judgment, pled guilty to obtaining money under false pretenses, filing a false tax return and knowingly providing false information in an application to the Michigan Gaming Control Board. Sentenced to \$75,000 restitution to the Greektown Casino and payment of taxes, penalties and interest owing to the State of Michigan. Defendant's officers and certain employees will enter into consent agreements with the State assuring that they pay taxes owed. The sentence included dissolution of the business and that the 5 company principals are each abstained from applying with the Gaming Control Board for any type of casino-related license, registering as a casino vendor and/or entering into business with a casino to provide goods or services for a period of 10 years.

PEOPLE v DINH PHUOC NGO, 36th District Court, 5/12/2004, charged with felony capping a bet at mini baccarat, or in the alternative, misdemeanor larceny of less than \$200. Judgment, pled guilty to misdemeanor larceny. Sentenced to 6 months probation, money and chips taken upon arrest returned to the casino, and \$200 fines/costs.

PEOPLE v MICHAEL ANTHONY NICHOLS, Wayne Circuit, 01/09/2003, charged with felony possession of a device to alter the outcome of a gambling game and possession of a device adapted for making a forged financial transaction. Judgment, pled guilty to attempted false pretenses with intent to defraud. Sentenced to 6 months probation and \$400 court costs.

PEOPLE v RAMONE DUJUAN NICKSON, Wayne Circuit, 7/27/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation, \$330 court costs, and \$240 supervision fees.

PEOPLE v PATRICIA ANN NIX, Wayne Circuit, 07/16/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 18 months to 14 years imprisonment.

PEOPLE v LATIFAH FARRAY NUMAN, Wayne Circuit, 10/29/2003, charged with 3 counts of felony uttering and publishing. Judgment, pled guilty to 1 count of drawing on non-sufficient funds. Sentenced to 18 months probation, \$1,440 restitution to the casino, \$60 Crime Victims fee, \$180 supervision fees, \$40 state fee, and attorney fees.

PEOPLE v CHESTER BLAKE OAKS, Wayne Circuit, 06/02/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 2 years probation with the first 6 months at Target City.

PEOPLE v JACK HAGOP OHANIAN, Wayne Circuit, 3/22/2004, charged with felony past posting, and in the alternative, misdemeanor larceny. Judgment, pled guilty to larceny under \$200. Sentenced to 5 days in jail, 5 days credit.

PEOPLE v DANIEL JOSEPH ONORATI, 36th District Court, 07/23/2003, charged with misdemeanor malicious destruction of property. Judgment, pled guilty to 1 count of malicious destruction of property. Sentenced to 6 months probation. \$200 court costs, \$200 fine, \$225 restitution, and \$50 Crime Victims fee.

PEOPLE v VINCENT RANAE OVERTON, Wayne Circuit, 06/23/2003, charged

with felony uttering and publishing. Judgment, pled guilty to 1 count of attempted uttering and publishing. Sentenced to 60-120 days in the Target City Drug Treatment Program at the William Dickerson Facility, 2 years probation, \$240 supervision fees, \$330 court costs, and attorney fees.

PEOPLE v YONG S. PADGETT, 36th District Court, 11/15/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 6 months probation, \$200 fine, \$200 court costs, and \$30/month supervision fees.

PEOPLE v PATRICIA ANN PAGE, Wayne Circuit, 07/21/2003, charged with felony uttering and publishing. Judgment, Defendant pled guilty to uttering and publishing. Sentenced to 18 months probation, \$1,000 restitution, \$200 court costs, \$160 supervision fees, and \$60 Crime Victims fee.

PEOPLE v ANTOINETTE PALMER, 36th District Court, 06/23/2003, charged with misdemeanor larceny less than \$200. Judgment, pled guilty to misdemeanor larceny less than \$200. Sentenced to 1 year non-reporting probation, \$116 restitution, \$100 fine, \$200 court costs, and \$50 Crime Victims fee.

PEOPLE v CHARLOTTE PALMORE, Wayne Circuit, 04/25/2003, charged with felony of uttering and publishing. Judgment, pled guilty to attempt to utter and publish. Sentenced to 2 years probation and 20 hours of community service.

PEOPLE v JOHN PASHA, 36th District Court, 3/31/2004, casino security officer charged with misdemeanor assault and/or assault and battery upon casino patron. Judgment, pled guilty to assault and battery. Sentenced to 6 months non-reporting probation and \$200 court costs.

PEOPLE v PAMELA PASHA, Wayne Circuit, 11/07/2003, charged with felony fraudulent check conspiracy. Judgment, pled guilty to felony fraudulent check conspiracy. Sentenced to 2 years probation, 90 days on a tether, \$100 court costs, and \$100 fees.

PEOPLE v PAUL RUGELIMA PATRICK, Wayne Circuit, 1/30/2004, charged with 3 counts of felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 6 months probation, with credit for 68 days in jail already served.

PEOPLE v TUNG THANH PHAM, Wayne Circuit, 08/18/2003, charged with felony pinching a bet at blackjack. Judgment, pled guilty to 1 count of capping at blackjack. Sentenced to 1 year probation, \$150 restitution to the casino, \$60 DNA screening, \$60 Crime Victims fee, \$25/month supervision fees, \$165 court costs, and attorney fees.

PEOPLE v ANTHONY CARL PHILLIPS, 36th District Court, 09/19/2003, charged with misdemeanor larceny over \$200, less than \$1,000. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year probation and \$200 fines/costs.

PEOPLE v REGINALD ALONZO PITTS, 36th District Court, 11/16/2004, charged with misdemeanor larceny under \$200. Judgment, pled guilty to disorderly conduct. Sentenced to \$150 court costs.

PEOPLE v PATRICIA ELAINE POE-JONES, 36th District Court, 12/8/2004, charged with misdemeanor embezzlement. Judgment, pled guilty to misdemeanor embezzlement. Sentenced to 6 months probation, \$200 court costs, \$120 oversight fees, and \$80 restitution.

PEOPLE v DENISE HOURDAKIS POLYCHRONOU, 36th District Court, 10/12/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 6 months

non-reporting probation and \$200 court costs.

PEOPLE v MOTTY PORTAL, 36th District Court, 3/12/2004, charged with misdemeanor larceny. Judgment, pled guilty to attempted misdemeanor larceny. Sentenced to 6 months probation and \$300 court costs.

PEOPLE v JOHNNIE RUTH POSEY, Wayne Circuit, 6/15/2004, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to uttering and publishing. Sentenced to 2 years probation, \$60 Crime Victims fee, \$60 state fee, \$150/year supervision fees, \$165 court costs, and \$400 attorneys fees.

PEOPLE v AHMED ALI PRATHER, Wayne Circuit, 09/30/2003, charged with a felony of 1 count casino cheating and habitual offender-third offense for pinching bets. Judgment, pled guilty to attempted casino cheating. Sentenced to 2 years probation, \$60 Crime Victims fee, \$220 supervision fees, \$500 court costs, and attorney fees.

PEOPLE v RODNEY RONEIL PRITCHETT, Wayne Circuit, 7/13/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 18 months probation.

PEOPLE v JOHN JAMES PUZA, Wayne Circuit, 07/07/2003, charged with felony collection of slot machine tokens in excess of the amount actually won. Judgment, pled guilty to attempted collection of slot tokens in excess of the amount actually won. Sentenced to 1 year probation, \$165 court costs, \$120 supervision fees, and \$60 Crime Victims fee.

PEOPLE v SABBIR AHMEN QURASHI, Wayne Circuit, 6/14/2004, charged with felony larceny \$1,000 or more, less than \$20,000. Judgment, pled guilty to attempted larceny over \$1,000, but less than \$20,000. Sentenced to 18 months probation, \$200 fine, and \$20/month supervision fees.

PEOPLE v HASSAN MOHAMMAD RAHAL, 36th District Court, 4/15/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment pled guilty to misdemeanor violation of the Tobacco Products Tax Act. Sentenced to a \$500 fine and \$500 court costs.

PEOPLE v ALLEN LACHON RAMSEY, 36th District Court, 01/23/2003, charged with felony conspiracy to collect a payment to alter the outcome of a gambling game and accepting payment for the purpose of altering the outcome of a gambling game. Judgment, pled guilty to attempted acceptance of a payment for the purpose of altering the outcome of a gambling game. Sentenced to 2 years probation, \$22,100 in restitution, \$10/month supervision fees, \$600 court costs, and court-appointed attorney fees.

PEOPLE v KURT EDWARD RAYE, 36th District Court, 1/14/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to disorderly conduct. Sentenced to 1 year probation and \$160 fine.

PEOPLE v KARA ANTOINEE REAVES, 36th District Court, 12/13/2004, charged with misdemeanor underage gambling and minor consumption of alcohol. Judgment, pled guilty to underage gambling. Sentenced to 1 year probation, \$200 court costs, \$50 Crime Victims fee, and \$120 supervision fees.

PEOPLE v TRACEY ARMAND REED, Wayne Circuit, 01/14/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempted identity theft. Sentenced to 6 months probation, \$60 state costs, \$165 court costs, \$60 Crime Victims fee, \$120 supervision fees, and attorney fees.

PEOPLE v LATONIA YEVETTE REID, 36th District Court, 07/17/2003, charged

with misdemeanor embezzlement. Judgment, pled guilty to attempt embezzlement. Sentenced to 6 months non-reporting probation, \$500 restitution, \$200 fine, and \$200 court costs.

PEOPLE v SANDRA REID, Wayne Circuit, 9/7/2004, charged with felony uttering and publishing. Judgment, pled guilty to uttering and publishing. Sentenced to 35 days in jail, with credit for time served.

PEOPLE v RONALD HENRY RESPONDEK, Wayne Circuit, 09/02/2003, charged with 1 count of PWID marijuana and 3 counts of money laundering-3rd degree. Judgment, pled guilty to PWID marijuana and 1 count 3rd degree money laundering. Sentenced 2 years probation and \$1,000 fines/costs.

PEOPLE v BEATRICE DENISE RICCI, 36th District Court, 07/23/2003, charged with 2 counts of misdemeanor embezzlement. Judgment, pled guilty to embezzlement less than \$200. Sentenced to 6 months probation, \$200 in fine, \$200 court costs, \$450 restitution, and \$50 Crime Victims fee.

PEOPLE v COREY RENEE RICHARDSON, Wayne Circuit, 03/25/2003, charged with felony uttering and publishing a false instrument and conspiracy. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 1 year probation, \$60 Crime Victims fee, \$120 supervision fees, \$165 court costs, and attorney fees.

PEOPLE v JOHNNIE LEE ROBERTS, 36th District Court, 11/9/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to misdemeanor trespass by a disassociated person. Sentenced to 1 year non-reporting probation and \$200 fine.

PEOPLE v LATASHA MONTELL ROBINSON, Wayne Circuit, 01/14/2003, charged with felony possession of another's financial device with intent to use. Judgment, pled guilty to attempted possession of another's financial transaction device with intent to use. Sentenced to 2 years probation, \$300 supervision fees, and \$600 fines/costs.

PEOPLE v LATOYA CHAVONNE ROBINSON, Wayne Circuit, 04/28/2003, charged with felony embezzlement over \$1,000, but less than \$20,000 and conspiracy to embezzle. Judgment, pled guilty to attempted embezzlement. Sentenced to 18 months probation, \$247.50 court costs, \$1,600 restitution, and \$180 supervision fees.

PEOPLE v FONDRA ANNETTE RODGERS, 36th District Court, 12/09/2003, charged with 3 counts of misdemeanor embezzlement. Judgment, pled guilty to 1 count of embezzlement. Sentenced to 6 months probation, \$350 fine, \$50 Crime Victims fee, \$180 supervision fees, and \$610 restitution.

PEOPLE v CHARLOTTE CAROLINE ROGERS, Wayne Circuit, 12/10/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 1 year in the drug court program, \$165 court costs, \$60 Crime Victims fee, and \$120 supervision fees.

PEOPLE v OSCAR ROMO, Wayne Circuit, 12/8/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment, pled guilty to attempted violation of the Tobacco Products Tax Act. Sentenced to 4 months in jail, with immediate release upon payment of \$2,500 costs.

PEOPLE v JOHN SALMAN, Wayne Circuit, 09/26/2003, charged with 1 count of the delivery/manufacture of marijuana, 1 count possession of less than 25 grams cocaine, and 1 count felony firearm. Judgment, pled guilty to felony firearm. Sentenced to 2 years in prison, with 67 days served.

PEOPLE v FARIS SAMOUIE, Wayne Circuit, 11/05/2003, charged with 1 count of illegal possession of cigarettes in violation of the Tobacco Product Tax Act. Judgment, pled guilty to illegal possession of cigarettes in violation of the Tobacco Product Tax Act. Sentenced to 11 months probation, \$165 court costs, \$60 Crime Victims fee, and \$110 supervision fees.

PEOPLE v MAZEN SAMOUNA, Macomb Circuit, 12/21/2004, charged with misdemeanor violation of the Tobacco Products Tax Act. Judgment, pled guilty to misdemeanor violation of the Tobacco Products Tax Act. Sentenced to 18 months probation, \$25/month court costs, \$25/month oversight fees, \$50 Crime Victims fee, and \$45 state fee.

PEOPLE v BRIAN KEITH SANDERS, Wayne Circuit, 10/21/2004, charged with felony uttering and publishing. Judgment, pled guilty to uttering and publishing. Sentenced to 2 years probation with 20 days in the Alternative Work Service, \$60 Crime Victims fee, \$60 state court costs, \$720 supervision fees, \$330 court costs, and \$450 attorney fees.

PEOPLE v TUNDE SHAMUSI SANUSI, 14-B District Court, 9/30/2004, charged with 5 counts of felony violation of the Income Tax Act. Judgment, pled guilty to 5 one-year misdemeanor counts of violating the Income Tax Act. Sentenced to 90 days probation, \$1,000 fines/costs, \$225 state fees, and \$50 Crime Victims fee.

PEOPLE v BOBBI LYNN SCALES, Wayne Circuit, 09/10/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 18 months probation and \$165 court costs.

PEOPLE v BENYAMIN ISAYEVICH SHAMAYEV, Wayne Circuit, 7/28/2004, charged with 3 counts of felony pinching a bet at Caribbean Stud poker and 1 count of capping a bet. Judgment, pled guilty to misdemeanor larceny over \$200, but less than \$1,000. Sentenced to 1 year probation, \$120 Crime Victims fee, \$300 supervision fees, \$160 court costs, and \$1,000 fine.

PEOPLE v HUDA GORGIS SHEAHAN, 36th District Court, 9/29/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year non-reporting probation and \$200 court costs.

PEOPLE v BILLY RAY SHELBY, Wayne Circuit, 7/16/2004, charged with felony claimed, collected, or taken, or aided and abetted another in claiming, collecting or taking, an amount of money or thing of value of greater value than the amount won; conspiracy to commit a legal act in an illegal manner; and larceny over \$200, but less than \$1,000. Judgment, pled guilty to 1 count of misdemeanor larceny. Sentenced to 1 year probation and \$1,600 restitution.

PEOPLE v MARWAN SINNO, Wayne Circuit, 12/1/2004, Charged with 2 counts of felony violation of the Tobacco Products Tax Act. Judgment, pled guilty to 1 count of felony violation of the Tobacco Products Tax Act. Sentenced to a \$2,500 fine, \$247.50 court costs, \$60 Crime Victims fee, and \$60 state court costs.

PEOPLE v ANGELO DEON SMILES, 36th District Court, 10/08/2003, charged with 1 count of misdemeanor larceny less than \$200 for stealing casino money by taking money from a cashier's window. Judgment, pled guilty to larceny less than \$200. Sentenced to 1 year non-reporting probation, \$200 fine, \$200 court costs, \$145.40 restitution to the casino, and \$50 Crime Victims fee.

PEOPLE v DAVID VINCENT SMITH, Wayne Circuit, 4/20/2004, charged with felony conspiracy and 2 counts of acceptance of a payment for the purpose of altering the outcome of a gambling game. Judgment, pled guilty to attempted acceptance of

a payment to alter the outcome of a game. Sentenced to 1 year probation, \$60 state fee, \$60 Crime Victims fee, \$120 supervision fees, and \$165 court costs.

PEOPLE v NOREEN YVETTE SMITH, Wayne Circuit, 9/15/2004, charged with felony 8 counts of uttering and publishing and 1 court of receiving and concealing stolen money and property \$1,000 or more, but less than \$20,000. Judgment, pled guilty to 2 counts of uttering and publishing and 1 count of receiving and concealing. Sentenced to 23 months to 5 years in jail on the uttering and publishing charges and 23 months to 5 years in jail on the receiving and concealing count.

PEOPLE v NOVELLA ANN-ALLEN SMITH, Wayne Circuit, 10/13/2004, charged with 13 counts of felony uttering and publishing, 1 count of receiving and concealing stolen property over \$20,000, and 1 count of obstructing an investigation. Judgment, pled guilty to 6 counts of uttering and publishing, 1 count of receiving and concealing in excess of \$20,000, and obstructing an investigation. Sentenced to 23 months to 14 years, with credit of 155 days for time served.

PEOPLE v RONALD SMITH, Wayne Circuit, 05/20/2003, charged with felony obtaining money under false pretenses. Judgment, pled guilty to false pretenses over \$1,000 under \$20,000. Sentenced to 1-5 years with Michigan Department of Corrections.

PEOPLE v TERESA SMITH, Wayne Circuit, 12/02/2003, charged with felony possession of another's financial transaction device with intent to use, deliver, or circulate. Judgment, pled guilty to possession of another's financial transaction device without consent. Sentenced to 3 years probation, \$60 Crime Victims fee, and \$200/year supervision fees.

PEOPLE v TRINITY RONNIELL SMITH, 36th District Court, 10/01/2003, charged with a misdemeanor of 1 count for obstructing an officer by disguise. Judgment, pled guilty to obstructing an officer by disguise. Sentenced \$200 court costs.

PEOPLE v PEGGY SUE SODERBERG, 36th District Court, 9/13/2004, charged with misdemeanor larceny of slot tokens over \$200 less than \$1,000. Judgment, pled guilty to misdemeanor larceny. Sentenced to 9 months probation, \$200 court costs, and \$900 restitution to the casino.

PEOPLE v ROBBIE NELSON SPENCER, Wayne Circuit, 3/18/2004, charged with felony larceny in a building and habitual offender-2nd supplement. Judgment, pled guilty to larceny in a building. Sentenced to 4 months in the Wayne County Jail.

PEOPLE v ROBBIE NELSON SPENCER, Wayne Circuit, 12/16/2004, charged with 2 counts of felony attempted larceny in a building. Judgment, pled guilty to 2 counts of attempted larceny in a building. Sentenced to serve 40 days in the Alternative Work Force Program.

PEOPLE v YVETTE STOKES, 36th District Court, 8/12/2004, charged with misdemeanor larceny over \$200, less than \$1,000. Judgment, pled guilty to misdemeanor larceny over \$200, less than \$1,000. Sentenced returned to the custody of the Wayne County Sheriff to continue serving a sentence for a violation of probation on a previous retail fraud charge.

PEOPLE v AURELINA STRATULAT, 36th District Court, 9/2/2004, charged with misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 6 months probation, \$45 restitution, and \$50 Crime Victims fee.

PEOPLE v JILLIAN NICOLE SWANSON, Wayne Circuit, 8/31/2004, charged with felony capping a bet at 3-card poker, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 1 year non-reporting probation, \$200 restitution, \$45 state costs, \$50 Crime Victims fee, and \$250 attorney fees.

PEOPLE v ERIC BURNARD TATE, Wayne Circuit, 08/29/2003, charged with 2 counts of felony past posting a bet at craps. Judgment, pled guilty to 1 count of past posting at craps. Sentenced to 2 years probation, \$120 supervision fees, \$165 court costs, \$350 attorney fees, and \$500 fine.

PEOPLE v TROY PIERRE TATUM, Wayne Circuit, 01/22/2003, charged with 2 counts felony embezzlement over \$1,000, but less than \$20,000, and 1 count conspiracy to embezzle. Judgment, pled guilty to attempted larceny over \$1,000, but less than \$20,000. Sentenced to 2 years probation, \$300 attorney fees, and \$600 court costs.

PEOPLE v TASHA L. THURMOND, Wayne Circuit, 2/11/2004, charged with 2 counts of felony attempted obtaining money under false pretenses over \$1,000 and 1 count of conspiracy to obtain money under false pretenses. Judgment, pled guilty to attempted obtaining money under false pretenses over \$1,000. Sentenced to 1 year probation, 100 hours community service, \$165 court costs, \$480 supervision fees, \$60 Crime Victims fee, and attorney fees.

PEOPLE v ZEENA Y. THUWAINI, 36th District Court, 9/3/2004, charged with felony violation of the Tobacco Products Tax Act. Judgment, pled guilty to misdemeanor violation of the Tobacco Products Tax Act. Sentenced to 1 year probation, \$1,000 fine, and \$900 restitution.

PEOPLE v TIA MARLOW TOLBERT, 36th District Court, 05/20/2003, charged with misdemeanor underage gambling. Judgment, pled guilty to underage gambling. Sentenced to 1 year probation and \$200 fines/costs.

PEOPLE v NIKOLLE TOMAJ, Wayne Circuit, 4/2/2004, charged with felony uttering and publishing, obtaining money under false pretenses, claiming a prize in a gambling game greater than the amount actually won, and conspiracy to claim a prize in a gambling game greater than the amount actually won. Judgment, pled guilty to uttering and publishing, obtaining money under false pretenses, claiming a prize in a gambling game greater than the amount actually won, and conspiracy to claim a prize in a gambling game greater than the amount actually won. Sentenced to 3 years probation, 450 hours of community services, \$360 supervision fees, and \$60 Crime Victims fee.

PEOPLE v CHRISTOPHER LORENZO TODDLE, 36th District Court, 05/29/2003, charged with 2 counts of misdemeanor minor gambling. Judgment, pled guilty to 1 count of underage gambling. Sentenced to 20 days of community service.

PEOPLE v ROBBIE MARIE TOTH, Wayne Circuit, 08/22/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to uttering and publishing. Sentenced to 3 years probation, \$500 fine, \$165 court costs, \$60 Crime Victims fee, \$1,800 supervision fees, and \$350 attorney fees.

PEOPLE v ROBERT NAVARRO TROUTMAN, 36th District Court, 5/11/2004, charged with misdemeanor 2nd degree retail fraud. Judgment, pled guilty to 2nd degree retail fraud. Sentenced to 1 year probation, \$100 fines, and \$50 court costs.

PEOPLE v MARASH ZEF ULAJ, 36th District Court, 5/19/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Defendant was sentenced to 6 months non-reporting, \$200 fine, and \$200 court costs.

PEOPLE v GREGORY THOMAS VERPOORT, Wayne Circuit, 03/27/2003, charged with felony pinching a bet at craps. Judgment, pled guilty to attempted pinching a bet at craps. Sentenced to 2 years probation, \$60 Crime Victims fee, \$600 court costs, and \$500 attorney fees.

PEOPLE v RHEA MICHELLE WALKER, Wayne Circuit, 07/23/2003, charged with felony uttering and publishing. Judgment, pled guilty to attempted uttering and publishing. Sentenced to 75 days in the Wayne County Jail Alternative Work Force.

PEOPLE v YEE CHIH WANG, 36th District Court, 10/20/2003, charged with 2 counts of misdemeanor trespass by a disassociated person. Judgment, pled guilty to 1 count of trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, \$200 court costs, and \$50 Crime Victims fee.

PEOPLE v YEE CHIH WANG, 36th District Court, 2/6/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 8 months, \$200 fine, \$65 court costs, and \$50 Crime Victims fee.

PEOPLE v INGRID WARE, Wayne Circuit, 03/07/2003, charged with felony larceny over \$1,000, less than \$20,000. Judgment, pled guilty to attempted larceny. Sentenced to 1 year probation, \$1,000 restitution to the casino, \$165 court costs, \$60 Crime Victims fee, \$10/month supervision fees, and attorney fees.

PEOPLE v THOMAS EDWARD WAREHALL, 36th District Court, 10/13/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to time served.

PEOPLE v SHERRY ANN WARREN, 36th District Court, 1/21/2004, charged with misdemeanor of assisting an underage gambler. Judgment, pled guilty to assisting an underage gambler. Sentenced to 1 year non-reporting probation and \$200 court costs.

PEOPLE v JONATHAN LAMONT WELCH, Wayne Circuit, 10/3/2003, charged with felony obtaining money under false pretenses over \$1,000, less than \$20,000, and conspiracy to obtain money under false pretenses. Judgment, pled guilty to attempted obtaining money under false pretenses. Sentenced to 2 years probation, \$600 court costs, \$240 supervision fees, and \$60 Crime Victims fee.

PEOPLE v BRIAN LEWIS WELLS, Wayne Circuit, 01/06/2004, charged with felony past posting at roulette, or in the alternative, misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to one day in jail with credit for time served and \$500 fine.

PEOPLE v SHERRY ARNETTE WHITE, 36th District Court, 07/21/2003, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year reporting probation, \$95 in restitution to the casino, and \$200 costs/fees.

PEOPLE v SHELLY LYNN WILDMO, Wayne Circuit, 10/1/2004, charged with felony uttering and publishing. Judgment, pled guilty to uttering and publishing. Sentenced to 2 years probation with the first 90-120 days in the Jail Base #3 Program and In-Patient Drug Treatment Program at the Dickerson Correctional Facility, enroll in the Positiv Image After Care Program upon her release from the in-patient program, \$60 state fee, \$60 Crime Victims fee, \$120/year supervision fees, \$165/year court costs, and \$400 court-appointed attorney fees.

PEOPLE v DONALD WILLIAMS, 36th District Court, 11/10/2004, charged with 1 count of felony larceny in a building and 1 count of misdemeanor larceny. Judgment, pled guilty to misdemeanor larceny. Sentenced to 93 days in the Wayne County Jail with credit for time served.

PEOPLE v HAROLD PAUL WILLIAMS JR., Wayne Circuit, 03/28/2003, charged with 3 counts of felony uttering and publishing. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 8-14 years imprisonment.

PEOPLE v LINDA YVONNE WILLIAMS, Wayne Circuit, 7/22/2004, charged with felony uttering and publishing. Judgment, pled guilty to attempt uttering and publishing. Sentenced to 1 year probation, \$60 state fees, \$60 Crime Victims fee, \$120 supervision fees, \$165 court costs, and \$400 court-appointed attorney fees.

PEOPLE v RAYMOND JESSE WILLIAMS, Wayne Circuit, 09/24/2003, charged with felony uttering and publishing. Judgment, pled guilty to 1 count of uttering and publishing. Sentenced to 9 months to 14 years in prison.

PEOPLE v ROBERT LEE WILLIAMS, 36th District Court, 10/28/2004, charged with misdemeanor embezzlement. Judgment, pled guilty to attempted embezzlement. Sentenced to 6 months probation and \$200 court costs.

PEOPLE v RONALD JAMES WILLIAMS, Wayne Circuit, 9/27/2004, charged with felony uttering and publishing an altered instrument and altering a financial transaction device. Judgment, pled guilty to altering a financial transaction device. Sentenced to 185 days in prison with credit for time served.

PEOPLE v KENNETH WINBUSH, Macomb Circuit, 2/4/2004, charged with delivery/manufacture of marijuana and habitual offender, 2nd offense. Judgment, pled guilty to possession with intent to deliver marijuana and habitual offender-second supplement. Sentenced to 3 years probation, with the first 180 days in Macomb County Jail, \$10/month supervision fees, and \$10/month court costs.

PEOPLE v GIOVANNI JOSEPH WOODS, 36th District Court, 12/16/2004, charged with misdemeanor breaking and entering the coin box of a slot machine. Judgment, pled guilty to breaking and entering the coin box of a slot machine. Sentenced to 91 days in jail with credit for time served.

PEOPLE v TONJA DANELLE WRIGHT, 36th District Court, 6/28/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to trespass by a disassociated person. Sentenced to 1 year probation, \$200 fine, and \$200 court costs.

PEOPLE v ERNEST YARBROUGH, Wayne Circuit, 03/03/2003, charged with a felony of larceny in a building for stealing \$300 in tips from a tip box. Judgment, pled guilty to attempted larceny in a building. Sentenced to 1 year probation, \$60 Crime Victims fee, \$600 court costs, \$500 attorney fees, and \$120 supervision fees.

PEOPLE v FAIEZ YOUSIF YOKHANNA, 36th District Court, 6/24/2004, charged with misdemeanor trespass by a disassociated person. Judgment, pled guilty to misdemeanor trespass by a disassociated person. Sentenced to 1 year non-reporting probation, \$100 fine, \$200 court costs, and \$214 in winnings turned over to the Michigan Compulsive Gambling Prevention Fund.

PEOPLE v LERON ANTONIO YOUNG, Wayne Circuit, 12/04/2003, charged with felony uttering and publishing and conspiracy to utter and publish. Judgment, pled guilty to uttering and publishing. Sentenced to 90 days in the Wayne County Jail.

PEOPLE v LEO ROBERT ZELKO, Wayne Circuit, 11/03/2003, charged with felony uttering a counterfeit note. Judgment, pled to attempted uttering and publishing. Sentenced to 1 year reporting probation; fees and costs waived.

Child Support Division- Prosecutions 2003 - 2004

ABNEY, MAREECE, Pled Lesser, 08/17/2004, Wayne Circuit Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$39,156.00 Restitution, \$292.60 each month, plus current support (\$360).

ADAIR, MARILYN D., Pled Guilty, 09/09/2004, Berrien Circuit, Circuit, 001 Child Support-Failing to Pay, Sentenced to: 37 Days Credit For 37 Days Served County Jail, 5 Years Probation, \$11,937.69 Restitution, \$100 per month.

AKERS, SR., RALPH DOUGLAS, Pled Guilty, 05/11/2004, Wayne Circuit Circuit, 001 Child Support-Failing to Pay, Sentenced to:60 Months Probation, \$30,000.00 Restitution at \$500 per month.

ALDRED, STEVEN DOUGLAS, Dismissed Restitution Made, 01/20/2004, Oakland Circuit, Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Third Offense.

ALETOR, JACKSON MACAULAY, Dismissed Agreement, 10/11/2004, Wayne Circuit Circuit, 01 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

ALEXANDER, RICHARD DALE, Dismissed Agreement, 08/10/2004, Eaton Circuit, Circuit, 001 Child Support-Failing to Pay 002 Habitual Offender-Fourth Offense.

ANDERSON, QUINNJARRIAS, Pled Lesser, 04/21/2004, Wayne Circuit Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$42,000.00 Restitution.

ANDRADE, CONCEPCION J., Pled Guilty, 09/21/2004, Van Buren Circuit, Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 68 Days Credit For 68 Days Served County Jail, 5 Years Probation, \$59,158.35 Restitution at \$150.00 per month at \$1500 probation.

ANGELO JUNIOR BURROUGHS, Pled Guilty, 08/24/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$15,607.50 Restitution.

ANGELO JUNIOR BURROUGHS, Pled Guilty, 08/24/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$12,000.00 Restitution.

ARGUIEN, LEO SAMUEL, Dismissed Agreement, 01/15/2004, Monroe Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

ARMSTRONG, MICHAEL E., Dismissed Agreement, 11/23/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Child Support-Failing to Pay.

ATKINSON, KENNETH WAYNE, Pled Lesser, 08/17/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$43,408.00 Restitution.

AUGUSTINE, ROBERT TODD, Pled Guilty, 09/17/2004, Calhoun Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$18,675.00 Restitution.

BARR, KENNETH WAYNE, Pled Guilty, 10/07/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 36-60 Months Probation, \$4,000.00 Restitution at \$200.00/month minimum.

BENEDICT, TONY RAY, Pled Lesser, 07/08/2004, Barry Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$51,771.00 Restitution.

BERGH, RANDYLL TIMOTHY, Pled Guilty, 02/23/2004, Houghton Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 12-36 Months County Jail, \$89,389.00 Restitution.

BESS, KENNETH VICTOR, Pled Guilty, 08/24/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 4 Days County Jail, 60 Months Probation, \$34,483.68 Restitution.

BICKERSTAFF, CHESTER ALLE, Dismissed Restitution Made, 06/14/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

BICKERSTAFF, DAVID J., Dismissed Agreement, 12/01/2003, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

BONELLI, JOSEPH MICHAEL, Dismissed Legal Issues, 12/20/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

BONICELLI, DANGELO R., Dismissed for Legal Issues, 10/01/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

BORCHMANN, KENNETH P., Dismissed Restitution Made, 02/17/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

BOULAY, ROY PAUL, Pled Guilty, 11/23/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 120 Days Credit For 120 Days Served County Jail, 5 Years Probation, \$107,238.08 Restitution.

BOWLES, JERRY W., Dismissed Restitution Made, 05/24/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

BOWMAN, RICKY, Pled Guilty, 07/09/2004, St. Joseph Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, arrearage paid over time to be determined by the Friend of the Court.

BRADT, STEVEN JOEL , Dismissed Restitution Made, 01/22/2004, Monroe Circuit, 001 Child Support-Failing to Pay.

BRANHAM, DAVID BRONNIE, Pled Lesser, 04/29/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, Sentenced to: 2 Years Probation, Restitution Pay \$350 per month toward arrearages and costs and fees.

BRANSCUMB, DARRELL ELL, Pled Guilty, 09/20/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: Monthly payment towards arrearage \$400.

BREMNESS, ROGER DALE, Dismissed Agreement, 06/04/2004, Shiawassee District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support, Sentenced to: 210 Days Credit For 210 Days Served County Jail, Restitution \$644 per month toward arrearage and current support.

BRINK, EDWARD GEORGE, Pled Guilty, 10/01/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 55 Days Credit For 55 Days Served County Jail, 5 Years Probation, \$11,966.89 Restitution.

BRITTON, TRENT K, Pled Guilty, 09/20/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, Defendant pay \$500.00 per month towards arrearage \$30,000.00 Restitution.

BROWN, DONALD EVERETT, Dismissed Agreement 11/17/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

BROWN, JEFFREY SCOTT, Pled Guilty, 05/07/2004, Kent District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support, Sentenced to: \$25,000.00 Restitution.

BROWN, SR., KEITH WESLEY, Pled Lesser, 12/14/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: \$149,837.40 Restitution at \$750 per month.

BULLOCK, CHESTER T., Pled Guilty, 02/17/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$24,000.00 Restitution.

BURNETT, BRYAN KEITH, Pled Lesser, 09/17/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Months Probation, \$12,600.00 Restitution.

BUSBY, STEVEN, Dismissed Restitution Made, 12/19/2003, Roscommon Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

BUSH, ANTHONY TYRICE, Dismissed Agreement, 08/31/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, Sentenced to: \$63,275.00 Restitution.

CAMERON, RICHARD BRUCE, Pled Guilty, 10/04/2004, Oakland Circuit, 001 Child Support-Failing to Pay, Sentenced to: 2 Months County Jail, Work release if eligible, 2 Years Probation, \$14,145.65 Restitution.

CAPEZZUTO, FRANK T., Dismissed Restitution Made, 03/17/2004, Wayne Circuit, 001 Desertion/Abandonment/Non-Support.

CAROTHERS, MICHAEL DUAN, Pled Guilty, 06/29/2004, Jackson Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: \$120.00 Fine & Cost, 2-6 Years, Credit For 62 Days Served State Prison, \$132,955.89 Restitution.

CARR, OBA DIALLO, Pled Guilty, 08/26/2004, Oakland Circuit, 001 Child Support-Failing to Pay, Sentenced to: 6 Months County Jail, Work release if qualify, 5 Years Probation, \$289,715.65 Restitution \$1884.61 plus extradition costs.

CARRIS, STEVEN DUANE, Pled Guilty, 09/30/2004, Jackson Circuit, 001 Child Support-Failing to Pay, Sentenced to: 180 Days Credit For 1 Days Served County Jail.

CHARLEBOIS, DONALD JERRY, Pled Lesser, 10/22/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 3 Days Credit For 3 Days Served County Jail, 24 Months Probation, \$39,046.00 Restitution.

CILIA, A/K/A RIVET, BARBRA K, Pled Lesser, 05/25/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$30,500.00 Restitution.

CLARK, GREGORY LEE, Dismissed Agreement, 4/28/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

COLON, MARCO ANTONIO, Dismissed/Closed Not Felony Prosecution, 10/07/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

COMP JR, DAVID LESLIE, Dismissed by the Court, 10/07/2004, Barry Circuit, 001 Child Support-Failing to Pay.

COMP, JR, DAVID LESLIE, Dismissed by the Court, 10/07/2004, Barry Circuit, 001 ABSCONDING OR FORFEITING BOND.

CONRAD, DAVID J., Pled Nolo, 06/22/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, Sentenced to: 66 Days County Jail, 5 Years Probation.

COOPER, TONIA R., Dismissed Restitution Made, 01/28/2004, Ottawa Circuit, 001 Child Support-Failing to Pay.

CORL, DEAN EDWARD, Pled Guilty, 06/11/2004, Allegan Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: Jail time of from 23-48 months.

COSELMAN, MITCHELL ALV, Dismissed Restitution Made, 08/22/2003, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

CRAVENS, PAUL GREGORY, Pled Guilty, 07/19/2004, Van Buren Circuit, 001 Child Support-Failing to Pay, Sentenced to: 35 Days Credit For 35 Days Served County Jail, 5 Years Probation, \$105,959.34 Restitution.

DAMASCHKE, ROGER ALLEN, Dismissed Restitution Made, 10/11/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

DAVIS, BRYAN K., Dismissed Agreement, 08/04/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

DAVIS, CYRUS GENE, Pled Lesser, 9/28/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: \$88,000 Restitution.

DAVIS, FLORENCE MELONIE, Pled Guilty, 08/26/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, Sentenced to: \$1,250.00 Fine & Cost, 9 Months with Credit For 93 Days Served County Jail, 5 Years Probation, \$42,345.84 Restitution.

DAY, ANTHONY T., Dismissed Agreement, 10/22/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

DEKEYSER, JEFFERY CARL, Pled Lesser, 05/17/2004, Cheboygan Circuit, 001 Child Support-Failing to Pay.

DERECHO, CONSTANTIN, Dismissed for Legal Issues, 09/24/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

DEXTER, BRENT LEE, Pled Lesser, 05/18/2004, Allegan District, 001 Disorderly Person-Non-Support.

DEYOUNG, JEFFREY, Pled Guilty, 08/12/2003, Kent Circuit, 001 Child Support-Failing to Pay Page, Sentenced to: \$660.00 Fine & Cost, 2-6 Years State Prison, \$105,277.27 Restitution, \$60.00 V.R. Fund.

DOTSON, DAVID EDWARD, Dismissed for Legal Issues, 11/18/2004, Genesee Circuit, 001 Child Support-Failing to Pay.

DOTSON, DAVID EDWIN, Dismissed Agreement, 12/10/2004, Genesee Circuit, 001 Child Support-Failing to Pay.

DUNCAN, GEORGE MALLORY, Dismissed Restitution Made, 05/07/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

DUVERNOIS, DORAN DUANE, Dismissed Restitution Made, 09/03/2004,

Genesee Circuit, 001 Child Support-Failing to Pay.

EARVIN, BRIAN, Pled Guilty, 06/21/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 48 Months Probation, \$45,380.34 Restitution.

EASTWAY, CURTIS SHAWN, Pled Lesser, 07/28/2004, Ingham Circuit, 001 Child Support-Failing to Pay, Sentenced to: 33 Days Credit For 33 Days Served County Jail, 36 Months Probation, \$35,434.00 Restitution.

EICHNER-DUDLEY, ROBERT T. Pled Lesser, 08/26/2004, Oakland District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support, Sentenced to: 1 Years Probation, Current payment obligations.

ELGIN, WAYNE A., Dismissed Restitution Made, 04/27/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

EMLER, JOHN ROBERT, Pled Guilty, 06/08/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 6 Months County Jail, 54 Months Probation, \$39,829.67 Restitution at \$1200 monthly on arrears.

EVANS, BRIAN EUGENE, Pled Guilty, 09/07/2004, Van Buren Circuit, 001 Child Support-Failing to Pay Page, Sentenced to: 68 Days Credit For 68 Days Served County Jail, 5 Years Probation, \$27,000.00 Restitution.

FARNSWORTH, DAVID G., Pled Guilty, 08/03/2004, St. Clair Circuit, 001 Child Support-Failing to Pay, Sentenced to: 3 Months County Jail - Suspended upon payments of \$360/month and full-time work, 36 Months Probation.

FAY, TREVOR LEE, Pled Guilty, 05/06/2004, Montcalm Circuit, 001 Child Support-Failing to Pay, Sentenced to: 6 Months Credit For 18 Days Served County Jail, 5 Years Probation, \$37,851.77 Restitution.

FERGUSON, JEFFERSON J., Pled Guilty, 04/21/2004, Allegan Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation.

FEURY, LEONARD M., Dismissed Agreement, 08/17/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

FISCHER, ROBERT F., Dismissed Agreement, 06/04/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

FITCH, TERENCE, Pled Lesser, 11/09/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$28,000.00 Restitution at \$300 monthly towards arrears.

FORD, KENNETH LEROY, Pled Guilty, 11/08/2004, Livingston Circuit, 001 Child Support-Failing to Pay, Sentenced to: 7 Days with Credit For 7 Days Served County Jail, 18 Months Probation.

FOWKES, GERALD K., Pled Lesser, 11/30/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$60,000.00 Restitution at \$587.25 monthly on arrears.

FURUHJELM, MARTIN, R., Dismissed Restitution Made, 04/01/2003, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

GANN, JULIAN ASBURY, Dismissed Agreement, 12/28/2004, Kent Circuit, 001 Child Support-Failing to Pay.

GANT III, EDGAR A., Pled Guilty, 02/18/2004, Cass Circuit, 001 Child Support-

Failing to Pay, Sentenced to: 180 Days with Credit For 10 Days Served County Jail, 2 Years Probation, \$13,438.69 Restitution.

GARCIA, RAYMOND SCOTT, Pled Guilty, 05/10/2004, Kent Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Third Offense, Sentenced to: 5 Years Probation, \$41,700.00 Restitution.

GARCIA, RAYMOND SCOTT, Pled Guilty, 09/07/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$41,700.00 Restitution.

GIBBINS, PAUL, Pled Lesser, 12/07/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$23,887.00 Restitution.

GIBSON, WILLIAM CHAD, Dismissed Agreement, 04/23/2004, Charlevoix Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

GILMAN, ANTHONY LEE, Dismissed Restitution Made, 05/12/2004, Mecosta Circuit, 001 Child Support-Failing to Pay.

GLIDDEN, GEORGE JONATHA, Pled Guilty, 08/25/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: \$10,200.00 Restitution at \$170 per month plus current child support, 5 Years Probation.

GRANT, DERRICK GORDON, Pled Guilty, 08/27/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 12 Months County Jail and 40 hours community service, \$28,752.29 Restitution.

GRANT, ERIC ALLEN, Closed Prosecutor's Office Will Charge, 08/25/2004, Alpena, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

GRASSNICK, MICHAEL ALLEN, Pled Guilty, 07/09/2004, Van Buren Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$18,000.00 Restitution.

GRAVES, LEONARD, Pled Lesser, 06/29/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: \$2,400.00 Restitution at \$200 per month and current child support \$329 per month, 60 Months Probation.

GREEN, TERRY WAYNE, Pled Guilty, 07/20/2004, St. Clair Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$132,318.93 Restitution.

GROTH, THOMAS M., Dismissed Defendant Died, 09/07/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

GRZESIK, DANIAL J., Pled Lesser, 03/05/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Second Offense, Sentenced to: 60 Months Probation \$26,443.45 Restitution.

GUNDERSON, ADAM JAY, Dismissed Restitution Made, 02/25/2004, Barry Circuit, 001 Child Support-Failing to Pay.

GURROLA, APOLINAR, Dismissed Agreement, 08/23/2004, Kent Circuit, 001 Child Support-Failing to Pay.

HAMEL, WADE BRISTOW, Pled Guilty, 5/24/2004, Kalamazoo Circuit, 001 Child Support-Failing to Pay, Sentencing to: 2 years Probation, \$12,623 Restitution.

HAMILTON, EDWIN THOMAS, Pled Guilty, 11/24/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, 6 Months with Credit For 71 Days Served, \$13,649.09

Restitution.

HAMMOCK, WENDELL, Pled Guilty, 08/12/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$18,000.00 Restitution at \$300 per month.

HANEY, JR., WILLIAM J., Dismissed Agreement, 06/21/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

HANEY, JR., WILLIAM J., Dismissed Agreement, 06/21/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

HARDEN, ANTONIO SHERRON, Pled Guilty, 10/15/2004, Genesee District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support, Sentenced to: \$0.00 Restitution Paid in full.

HARRINGTON, ROGER, Pled Guilty, 10/08/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 90 Days with Credit For 2 Days Served County Jail, 5 Years Probation, \$28,779.90 Restitution at \$500 per month.

HARVEY, KEITH ALLEN, Pled Guilty, 03/23/2004, Kent Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, \$5,500.00 Restitution.

HASSEVOORT, CHARLES PAUL, Pled Guilty, 10/08/2004, Allegan Circuit, 001 Child Support-Failing to Pay, Sentenced to: 14 Days with Credit For 14 Days Served County Jail, 4 Years Probation, \$69,451.62 Restitution.

HAYES, DAVID ALAN, Pled Guilty, 09/09/2004, Allegan Circuit, 001 Child Support-Failing to Pay, Sentenced to: \$31,242.25 Restitution.

HAYWOOD, LONNELL VENTURA, Pled Lesser, 11/23/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$14,288.00 Restitution at \$252 per month.

HELTON, DAVID BRUCE, Pled Lesser, 07/12/2004, Eaton District, 001 Child Support-Failing to Pay, 002 Habitual Offender-Fourth Offense, 003 Disorderly Person-Non-Support, Sentenced to: \$40.00 Fine & Cost, 10 Days County Jail with credit for time served.

HENDERSON, GERRY TODD, Dismissed Agreement, 08/26/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

HERRERA, CHRISTOPHER, Pled Guilty, 10/18/2004, Kent Circuit, 001 Desertion/Abandonment/Non-Support, 002 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$53,479.13 Restitution at \$603 per month.

HICKEY, DOUGLAS LEE, Pled Lesser, 07/27/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, \$37,635.00 Restitution at \$144.75 per week.

HILER, TERRY J., Pled Guilty, 07/14/2004, Newaygo Circuit, 001 Child Support-Failing to Pay, Sentenced to: 12 Months with Credit For 164 Days Served County Jail, 60 Months Probation, \$95,769.00 Restitution.

HODGE, RICHARD RAYMOND, Pled Lesser, 09/28/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$15,212.88 Restitution at \$254.00 per month.

HOLLING, JAMES J., Dismissed Agreement, 08/04/2004, Van Buren Circuit, 001 Child Support-Failing to Pay.

HOLOWECKI, MARK JOSEPH, Pled Guilty, 08/31/2004, Oakland Circuit, 001 Child Support-Failing to Pay, Sentenced to: 90 Days County Jail With work release, 2 Years Probation, \$52,252.05 Restitution Plus costs.

HOMER, KEVIN KEITH, Pled Guilty, 09/14/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, Restitution \$11,337.02 to State of Michigan.

HORN, DENNIS J., Pled Guilty, 02/17/2004, Mason Circuit, 001 Child Support-Failing to Pay, Sentenced to: 90 Days with Credit For 5 Days Served County Jail, 5 Years Probation, \$47,665.01 Restitution.

HOSFORD, DARIN RICHARD, Pled Guilty, 06/23/2004, Ingham Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$30249.47 Restitution at \$504.15 per month.

HUBBARD, THOMAS LOUIS, Pled Guilty, 01/22/2004, Oakland Circuit, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, \$18,554.09 Restitution at \$400 per month.

HUGHES, PATRICK C., Pled Lesser, 06/22/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$6,000.00 Restitution.

HUGHES, PATRICK CHARLES, Pled Lesser, 04/13/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$12,000.00 Restitution.

JACOBS, STEPHEN J., Pled Lesser, 09/08/2004, Monroe Circuit, 001 Child Support-Failing to Pay, Sentenced to: 1 Years Probation, \$1,200.00 Restitution.

JOHNSON, ERIC LOUIS, Dismissed Agreement, 12/14/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

JOHNSON, LARRY JOSEPH, Pled Guilty, 08/11/2004, Jackson Circuit, 001 Child Support-Failing to Pay, Sentenced to: 30 Days County Jail, 60 Months Probation, \$16,200.00 Restitution at \$250/month.

JOHNSON, JR., GARY LEE, Dismissed Agreement, 05/28/2004, St. Clair Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense.

JONES, LARKISKY, Pled Guilty, 10/08/2004, Kent Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: \$51,577.70 Restitution.

JONES, LARKISKY, Pled Lesser, 10/08/2004, Kent Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 4 Years Probation, \$2,402.00 Restitution.

JONES, LARKISKY, Pled Guilty, 10/13/2004, Kent Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 4 Years Probation, \$43,244.66 Restitution.

JOUBRAN, ELIAS SAM, Pled Guilty, 10/04/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: \$300.00 Fine & Cost, 6 Months with Credit For 72 Days Served County Jail, 5 Years Probation, \$12,000.00 Restitution at \$200 per month.

KALMAN, LOUIE JOE, Pled Guilty, 11/03/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 2-4 Years State Prison, \$27,587.85 Restitution.

KAMPHUIS, ROBERT D., Pled Guilty, 11/08/2004, Kent Circuit, 001 Child

Support-Failing to Pay, Sentenced to: 30 Months County Jail, 60 Months Probation, \$95,786.00 Restitution.

KEESEE, CARL LEE, Pled Lesser, 10/05/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$24,000.00 Restitution at \$400 per month.

KELLEYBREW, WILLIE LEE, Pled Lesser, 12/14/2004, Oakland District, 001 Child Support-Failing to Pay.

KING, RONALD CORNELIUS, Pled Guilty, 09/09/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 55 Days County Jail, 5 Years Probation, \$34,664.00 Restitution.

KIRKSEY, WILLIAM MICHAEL, Dismissed Legal Issues, 08/20/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

KNOTT, MICHAEL GORDON, Dismissed Restitution Made, 10/13/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay.

LAFORET, LEONARD J., Pled Lesser, 01/16/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: 60 Months Probation \$45,612.60 Restitution at \$760.21 per month.

LAFORET, LEONARD J., Pled Lesser, 01/16/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: 60 Months Probation, \$24,000.00 Restitution.

LAIRD, JASON G., Pled Nolo, 04/22/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense.

LAMBERT, GARY LEE, Closed the Friend of the Court is Charging, 09/23/2003, Kalamazoo Circuit, 001 Child Support-Failing to Pay.

LANDON, KARTER GENE-ROY, Pled Nolo, 7/23/2004, Genesee Circuit, 001 Child Support-Failing to Pay.

LANKFORD, LARRY DEAN, Dismissed Agreement, 11/19/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

LARRABEE, JOSEPH LYNN, Pled Lesser, 05/12/2004, Kent District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support.

LASATER, MARK A., Dismissed Restitution Made, 01/30/2004, St. Clair Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

LATREILLE, PAUL ANTHONY, Pled Guilty, 02/18/2004, Genesee Circuit, 001 Child Support-Failing to Pay Page, Sentenced to: 60 Months Probation.

LAURSEN, SCOTT LEE, Dismissed Agreement, 09/23/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

LEDBETTER, DAVID NEALON, Dismissed Restitution Made, 10/06/2004, Gratiot Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

LEO, JOSEPH E., Pled Lesser, 09/21/2004, Oakland District, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Fourth. Offense.

LEONARD, WILBUR, Pled Nolo, 06/23/2004, Mason Circuit, 001 Child Support-Failing to Pay, Sentenced to: 90 Days County Jail, 5 Years Probation, \$70,711.25

Restitution at \$589 per month.

LINDERMAN, JAN ARNOLD, Dismissed Restitution Made, 12/09/2004, Van Buren Circuit, 001 Child Support-Failing to Pay.

LOOMER, PETRA, Dismissed Restitution Made, 06/29/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

LOUX, JR, MICHAEL JOSEPH, Dismissed Agreement, 10/29/2004, Shiawassee Circuit, 001 Child Support-Failing to Pay.

MACHIELA, ROBERT LEE, Pled Guilty, 11/01/2004, Mecosta Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$41,264.22 Restitution.

MANN, JERRY GORDON, Dismissed Restitution Made, 04/15/2004, Livingston Circuit, 001 Child Support-Failing to Pay.

MANSOOR, ODAA, Pled Lesser, 09/14/2004, Oakland District, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense N, 003 Disorderly Person-Non-Support, Sentenced to: \$500.00 Fine & Cost.

MARCHEWKA, ALAN G., Dismissed Restitution Made, 09/08/2004, Macomb Circuit, 001 Child Support-Failing to Pay.

MAROHN, DENNIS CHARLES, Deferred Prosecution, 06/29/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense.

MAROHN, DENNIS CHARLES, Deferred Prosecution, 06/29/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense.

MAROHN, DENNIS CHARLES, Dismissed Agreement, 12/03/2004, Oakland Circuit, 001 Desertion/Abandonment/Non-Support.

MAROHN, DENNIS CHARLES, Pled Lesser, 12/03/2004, Oakland Circuit, 001 Desertion/Abandonment/Non-Support, Sentenced to: 1 Years Probation, \$5,630.00 Restitution.

MAROTTA, DIANE CHRISTINE, Dismissed Restitution Made, 06/01/2004, Monroe Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

MARSHALL, RONALD TERRY, Dismissed Defendant Died, 12/07/2004, Monroe Circuit, 001 Child Support-Failing to Pay.

MARTIN, CHRISTOPHER LAM, Pled Guilty, 12/01/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Months, \$52,053.00 Restitution.

MASCIA, GIUSEPPE NICOLA, Pled Guilty, 08/18/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 73 Days with Credit For 73 Days Served County Jail, 5 Years Probation, Restitution \$225 per month.

MASSINGILL, MAURICE, Pled Lesser, 11/12/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$12,000.00 Restitution at \$200 per month.

MCAFEE, WILLARD DUANE, Pled Guilty, 09/09/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 90 Days with Credit For 68 Days Served County Jail, 5 Years Probation, \$42,646.50 Restitution at \$500 per month.

MCCAIN, FRANKLIN D., Dismissed Agreement, 08/04/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

MCCANN, KENNETH WAYNE, Pled Guilty, 08/31/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation.

MCCLOSKEY, JOHN PATRICK, Pled Nolo, 11/22/2004, Kent Circuit, 001 Child Support-Failing to Pay.

MCCRAY, KRISTOPHER KEITH, Pled Guilty, 11/29/2004, Oakland District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support.

MCCULLOCH, RICHARD J., Dismissed Agreement, 07/01/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

MCDOWELL, RONALD, Pled Guilty, 08/04/2004, Allegan Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 12 Months Jail.

MCNALL, JOSEPH, Pled Guilty, 08/04/2004, St. Joseph Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$42,598 Restitution at \$706.97 per month.

MELOW, GLEN WILLIAM, Pled Guilty, 08/17/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 2-15 Years State Prison.

MELOW, GLEN WILLIAM, Pled Guilty, 08/17/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 2-15 Years State Prison.

MEYER, JR., MICHAEL A., Pled Lesser, 01/09/2004, Monroe Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, \$1,692.50 Restitution.

MIAL, SCOTT MARLON, Dismissed Restitution Made, 06/07/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Child Support-Failing to Pay.

MILLER, ALVIN, Dismissed Restitution Made, 10/19/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

MILLER, EDWARD A., Consent Judgment in Court, 02/12/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

MILLER, MARK EDWARD, Pled Guilty, 6/23/2004, Kent Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 4 Years Probation, 3 Months County Jail, \$49860.42 Restitution.

MOAYER, MATTHEW MASSOUD, Guilty Bench Trial, 5/36/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$21,788 Restitution.

MONDRAGON, MATEO MORA, Dismissed Restitution Made, 12/15/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

MONTELONGO, ELMER SCOTT, Guilty Verdict Bench Trial, 06/30/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$10,845.00 Restitution \$404.55 per month.

MOUSSEAU, RONALD JAY, Pled Guilty, 07/09/2004, Livingston Circuit, 001 Child Support-Failing to Pay Page, 002 Habitual Offender-Third Offense, Sentenced to: 6 Years with Credit For 92 Days Served State Prison.

NASH, BARRY DUANE, Pled Guilty, 10/11/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$36,467.02 Restitution.

NASH, JR., JONATHAN HALE, Dismissed Agreement, 09/15/2004, Branch Circuit, 001 Child Support-Failing to Pay.

NIEMIEC, JOHN DAVID, Pled Guilty, 12/13/2004, Macomb Circuit, 001 Child Support-Failing to Pay, Sentenced to: 6 Months County Jail Suspended for 11 months for monitoring compliance, 5 Years Probation, \$46,179.52 Restitution.

NIXON, GERALD A., Consent Judgment in Court, 05/21/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

NORRIS, CHARLES EDWARD, Pled Guilty, 08/10/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 60 Months Probation, \$31,062.00 Restitution of \$522 per month.

NUNNERY, JR, FREDERICK, Pled Guilty, 07/20/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Second Offense, Sentenced to: 183 Days with Credit For 54 Days Served County Jail, 5 Years Probation Plus Substance Abuse Program, \$63,906.00 Restitution.

O'NEAL, JEROME, KALEIALOH, Dismissed Legal Issues, 12/10/2003, Muskegon Circuit, 001 Child Support-Failing to Pay.

OAKLEY, DAVID FREDERICK, Closed Prosecutor's Office Will Charge, 10/11/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

OLEKSIW, ANDREW STEPHEN, Pled Guilty, 06/04/2004, Tuscola Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 180 Days with Credit For 59 Days Served County Jail, 60 Months Probation, \$39,000.00 Restitution.

OLIVEIRA, JOHN R., Dismissed Agreement, 06/21/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

ONUOSA, JAMES O., Pled Lesser, 04/23/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$156,751.00 Restitution at \$1,800 per month.

ORTIZ, JR., FRANK BENITO, Pled Lesser, 06/21/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$7,500.00 Restitution.

PAPIERSKI, BRYAN, Dismissed Restitution Made, 10/26/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

PARRINO, MARK LEE, Dismissed Agreement, 09/20/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

PATON, MICHAEL VAUN, Pled Guilty, 7/29/2004, Eaton Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$53,198 Restitution.

PEAKE, EUGENE ERNEST, Dismissed Restitution Made, 08/02/2004, Van Buren Circuit, 001 Child Support-Failing to Pay.

PEARSON JR., BECKWITH, Pled Lesser, 06/29/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: 60 Months Probation, \$1,402.40 Restitution.

PERKINS, NIGEL, Pled Guilty, 7/12/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$34,630 at \$250 per month.

PHILLIPS, ANTHONY LAMARR, Pled Guilty, 08/16/2004, Berrien Circuit, 001

Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$27,073.00 Restitution.

PHILLIPS, THOMAS FREDERIC, Pled Lesser, 09/19/2004, Allegan District, 001 Disorderly Person-Non-Support.

PIERCE, MARK ALLEN, Dismissed Restitution Made, 11/08/2004, Kent District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support.

PITTAWAY JR., DONALD JAMES, Dismissed Agreement, 05/06/2004, Monroe Circuit, 001 Child Support-Failing to Pay.

POLIKOWSKY, JAMES, Dismissed by the Court, 04/01/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

PONCIL, ERNEST OLIVER, Pled Guilty, 11/08/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 36 Months Probation, \$240,057.86 Restitution.

PONCIL, ERNEST OLIVER, Dismissed for Plea on Another Case, 11/08/2004, Kent Circuit, 001 Child Support-Failing to Pay.

PROXMIRE, JOHN WAYNE, Pled Lesser, 05/10/2004, Kalamazoo Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, \$85,623.50 Restitution.

RAUTENBERG, WALTER THOM, Pled Guilty, 08/27/2004, Oscoda Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Second Offense, Sentenced to: 9 Months County Jail, Restitution to be Determined by FOC.

RAUTIO, JAMES L., Pled Lesser, 10/19/2004, Wayne Circuit, 002 Child Support-Failing to Pay, 003 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$32,423.23 Restitution at \$540 per month.

REAGAN, MICHAEL PATRICK, Pled Lesser, 08/24/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$92,602.47 Restitution at \$220 per month.

REARDON, JOHN M., Pled Lesser, 03/29/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 36 Months Probation, \$14,400.00 Restitution.

REMICK III, JAMES, Dismissed Restitution Made, 05/17/2004, Monroe Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

REYNAERT, KIRBY K., Pled Guilty, 10/07/2004, Jackson Circuit, 001 Child Support-Failing to Pay, Sentenced to: 240 Days with Credit For 12 Days Served County Jail.

RIAS, CHARLES MICHAEL, Pled Guilty, 08/16/2004, Van Buren Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, 73 days in Jail with 73 days credit, \$44067.70 Restitution.

RICE, GEORGE, Dismissed by the Court, 06/29/2004, Van Buren Circuit, 001 Child Support-Failing to Pay.

RIOPELLE, HARRY A., Pled Lesser, 08/06/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$16,194.00 Restitution at \$270 per month.

RIOPELLE, HARRY ANTHONY, Pled Lesser, 08/06/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$5,000.00 Restitution at \$81.23 per month.

RISNER, ROBERT MICHAEL, Dismissed for Legal Issues, 08/23/2004, Jackson Circuit, 001 Absconding Or Forfeiting Bond.

ROBERTS, RONALD STEWART, Dismissed Restitution Made, 10/11/2004 Kent Circuit, 001 Child Support-Failing to Pay.

ROBERTS, RONALD STEWART, Dismissed Restitution Made, 10/11/2004, Kent Circuit, 001 Child Support-Failing to Pay.

ROBERTS, RONALD STEWART, Dismissed Restitution Made, 10/11/2004, Kent Circuit, 001 Child Support-Failing to Pay.

ROBINS, SCOTT, Pled Lesser, 09/01/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: \$33,000.00 Restitution.

ROCK, GARY, Dismissed Agreement, 05/12/2003, Genesee Circuit, 001 Child Support-Failing to Pay.

RODRIGUEZ, BENJAMIN, Dismissed Agreement, 12/10/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

ROMERO, INGRID L., Dismissed Agreement, 08/10/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

ROSE, ANTHONY JAMES, Pled Lesser, 02/13/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$20,500.00 Restitution.

ROSS, PAUL DANIEL, Dismissed Restitution Made, 09/17/2004, Genesee Circuit, 001 Child Support-Failing to Pay.

ROUX, STEVEN PATRICK, Dismissed Restitution Made, 09/29/2004, Oakland Circuit, 001 Child Support-Failing to Pay.

ROWLAND, JAMES EDWARD, Pled Lesser, 07/27/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$30,000.00 Restitution at \$500 per month.

RUSH, GREGORY LYNN, Pled Guilty, 10/19/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 36 Months Probation, \$20,000.00 Restitution at \$50/week.

RUSSELL, EDMUND DUANE, Dismissed for Legal Issues, 09/27/2004, Wayne Circuit, 001 Child Support-Failing to Pay.

SANDERS, RANDY SCOTT, Pled Guilty, 10/20/2003, Kent Circuit, 001 Desertion/Abandonment/Non-Support, 002 Child Support-Failing to Pay, Sentenced to: Elec. Monitor 1 year home, 5 Years Probation, \$121,682.00 Restitution.

SANTAROSSA, ROBERTO, Dismissed Agreement, 11/12/2003, Genesee Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

SCHIAN, JOSEPH HAROLD, Pled Guilty, 07/26/2004, Saginaw Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$35,679.10 Restitution.

SCHLUNT, NORMAN EARL, Dismissed Agreement, 06/14/2004, Berrien Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Second Offense.

SEMENIUK, TODD ANTHONY, Pled Lesser, 08/03/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 60 Months Probation, \$47,271.35 Restitution at \$500

per month.

SETSUDA, RICHARD ROY, Pled Lesser, 12/18/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

SEYMOUR, SPENCER LEE, Dismissed Restitution Made, 11/12/2004, Kent Circuit, 001 Child Support-Failing to Pay.

SEYMOUR, SPENCER LEE, Dismissed Restitution Made, 11/12/2004, Kent Circuit, 001 Child Support-Failing to Pay.

SHUMERSKI, PAUL MICHAEL, Pled Lesser, 08/24/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$36,641.00 Restitution.

SILVERTHORNE JR, JEFFREY A., Pled Guilty, 01/20/2004, Ionia Circuit, 002 Child Support-Failing to Pay, Sentenced to: 12 Months with Credit For 95 Days Served County Jail, 60 Months Probation, \$88,230.60 Restitution.

SILVERTHORNE, JR., JEFFREY A., Pled Guilty, 01/20/2004, Ionia Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$30,000.56 Restitution at \$349.13 per month.

SIMONS, JEFFREY KEVIN, Pled Guilty, 09/10/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$18,000.00 Restitution at \$300 per month.

SIMONS, JEFFREY KEVIN, Pled Guilty, 09/10/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$18,000.00 Restitution at \$300 per month.

SINGLETON, JR., JOSEPH, Pled Guilty, 11/06/2003, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, \$39,000 Restitution at \$150 per week.

SISSON, VIRGIL W., Pled Guilty, 06/18/2004, Berrien Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: 5 Years Probation, 365 Days in Jail, Credit for Program Time and Remaining Time on Tether.

SLAUGHTER, PATRICK NOLEN, Pled Guilty, 10/15/2004, Eaton Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: \$29,001.15 Restitution.

SMERDON, BRIAN, Dismissed Restitution Made, 07/23/2004, Saginaw Circuit, 001 Child Support-Failing to Pay.

SMITH, MICHAEL A., Dismissed Restitution Made, 03/08/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Second Offense.

SOUERS, JOHN CHRISTIAN, Pled Guilty, 03/04/2004, Berrien Circuit, 001 Child Support-Failing to Pay 002 Desertion/Abandonment/Non-Support, Sentenced to: 5 Years Probation, 90 Days Jail with Credit for 65 Days, \$36,780 Restitution at \$613 per Month.

SPAIN, JOSEPH EMMITT, Dismissed Defendant Died, 11/24/2003, Monroe Circuit, 001 Child Support-Failing to Pay.

SPEHAR, STEVEN JOHN, Pled Lesser, 01/07/2004, Wayne Circuit, 001 Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$45,107.25 Restitution.

STEELE, MARK JEFFERY, Dismissed Agreement, 06/02/2004, Oakland Circuit,

001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense.

STEPHENS, MICHAEL L., Pled Guilty, 09/20/2004, Allegan Circuit, 001 Child Support-Failing to Pay, Sentenced to: 120 Days with Credit For 27 Days Served County Jail, 60 Months Probation, \$21,996.23 Restitution.

STONE, GREGORY MICHAEL, Pled Guilty, 07/23/2004, Allegan Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 1 Year with Credit For 12 Days Served County Jail, 5 Years Probation, \$30,186.33 Restitution.

STOW, MARK EDMUND, Dismissed Restitution Made, 08/24/2004, Barry Circuit, 001 Child Support-Failing to Pay.

STRANGE, KEITH ALLOWAY, Pled Lesser, 10/12/2004, Oakland Circuit, 001 Child Support-Failing to Pay, Sentenced to: 24 Months Probation, \$16,366.85 Restitution.

STRICKER, JOSEPH JOHN, Pled Guilty, 05/25/2004, Bay Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 5 Years Probation, \$35,679.10 Restitution.

STUBBS, LOYAL E., Pled Guilty, 05/27/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$45,000 at \$750 per month.

SULLIVAN, BARRY, Dismissed Restitution Made, 10/01/2004, Berrien Circuit, 001 Child Support-Failing to Pay.

SULLIVAN, JAMES MICHAEL, Dismissed Agreement, 08/10/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

SUNDAY, MANUEL DENO, Dismissed Agreement, 10/22/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Fourth Offense.

SZUBINSKI, TIM ROGER, Pled Guilty, 10/28/2004, Kent District, 001 Child Support-Failing to Pay, 002 Disorderly Person-Non-Support, Sentenced to: \$921.90 Restitution.

TANNER, JAMES GRANT, Pled Guilty, 11/22/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 54 Days with Credit For 54 Days Served County Jail, 60 Months Probation, \$44,053.37 Restitution at \$400 per month.

THOMPSON, KENNETH LEE, Dismissed Restitution Made, 12/23/2004 Oakland Circuit, 001 Child Support-Failing to Pay.

THORNE, RICKY BLAINE, Pled Lesser, 02/14/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$34,865.00 Restitution.

THRALL, WILLIAM L., Dismissed Legal Issues, 04/20/2004, Genesee Circuit, 001 Child Support-Failing to Pay.

THRUSH, BRIAN LYNN, Pled Guilty, 05/21/2004, Eaton Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, 90 Days Jail with Credit for 67 Days, \$24,000 Restitution.

TOBAR, WILLIE E., Pled Lesser, 11/05/2004, Berrien Circuit, 001 Child Support-Failing to Pay, 002 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$25,304.49 Restitution at \$500 per month.

TOLBERT, ROBERT WILLIAM, Pled Guilty, 09/13/2004, Genesee Circuit, 001

Child Support-Failing to Pay, Sentenced to: 60 Months Probation, \$35,308.81 Restitution.

TUCKER, EDWARD CLARENCE, Pled Guilty, 05/13/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 4 Years Probation, \$16,704 Restitution.

VANDERHEYDEN, RICHARD J. Dismissed Agreement, 10/21/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

VANOVER, WARREN VICTOR, Dismissed Restitution Made, 02/26/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

VERHULST, WILLIAM GUY, Pled Guilty, 10/12/2004, Kent Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$47,094.95 Restitution.

VIRGIL, CARL DEMARDRIAN, Dismissed Restitution Made, 09/13/2003, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

VIZZACCERO, JOSEPH, Pled Guilty, 05/20/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Third Offense, Sentenced to: 6 Months with Credit For 8 Days Served County Jail, 2 Years Probation, \$30,638.00 Restitution.

WEBB, RAYMOND EARL, Pled Guilty, 06/04/2004, Allegan Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Second Offense, Sentenced to: 5 Years Probation.

WELSHEIMER, RANDY LEE, Dismissed Restitution Made, 08/23/2004, Kent Circuit, 001 Child Support-Failing to Pay.

WESLEY-LAWSON, JAMES B., Guilty Verdict Jury Trial, 03/18/2004, Ionia Circuit, 002 Desertion/Abandonment/Non-Support, 003 Habitual Offender-Third Offense, Sentenced to: 2-8 Years with Credit For 55 Days Served State Prison, \$35,381.00 Restitution.

WESTENDORF, RICHARD, Dismissed Restitution Made, 01/23/2004, Ottawa Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

WESTERMAN, JIMMY DALE, Pled Guilty, 11/17/2004, Lenawee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 6 Months with Credit For 71 Days Served County Jail, 60 Months Probation, \$49,683.08 Restitution.

WILKENS, ROD MICHAEL, Dismissed Restitution Made, 09/10/2004, Washtenaw Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

WILLIS, BRETT, Pled Guilty, 07/12/2004, Genesee Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$30,000 Restitution at \$500 per month.

WOJCIK, RAYMOND RICHARD, Dismissed Restitution Made, 04/16/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support.

WOLF, JR., BERNARD HARVEY, Dismissed Restitution Made, 12/08/2004, Kent Circuit, 001 Child Support-Failing to Pay.

WOODIN, JEFFREY, Pled Guilty, 03/12/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: 60 Months Probation, \$34,663 Restitution.

WOODS, SR., STEVEN M, Pled Lesser, 01/28/2004, Wayne Circuit, 001 Child Support-Failing to Pay, 002 Desertion/Abandonment/Non-Support, Sentenced to: \$15,000.00 Restitution at \$250 per month.

WORTHEN, JR., WALTER BELL, Pled Guilty, 08/16/2004, Genesee Circuit, Sentenced to: 5 Years Probation, \$16,752 Restitution at \$250 per month.

WRIGHT, LARRY ELTON, Pled Guilty, 09/10/2004, Berrien Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, 50 Days with Credit For 50 Days Served State Prison, \$42,891.12 Restitution at \$750 per month.

WRUCK, JAMES RONAN, Dismissed by the Court, 08/17/2004, Genesee Circuit, 001 Child Support-Failing to Pay.

YODER, KURTIS L., Pled Guilty, 06/04/2004, Van Buren Circuit, 001 Child Support-Failing to Pay, Sentenced to: 5 Years Probation, \$4,500 Restitution at \$75 per month.

ZARYCKI, JR., JULIAN, Pled Guilty, 07/01/2004, Livingston Circuit, 001 Child Support-Failing to Pay, Sentenced to: 90 Days with Credit For 18 Days Served County Jail, 5 Years Probation, \$60,000.00 Restitution.

ZOMERFELD, PAUL ANTHONY, Dismissed Agreement, 06/17/2004, Oakland Circuit, 001 Child Support-Failing to Pay, 002 Habitual Offender-Fourth Offense.

Criminal Prosecutions Division 2003 - 2004

PEOPLE v ADKINS, ROGER DEAN, 36th District Court, 4/19/2004. Defendant charged with Failure to Register with the Sex Offender Registry. Sentenced to three years probation with registration requirement, \$60 CVF, must maintain employment of at least 30 hrs/week.

PEOPLE v ROBERT AGUAS, Grand Traverse Circuit, 09/05/2003, Defendant charged with 5 counts blue sky laws – fraudulent schemes/statements and 1 count attempt blue sky laws - fraudulent schemes/statements. Judgment - Plea Agreement, Defendant sentenced to 1 1/2-5 years in prison, concurrent w/federal sentence; \$137,500 restitution; \$600 attorney fee.

PEOPLE v ALEXANDER J. AJEMIAN, Oakland Circuit, 05/22/2003, Defendant charged with 1 count conspiracy to commit securities fraud. Judgment - Plea Agreement, pled guilty to 1 count of Conspiracy to Commit Securities Fraud. Sentenced to 180 days in jail w/credit for 1 day; 18 months probation; restitution \$86 million; costs \$450; CVF fee \$60; supervision fee \$100/mo.; must report to federal authorities.

PEOPLE v TROY WAYNE ALBRIGHT, Wayne Circuit, 01/14/2003, charged with 1 count child sexually abusive activity and 1 count using computer to commit a crime. Pled as charged and sentenced to 6 months jail, \$1,000 fine, \$60 CVF, \$30 supervision fee, \$3,000 court costs, 5 years probation, no computer, participate in sexual offender treatment program, register as sex offender.

PEOPLE v TROY WAYNE ALBRIGHT, Wayne Circuit, 01/14/2003, charged with 1 count child sexually abusive activity and 1 count using computer to commit a crime. Pled as charged and sentenced to 6 months jail, \$1,000 fine, \$60 CVF, \$30 supervision fee, \$3,000 court costs, 5 years probation, no computer, participate in sexual offender treatment program, register as sex offender.

PEOPLE v YVONNE ALBRITTON, Wayne Circuit, 2/12/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v THOMAS EDSON ALLEN, Isabella Circuit, 7/1/04, Defendant charged with 4 counts of Computers - Internet-Accosting for Immoral Purposes; 4 counts Computers-Internet-Distributing Obscene Matter to a Minor; 2 counts Child Sexually Abusive Material - Possession; 1 count Computers- Using to Commit a Crime. Pled guilty as charged; sentenced 15 months - 10 years prison, \$65 CVF, \$350 attorney's fees, \$4250 reimbursement for investigation/prosecution.

PEOPLE v KERMAN ELLIS AMOS, Wayne Circuit, Defendant charged with Failure to Register; pled as charged, sentenced to 5 months Wayne County Jail, costs and fees.

PEOPLE v CHRISTOPHER ANDERSON, Michigan Supreme Court, 10/31/2003, Defendant pled guilty to Count IV Internet/Computers - Using to Commit and was sentenced on 5/30/02 to 12-20 months. Defendant has filed an appeal for reversal. Leave to Appeal – Denied.

PEOPLE v ANKNEY, CHARLES FRANCIS, Lenawee Circuit, 6/25/2004, Defendant charged with 2 counts Attempting to Communicate with another to commit a crime of accosting, enticing or soliciting a child for immoral purposes, and 2 counts of Attempting to communicate with another to commit crime of disseminating sexually explicit information to minor. Pled as charged; sentenced to 8 months jail, no access to a computer with internet capabilities; \$60 CVF, \$1490 costs and \$12.50/month supervision fees.

STATE OF MICHIGAN, DEPT. OF TREASURY v KARIM H AODISH, Wayne Circuit, 03/18/2003, charged with 1 count possess, acquire, transport or offer for sale 3,000 or more cigarettes or tobacco products with wholesale price of \$250,000. Judgment – Plea Agreement, sentenced to 3 years probation; \$500 fine; \$495 court costs; \$60 crime victim assessment fee; \$360 supervision fee.

PEOPLE v DENNIS RANDALL ARNDT, Wayne Circuit, From 5/6/04 through 7/19/04, Defendant used the Internet to chat with undercover persona posing as a 14 year old girl . 7/19/04, pled as charged. Sentenced to two years probation, with the first year in the W.C.J., plus costs.

PEOPLE v DAVID ASHLEY, Ingham Circuit, , Defendant charged with 4 counts of child sexually abusive activity-distributing or promoting; 4 counts of Computers-using to commit a crime-maximum imprisonment of 4 years or more but less than 10 years. Pled guilty to two counts of Child Sexually Abusive Activity, sentenced to 12 months jail, six months probation, \$60 CVF, \$60 DNA, attorney fees \$500. Sentenced to five years probation with the first year in the Ingham County Jail with no work release. Upon release from jail he is required to complete sex offender therapy and pay costs and fees; Judgment - Plea Agreement.

PEOPLE v ELIZABETH AYERS, Wayne Circuit, 5/28/2003, Charged with welfare fraud; Judgment/Plea Agreement pled and sentenced to 3-years probation, 150 hours community service and restitution of \$2,093.00.

PEOPLE v ROBERT MICHAEL BAGETTA, Oakland Circuit, 04/14/2003, charged with 1 count embezzlement by agent or trustee \$1,000 or more but less than \$20,000 and 3 counts of insurance-fraudulent acts. Ped guilty to counts 1 and 3; sentenced to 2 to 4 years on count 1 and 2 to 5 years on count 3, restitution \$16,862; DNA \$60, CVF \$60.

PEOPLE v BOBBIE DOUGLAS BAKER, Wayne Circuit, 1/15/2003, Defendant charged with 5 counts Election Law Violation - Improper Return, Absentee Ballot, and 3 counts Conspiracy of Election Law Violation - Improper Return of Absentee Ballot. Judgment - Plea Agreement, Defendant pled to 5 counts of ABS Ballot/IMP and 2 counts of Consp ABS Ballot/IMP and was sentenced to 1 year probation.

STATE OF MICHIGAN, DEPT. OF TREASURY v YOUSSEF AOUN BAKRI D/B/A/ NEW BALTIMORES SMOKERS SHOP, Macomb Circuit, 05/05/2003, Criminal prosecution for Tobacco/Sales and withholding tax violations relating to joint management of the Smokers Shop. Judgment - Plea Agreement, Defendant pled guilty to count 1 in return for dismissal of other counts. Sentenced to 2 years probation, 1st 60 days in jail; restitution \$26,399; 50 hours community service; CFV \$60; DNA \$60; \$10 per/mo costs.

PEOPLE v GARY DAVID BALL, Wayne Circuit, 05/01/2003, Defendant charged by the FCMLS with 1 count maintaining a drug house; Verdict - Court, 5/1/03 Guilty by jury; sentenced to probation.

PEOPLE v JODIE ANNE BALL, Wayne Circuit, 11/19/2003, Defendant Ball charged with 1 count Embezzlement - Agent or trustee \$1,000 or More But Less Than \$20,000. Judgment - Plea Agreement, Defendant pled as charged. Sentenced to 1 year probation; \$19,850.00 restitution; \$200.00 costs; \$20.00/per month supervision fee.

PEOPLE v TIMOTHY BANDY, Ingham Circuit, 04/02/2003, charged with 3 counts false pretenses over \$100. Judgment – Plea Agreement, Defendant sentenced to 3 years probation (in Washtenaw County); \$30,000 restitution to FIA.

PEOPLE v KENNETH IRWIN BANKS, Wayne Circuit, Defendant failed to register - Defendant not guilty, claiming that he attempted to register with Detroit Police,

who informed him he can only register at certain times of the year.

PEOPLE OF THE STATE OF MICHIGAN v BRIAN COLEMAN BARGE, Oakland Circuit, 8/25/2003, Defendant charged with 1 count Insurance - Fraudulent Acts. Judgment - Plea Agreement, Defendant pled guilty as charged. Sentenced to 24 months probation; \$31,077.40 restitution @ \$1,500/month; \$960.00 supervision fee @ \$40.00/month; \$600.00 costs; \$60.00 Crime Victim Fee.

PEOPLE v DIANE SUE BARNETT, Macomb Circuit, 04/15/2003, charged with one count of attempted insurance fraud. Judgment - Plea Agreement, Defendant pled guilty and was sentenced to 1 year probation; \$4,150 restitution; Crime Victims Fee \$60; DNA fee \$60. Court will consider term upon full payment of restitution.

PEOPLE v SHARIA BARR, Wayne Circuit, 9/4/2003, Charges with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hour community service and restitution of \$6,118.00.

PEOPLE v STEVEN BAUDER, 60th District Court, 10/27/2003, Defendant charged with one Count Sex Offender Failure to Register. Defendant convicted of 2nd degree murder and CSC and received a life sentence. Arrest occurred prior to our warrant and didn't want to dismiss until trial was complete.

PEOPLE v JOHN EDWARD BEAN, Barry Circuit, 02/06/2003, charged with Computers - Internet - Communications with Another to Commit Crime, Computers - Using to Commit a Crime, Child Sexually Abusive Activity - Distributing or Promoting. Pled guilty; sentenced to 23 months-10 years in prison; \$60 DNA fee; \$60 CVF, and \$50,000 in fines.

PEOPLE v CLARENCE OLIVER BEAN, JR., Lake Circuit, 10/16/2001, MSP requests AG assistance in a 20 year old homicide involving a Lake County resident, Diane Chorba. Ms. Chorba has been missing for 20 years (her body has not been discovered). Evidence indicates she was murdered by her then boyfriend, Ollie Bean. Grand jury indictment issued 2/13/2001 charging Bean with murder. Convicted by jury of second degree murder; sentenced 10/16/2001 to 30-60 years in prison.

PEOPLE v DIANE LYNN BECKETT, Kent Circuit, 12/08/2003, Employee of First American Title Company, charged with 2 counts Embezzlement - Agent or Trustee \$20,000 or More for embezzling approximately \$286,000. Defendant sentenced to 1 year in jail plus restitution of \$290,000. Judgment - Plea Agreement, Defendant pled guilty as charged to 2 counts of Embezzlement Over \$20,000. Sentenced to 1 year in jail; 60 months probation; restitution \$290,000 in installments of \$25/mo; crime victim fee \$60; state costs \$120.00.

PEOPLE v JOAN BENNETT, Wayne Circuit, 1/14/2004, Defendant charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v CARLA BENTLEY, Wayne Circuit, 2/12/2004, Defendant charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v SHERIKO RASHELL BERRY, Ingham Circuit, 01/22/2003, charged with 1 count embezzlement by agent and 4 counts making or permitting false tax returns. Pled guilty to embezzlement by agent or trustee over \$1,000 but less than \$20,000; sentenced to 60 days jail, \$8,078 restitution, fines, costs, \$300 probation oversight fee, \$60 cvf, DNA fee, \$150 forensic lab fee, community service, and 18 months probation.

PEOPLE v STACIA BERRY, Wayne Circuit, 4/1/2003, welfare fraud of \$11,620;

Dismissed - By Court, Case dismissed and approved for recoupment action.

PEOPLE v BINGHAM, Wayne Circuit, Defendant charged with 1 count Sex Offender - Failure to Register. Pled guilty; sentenced to 2 yrs probation; \$60 CVF, court costs \$247.

PEOPLE v BETSY ANN BLACK, Kent Circuit, 02/28/2003, charged with 1 count delivery of controlled substance-Ecstasy. Pled guilty; sentenced to tether and probation.

PEOPLE v DORIE BLAIR, 61st District Court, 10/10/2003, Employee of the Kent County Sheriff Dept. accused of assaulting a female employee. Charged with 1 count of CSC - Fourth Degree. Order - Bound Over, Defendant bound over to circuit court.

PEOPLE v BLUMENTHAL, THOMAS, Wayne Circuit, Defendant charged with 3 cts of Child Sexually Abusive Material-Production; 3 cts Possession of Child Sexually Abusive Material; 3 cts Computers-Using to Commit Child Sexually Abusive Material-Production; 3 cts Computers-Using to Commit Child Sexually Abusive Material-Possession; Habitual Offender-3rd notice. Defendant pled to Counts 1 & 2 - Will be serving his sentence concurrent with a felony fire arms conviction.

PEOPLE v BLUNT, DEON JEROME, Wayne Circuit, , Defendant, SOR, Failure to Register - pled as charged; sentenced to 90 days in jail with 66 days credit.

STATE OF MICHIGAN v FRANCES JO BOLS, Wayne Circuit, 12/8/2003, charged with welfare fraud; Dismissed - By Court.

PEOPLE v THOMAS W. BONNER, 23rd District Court, 09/24/2003, Judgment - Plea Agreement, Defendant pled to 1 Count Larceny by Conversion (over \$1,000 and under \$20,000). 9/24/03 Defendant sentenced to 12 months probation with fines, costs and supervision fees totaling \$945 (or 100 hours community service); \$11,577.08 Restitution.

PEOPLE v THERESA BOOKER, Wayne Circuit, Defendant charged with welfare fraud. Defendant fraudulently obtained welfare benefits in the amt of \$618.00 from the SOM. Warrant/case outstanding; Dismissed - By Court, Defendant no longer resides in Michigan.

PEOPLE v MONTE BRADLEY, Wayne Circuit, 2/19/2004, Defendant charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE OF THE STATE OF MICHIGAN v SHAWN BRASWELL, Oakland Circuit, 10/30/2003, Defendant is charged with 1 count Criminal Enterprises -- Conducting and 3 counts Insurance - Fraudulent Acts; Judgment - Plea Agreement, 7/13/03 Plea entered to 2 Counts Fraudulent Acts; 1 Count Criminal Enterprise - Conduct and 1 Count Insurance Fraudulent - Acts dismissed; 10/30/03 Sentenced to 2 years probation, 11 days jail, \$1,440 supervision fee, \$500 costs, \$6,428.47 restitution, \$60 CVRA, \$60 state minimum costs.

STATE OF MICHIGAN v LATOYA BRAZIER, Wayne Circuit, 12/1/2003, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v ANDREW ALLEN BRENNER, Jackson Circuit, 10/22/2003, Charged with 1 count Misconduct in Office and 1 count Public Officials--Willful Failure to Uphold Law; Verdict - Acquittal, 10/22/03 Jury verdict, not guilty.

PEOPLE v CAMERON ALAN BRINKER, Allegan Circuit, 04/25/2003, Charged with 1 count embezzlement by agent or trustee and 1 count forgery of license

documents. Pled guilty 11/4/02; sentenced 4/25/03 to 6 months jail, 5 years probation, \$60 CVF, \$60 DNA fee \$1,500 court costs, \$1,200 probation oversight, restitution of \$207,124.76.

PEOPLE v BERTHA BROWN, Wayne Circuit, 7/31/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$10,226.00.

PEOPLE v ELIZABETH JEAN BROWN, Alpena Circuit, Defendant, a former FIA employee, charged with 6 counts false pretenses and 4 counts forgery. Pled guilty to 2 counts of false pretenses over \$20,000. Placed on delayed sentence; date to be set. Paid partial restitution of \$43,160.94. Rec'd \$3,111.55 restitution on 4/29/04; \$262.00 on 6/1/04, and \$200 on 7/23/04. Sentenced to jail.

PEOPLE v FRANK LEROY BROWN, 97th District Court, Complaint filed 10/20/03 to 1 Count Sex Offender Failure to Register. Defendant arrested and serving time in Minnesota for Failure to Register.

PEOPLE v BROWN, GLENN, Wayne Circuit, on 5/7/04, Mr. Brown pled guilty and was sentenced to one count of Failure to Register in front of the Honorable Maggie Drake. Judge Drake sentenced defendant to 90 days probation plus court cost and attorney fees.

PEOPLE v KIESHA BROWN, Wayne Circuit, 8/28/2003, charged welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,449.00.

PEOPLE v STACY BROWN, Wayne Circuit, 7/31/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$6,571.00.

PEOPLE v LOUTANA BRYANT, Wayne Circuit, 3/31/2004, Defendant charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution to the MFIA in the amt of \$5,132.00.

PEOPLE v BUCKLAND, JAMES PAUL, Court of Appeals, Opinion of the Court of Appeals was received and the Court affirmed the decision of the lower court.

PEOPLE v JUAN PABLO BUENO, Oakland Circuit, 50 DC traffic clerk. Defendant is charged w/1 ct Solicitation to Embezzle \$1,000 to \$20,000 and 1 ct Solicitation of False Pretenses - \$1,000.00 or More But Less Than \$20,000.00. Defendant pled to 1 count of solicitation to commit False Pretenses. Defendant sentenced, 18 mos probation, 6 months jail time, court fees of \$450, CVRF \$60, State Costs \$60, supervision \$1296, comply with DNA testing, drug testing.

PEOPLE v ALVIN J BURCHAM, Court of Appeals, Charged with 1 count Conversion of funeral contracts in violation of the prepaid funeral contract funding act; Pled no contest to one count of conversion of funeral contracts; sentenced 8/29/00 to 12 months jail, 5 years probation, \$5,000 fines and \$7,500 costs, \$60 CVF, and \$79,000 restitution. Burcham filed claim of appeal appealing his sentence regarding restitution. (COA Affirmed lower court - rec'd 7-29-2003); Affirmed - In Full.

PEOPLE OF THE STATE OF MICHIGAN v CORNELL TRAVIS BURNS, Oakland Circuit, 11/03/2003, Defendant is charged with 1 count Criminal Enterprises -- Conducting and 5 counts Insurance - Fraudulent Acts; Judgment - Plea Agreement, 9/29/03 Plea entered to 5 counts Insurance Fraudulent - Acts; 1 Count Criminal Enterprise - Conduct dismissed, 11/3/03 Sentenced to 48 months probation, \$2,400 costs, \$22,705.53 restitution, \$1,980 supervision fee, \$60 CVRA, \$300 state minimum costs, 1 year jail.

PEOPLE v JOHN BURNS, Oakland Circuit, 12/23/2003, Defendant charged with 15 counts of Child Sexually Abusive Material & 1 count Using a computer to commit a crime; pled to 2 counts CSC, 1 count using a computer to commit a crime; sentenced to 5 yrs probation, first year in jail, register as sex offender, no contact with minors (other than with 4 year old daughter but only as allowed by protective services), no computer or Internet access.

PEOPLE v CHRISTOPHER BURROWS, Oakland Circuit, 03/20/2003, Defendant charged with 4 counts Financial Transaction Device -- Stealing/Retaining Without Consent. Judgment - Plea Agreement, Defendant pled to 4 counts of MCL 750.157N1. Sentenced to 2 years probation; restitution \$2,891; costs 600; Sup \$960 @ \$40.00/mo; \$60 CVF fee; \$60 DNA fee.

PEOPLE v RICHARD MILTON CALL, JR, 16th District Court, Defendant charged with downloading pornography (sometimes child porn). Defendant and her husband participated. Sentenced to 1 year probation and psychological evaluation.

PEOPLE v CAMPBELL, JAMES, Wayne Circuit, SOR offender, pled as charged with Failure to Register. Sentenced to one year probation.

PEOPLE v KIMBERLY CANNON, Wayne Circuit, 10/9/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v SHAE CARD, Wayne Circuit, 5/24/2004, Defendant charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communication and restitution to the State of Michigan FIA.

PEOPLE v VALERIE CARR, Wayne Circuit, 01/21/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$6,322.

PEOPLE v DAYLINE CARTER, Wayne Circuit, 10/16/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v HERMAN CARTER, Montcalm Circuit, 01/03/2003, CSC complaint referred by Montcalm Co. Pros. Ofc. because of conflict. Carter charged with 2 counts CSC 2nd. Pled as charged; sentenced to 6 months jail, \$200 fine, \$300 costs, \$60 cvf, \$60 DNA, \$3,900 oversight, 60 months probation.

PEOPLE v KENNETH CARTER, Wayne Circuit, 3/26/2004, charge with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 1-year probation, costs/fees and restitution to the MFIA in the amt of \$580.95.

PEOPLE v CARTER, KEVIN MARK, Wayne Circuit, Defendant charged with 9 counts of Child Sexually Abusive Material-Possession, and 1 count of Using a Computer to Commit a Crime. Pled to 4 counts of Child Sexually Abusive Material-Possession; sentenced to 12 mos probation with 90 days in jail (suspended if he complies with probation), in addition to court fees and fines, 8 days on alternative work program and attend 10 meetings of the ETRS Sexual Offender program.

PEOPLE v LISA CARTER, Wayne Circuit, 01/27/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$30,955.00.

PEOPLE v RALONDA CARTER, Wayne Circuit, 8/26/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hour community service and restitution of \$4,362.

PEOPLE v JOHNATHON C. CHASE, Wayne Circuit, Defendant charged with Child

Sexually Abusive Material and Computers-Communicating with Another to Commit Crime. Pled guilty to Count II-Computers.; sentenced to 3 years probation with first 5 months in jail. No contact with children under 16, no computer use, pay costs and fees.

PEOPLE v HILLIE LARINCE CHILDERS, Oakland Circuit, Defendant charged with racketeering for a string of thefts at trucking terminals totaling \$400,000 in losses. Convicted of breaking and entering Sentenced 9/3/03 - 78 months to 20 years, Restitution of \$20,096.10, \$60 for crime victims rights fund.

PEOPLE v AHMAD CHOUCAIR, Oakland Circuit, 06/02/2002, Charged with 1 Count Obtaining Money Under False Pretenses. Judgment - Plea Agreement, 5/29/02 Plea entered to 1 Count Obtaining Money by false Pretenses of \$20,000 or more. Defendant failed to appear at sentencing and a bench warrant was issued and entered in into the LEIN system. U.S. Customs was notified. Should Mr. Choucair be arrested on the bench warrant, case to be reopened.

PEOPLE v THOMAS WESLEY CLARK, Macomb Circuit, 3/18/2004, Defendant charged with 1 count Attempt False Pretenses - \$20,000 or More and 1 count False Pretenses - \$200.00 or More But Less Than \$1,000.00; Judgment - Plea Agreement, Disposition - Sentence: Probation 1 yr 6 mo; 50 hours Community Service; Restitution \$960; State Cost \$60; Crime Victim Assess \$60; Supervision Fee \$360 @ 20 /mo; Court Costs \$360 @ \$20/mo; Repay Atty Fees; Count 2 Dismissed.

PEOPLE OF THE STATE OF MICHIGAN v TOMMY R. CLARK AKA BURTON CLARK II, Oakland Circuit, 11/24/2003, Defendant is charged with 1 count Criminal Enterprises -- Conducting and 4 counts Insurance - Fraudulent Acts. Judgment - Plea Agreement, 9/26/03 Plea entered to 1 Count Insurance - Fraudulent Acts; 3 Counts Insurance - Fraudulent Acts and 1 Count Criminal Enterprise - Conduct dismissed; 11/24/03 Sentenced to 24 months probation, \$600 costs, \$20,220.94 Restitution, \$60 CVRA, \$60 state minimum costs, attorney fees.

PEOPLE v JOHN CLEMENTS, Oakland Circuit, 07/11/2003, 1 Count Embezzlement by Agent or Trustee. Defendant pled to 1 Count Attempt Embezzlement \$20,000 or more; & 1 Count Embezzle \$20,000; Sentenced to 1 1/2 years prison; \$128,483.48 Restitution; \$60 CVRA; \$60 DNA.

PEOPLE v COLEMAN, LANCE, Wayne Circuit, 4/16/2004, charged with failure to register with the Sex Offender Registry. Pled as charged, sentenced to 2 years probation with registration requirement, no association or contact with children under 16 years, \$730 costs and fees, \$60 CVF.

PEOPLE v WILLIE COLT, Wayne Circuit, 5/25/2004, Charged with welfare fraud, liable for 1/2 of \$4,532; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communication and restitution to the State of Michigan FIA.

PEOPLE v HOPE COTTON, Wayne Circuit, 7/31/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$3,380.00.

STATE OF MICHIGAN v INEZ COX, Wayne Circuit, 12/1/2003, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v ERIC MATTHEW CRAWFORD, Macomb Circuit, 01/15/2003, charged with 1 count distribution of child pornography. Pled guilty; sentenced to 3 years probation, \$60 DNA fee, \$360 court costs, \$360 oversight costs, \$60 CVF.

PEOPLE v PENNY L. CRUZ, Wayne Circuit, 1/30/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-year's probation, 150 hour community service and restitution.

PEOPLE v JOHN PATRICK CURRY, Kalamazoo Circuit, 10/28/2003, 2 counts - Embezzlement - Agent or Trustee \$20,000.00 or More; 3 counts - Blue Sky Laws - Fraudulent Schemes/Statements; Plea entered to 2 Counts blue Sky Laws - Fraud; 10/28/03 Sentenced to 11 months jail, credit for 330 days, \$1,185,730 restitution, \$60 CVR.

PEOPLE v ANGELO D'ALESSANDRO, Oakland Circuit, 04/16/2003, D'Alessandro charged with 1 count involuntary manslaughter and 1 count violation of MIOSHA safety regulations. Order - Not Bound Over, Defendant's motion to quash the information was granted by the court on 4/16/03.

PEOPLE v RAMZI DAKHLALLAH, 21st District Court, Defendant charged with 3 counts sales tax fraud. Defendant pled guilty. Sentenced to probationary term. First \$40,000 of \$200,000 restitution - paid at sentencing.

STATE OF MICHIGAN v PHYLLIS DANIELS, Wayne Circuit, 12/1/2003, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v TAMARA DATES, Wayne Circuit, 01/21/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$6,987.

PEOPLE v DAYMONYAER SIVAD DAVIS, Kent Circuit, 03/17/2003, Charged by the FCMLS with 1 count Delivery of a Controlled Substance-Ecstasy. Pled guilty. 3/17/03 sentenced to probation.

PEOPLE v KENNETH JEROME DAVIS, 86th District Court, Sex Offender - Failure to Register - waived the exam, pled guilty to Failure to Comply with Reporting Requirements (misdemeanor) and was immediately sentenced to 47 days in the county jail, \$345 fine and requirement to immediately register.

PEOPLE v CYNTHIA DEAN, Wayne Circuit, 12/1/2003, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v EVLIN DEAN, Wayne Circuit, 4/20/2004, charged with welfare fraud, Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service court costs/fees and restitution of \$4,008.

PEOPLE v LEO STANLEY DESROCHER, Oakland Circuit, Defendant charged with use of Internet to commit crime and distribute obscene matter to a minor. Defendant pled guilty on Counts 1 & 2 and sentenced to 24 mos-20 yrs; also to pay \$60 DVF and \$120 costs.

PEOPLE v JEROME DEWALD, Ingham Circuit, 10/15/2003, Charged with 2 Counts False Pretenses, 2 Counts Common Law Fraud, 2 Counts Larceny by Conversion, and 1 Count Conspiracy. Resentencing was 10-15-03. Verdict - Jury, 6/27/03 Defendant convicted of 1 Count False Pretenses \$1,000 or more, but less than \$20,000, 2 Counts Fraud Common Law and 2 Counts Larceny by Conversion \$20,000 or more; 10/15/03 Defendant sentenced to 16-60 months jail as to False Pretenses, 23-120 months jail as to Fraud, 23-120 months as to Larceny (sentence is to run concurrent); \$708,187.50 less money seized of \$172,558.99 Restitution, \$60 CVRA, \$400 Costs. 75 days jail credit.

PEOPLE v ZAKIA DHAIFULLAH, Wayne Circuit, Charged with welfare fraud; Dismissed - By Court, Defendant no longer resides in Michigan.

PEOPLE v DAVID MICHAEL DUCHAM, Ottawa Circuit, 11/5/2003, Defendant charged with 1 count false pretenses over \$1,000 but less than \$20,000 and Habitual Offender 4th Offense. Judgment - Plea Agreement, Defendant pled guilty as charged.

Sentenced to 36 mos. probation; restitution \$9,415.00; fine; \$1,000.00; CV Fund \$60.00; oversight \$50/mo.; 100 hrs community service.

PEOPLE v DURHAM, RANDY ALLEN, 26-2 District Court, Defendant charged with 5 counts of Absentee Ballot-Improper Possession and two counts of Absentee Ballot Tampering. Entered a plea at AOL. Sentenced to 18 months probation and a \$500 fine.

PEOPLE v DONALD DEAN DUVALL, AKA COCO, Oscoda Circuit, 10/29/2003, Defendant charged with 2 counts of Homicide - Murder 1st Degree - Premeditated. Jury verdict - Defendant found guilty of 1st degree premeditated murder. Sentenced to life in prison with no chance of parole.

PEOPLE v RAYMOND WILBUR DUVALL AKA JR. DUVALL, Oscoda Circuit, 10/29/2003, Defendant charged with 2 counts of Homicide - Murder 1st Degree - Premeditated. Jury Verdict - Defendant found guilty of 1st degree premeditated murder. Sentenced to life in prison with no chance of parole.

PEOPLE v DANIEL DYE, Wayne Co., 2/6/2004, Defendant charged and pled guilty to Using Computer/Internet to distribute obscene matter; Using Computer/Internet to solicit minor for immoral purposes, sentenced to two years probation, register as sex offender, complete sex offender treatment program.

PEOPLE v DYER, ANTHONY EUGENE, 36th District Court, 4/19/2004, SOR charged with Failure to Register. Pled as charged; sentenced to 2 yrs probation, enrollment in a continuing education program to obtain GED, seek and maintain employment, cannot live where there is a child under 16 or provide care for anyone under 16. Shall register anytime he leaves present address pursuant to Sex Offender Act.

PEOPLE v RICHARD EDWARDS, JR., 2-1 District Court, SOR, Charged with 1 Count Sex Offender Failure to Register; Serving time in Kentucky.

PEOPLE v CHARITA LYNETTE ELLEDGE, Wayne Circuit, 01/14/2003, charged with 5 counts obtaining personal identity information without authorization; 3 counts unauthorized access to computer; 5 counts using computer to commit crime; 2 counts unauthorized credit application; 3 counts illegal sale/use of financial transaction device; 1 count resisting & obstructing police officer. Pled to 3 counts unauthorized access to computer and 1 count financial transaction device; sentenced to 11 months jail, \$60 CVF, \$110 supervision fee, \$275 court costs, \$60 DNA fee.

PEOPLE v GRETA ELLINGTON, Wayne Circuit, 10/16/2003, charged with welfare fraud (Co-defendant Dennis Williams); Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communit service and restitution.

PEOPLE v CLYDE ELLIOTT, Oakland Circuit, Failure to Register as Sex Offender; sentenced to 90 days jail with 74 days time served. Required to maintain his SOR obligations.

PEOPLE v SHANNON ELMORE, Wayne Circuit, 11/17/2003, welfare fraud, \$3,232; Dismissed - Lack of Progress, Case dismissed due to insufficient evidence.

PEOPLE v DALE ESSENMACHER, Oakland Circuit, 1/9/2004, Defendant charged with 7 counts Blue Sky Laws - Borrowing from Customer. Judgment - Plea Agreement, Defendant pled guilty to 2 counts of Blue Sky Laws - Borrowing from Customer. Sentenced to 5 years probation; \$225,449.97 restitution at the rate of \$3,750/mo.; \$1,500 costs; \$8,100 supervision fees at the rate of \$135/mo; \$60 CV Fee; \$120 state minimum costs.

PEOPLE v DONALD JEAN FARLEY, Wayne Circuit, 2/20/2004, Defendant charged with 10 counts of child sexually abusive activity, each a seven year felony.

Pled guilty to four counts; sentenced to three years probation, one year in Wayne County Jail, sex offender therapy, no computers or contact with children under the age of 16, attorney fees and costs.

PEOPLE v CAROLYN FAVORS, Wayne Circuit, 5/24/2004, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, and restitution to the State of Michigan FIA.

PEOPLE v LEO FENNELLY, Livingston County, Accused of child sexually abusive activity involving the Internet. This is the second investigation/case against Defendant. When he was arrested on the Wayne County case he admitted to having met and abused a minor female from Livingston County. This is the Livingston County inv. 7/30/2003, pled as charged; sentenced 6-20 yrs, \$60 CVF.

PEOPLE v FRANK FIELDS, 25th District Court, 12/10/2003, Charged with 1 Count Election Law Violation - Improper Return, Absentee Ballot, 1 Count Election Law Violation, Tampering with Absentee Ballot and 1 count Conspiracy of Election Law Violation - Improper Return of Absentee Ballot; Dismissed - By Plaintiff, 12/10/03 Nolle Prosequi entered dismissing case due to defendant's death.

PEOPLE v MILO LORENZO FITZPATRICK, Calhoun Circuit, 07/09/2001, Charged with assault with intent to murder and felony firearm for trying to kill a Battle Creek police officer. Found guilty by jury of all counts of assault with intent to murder and felony firearms; sentenced to life in prison.

PEOPLE v STEVEN E. FORD, Mackinac Circuit, 10/24/2003, Defendant charged with 1 Count CSC-4th Degree and 1 Count Common Law Misconduct in Office. Judgment - Plea Agreement, 9/15/03 Plea entered to Assault - Aggravated; 1 Count CSC 4th Degree Mul Var and 1 Count Common Law Offenses dismissed; 1/24/03 Sentenced to 60 days jail, \$200 fines, \$45 other, \$1,000 costs, \$650 restitution, 24 months probation.

PEOPLE v TERRY LEE FRAKES, 91st District, Defendant charged with 1 Count Sex Offender Failure to Register. Serving time in Texas for Failure to Register.

PEOPLE v CLARISSA LYVENIA GALLOWAY, Wayne Circuit, 5/29/2003, Charged with welfare fraud; Judgment - Plea Agreement, Judgment/Plea Agreement pled and sentenced to 3-years probation, 150 hours community service and restitution of \$2,719.00.

PEOPLE v MANUEL DEJESUS GAMBOA, Kent Circuit, 11/4/2003, Defendant charged with 1 count conspiracy to deliver over 45 kilos of marijuana by the FCMLS. Order - Motion Nolle Prosequi GRANTED - case dismissed w/o prejudice; Dismissed - By Court.

PEOPLE v NAIEL NADHIM GAPPI, Wayne Circuit, 08/19/2003, 9/27/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, Plea entered to PWID Marijuana; Felony Firearm charged dismissed at sentencing. Defendant was sentenced to 12 months probation, fines and costs.

PEOPLE v NIKITA JARRELL, Wayne Circuit, 8/23/2004, Charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-yrs probation, 150 hours comm svc, costs/fess and restitution to the MFIA.

PEOPLE v DANIEL LEE GIBLER, Jackson Circuit, 10/22/2003, ICharged with 1 Count Misconduct in Office and 1 Count Public Officials--Willful Failure to Uphold Law; Verdict - Acquittal, 10/22/03 Jury Verdict before Judge Chad Schmucker, on Count 1 Misconduct in Office, hung jury; and Count 2 Willfull Failure to Uphold the Law, not guilty.

PEOPLE v ALICE GILBERT, Wayne Circuit, 3/26/2004, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution to the MFIA in the amount of \$21,104.

STATE OF MICHIGAN v DENA GILMORE, Lenawee Circuit, 02/13/2003, charged with 3 counts violation of cigarette tax act. Pled to one felony count; sentenced to 5 years probation and 6 months in jail.

STATE OF MICHIGAN v DENA GILMORE, Lenawee Circuit, charged with 3 counts violation of cigarette tax act. Pled to one felony count; sentenced to 5 years probation and 6 months in jail.

PEOPLE v GLOMSKI, JOEL, Oakland Circuit, 9/29/04, Defendant charged with 1 count of Child Sexual Abusive Activity and 2 counts of Computers-Internet Communicating to Commit. Pled to Counts 1 & 2; sentenced to 2 yrs-20 years and 5 months, \$60 CVF, \$120 State costs. Defendant sentenced to prison for 2-20 years on Count 1 and 6 mos-4 yrs on Count 2.

PEOPLE v STEVEN GLUSKIN, 36th District Court, 03/05/2003, charged with 1 count possession with intent to deliver 5-45 kilograms of marijuana. Pled guilty; sentenced to 2 years probation.

PEOPLE v DEBORAH GOODEN, 36th District Court, 12/02/2003, ctn 96-99-000014-01 charged with 1 Count Food Stamp Fraud over \$1,000. Gooden was data terminal operator at Greenfield/Joy district office and caused false food stamp supplements to be issued to herself; Judgment - Plea Agreement, Pled, sentenced.

PEOPLE v MICHELLE GORDON, Wayne Circuit, 5/28/2003, Charged with welfare fraud; Judgment - Plea Agreement, Judgment/Plea Agreement pled and sentenced to 3-years probation, 150 hours community service and restitution of \$7,708.00.

PEOPLE v LATOSHA GROCE, Wayne Circuit, 4/20/2004, charged with welfare fraud, Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service, court costs/fees and restitution of \$9,120.

PEOPLE v TOCHI GROVES, Wayne Circuit, 4/21/2004, charged with welfare fraud (Co-defendant Barcele Groves) liable for 1/2 of \$4,532; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service, court costs/fees and restituiion of \$2,266 (1/2 of the \$4,532; co-defendant Barcele Knox).

PEOPLE v EUGENE R. GRULKE, 88th District Court, 08/27/2003, Defendant charged with 1 count Unemployment Compensation Fraud - False Statement/Misrepresentation - Loss of \$1,000 to \$25,000. Judgment - Plea Agreement, Defedant pled as charged. Sentenced to 1 year probation; restitution \$7,800 with 90 days in jail if money is not paid.

PEOPLE v GUY, MATT, Kent Circuit, 2/20/2004, Defendant charged with 2 counts of using a computer to commit a crime and 3 counts of distributing obscene matter to children. Pled guilty to 1 count of using computers to commit a crime and 2 counts of distributing obscene matter to children; sentenced Count 2 to 16 mos-10 years and Counts 4&5 - 16 mos-4 years, register as sex offender, \$60 CVF and \$180 state costs.

PEOPLE v AMY HALL, Wayne Circuit, 01/09/2003, charged with welfare fraud; pled and sentenced to 3 years probation, 150 hours community service and restitution of \$6,452.00.

PEOPLE v DAVID HALL, Wayne Circuit, 01/31/2003, charged with embezzlement by public officer; pled guilty and sentenced to 18 months probation, \$60 DNA, \$600 costs, restitution to be determined.

PEOPLE v GAIL HALL, Wayne Circuit, 01/21/2003, former FIA employee charged with welfare fraud; pled guilty to 1 count of false pretenses over \$1,000; sentenced to 3-years probation, 150 hours community service and restitution of \$3,423.56.

PEOPLE v JOSEPH R HALL, Wayne Circuit, Defendant charged with Conspiracy to Commit False Pretenses and False Pretenses. Judgment - Plea Agreement Closed pursuant to plea agreement.

PEOPLE v PATRICIA HAMPTON, Wayne Circuit, 01/09/2003, charged with welfare fraud; pled and sentenced to 3 years probation, 150 hours community service and restitution of \$3,558.00.

PEOPLE v TONY MICHAEL HANN, Wayne Circuit, 10/20/2003, charged with one count Failure to Register as Sex Offender. Pled guilty; sentenced 10 months to 4 years concurrent.

PEOPLE v ADNAN HANNA, Macomb Circuit, 04/29/2003, Charged with TPTA violations. Judgment - Plea Agreement, Defendant pled to a 5-year felony violation of TPTA and was sentenced to 1 year probation; costs of \$540; fine of \$1,000.

STATE OF MICHIGAN, DEPT. OF TREASURY v RAID WAID HANNA, Macomb Circuit, 08/13/2003, Judgment - Plea Agreement, 8/13/03 Defendant plead to added count of Attempted Illegal Possession of Tobacco Products. 8/13/03 sentenced to 18 months probation, fines and costs.

STATE OF MICHIGAN, DEPT. OF TREASURY v MOHAMMED HAQUE, Macomb Circuit, 12/19/2002, Court dismissed w/o prejudice upon Defendant's failure to timely submit a brief.

PEOPLE v JEANETTE HARDY, Wayne Circuit, Charged with welfare fraud; Dismissed - By Court, Def no longer resides in Michigan.

PEOPLE v CARTER CHRISTOPHER-ADDISON HATFIELD, Kalamazoo Circuit, Defendant charged with 4 counts of acting as a security guard without a license and 1 count using a computer to commit a crime in connection with "rave" parties in Western Michigan; Judgment - Plea Agreement, 4/21/03 plea entered; sentenced to probation and jail.

PEOPLE v CHRISTOPHER LAMAR HAWKINS, Michigan Supreme Court, AG filed Motion Allowing Attorney General to File Amicus Curiae Brief and Amicus Curiae Brief in Support of Plaintiff-Appellant as interested party in the case of People v Christopher Lamar Hawkins, Kent County case being handled by Kent County Prosecutor Forsyth re: good faith exception to the exclusionary rule should apply in Michigan courts; Affirmed - In Full, Supreme Court decision rendered affirming Motion.

PEOPLE v MILDRED HEAD, Wayne Circuit, 6/17/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v TADD ALAN HEFT, Allegan Circuit, 04/22/2003, charged with 1 count Manufacture/Deliver Prescription Forms and 1 count Intentionally Placing False Information on Medical Record. The Defendant was acquitted by a jury.

PEOPLE v JOHN DAREN HENKEL, Kent Circuit, 07/09/2003, John Henkel charged by the FCMLS with 1 Count Manufacture Controlled Substance, Methamphetamine.; Jury trial 5/6/03; Defendant pled guilty; Judgment - Plea Agreement; 7/9/03 Sentenced to 12 months county jail.

PEOPLE v FREDDIE HENRY, Wayne Circuit, 9/3/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150

hours community service and restitution of \$9,196.00.

PEOPLE v DEBRA PARMENTIER HERRICK, Otsego Circuit. Defendant charged with 6 counts of perjury. Judgment – Plea Agreement, Defendant plead to 2 counts of perjury, 4 counts were dismissed. Defendant sentenced to 212 days in jail with credit for 212. No probation given.

PEOPLE v DEBRA (PARMENTIER) HERRICK, C13 Grand Traverse, 08/26/2003, Defendant charged with 1 count of extortion. Case dismissed as part of a plea agreement in Otsego Circuit Court File No. 94-1964-FH.

PEOPLE v MICHELLE HESKETT, Muskegon Circuit, 4/26/2004, Pro Guns and Sporting Goods was charged in our gun "scarecrow" operation with 2 counts of sale of firearms/weapons to a felon. Nolle Prosequi entered against the business at the request of the owner of the business, Vandy Heskett, and charges reissued against his wife, Defendant, who was the employee who actually was involved in the transaction. Jury trial reset to 5/1/03 8:30 Judge Timothy Hicks. Settled by plea. 1 year delayed sentence. Sentenced on 4/26/04 to pay fines and costs. Charges for selling firearms to a felon were dismissed.

PEOPLE OF THE STATE OF MICHIGAN v KEITH MITCHELL HIGDON, Wayne Circuit, Defendant charged with 1 count Criminal Enterprises -- Conducting and 2 counts Insurance - Fraudulent Acts. Judgment - Plea Agreement, Defendant sentenced to 3 years probation; \$60 CV fund; \$200 costs; \$1,645 restitution; \$1,080 supervision fees; undergo periodic urinalysis upon request of probation officer.

PEOPLE OF THE STATE OF MICHIGAN v PAMELA JOYCE HIGDON, Oakland Circuit, Defendant charged with 1 count Criminal Enterprises -- Conducting and 2 counts Insurance - Fraudulent Acts. Judgment - Plea Agreement, Defendant pled as charged. Sentenced to 1 year probation; Costs \$300; CV Fee \$60; Supervision Fee \$240/ for 20 months; DNA Fee \$60.

PEOPLE v JOHNETTIA HINTON, Wayne Circuit, 2/12/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v RONNIE HORSTON, Berrien Circuit, 9/3/04, Defendant charged with Failure to Register-Sex Offender, sentenced to 90 days plus costs and fees.

PEOPLE v KIM HOWARD, Wayne Circuit, 01/14/2003, charged with welfare fraud; pled and sentenced to 2-years probation, 150 hours community service and restitution of \$6,952.00.

PEOPLE v HOWCROFT, JAMES WILLIAM, Oakland Circuit, Use of Internet to distribute obscene material to a minor. Pled to counts 1 & 2, sentenced 5 mos-20 years on Count 1, and 2 -4 years on Count II.

PEOPLE v STEVEN JAMES HUDVAGNER, Wayne Circuit, 12/17, Defendant charged with 1 Count Child Sexually Abusive Material-Distributing, 2 Counts Using computers to commit a crime and 12 Counts Child Sexually Abusive Material-Possession. Pled guilty to Counts 1,2,3 & 15; sentenced to 23 months prison.

PEOPLE v MARY ANN HUNT, Wayne Circuit, welfare fraud of \$14,703; Dismissed - By Court, Def is deceased.

PEOPLE v WILLIAM HUNTER, Wayne Circuit, Defendant charged with 2 counts fraudulent access to computers and habitual offender, 4th. Pled to 2 counts fraudulent access to computers; sentenced to 3 years probation, 120 days jail (suspended if restitution paid by 6/1/03), \$4220 restitution, \$60 cvf, \$120 supervision fee, \$650 court costs or community service.

STATE OF MICHIGAN v CHAQUETTA HURT, Wayne Circuit, 12/1/2003, Defendant charged with welfare fraud - Co-defendant William Hurt; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

STATE OF MICHIGAN v WILLIAM HURT, Wayne Circuit, Defendant charged with welfare fraud - Co-defendant Chaquetta Hurt; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v JEFFREY LAMONT INGRAM, 64-A District Court, Defendant charged with 1 Count Sex Offender Failure to Register; Nolle Pros. Registered in Missouri.

PEOPLE v MIGUEL ANGEL IREAHETA-MEDRANO, Kent Circuit, 02/28/2003, charged by the FCMLS with 1 count manufacture controlled substance, methamphetamine. Pled guilty; sentenced to 36 months probation.

PEOPLE OF THE STATE OF MICHIGAN v CHARITY L. IRBY, Oakland Circuit, Defendant charged with 1 count Criminal Enterprises -- Conducting and 4 counts Insurance - Fraudulent Acts. Judgment - Plea Agreement, 9/26/03 Plea entered to 4 Counts Insurance Fraudulent - Acts; 1 Count Criminal Enterprise - Conduct dismissed, 11/3/03 Sentenced to 244 days jail, \$9,008.31 restitution, \$240 state minimum costs.

STATE OF MICHIGAN, DEPT. OF TREASURY v ADEL ISAK, Wayne Circuit, 04/30/2003; Judgment - Plea Agreement, Defendant pled to attempted possession of tobacco tax stamps and was sentenced to a term of 2 years probation.

PEOPLE v JAMIKA JACKSON, Wayne Circuit, 01/09/2003, charged with welfare fraud; pled and sentenced to 3 years probation, 150 hours community service and restitution of \$3,514.00.

PEOPLE v BELINDA JAMES, Wayne Circuit, 6/28/2004, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communication and restitution to the State of Michigan FIA.

PEOPLE v HARRY JAVENS, Oakland Circuit, Defendant charged with 2 counts of solicitation to murder dc judges. The motive behind the solicitation is that Def. is a wealthy businessman who these 2 judges have a history of ruling against. Def. solicited Richard McLaughlin to murder these judges. Portions of the solicitation to murder are captured on an audio recording. 404B Motion issue heard 5/19/2004 - denied. Defendant's motion to post \$2 million bond directly with the Court to avoid the bond fee with a bondsman granted. Defendant pled to one count pursuant to dismissal of count two.

PEOPLE v HARRY JAVENS, Court of Appeals, 10/27/2003, 8/14/03 Defendant is charged with 2 counts of solicitation of murder of a district court judge. Defendant filed Emergency App for Leave to Appeal regarding denial of bond motion. The Court ordered that the Defendant's motion for review of bail is DENIED.

PEOPLE v SAM GERGES JINA AKA MILCE, Wayne Circuit, 04/24/2003, Defendant is charged with 2 counts possess or offer for sale cartons of assorted brands of cigarettes without proper markings. Judgment - Plea Agreement, Defendant sentenced to 1year probation; costs \$897; fines \$1,000.

PEOPLE v BRENT AVERY JOHANNSEN, Ingham Circuit, 01/15/2003, charged with 1 count embezzlement by agent or trustee over \$20,000. Pled guilty; sentenced to 5 years probation, \$60 DNA, \$7,200 oversight fee, \$60 CVF, \$136,831.31 restitution, 180 days jail, community service.

PEOPLE v DEIDRA JOHNSON, Wayne Circuit, 4/21/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150

hours community service court costs/fees and restitution of \$7,892.

PEOPLE v LILLIE JOHNSON, Wayne Circuit, 2/19/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v NICOLE MCCAIN JOHNSON, Wayne Circuit, 8/26/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-yrs probation, 150 hours comm svc, costs/fess and restitution to the MFIA.

PEOPLE v BILAL MOHAMAD JOMAA, and RAMZI ABDUNABI DAKHLALLAH, Wayne Circuit, 05/22/2003, Sales tax fraud. Defendant Jomaa charged with 3 counts sales tax fraud; Judgment - Plea Agreement, Defendants pled to to count 1 in return for dismissal of counts 2 and 3. Defendants each sentenced to 5 years probation, \$60 CVRA, \$60 DNA, \$200 court costs per year and \$135 supervision fee each month on probation. \$200,000 Restitution, not less than \$3,000 per month. \$40,000 was received at sentencing.

PEOPLE v JANICE JONES, Wayne Circuit, 12/10/1999, welfare fraud, \$13,512; Judgment - Plea Agreement, Judgment/Plea Agreement pled and sentenced to 3-years probation, 150 hours community service and restitution of \$13,512.00.

PEOPLE v KATHRYN JONES, Wayne Circuit, 3/26/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution to the MFIA in the amt of \$27,063.

PEOPLE v JUDERJOHN, ALBERT WILLIAM, Ingham Circuit, 1/7/2004, Defendant sentenced to one count possession of child sexually abusive material, 30-48 months; four counts of using computer to commit a crime. Pled guilty; must complete sex offender treatment while incarcerated, register as sex offender, \$60 State Cost per count, DNA testing, \$60 CVF.

PEOPLE v AMIR M. KADDIS, 31st District Court, 07/24/2003, Defendant charged with 1 count Tobacco Products Tax Act (TPTA) violation. Judgment - Plea Agreement, 7/24/03 Plea entered to 1 Count Violation of Tobacco Products Tax Act (TPTA); Sentenced to 1 year probation and fined \$750 plus costs; assessed \$3,500 plus costs on four Department of Agriculture violations which the corporation (Amazing Thrift Store) pled to. Any violation of law during probation will result in a 90-day sentence.

PEOPLE v BRIAN KAISER, Ottawa Circuit, 12/02/2003, Kaiser charged with 1 count conspiracy to deliver cocaine, 1 count conspiracy to deliver marijuana and 1 count perjury. Judgment - Plea Agreement, plea entered to 1 Count Delivery/Manufacturing Marijuana; 11/3/03 sentenced to \$750 fine, \$60 CVRA, \$95 Other, 24 months probation, 80 hours community service, license suspended one year \$25 monthly oversight fee.

STATE OF MICHIGAN, DEPT. OF TREASURY v DAVID KELLAPOURES, Macomb Circuit, 02/25/2003, charged with 2 felony income tax counts. Pled guilty as charged; sentenced to \$39,918 restitution; two years probation; \$1,950 court fine; \$960 court cost; \$960 oversight fees; \$60 cvf; \$60 DNA.

PEOPLE v EMILJAN KELLEZI AKA EMILJANKOA181, Ingham Circuit, 07/24/2002, Defendant charged with one count child sexually abusive activity and one count using computer to commit a crime. Undercover officer, posing as a 14-year old female, engaged in chat room conversations with defendant who arranged to meet for sexual intercourse. Pled guilty to child sexually abusive commercial activity; sentenced to 21-240 months prison.

PEOPLE v KENT ARMS INC, Kent Circuit, 09/24/2003, Corporation charged in our

gun "scarecrow" operation with 2 counts of sale of firearms/weapons to a felony. 62-A District Court Judge Jack R. Jelsema dismissed the case. Appeal to 17th Circuit Court. Order - Final, Stipulation and Order to Dismiss because of mootness. The defendant/corporation was dissolved.

PEOPLE v JEHANZEB KHAN, Oakland Circuit, 10/01/2001, Investigation of on-line sexual predator of minor. Khan, aka Jehan Zeb Khan, aka raja_25, aka Guest_king, aka "king" charged by the HTCUC with one count child sexually abusive activity and one count communicating with a person over a computer to commit the crime of child sexually abusive activity. Pled to count I, sentenced to three years probation, 11 mo. 29 days 23 hours jail.

PEOPLE v JEHANZEB KHAN, Oakland Circuit, 10/01/2001, Investigation of on-line sexual predator of minor. Defendant charged with one count child sexually abusive activity and one count communicating with a person over a computer to commit the crime of child sexually abusive activity. Pled to count I, sentenced to three years probation, 11 mo. 29 days 23 hours jail.

PEOPLE v BAHU KHOSHUKO AKA BILLY, Wayne Circuit, 04/24/2003, Khoshuko charged with 2 counts acquire, possess or offer for sale cartons of assorted brands of cigarettes without proper marking, in violation of Tobacco Products Act. Judgment – Plea Agreement, Defendant sentenced to 1 year probation; costs \$1,027; fines \$1,000.

PEOPLE v LASHAWN KING, Wayne Circuit, 6/29/2004, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communication and restitution to the State of Michigan FIA.

PEOPLE v BRIAN KIRSCH, Oakland Circuit, Defendant pled guilty to 1 count using the internet to commit a crime and 1 count disseminating obscene material to a minor. Sentenced to 2 yrs. probation, 6 months county jail and ordered to attend drug treatment program.

PEOPLE v BARCELLE KNOX, Wayne Circuit, 4/21/2004, charged with welfare fraud (Co-defendant; Tochi Groves) liable for 1/2 of \$4,532; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, court costs/fees and restitution of \$2,266 (1/2 of \$4,532; co-defendant Tochi Groves).

PEOPLE v LARRY MATTHEW KNUTSON, 42-2 District Court, 12/18/2003. Defendant charged with 1 ct misdemeanor count of False Pretenses - \$200.00 or More But Less \$1,000.00. Judgment - Plea Agreement, Defendant pled guilty as charged to 1 count False Pretenses - \$200.00 or more but less than \$1,000.00 and was sentenced to \$960 restitution; 100 Fine; \$300 costs; \$50 CV Fund; \$40 other.

PEOPLE v MICHAEL WAYNE KOMEJAN, Barry Circuit, 12/20/2001, Defendant charged with Criminal Enterprises, Distributing or Promoting Child Sexually Abusive Material, Using Computers to Commit a Crime. Sentenced to three years' imprisonment on one count of RICO, three counts of distribution of child sexually abusive material, and 1 count of using a computer to commit a crime. The Court also ordered defendant to forfeit \$18,760 in criminal proceeds from the enterprise. According to the forfeiture statute, these funds should be remitted to the investigating agency.

PEOPLE v KOWALSKI, THOMAS, Wayne Circuit, 3/31/2004, Defendant charged with 2 counts of receiving and concealing stolen property over \$20,000 and 1 count receiving and concealing stolen property over \$1000. Pled guilty as charged; sentenced to 2 yrs probation, \$1000 fine on each count, restitution for victims.

PEOPLE v DANIEL BRENT LAKOSKY, Macomb Circuit, Defendant charged with 1 ct Attempt False Pretenses - \$20,000 or More and 1 ct False Pretenses - \$200 or

More But Less Than \$1,000, Habitual Offender-Second Notice. Sentenced on 4/15/04 to 10 months jail and restitution of \$320. Probation violation hrg 7/20/04, sentenced to 12 months in County Jail.

PEOPLE v DANIEL LALEWICZ, Wayne Circuit, 03/06/2003, Defendant charged with 1 count possession with intent to deliver controlled substance - Ecstasy. Pled guilty; sentenced to 2 years probation.

PEOPLE v ELAINE LANIER, Wayne Circuit, 01/14/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$1,141.00.

PEOPLE v VANESSA LARRY, Wayne Circuit, 01/28/2003, Welfare fraud of \$4,335.; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,335.

UNITED STATES OF AMERICA v WAUNTA WATTS, United States District Court, Eastern

PEOPLE v KEM LAWRENCE-GIBSON, Wayne Circuit, 1/12/2000, welfare fraud of \$12,840.92; Judgment - Plea Agreement, Judgment/Plea Agreement pled and sentenced to 3-years probation, 150 hours community service and restitution of \$12,840.92.

PEOPLE v IPHAJENIA LEWIS, Wayne Circuit, 1/9/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$19,794.

PEOPLE v TIMOTHY JOHN LIMA, Kent Circuit, 03/20/2003, Charged by the FCMLS with 1 Count Controlled Substance violation -- Manufacture Methamphetamine; Judgment - Plea Agreement, Plea entered; 3/20/03 Sentenced to 10-20 years.

PEOPLE v TRACEY LITTLE, Wayne Circuit, 10/16/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v ASSAD ULLAH LONE, Wayne Circuit, 09/23/2002, Defendant charged with various counts of conspiracy to commit a crime, using a computer with intent to defraud, obtaining personal identity information with intent to unlawfully use info, et al. Pled guilty; sentenced to probation and restitution.

PEOPLE v PATRICK LOTHAMER, 30th Circuit, Defendant used Internet to communicate with 13-year old underage persona. Solicited underage persona for sexual acts, distributed obscene matter, distributed child pornography, and made plans and preparations to meet to engage in sexual activity. Defendant sentenced to 18-120 months with the MDOC. He is also required to pay \$60 court costs, \$400 state costs, \$240 crime victims' rights fee.

PEOPLE v LOVE, ARTHUR LEE, Genesee Circuit, charged with one count of Failure to Register as a Sex Offender, pled as charged, sentenced 12 months probation with statutory requirements of 25 days jail credit \$60 Crime Victims Fee, \$60 State costs, \$120 supervision fee (payable \$10/mo). Def. must continue with registration obligations, no alcohol/drugs, no association w/ felons, no violent activity, no weapons.

PEOPLE v LUNDSTEDT, JOSEPH PAUL, Wayne Circuit, SOR, Defendant pled as charged; sentenced to 3 years probation with sex offender treatment, must register and pay fines & costs.

PEOPLE v TONI LYLES, Wayne Circuit, 6/17/2003, charged with welfare fraud;

Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v PATRICIA MACNEAR, Wayne Circuit, 6/8/1999, charged with welfare fraud; Judgment - Plea Agreement, Judgment/Plea Agreement pled and sentenced to 3-years probation, 150 hours community service and restitution of \$8,795.00.

PEOPLE v KENNETH JOSEPH MADEJCZYK, Court of Appeals, 1/14/2003, Chief of police of Grandville convicted of embezzlement by public officer over \$50. Sentenced to 4 1/2 to 10 years for embezzling approx. \$50-\$100,000 from the city's Narcotics Fund. This is an appeal of that conviction; Affirmed - In Full, COA affirmed sentence.

PEOPLE v KENNETH JOSEPH MADEJCZYK, Michigan Supreme Court, 06/30/2003, Chief of Police of Grandville convicted of embezzlement by public officer over \$50. Sentenced to 4 1/2 to 10 years for embezzling approx. \$50-\$100,000 from the city's Narcotics Fund. Defendant appealed his sentence to the COA. COA affirmed 1/14/03. This is an appeal of that decision. Leave to Appeal - Denied, 6/30/03 MI Supreme Court denied Application for Leave to Appeal from the January 14, 2003 Judgment of the Court of appeals.

PEOPLE v MALDONADO, JR, REYNALDO, 70th District Court, Defendant charged with one count Failure to Register, pled guilty and was sentenced on 4/4/04 to two years probation with the first year in the county jail.

PEOPLE v ELIZABETH MARALDO, Wayne Circuit, 3/31/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution to the MFIA in the amt of \$936.00.

PEOPLE v SHAWN MARTIN, Wayne Circuit, 1/8/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$603.

PEOPLE v SUPRINA MARTIN, Wayne Circuit, 01/09/2003, charged with welfare fraud; pled and sentenced to 3 years probation, 150 hours community service and restitution on \$5,481.00.

PEOPLE v SONYA MATHIS, Wayne Circuit, 3/5/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,897 to the MFIA.

PEOPLE v ADRIENNE MATTIE, Kalkaska Circuit, 12/23/02 Charged with 2 counts embezzlement by agent or trustee and 3 counts failure to file/false tax returns; Judgment - Plea Agreement, 9/10/03 Plea entered to 2 Counts Embezzlement; \$1,000 or more, but less than \$20,000; 10/8/03 Sentenced to 48 months probation; \$300 Costs, \$16,475 Restitution, \$60 CVRA, \$350 Attorney Fees \$60 State Costs, MDOC Supervision Fee \$600, 1,000 hours community service, 58 hours in lieu of \$300 Court Costs, 9 months in jail to be held in abeyance with credit for 1 day served.

PEOPLE v TAMMY MAYS, Wayne Circuit, 8/26/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-yrs probation, 150 hours comm svc, costs/fess and restitution to the MFIA.

PEOPLE v VANESSA MCCARTY, Wayne Circuit, 1/14/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v ANTHONY MICHAEL McCLAIN. Charged with 1 ct using a computer to defraud, 2 cts obtaining personal identity information of another with intent to unlawfully use information, 1 ct possession of a financial transaction device, 1 court illegal use of financial transaction device, and 1 ct using a computer to commit a

crime. Defendant pled guilty to 3 counts & sentenced on 3/5/2003 to 5 years' probation, the last 12 months in Wayne County Jail. Restitution \$21,590.

UNITED STATES OF AMERICA v FRED DUANE MCCLURE, United States District Court, Eastern District, Fred Duane McClure was posting child sexually abusive material to the internet website, "Photoisland.com." Charged by federal indictment in the USDC-ED with transporting in interstate commerce, by computer, visual depictions the producing of which involved the use of minors engaging in sexually explicit conduct in violation of Title 18, USC, 2252(a)(1) by uploading digital images of child pornography. Defendant sentenced to 51 months in Federal prison with a referral to Federal Sex Offenders Program - 2 yrs supervised release - follow up psychiatric care, register as sex offender-no unsupervised contact with anyone under 18 - no use of computer or internet - \$200 special assessment fee.

PEOPLE v MCCLUSKER, DONALD, Iosco Circuit, 6/16/2003 charged with and pled guilty to 4 counts of CSC-4th degree, and 6 counts of attempt to use the internet to solicit sex. Sentenced 12 months to 15 years. \$60 DNA sample; \$60 CVF.

PEOPLE v SHEILA MCDONALD, Wayne Circuit, 5/8/2003, charged with welfare fraud; Judgment - Plea Agreement, sentenced to 3-years probation, 150 hours community service and restitution of \$9,171.65.

PEOPLE v ANGELA MCEL RATH, Wayne Circuit, 10/22/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hour community service and restitution.

PEOPLE v TRACIE MCELROY, Wayne Circuit, 8/26/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-yrs probation, 150 hours comm svc, costs/fess and restitution to the MFIA.

PEOPLE v CHARLES MORGAN MCGILL, St. Clair Circuit, Defendant charged with use of computer to transmit at least 7 images of child pornographic material to an undercover officer in Suffolk County New York. Pled guilty to 7 counts of Child Sexual Abusive Activity, sentenced to 1-7 years prison, \$480 state costs, \$60 CVF, \$500 court costs and must register as sex offender.

PEOPLE v CHENNEL MCGRAW, Wayne Circuit, 11/14/2003, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution of \$8,491.00.

PEOPLE OF THE STATE OF MICHIGAN v SCHREKA MCKINNEY, Ingham Circuit, Former Ingham County FIA employee obtained and used FIA Emergency Support Services (ESS) fund to pay for repairs, new chrome wheels, etc., totalling \$4,889.55. Defendant charged with 3 counts of False Pretenses - \$1,000 or more but less than \$20,000. Sentenced to 2 years probation, rest'n of \$11,797.45, fines and costs, and 90 days in jail unless money paid in full.

PEOPLE v JOHN RODNEY MCRAE, Court of Appeals, 01/12/2001, appeal of Clare Circuit Court conviction & sentence for first degree murder of Randy Laufer in 1987, convicted 12/11/98, COA affirmed conviction and sentence.

PEOPLE v PETER PERCY MCZEAL, 61st District Court, SOR - Failure to Register - Arrested & pled guilty to Failure to Register in Kent County. Nolle Pros - dismissing our warrant.

PEOPLE v SHAREE MILLER, Genesee Circuit, 01/29/2001, internet murder case handled jointly with the Genesee County Prosecutor. Defendant found guilty by jury of conspiracy to commit premeditated murder and 2nd degree murder, sentenced 1/29/01 to life imprisonment on the conspiracy to murder count and 54-81 years on the 2nd degree murder count.

PEOPLE v SHAREE MILLER, Genesee Circuit, 01/29/2001, internet murder case handled jointly with the Genesee County Prosecutor, found guilty by jury of conspiracy to commit premeditated murder and 2nd degree murder, sentenced 1/29/01 to life imprisonment on the conspiracy to murder count and 54-81 years on the 2nd degree murder count.

PEOPLE v ZEDORA MILLER, Wayne Circuit, 1/15/2004, Defendant charged with 2 counts Election Law Violation - Improper Return, Absentee Ballot, 1 count Attempting to Influence Absent Voter, 1 count Absentee Ballot Tampering and 1 count Conspiracy of Election Law Violation - Improper Return of Absentee Ballot. Judgment - Plea Agreement, Defendant pled to 2 counts ABS Ballot/Imp; 1 count Conspiracy ABS Ballot/Imp; 1 count Ballot Tampering. Sentenced to 1 year probation.

PEOPLE v CHERYL MITCHELL, Wayne Circuit, 12/9/1999, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v MITCHELL, Oakland Circuit, 7/9/2003; Defendant charged with ID theft, credit card theft, etc. for using fraudulent credit card numbers to make hotel reservations. Pled as charged; sentenced to 10 mos. jail; \$306 restitution and customary fees.

PEOPLE v LAURA MITCHELL, Wayne Circuit, 3/31/2004, charged with welfare fraud, Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution to the MFIA in the amount of \$1,784.00.

PEOPLE v LULA MITCHELL, Wayne Circuit, 10/9/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v AARON CHRISTOPHER MOORE, Washtenaw Circuit, sentenced on his second probation violation (originally sentenced on CSC 2nd); court revoked HYTA but only reinstated probation, extending it 2 years. Defendant must attend outpatient substance abuse treatment must perform 200 hrs community service, No alcohol/drugs, must undergo alcohol/drug testing, must wear a blood alcohol tether for 6 months.

PEOPLE v FRANCOIS MOORE, Wayne Circuit, 1/8/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,717.

PEOPLE v HAZEL MOORE, Wayne Circuit, 10/3/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hour community service and restitution.

PEOPLE v MONIQUE MOORE, Wayne Circuit, 6/27/2001, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$3,698.00.

PEOPLE v J.A. MORRIN CONSTRUCTION COMPANY, Monroe Circuit, 10/10/2002, charged with 1 count involuntary manslaughter and 1 count MIOSHA violation-causing employee death. Pled guilty to involuntary manslaughter; sentenced to 5 years probation, \$7,500 fine, \$750 costs, \$148,593.45 restitution, \$60 CVF, supervision fee of \$8,100.

PEOPLE v TREMMIE MORRIS, Wayne Circuit, 6/25/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$2,507.00.

PEOPLE v WAYNE L. MULKA, 88th District Court, 10/01/2003, Misdemeanor

Complaint - Defendant charged with 1 Count Unemployment Compensation Fraud - False Statement/Misrepresentation - Loss of \$1,000 to \$25,000; Judgment - Plea Agreement, 10/1/03 Plea entered to 1 Count Unemployment Compensation Fraud 1 Year; 10/1/03 Sentenced to \$250 Fine, \$250 costs, \$7,200, Restitution, 90 days jail are delayed for 1 year with no like offenses.

PEOPLE v CHRISTINE MULLEN, Ingham Circuit, 10/02/2002, Defendant charged with 1 count of Embezzlement-Agent or Trustee \$100.00 or more. Verdict - Jury, Defendant was sentenced to: 24 months probation; 30 days jail (deferred until appeal period has expired); \$200 per month restitution (final restitution to be determined at future hearing); \$60 crime victims fund; 300 hours community service; 24 months probation.

PEOPLE v LATICIA MYERS, Wayne Circuit, 8/26/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$3,661.

PEOPLE v MARC NANCE, Wayne Circuit, Defendant charged with internet auction fraud for the sale of computers without delivery. Charged with 4 counts fraudulent access to computers and 1 count receiving and concealing stolen property. Sentenced to 10 months jail, credit for 24 days, jail sentence suspended when he's deported to Canada, which will be by June 7. He must also pay the \$60 crime victims fee.

STATE OF MICHIGAN, DEPT. OF TREASURY v AHMED NASIR, Court of Appeals, 1/14/2003, Court of Appeals argument on June 4, 2002. Issues include the strict liability of the Tobacco Products Tax Act provisions on possession of counterfeit stamps and alleged prosecutorial misconduct. Reversed - In Full, Nasir appealed on several grounds; COA addressed only one and reversed and remanded for new trial. We will not appeal to Supreme Court.

PEOPLE v NELSON, ANTHONY JOSEPH, Kent Circuit - SOR, pled as charged with failure to register by Kent Co. Prosecutor - sentenced to 2 yrs. probation.

PEOPLE v STANLEY SCOTT NESEN, Montcalm Circuit, 06/20/2001, CSC complaint against a Montcalm County Court Officer. Defendant charged with 2 counts CSC 1st degree and 6 cts CSC 2nd degree. Pled guilty to 1 count CSC 1st degree with person under 13 and 1 count CSC 2nd; sentenced 6/20/2001 to 3-20 years in prison and \$150.00 assessment for forensic lab test.

PEOPLE v TIMOTHY EDWARD NEWSOME, Oakland Circuit, 02/10/2003, Defendant charged with racketeering. Pled guilty; sentenced to 8-20 years in prison.

PEOPLE v LORAIN ANN NUTKINS, Oakland Circuit, 3/22/2004. Defendant charged with 2 counts false pretenses, 4 counts forgery and 4 counts uttering and publishing. Judgment - Plea Agreement, Defendant pled guilty of 2 counts of False Pretenses-\$20,000 or More; Sentenced to 3 yrs probation; \$109,229.03 restitution @ \$3,246 per month; \$900 costs; \$60 CVF; \$60 DNA fee; \$2,520 supervision fee.

STATE OF MICHIGAN v LYNN OVERDORF, Lenawee Circuit, 08/07/2003 Defendant charged with 3 Counts Felony Illegal Possession of Tobacco Products other than Cigarettes. Judgment - Plea Agreement, 8/7/03 Plea entered to 1 Count Illegal Possession of Tobacco Products other than cigarettes; Sentenced to probation, fines and costs. Restitution of \$32,354.00 was ordered and paid.

PEOPLE v JAMES CHESTER PADUCHOWSKI, Oakland Circuit, 07/24/2003, Charged with 1 Count Conspiracy to Deliver Marijuana, Delivery of Marijuana, and Habitual Offender 2nd. Judgment - Plea Agreement, 7/24/03 Plea entered to PWID Marijuana and was sentenced to 1 year probation, with 6 months on tether in lieu of jail., fines and costs were assessed. Defendant also sentenced as a repeat offender.

PEOPLE v TINA PASTOR, Wayne Circuit, 12/17/2001, Charged with welfare fraud; Judgment - Plea Agreement, Case reduced to diversion status. Ordered to pay restitution of \$1,076.00.

PEOPLE OF THE STATE OF MICHIGAN v WILLIAM PRATT PATTERSON, Oakland Circuit, 10/23/2003, Defendant charged with 1 Count Criminal Enterprises -- Conducting and 4 counts Insurance - Fraudulent Acts; Judgment - Plea Agreement, 10/2/03 Plea entered to 4 Counts Insurance Fraud - Acts; 10/23/03 Defendant sentenced to 153 days jail with 65 days credit, \$600 costs, \$26,416.93 restitution, \$60 CVRA, \$240 state minimum costs, 2 years probation.

PEOPLE v RONALD F. PAUL, 88th District Court, 08/27/2003, Misdemeanor Complaint - Defendant charged with 1 count Unemployment Compensation Fraud - False Statement/Misrepresentation - Loss of \$1,000 to \$25,000. Judgment - Plea Agreement, Defendant pled as charged. Sentenced to 1 year probation; restitution \$7,800 with 90 days in jail if money is not paid.

UNITED STATES OF AMERICA v ALAN MIKELL, CHRISTOPHER GRISEL, RONALD MICHAEL HINES, United States District Court, Eastern District, Grand jury charges by US attorney in Bay City being handled jointly with AG FCMLS. Defendant Grisel was found guilty by jury on 5/25/99 of 1 ct of conspiracy to launder money, 13 cts of wire fraud & 7 cts of money laundering. Def Mikell was found guilty by jury on 5/25/99 of 1 ct of conspiracy to launder money, 7 cts of wire fraud & 1 ct of money laundering.

PEOPLE v GWENDOLYN PEEK, Wayne Circuit, 6/25/2003, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,695.00.

PEOPLE v CLAUDIA PENN, Wayne Circuit, 8/27/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hour community service and restitution of \$8,125.

PEOPLE v MICHAEL IRVING PERKINS, Ingham Circuit, 10/28/03 - Defendant pled as charged; sentenced to 36 mos-20 years, register as a sex offender, pay \$60 crime victims' assessment and \$120 court costs.

PEOPLE v LISA PETERSON, Wayne Circuit, 01/14/2003, charged with welfare fraud; pled and sentenced to 2-years probation, 150 hours community service and restitution of \$2,536.00.

PEOPLE v EMILY CLARE PETRIDES, Genesee Circuit, 05/30/2003, Defendant charged with 1 count delivery of marijuana. Judgment - Plea Agreement, Defendant was sentenced to 3 years probation under HYTZ, must attend 2 weeks of drug court program, continue drug treatment, no firearms, continue school. Court imposed a curfew and reside at parent's house.

PEOPLE OF THE STATE OF MICHIGAN v AUSTIN JIMMIE PETTWAY, Oakland Circuit, 08/28/2003, Defendant charged with 1 count Criminal Enterprises -- Conducting and 3 counts Insurance - Fraudulent Acts; Judgment - Plea Agreement, Plea entered to 2 Counts Insurance Fraudulent - Acts; 1 Count Criminal Enterprise - Conduct dismissed; Sentenced to 2 years probation, \$200 costs, \$14,318 restitution, \$60 CVRA, \$25 month supervisory fee, \$120 state minimum costs, attorney fees.

PEOPLE v ROLIN PETTWAY AKA ANTHONY HUDSON, Oakland Circuit, 6/3/2004, NICB identified insurance fraud ring (staged parked car accidents) operating in Wayne, Oakland, and Macomb Counties. Total fraud identified in excess of \$1.4 million. Defendant charged with 1 count conducting criminal enterprises & 5 counts insurance fraud acts. Defendant pled guilty to racketeering. Sentenced to 3-20 years on 6/3/04.

PEOPLE v ANDRE KEVIN PHLEGM, 65-1 District Court, SOR, 1 Count Sex Offender Failure to Register; Sentenced 4/15 to 6 months, \$1300 fine.

PEOPLE v BARBARA JEAN PIERSON, Ingham Circuit, 02/12/2003, Defendant charged with 1 count Stealing/Retaining Financial Transaction Device and 1 ct Larceny by Conversion. Pled guilty; sentenced to 24 months probation, \$8,612.53 restitution to State of Michigan (DMB), \$145.66 to Citi Financial; \$500 costs, \$60 CVF, \$240 probation oversight fee, \$60 DNA fee, 100 hours community service.

PEOPLE v KEITH PIETILA, Oakland Circuit, 05/22/2003, Defendant Pietila charged with 1 count conspiracy to commit securities fraud and 16 counts violation of Blue Sky Laws - fraudulent schemes/statements. Judgment - Plea Agreement, Sentenced to 273 days in jail w/credit for 1 day; 2 years probation; restitution \$86 million; costs \$600; CVF \$60; DNA \$60; supervision fee \$100/mo.

PEOPLE v JAYLEEN POMPEY, Wayne Circuit, 5/29/2003, Defendant charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$8,860.00.

PEOPLE v TASHIA PORTOR, Wayne Circuit, 10/4/2001, welfare fraud; Judgment - Plea Agreement, sentenced to 3-years probation, 150 hours community service and restitution of \$5,542.00.

UNITED STATES OF AMERICA v ROY GEORGE-ERNEST POURCHEZ, United States District Court, Eastern District, 01/10/2003, Defendant charged in federal court with knowingly and intentionally executing a scheme to defraud using the mail or other interstate wire transmissions. Pled guilty; sentenced in federal court to 33 months in prison.

PEOPLE v JAMES ALLEN PRATER, Wayne Circuit, 02/12/2003, Defendant charged w/1 ct omufp for receiving social security disability benefits while employee by DMH as a nurse at several nursing homes. Judgment - Plea Agreement, Defendant pled to 1 count attempt false pretenses. Sentenced on 2/12/03 to 5 years probation; restitution \$41,831.30.

PEOPLE v RAYMOND MICHAEL RANGER, Grand Traverse Circuit, Defendant charged with 1 Count Sex Offender Failure to Register; pled as charged. Sentenced to 10 mos jail, credit for 24 days, jail sentence suspended when he's deported to Canada. He must also pay the \$60 crime victims fee.

PEOPLE v DIANA REED, Wayne Circuit, 8/26/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,633.

PEOPLE v KARITA REED, Wayne Circuit, 7/13/2004, Charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community service and restitution to the SOM FIA in the amount of \$6,474.00.

PEOPLE v LORI REESE, Wayne Circuit, 01/23/2003, pled and sentenced to 2-years probation, 150 hours community service and restitution of \$7,480.00.

PEOPLE v CHARLES EDWARD REID, 81st District Court, SOR, 1 Count Sex Offender Failure to Register. Sentenced to 90 days probation, credit for 35 days, court costs and attorney fees. The court indicated that if the defendant returned with proof of proper registration prior to the close of the 90 days the case would be closed.

BERNADINE RICE v 36th District Court, 5/29/2003, FIA/OIG reports that Defendant received benefits under either different names, using various forms and fictitious ID since 1992. It appears that over \$450,000 was fraudulently paid. Verdict - Court, Defendant found guilty and was given a 2 1/2 to 10 yr concurrent prison sentence on the combined charges.

PEOPLE v ROBERTS, GARY LINNELL, Wayne Circuit, Failure to Register - Sex Offender, pled as charged; sentenced on 2/13/04 to 4 months probation and a \$600 fine. He must pay the fine before release from probation.

PEOPLE v MONIQUE M. ROBINSON, Wayne Circuit, charged with welfare fraud; Dismissed - By Court, Def no longer resides in Michigan.

PEOPLE v TIA ROBINSON, Wayne Circuit, 10/16/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v ALI ROMZAN, 36th District Court, 03/24/2003, Criminal tobacco product tax violation. Pled guilty to one count as charged (1yr misd.), Nolled two remaining counts. Sentenced to fines and costs plus \$391.00 restitution.

PEOPLE v HILDEGARD (HEIDI) RUDNICK, 8th District Court, Former state employee charged with Embezzlement over \$1000 but less than \$20,000 (5 yr.) Sentenced pled to embezzlement under \$1000, misdemeanor, and paid restitution, probation for a year.

PEOPLE v WILLIAM JOE SALANDER, Gratiot Circuit, 12/23/2002, Defendant charged with Attempted CSC 3rd degree, Communicating with Another over the Internet to Commit Crime, Child Sexually Abusive Activity, Using a Computer to Commit Crime. HTCUC is assisting prosecutor with prosecution. Defendant sentenced on 12/23/02 to 16-60 mos prison concurrent.; Judgment – Plea.

PEOPLE v LATICIA YVETTE SANCHEZ (SNEAD), 54-A Judicial Circuit Court, Defendant, employee of FIA, falsely claimed her ex-husband as a dependent for purposes of state health insurance. By not disclosing the divorce, the state paid in excess of \$37,000 in benefits between 1998-2002. Pled guilty to one count of false pretenses between \$1000 and \$20,000, a five year felony. Def. sentenced to 18 months probation and restitution of \$10,588.68, one ct false pretences between \$1000-20,000. Restitution paid at sentencing.

PEOPLE v CHARLES ERNEST SCHAUB, Court of Appeals, 4/10/2003, Found guilty by jury of conspiracy to commit arson. Sentenced 4/2/01 to 5-20 years. Motions for new trial denied 5/9/01 by CC. Appeal filed. Court of Opinion affirming conviction issued 4/11/03 Affirmed - In Full, The Court of Appeals affirmed Defendant's conviction.

PEOPLE v RANDOLPH KEVIN SCHAUB, Court of Appeals, 4/10/2003, Found guilty by jury of conspiracy to commit arson. Sentenced 4/2/01 to 5-20 years. Motions for new trial denied 5/9/01 by CC. Appeal filed. Court of Appeals Opinion affirming conviction issued 4/11/03 Affirmed - In Full, Court of Appeals affirmed Defendant's conviction.

PEOPLE OF THE STATE OF MICHIGAN v JAMES ARLEAVIS SCOTT AKA RON ANTHONY SMITH, Oakland Circuit, 11/3/2003, NICB has identified an insurance fraud ring (staged parked car accidents) operating in Wayne, Oakland and Macomb counties. Total fraud identified thus far is in excess of \$1.4 million. Ring appears to involve 5-6 ringleaders and several dozen peripheral participants. Sixteen defendants charged. Defendant is charged with 1 count Criminal Enterprises -- Conducting and 4 counts Insurance - Fraudulent Acts. Judgment - Plea Agreement, 9/29/03 Plea entered to 4 Counts Insurance Fraudulent - Acts; 1 Count Criminal Enterprise – Conduct dismissed; \$2,400 costs, \$28,499.53 restitution, \$6,480 supervisory fee, \$60 CVRA, \$240 staet minium costs, 1 year jail.

PEOPLE v RENITA YVETTE SCOTT AKA JUANETTA LEFWICH, Oakland Circuit, 5/6/2004, Defendant charged with 1 count conducting criminal enterprises & 4 counts insurance fraud acts. Defendant pled to 3 counts insurance fraud. Rec'd

\$7672 restitution. Defendant sentenced to three counts of insurance fraud.

PEOPLE v SHARP, Ingham Circuit, Defendant pled to Malicious Destruction of Personal Property over \$200 but under \$1000 MCL750.377A1C1; Sentenced on one year misdemeanor to one day in jail with credit for one day served.

PEOPLE v MICHELLE SHEWMAKER, Wayne Circuit, 5/5/2004, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communication and restitution to the State of Michigan FIA.

PEOPLE v RICHARDO ANTONIO SMART, Wayne Circuit, Failure to Register - Sex Offender. Defendant was sentenced on two drug charges as well as failure to register to 18 mos to 20 years prison and required to register as sex offender.

PEOPLE v ANGELA SMITH, Wayne Circuit, 1/15/2004, Defendant charged with 1 count Election Law Violation - Improper Return, Absentee Ballot, and 1 count Conspiracy of Election Law Violation - Improper Return of Absentee Ballot. Judgment – Plea Agreement, Defendant pled to 1 count ABS Ballot/Imp and 1 count Conspiracy ABS Ballot/Imp. Sentenced to 1 year probation.

PEOPLE v CARL EDWARD SMITH, Genesee Circuit, 05/30/2003, Defendant charged with violations of the Blue Sky Law - Fraudulent Schemes and/or Statements. AG is co-prosecuting with the Genesee County Prosecutor's Office; Judgment - Plea Agreement, Defendant sentenced to 6 years 8 months to 10 years in prison; Restitution \$2,600,000; \$60 CV fund.

PEOPLE v LAKEISHA SMITH, Wayne Circuit, 5/30/2003, Charged with welfare fraud; Judgment - Plea Agreement, Judgment/Plea; sentenced to 3-years probation, 150 hours community service and restitution of \$5,386.00.

PEOPLE v LAVADA SMITH, Wayne Circuit, 02/25/2003, charged with welfare fraud; pled and sentenced to 2-years probation and restitution of \$7,038.

PEOPLE v SHARISE LYNETTA SMITH, Wayne Circuit, 03/07/2002, Defendant charged with 1 count of welfare fraud. Defendant pled guilty and sentenced on 2/28/02 (under advisement for one year). Judgment - Plea Agreement, Defendant pled to 1 count of Welfare Fraud over \$500. Sentenced to 3 years probation; \$5,034 restitution; \$495 costs; \$360 supervision fee.

PEOPLE v TERRY LEE SOUVA, 88th District Court, 09/24/2003, Defendant charged with 1 count possess, acquire, transport or offer for sale cartons of assorted brands of cigarettes without proper markings in violation of Tobacco Products Tax Act. Co-defendant - Szcukowski. Judgment - Plea Agreement, Plea entered as charged; Defendant sentenced to 24 months probation with fines and costs; restitution ordered in the amount of \$870 to the Stae and \$2,038 to Great Northern.

PEOPLE v KEITH BERNARD STALLWORTH, Wayne Circuit, 06/27/2003, Defendant charged with 1 Count False Certification of Personal Info and 1 Count of False Swearing to egister/Voter Information. Judgment - Plea Agreement, Plea entered to 1 Count election Law False Swearing; 6/27/03; Sentenced to 2 years probation, \$330 Costs, \$60 CVRA.

PEOPLE v CHARLENE STANFORD, Wayne Circuit, 4/7/2004, Charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 1-year probation, costs/fees and restitution of \$4,372.

PEOPLE v DAVID STEINER, AKA SENGINEXPE, AKA SXYNDRAG49, AKA SEXPRT, Saginaw Circuit, 06/26/2001. Defendant charged with 1 ct distributing and promoting child sexually abusive activity and 14 cts possession of child sexually abusive material. Found guilty by jury of 3 counts possession of child pornography; sentenced 6/26/01 to 12 months in jail, \$60 CVF.

PEOPLE v LESLIE NEAL STERLING, Alger Circuit, Defendant charged with 1 count of Sex Offenders - Failure to Register, Pled as charged. Sentenced to 80 days.

PEOPLE v HOWARD L. STICKNEY, Genesee Circuit, 06/09/2003, Defendant, nurse anesthetist, is allegedly committing CSC against patients while they are under anesthetic. Charged with 1 count CSC 3rd and 1 count CSC 4th. Pled no contest; sentenced 8 months-15 years, \$60 CVF, \$60 DNA.

PEOPLE v HOWARD L. STICKNEY, Tuscola Circuit, charged with 1 count CSC 3rd. Pled as charged on 10/13/03; sentenced to seven years prison, \$100 State fees, \$60 CVF.

PEOPLE v HOWARD L. STICKNEY, Oakland Circuit, Defendant charged with 1 count CSC 3rd. Pled no contest to CSC, 3rd Degree and was sentenced to 5-15 years. The sentence is to run concurrent with the other two cases. He was also ordered to successfully complete mental health treatment upon his release on parole. The court also ordered that he not work in the medical field without the express permission of the court and no request should be made until the counseling is completed.

UNITED STATES OF AMERICA v SCOTT SUTHERLAND, United States District Court, Eastern District, 12/04/2003, Sutherland indicted in 11/02 in the USDC-ED of 1 count of delivery of cocaine, 21 USC §841(a)(1) and delivery of cocaine in possession of firearm, 18 USC 924(c). Sutherland made a series of cocaine deliveries and is a member of the Devil's Disciples Motorcycle Gang being investigated by the DPD/AG/FBI Violent Crimes Task Force. Verdict – Court of guilty.

PEOPLE v MICHAEL TANNER, Wayne Circuit, 10/20/03 to 1 Count Sex Offender Failure to Register. Pled as charged; sentenced to 80 days Wayne County Jail.

PEOPLE v STEVEN TAYLOR, Allegan Circuit, 12/04/2003, Defendant charged with 1 count Aid and Abet Possession with Intent to Deliver 45 kilos or more of Marijuana and 1 Count Possession with Intent to Deliver 45 kilos or more of Marijuana. Plea entered to 1 Count Controlled Substance- Deliver/Manufacturing 5-45K MR; 9/2/03 Sentenced to 60 days jail, \$60 CVRA, \$1,500, Circuit Court Costs, \$2,500 Library Penal fine Fund, \$60 DNA Sample, \$150 Forensic Fee, 36 months probation, \$1,800 probation fee, 30 days suspended license and 6 months restricted license.

PEOPLE v LARRY DANIEL THEBO, 61st District Court, 02/28/2003, Defendant charged with 1 count controlled substance violation, operating/maintaining a laboratory involving hazardous waste or, in the alternative, operating/maintaining laboratory in the presence of a minor, and 1 count possession of more than 10 grams Ephedrine. Pled guilty; sentenced to 1 year in jail plus fines and costs.

PEOPLE v TASHA THOMAS, Wayne Circuit, 01/23/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,666.00.

PEOPLE v CHARMAINE THOMPSON, Wayne Circuit, 2/13/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

STATE OF MICHIGAN, DEPT. OF TREASURY v TONY ANTHONY TISELL /SAPPHIRE DOOR & WINDOW, Kent Circuit, Judgment - Plea Agreement, Defendant pled to 4 misdemeanors under MCL 205.27(4). Restitution \$2,728; fines of \$300.00 and costs of \$100.00.

STATE OF MICHIGAN v MICHAEL TLAIS, 19th District Court, 08/24/1999. Judgment - Plea Agreement, Sentenced to 3 years probation; restitution \$16,572 at the rate of \$220 per month.

PEOPLE v THOMAS LEE TOWNSLEY, Wayne Circuit, 04/03/2003, Defendant charged with 1 count forgery. Judgment – Plea Agreement, Defendant pled as charged to 1 count of Forgery. Sentenced to 100 hours community service; restitution to be determined; costs \$165; fees \$360; crime victim fee \$60.

PEOPLE v TRAYLOR, CHRISTOPHER, Wayne Circuit, Defendant charged with one count of Failure to Register, pled guilty as charged; sentenced 2 yrs probation.

PEOPLE v HECTOR VEGA, 61st District Court, 12/04/2003, Defendant charged with 1 count - Conspiracy - Controlled Substance - Delivery/Manufacture 45 Kilograms or More of Marijuana; 1 count - Controlled Substance - Delivery/Manufacture 5-45 Kilograms of Marijuana; and 1 count - Controlled Substance - Delivery/Manufacture 45 Kilograms or More of Marijuana. Judgment – Plea Agreement.

UNITED STATES OF AMERICA v LEONARD WADE, United States District Court, Eastern District, 12/01/2003, Defendant indicted in USDC-ED in 11/02 on possession of marijuana with intent to deliver and conspiracy to deliver marijuana. Defendant responsible for thousands of pounds of marijuana being delivered from Arizona to Michigan. Sentenced to 4 years - federal imprisonment; Judgment - Plea Agreement.

PEOPLE v ROCHELLE WAFER, Wayne Circuit, 8/26/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-yrs probation, 150 hours community service, costs/fess and restitution to the MFIA.

PEOPLE v JOSEPH WALKER, Wayne Circuit, Failure to Register Sex Offender Registry, sentenced on 10/27/04 to one year probation which can be closed upon payment of a \$500 fine.

PEOPLE v PATRICE WALKER, Wayne Circuit, 5/20/2003, welfare fraud of \$10,309; Judgment - Plea Agreement, sentenced to 3-years probation, 150 hours community service and restitution of \$10,309.00.

PEOPLE v ELOISE WALLACE, Wayne Circuit, 6/29/2004, charged with welfare fraud. Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours communication and restitution to the State of Michigan FIA.

PEOPLE v WANDA RICKS, Wayne Circuit, 6/17/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v THOMAS A. WARMUS, Oakland Circuit, 06/23/2003, Defendant charged with 6 cts of illegal financial transaction by insurance company director. 6/25/03 Dismissed - By Plaintiff, due to Defendant's age and his 97-month sentence in federal prison.

PEOPLE v GWENDOLYN WASHINGTON, Wayne Circuit, 6/25/2003, Charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$3,072.00.

PEOPLE OF THE STATE OF MICHIGAN v TRISTA MARIE WASNICK, Oakland Circuit, 09/11/2003, Defendant charged with 1 Count Criminal Enterprises -- Conducting and 3 Counts Insurance - Fraudulent Acts; Judgment - Plea Agreement, 8/14/03 Defendant pled to 1 Count Criminal Enterprise - Conduct and 3 Counts Insurance Fraud - Acts; 9/11/03 Sentenced to 21 days jail with 21 days credit; \$500 Costs, \$22,214 Restitution, \$60 CVRA, \$60 DNA fee, 3 years probation, 80 hours of community service.

PEOPLE v TRACY WATSON, Wayne Circuit, 1/10/2002, charged with welfare fraud; Judgment - Plea Agreement, Judgment/Plea; sentenced to 3-years probation,

150 hours community service and restitution of \$6,356.00.

PEOPLE OF THE STATE OF MICHIGAN v CORAL EUGENE WATTS, Oakland Circuit, Defendant is a confessed serial killer who has claimed to have killed as many as 80 women, including women in Michigan. Found guilty by jury of first degree premediated murder and sentenced to life in prison.

PEOPLE v KRYSTAL WEATHERS, Wayne Circuit, 3/22/2002, ; Order - Plea Agreement, Case reduced to diversion status. Ordered to pay restitution of \$1,600.00.

PEOPLE v LEE P WELLS, Oakland Circuit, 05/22/2003, Defendant charged with 1 count conspiracy to commit securities fraud and 16 counts violation of Blue Sky Laws - fraudulent schemes/statements. Judgment - Plea Agreement. Sentenced to 273 days in jail w/credit for 1 day; 2 years probation; restitution \$86 million; costs \$600; CVF fee \$60; DNA fee \$60; supervision fee \$100/mo.

PEOPLE v ALECIA WESLEY, Wayne Circuit, 01/14/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$6,647.00.

PEOPLE v JAMILA WILKINS, Wayne Circuit, 3/31/2004, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution in the amt of \$27,318.

PEOPLE v DENNIS WILLIAMS, Wayne Circuit, 10/16/2003, Defendant charged with welfare fraud; Judgment - Plea Agreement, Sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v ROSLYN WILLIAMS, Wayne Circuit, 7/31/2003, charged with welfare fraud; Judgment - Plea Agreement, pled and sentenced to 3-years probation, 150 hours community service and restitution of \$4,329.00.

PEOPLE v SHARON WILLIAMS, Wayne Circuit, 01/14/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$9,072.00.

PEOPLE v SONYA WILLIAMS, Wayne Circuit, 10/9/2003, charged with welfare fraud; Judgment - Plea Agreement, Sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE v LAKEISHA WILLIS, Wayne Circuit, 4/20/2004, charged with welfare fraud; Judgment - Plea Agreement, Pled and sentenced to 3-years probation, 150 hours community services, court costs/fees and restitution of \$5,856.

PEOPLE v ANGIE WILSON, Wayne Circuit, 5/29/2003, charged with welfare fraud; Judgment - Plea Agreement, sentenced to 3-years probation, 150 hours community service and restitution of \$2,610.00.

PEOPLE v DONALD WILSON, Oakland Circuit, 01/25/2001, Defendant convicted by a jury with receiving & concealing over \$20,000, altering vehicle identification, obtaining money under false pretenses, and receiving & concealing over \$1,000; sentenced on 1/25/01 to 9 months jail, 1 year tether and 2 years probation. Restitution hearing was held on 2/26/01 and judge ordered \$80,000 in restitution to be paid before end of probation.

PEOPLE v DONALD L WILSON, Court of Appeals, 07/01/2003, Defendant charged by with receiving & concealing over \$20,000, altering vehicle identification, omufp, & rec & concealing over \$1,000. Defendant found guilty of all counts; sentenced on 1/25/01 to 9 months jail w/work release, 1 year tether and 2 years probation. Defendant filed Claim of Appeal, appealing his conviction. Affirmed - In Full, 7/1/03 MI COA affirmed Oakland Circuit Court's decision re Defendant's

conviction.

PEOPLE v LAWANDA WILSON, Wayne Circuit, 01/14/2003, charged with welfare fraud; pled and sentenced to 3-years probation, 150 hours community service and restitution of \$5,320.00.

PEOPLE v DESHAWN D. WITCHER, Calhoun Circuit, 07/09/2001, Charged with assault with intent to murder and felony firearm for trying to kill a Battle Creek police officer. Defendant found guilty by jury on all counts of assault with intent to murder and felony firearm; sentenced to life in prison.

STATE OF MICHIGAN v ANGELA B. WOFFORD, Wayne Circuit, 12/1/2003, charged with welfare fraud; Judgment – Plea; sentenced to 3-years probation, 150 hours community service and restitution.

PEOPLE OF THE STATE OF MICHIGAN v TYSON JOHN WRIGHT, 67-4A District Court, 05/06/2003, Defendant charged with use tax fraud and making a false statement in an application of certificate of title (purchase price). Judgment - Plea Agreement, Defendant pled to a 1-year misdemeanor. Sentenced to pay restitution in the amount of \$1,850 to SOM, Nationwide Ins. Co. \$15,173; \$815 fines and costs.

PEOPLE v GREGG WYSOCKI, Lapeer Circuit, 01/13/2003 Defendant charged with 1 count unauthorized access of computers. Pled guilty; sentenced to 30 days jail; 18 months probation, \$500 fine, \$500 costs, \$30 Restitution Ordinance Fee, \$60 CVF, \$2,430 State Supervision Fees.

UNITED STATES OF AMERICA v JOHNNY YBARRA, United States District Court, Eastern District, 12/04/2003, Defendant indicted in the USDC-ED of 3 counts of delivery of cocaine, 21 USC §841(a)(1). Defendant made a series of cocaine deliveries and is a member of the Devil's Disciples Motorcycle Gang being investigated by the DPD/AG/FBI Violent Crimes Task Force. Judgment - Plea Agreement.

PEOPLE v JAMES GEARHART YOUNG, JR., 65-1 District Court, Defendant charged with 1 Count Sex Offender Failure to Register. Pled as charged. Serving 81 days then return to Chicago to half-way house.

STATE OF MICHIGAN, DEPT. OF TREASURY v PAUL YOUNGBLUT, Kalamazoo Circuit, 3/1/2003, Defendant accused of underreporting sales tax (auto parts business, partially run on line.) Judgment - Plea Agreement, Pled guilty to one year misdemeanor and was ordered to pay \$3,000.00 in restitution for tax, penalty and interest. Assessed fines and costs at \$305.00 or 30 days in jail.

Environment, Natural Resources, and Agriculture - Prosecutions 2003 – 2004

PEOPLE OF THE STATE OF MICHIGAN v ROBERT LEE ADAMS, 72nd District Court, 12/27/2002, Referral from the Clay Township Police Department, Officers Labuhn and Schaible. Suspects took a "free" fuel oil tank from Harsens Island, Clay Township, St. Clair County, and intentionally dumped fuel oil out of the tank (30 gals) onto ground and into ditch that runs into Middle Channel Tributary, affecting St. Clair River and Lake.

Plea Agreement: Defendant pled guilty to misdemeanor of knowingly and illegally discharging or disposing of used oil, by dumping used oil onto ground or into groundwaters, contrary to MCL 324.16704.

PEOPLE OF THE STATE OF MICHIGAN v JOHNNY WESLEY BORDERS, 72nd District Court, 12/27/2002, Referral from the Clay Township Police Department, Officers Labuhn and Schaible. Suspects took a "free" fuel oil tank from Harsens Island, Clay Township, St. Clair County, and intentionally dumped fuel oil out of the tank (30 gals) onto ground and into ditch that runs into Middle Channel Tributary, affecting St. Clair River and Lake.

Plea Agreement: Defendant pled guilty to misdemeanor of knowingly and illegally discharging or disposing of used oil, by dumping used oil onto ground or into groundwaters, contrary to MCL 324.16704.

PEOPLE OF THE STATE OF MICHIGAN v MAJED M. BAKRI, MALEK PETROLEUM, INC., Wayne Circuit, 1/12/2004, Complaint for felony and misdemeanor violations filed in 24th District Court and transferred to Wayne County Circuit (because of felony charges) regarding gasoline in the basement of residence of citizen, due to the improper disposal of gasoline tank waste liquids by Majed Bakri, dba Malek Petroleum, Inc.

Plea Agreement: Defendant pled guilty to count II, misdemeanor. All other claims dismissed. Defendant will reimburse costs to the Department of Environmental Quality (DEQ) in the amount of \$6,000 (paid quarterly, commencing 90 days from sentencing).

PEOPLE OF THE STATE OF MICHIGAN v DANIEL BATES AND JAMES BODIE, 4th District Court, 3/16/2004, Complaint filed in 4th District Court on 05/20/03 against Daniel Lee Bates and James Bodie (Village of Cassopolis yard waste site, Pokagon Hwy, Cass County) regarding discharge of raw sewage to the ground and into the soil, and failing to dispose of liquid industrial waste at designated facility.

Plea Agreement: Defendant Bates pled guilty to one count of illegal disposal of liquid industrial waste. Defendant Bodie dismissed. \$500.00 fine and \$500 in restitution to DEQ.

PEOPLE OF THE STATE OF MICHIGAN v GEORGE CARL BUSH, 36th District Court, 4/7/2004, Complaint filed in 36th District Court alleging that Defendant released mercury into school corridors of Detroit Finney High School. Joint investigation by Detroit Police Department, United States Environmental Protection Agency and Attorney General's office. (Environmental Crimes Task Force case)

Order: Bound Over, District Court file closed. See Wayne County Circuit file 04-3870.

PEOPLE OF THE STATE OF MICHIGAN v GREGORY R. CHEEK, LAKE WEED-A-WAY, INC., D/B/A PROFESSIONAL LAKE MANAGEMENT, 52-2 District Court, 11/7/2003, Professional Lake Management (licensed by Department of Agriculture) under contract with the Grass Lake Homeowners Association applied the herbicide fluridone to Grass Lake (herbicide is not authorized for aquatic nuisance control via a DEQ permit) Application resulted in a total kill of vegetation at application points. Investigation and company employee information disclosed agreements between company officials and customers resulting in unpermitted

herbicide applications circumventing DEQ permit denials or application restrictions. Dismissed: While court satisfied that People met burden to establish probable cause that felony occurred, court is not satisfied that probable cause exists to believe defendant committed offense; therefore, case dismissed.

STATE OF MICHIGAN v GREGORY R. CHEEK AND PROFESSIONAL LAKE MANAGEMENT, Oakland Circuit, 7/7/2004, Application for Leave to Appeal from District Court Order dated 11/7/03 dismissing Complaint for lack of probable cause to believe Defendant.

Order: Oakland Circuit Court Judge Gene Schnelz ruled against State in appeal. (Motion for reconsideration of the District Judge's decision denying bindover.)

PEOPLE OF THE STATE OF MICHIGAN v FORMULATED ENVIRONMENTAL ALTERNATIVES, INC., Ingham Circuit, 4/12/2004, Bound over from 54-A District Court, Review criminal investigation file regarding fraudulent request for payment of MUSTFA funds at Wine Basket Market site, Highland, Michigan. Formulated (FEA) was hired by Edward Murad, owner of Wine Basket, 3542 Duck Lake Rd, Highland, to conduct site assessment -and FEA then applied for MUSTFA funds (Claim #083094-5856). Tank was found to be heating fuel tank which does not qualify for MUSTFA funds - no evidence of contamination at site. FEA Underground Storage Tank (UST) removal consultant since 1988.

Order: Defendant pled no contest as charged. Defendant placed on probation for two years and ordered to pay \$10,500.00 restitution.

PEOPLE OF THE STATE OF MICHIGAN v JAMES BLOOMFIELD, HEARTBEAT HOMES, 10th District Court, 07/17/2003, Request for Attorney General review by Office of Criminal Investigations regarding violations of sewerage system installation regulations. Suspects, a private contractor and city official, allowed installation of a sewerage system contrary to Part 41, Natural Resources and Environmental Protection Act (NREPA). Complaint filed in 10th District Court.

Plea Agreement: Defendant pled guilty to one misdemeanor count of constructing a sewerage system without a permit. Ordered to pay \$160 in fines and court costs.

PEOPLE OF THE STATE OF MICHIGAN v ROBERT HORAN, MICHAEL COTTER & COTTER DRAGLINE SERVICES, INC., 77th District Court, 12/16/2003, Review of criminal investigation file regarding Horan Property. Suspects, a private contractor and a property owner, dredged and filled bottomlands and wetland without a permit, contrary to NREPA, Part 301. Mecosta County Prosecuting Attorney, an acquaintance of property owner, requests that DEQ refer this case to an alternate prosecuting official.

Plea Agreement: Defendants pled guilty as charged and were fined \$2,000.00 each.

PEOPLE OF THE STATE OF MICHIGAN v DONALD EDGAR JOHNSON, 79th District Court, 01/05/2004, Review of criminal investigation file regarding Donald E. Johnson, Johnson's Supreme Auto & Marine, 825 S. Pere Marquette Highway, Ludington, Michigan (Mason County) regarding knowing release of petroleum-based hazardous substance into a storm drain, which occurred just after DEQ ordered suspect to properly characterize and dispose of liquids stored on his property. Investigation also revealed improper storage of hazardous waste and liquid industrial waste, and the release of hazardous waste and liquid industrial waste into the ground.

Plea Agreement: Defendant pled guilty to misdemeanor of illegal storage of hazardous waste. Defendant must pay \$5,000.00 in fines, costs and restitution; in addition to one year's probation.

PEOPLE OF THE STATE OF MICHIGAN v LIGHTHOUSE HARBOR MARINA, LLC, 1st District Court, 2/4/2004, Request for review by DEQ, Office of Criminal Investigations. Approximately 05/01/2001, suspects conducted unauthorized and illegal dredge and fill activities at the Lighthouse Harbor Marina (Monroe County). These violations include dredging and filling of an inland stream without a permit,

causing soil erosion and sedimentation into state waters, and a knowing discharge of a pollutant into state waters.

Plea Agreement: Defendant Lighthouse Harbor pled guilty and paid fines and costs in the amount of \$1,500.00.

PEOPLE OF THE STATE OF MICHIGAN v MCLEIEER OIL, INC., AND MICHAEL MCLEIEER, 10th District Court, 03/17/2003, Complaint filed for failure to obtain requisite permits to establish and/or conduct hazardous waste facility. Abandonment of hazardous waste containers at 333 W. Mill Street, Athens, Michigan, while property was owned by Michael McLeieer. Property tax reverted to State in 1999.

Plea Agreement: Judgment of Sentence entered 03/17/2003. Defendant must pay fines and costs totaling \$2,800.00 by 6/13/03. Failure to pay results in incarceration for 20 days. Restitution in the amount of \$39,145.00 is to be paid within 11 months.

PEOPLE OF THE STATE OF MICHIGAN v ROBERT GENE MEEUWSEN, Ottawa Circuit, 03/10/2003, Review criminal investigation report alleging discharge of liquid industrial waste into the soil; MCL 324.12113(2)(b), discharge of liquid industrial waste into surface water; and felony charge MCL 324.3109 - discharge into the water of the state an injurious substance. Complaint filed in 58th District Court (Hudsonville) transferred to Circuit Court because felony charges pending.

Plea Agreement: Judgment of Sentence entered 03/10/03: Restitution as follows: \$2,000.00 – Department of Natural Resources (DNR); \$500.00 - Attorney General; \$2,676.11 – DEQ/OCI; \$10,823.89 - DEQ/Water Division; \$7,000.00 - Land Conservancy of West Michigan.

PEOPLE OF THE STATE OF MICHIGAN v KIM MEUSER, Ingham Circuit, 6/10/2003, Complaint filed regarding three allegedly fraudulent Schoolcraft County wetland permit applications to the DEQ for certain parcels of property owned by Gregg Stoll located in Walled Lake, Michigan (bound over from District Court).

Dismissed: Motion/Order of Nolle Prosequi as part of a plea agreement with Greg Stoll. File Closed.

PEOPLE OF THE STATE OF MICHIGAN v LAMOIN CASKEY, WILLIAM ORT, JR., AND MICHAEL ROWLEY, 2-1 District Court, 11/06/2003, Joint investigation by Raisin Charter Township Department of Public Safety, US Environmental Protection Agency and DEQ determined that violations of NREPA regarding the transporting of hazardous waste occurred relating to American Steel Works, Inc./Great Lakes Welding Company.

Plea Agreement: Defendants pled guilty as charged. Caskey - \$2,000 fines, costs and restitution; 6 months' probation. Rowley - \$1,500 fines, costs and restitution; one year probation. Ort - \$30,700 fines, costs and restitution; two years' probation.

PEOPLE OF THE STATE OF MICHIGAN v PARAGON PROPERTIES, LLC & PAMAR ENTERPRISES, INC, 41-B District Court, 10/18/2003, Review of criminal investigation file regarding construction of Prentiss Village Apartments; failure to restore wetland. Loss of approximately 2,000 linear feet of stream and loss of substantial fish & wildlife habitat. Grading has changed contour of land; construction of building in wetlands area; concerns regarding construction and maintenance of private agricultural drains.

Verdict: Defendant Paragon was found guilty as charged, and ordered to pay fines and costs in the amount of \$1,745.00. Defendant Pamar was acquitted.

PEOPLE OF THE STATE OF MICHIGAN v POWER VAC SERVICES, INC. DETROIT, 36th District Court, 11/27/2002, Complaint filed with regard to violations of Hazardous Waste - MCL 324.11123(1) - operating facility without a license/ treating hazardous waste without a license and manifest reporting violations.

Plea Agreement: Defendant pled guilty to transportation of liquid industrial waste, in violation of MCL 324.12107(6).

PEOPLE OF THE STATE OF MICHIGAN v SAPPINGTON CRUDE OIL INC, WALTER B. SAPPINGTON, 78th District Court, 5/13/2004, Review of two criminal investigation files regarding Walter Bond Sappington, Sappington Crude Oil, Inc. alleging violation of oil and gas abandoned wells, failure to produce or properly plug and abandon each of four wells in Newaygo County and six wells located in Cass County.

Plea Agreement: Defendant pled guilty to misdemeanor charge in Count I of complaint. Within two years, Defendant shall plug or economically produce the Fetterley 3-9 Well identified in paragraph 1 of Complaint; \$1,000.00 in fines; \$1,917.16 in investigative costs; penalty of \$3,000.00, for a total of \$5,917.16.

PEOPLE OF THE STATE OF MICHIGAN v SAPPINGTON CRUDE OIL INC, WALTER B. SAPPINGTON, 4th District Court, 5/6/2004, Review of two criminal investigation files regarding Walter Bond Sappington, Sappington Crude Oil, Inc. alleging violation of oil and gas abandoned wells, failure to produce or properly plug and abandon each of four wells in Newaygo County and six wells located in Cass County.

Plea Agreement: Defendant pled guilty to misdemeanor charge in Count I of Complaint. Within two years, Defendant shall plug or economically produce each of the six oil production wells identified in paragraph 1 of Complaint; \$1,000.00 in fines; \$2,176.21 in investigative costs; penalty of \$5,000.00, for a total of \$8,176.21.

PEOPLE OF THE STATE OF MICHIGAN v ALTERNATIVE FUELS, L.C. & MASHELLE SAGER, 77th District Court, 07/15/2002, Complaint Felony/ Misdemeanor filed 8/17/2000 - Scrap tire collection site located in Sears, Michigan - criminal allegations: Counts 1 and 2 Uttering and Publishing (Felony); Counts 3 through 90 - Misdemeanor violations Part 169 of NREPA. (Scrap Tires). Ongoing violations by company and individuals.

Plea Agreement: Defendant Alternative Fuels pled guilty to misdemeanor and paid \$250.00; charge against Defendant Sager was dismissed.

PEOPLE OF THE STATE OF MICHIGAN v KENNETH SCHUMACHER AND SCHUMACHER SALVAGE, 77th District Court, 07/15/2002, One count misdemeanor complaint filed for violations of Part 169, Scrap Tires of NREPA. Scrap tire collection site located in Sears, Michigan - MDEQ has observed and documented 80 violations of Part 169 between 4/98 and 2/2000. Owner has failed to attempt to remediate any of these violations.

Plea Agreement: Defendant pled guilty and was placed on four years' probation; ordered to perform cleanup of entire Schumacher Salvage during that time; ordered to file monthly performance reports with Probation Department and DEQ.

PEOPLE OF THE STATE OF MICHIGAN v H. BERNARD WALTER ASHLEY, 54-A District Court, 10/18/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty. \$3,000.00 for restitution to DNR; \$500-fine; \$200-costs; \$40-judgment = \$3,740.00.

PEOPLE OF THE STATE OF MICHIGAN v MICHAEL DECAMP, 23rd District Court, 10/25/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty; \$6130.00 in fines, costs and restitution due; payment to be made in \$400 installments; 24 months probation.

PEOPLE OF THE STATE OF MICHIGAN v MICHAEL LEE DECAMP, 45-A District Court, 10/28/04, Complaint filed as part of Operation Slither, a covert

investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Final Order: Order of Probation entered 10/28/04; \$556.00 in fines and costs.

PEOPLE OF THE STATE OF MICHIGAN v GUY LANCE DUNN, 23rd District Court, 06/09/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty to three counts; fines & restitution totaled \$2,470.00.

PEOPLE OF THE STATE OF MICHIGAN v ROGER FLORIAN, 1st District Court, 02/25/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty to counts 26-35, counts 1-25 dismissed. Defendant to pay a fine of \$2,500 and restitution to State of Michigan of \$470. Probation terminated upon full payment of fees.

PEOPLE OF THE STATE OF MICHIGAN v JAMES HEFFERNAN, 23rd District Court, 04/15/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled nolo contendere to counts 1-9; counts 10-21 dismissed. \$4,440.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v FRANK GEORGE KITTER, 16th District Court, 05/12/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty; \$1,220.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v THOMAS NELSON, 16th District Court, 07/22/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty; \$3,500.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v JEFFERSON RACE, 54-A District Court, 02/10/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty; \$1,610.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v JEFFERSON RACE, 52-1 District Court, 02/06/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Dismissed: By Court Order of Nolle Prosequi.

PEOPLE OF THE STATE OF MICHIGAN v JEFFERSON RACE, 23rd District Court, 03/03/04, Complaint filed as part of Operation Slither, a covert investigation

into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Dismissed: By Court Order of Nolle Prosequi.

PEOPLE OF THE STATE OF MICHIGAN v GORDON RENAUD, 23rd District Court, 03/03/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Plea Agreement: Defendant pled guilty; \$3,470.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v GORDON RENAUD, 28th District Court, 03/03/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Dismissed: By Court Order of Nolle Prosequi.

PEOPLE OF THE STATE OF MICHIGAN v JOEL ROGDELIN, 23rd District Court, 03/03/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Plea Agreement: Defendant pled guilty; \$8,835.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v WILLIAM SANDS, 53rd District Court, 03/23/04, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Plea Agreement: Defendant pled to violation of NREPA and possession of marijuana. Placed on probation for one year and fined \$6,205.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v WILLIAM ROBERT SANDS, 23rd District Court, 3/23/2004, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Dismissed: By Court Order of Nolle Prosequi.

PEOPLE OF THE STATE OF MICHIGAN v JAMES WEISS, 52-1 District Court, 2/24/2004, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Dismissed: Plea/Conviction on another case, Order of Nolle Prosequi entered by Court.

PEOPLE OF THE STATE OF MICHIGAN v JAMES ALLEN WEISS, 16th District Court, 6/8/2004, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.
Plea Agreement: Defendant pled guilty; \$940.00 in restitution.

PEOPLE OF THE STATE OF MICHIGAN v RALPH WEISS, 14-B District Court, 10/29/2004, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR,

and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty to 15 counts; ordered to pay \$8,570.00 in fines, costs and restitution.

PEOPLE OF THE STATE OF MICHIGAN v DANIEL GENE WILLIAMS, 74th District Court, 2/9/2004, Complaint filed as part of Operation Slither, a covert investigation into the illegal trade of Michigan reptiles. The U.S. Fish & Wildlife Service, Ohio DNR, and Michigan DNR working cooperatively to investigate reptile dealers. Attorney General assistance required to handle prosecution of the case.

Plea Agreement: Defendant pled guilty to one count; fines and costs in the amount of \$970.00.

PEOPLE OF THE STATE OF MICHIGAN v TONY SPOHN, Ingham Circuit, 6/10/2003, Complaint filed regarding three allegedly fraudulent Schoolcraft County wetland permit applications to the DEQ for certain parcels of property owned by Gregg Stoll located in Walled Lake, Michigan (bound over from District Court).

Dismissed: By Plaintiff, Motion/Order of Nolle Prosequi as part of a plea agreement with Gregg Stoll.

PEOPLE OF THE STATE OF MICHIGAN v GREGG DIEDRICH STOLL, Ingham Circuit, 6/10/2003, Complaint filed regarding three allegedly fraudulent Schoolcraft County wetland permit applications to the DEQ for certain parcels of property owned by Gregg Stoll located in Walled Lake, Michigan (bound over from District Court).

Plea Agreement: Defendant pled guilty on June 10, 2003.

PEOPLE OF THE STATE OF MICHIGAN v GREGG DIEDRICH STOLL, Court of Appeals, 10/15/2003, Stoll files Application for Leave to Appeal in Court of Appeals (on or about July 9, 2003).

Leave to Appeal – Denied.

PEOPLE OF THE STATE OF MICHIGAN v GREGG DIEDRICH STOLL, Michigan Supreme Court, 2/27/2004, Stoll files Application for Leave to Appeal in Supreme Court (on or about November 5 2003).

Leave to Appeal – Denied.

PEOPLE OF THE STATE OF MICHIGAN v STORAENSO NORTH AMERICA CORPORATION, F/K/A CONSOLIDATED PAPERS, INC., 95-A District Court, Complaint filed alleging 41 separate violations of DEQ permit. Informal review of possible violations of Agricultural Use Approval (AUA) permit #00-AUA-002 issued to Consolidated Papers, Inc., acquired by StoraEnso North America Corporation, for land application of paper mill sludge (trade name "NiAGro") generated by facility located in Niagara, Wisconsin.

Plea Agreement: Defendant pled guilty. Restitution of \$35,000; costs and fines \$6,000 - total: \$41,000. Defendant will also undergo 5-year monitoring program.

PEOPLE OF THE STATE OF MICHIGAN v FRED PEPLINSKI, Leelanau Circuit, 12/23/2003, Complaint filed in 13th Circuit Court alleging illegal discharges and falsified documents by two Department of Public Works Superintendent. Superintendent knowingly discharged wastewater in violation of permit issued to Suttons Bay and knowingly submitted false reports to the DEQ to conceal illegal discharges, which are felony violations.

Plea Agreement: Defendant sentenced to six months in county jail for knowing release into Sutton's Bay; \$2,500.00 fine; \$1,000.00 restitution to DEQ.

Health Care Fraud - Prosecutions 2003 – 2004

PEOPLE v A DENTAL CENTER, P.C. - DEARBORN HTS, 20th District Court, 07/23/2003, 3/17/03 Complaint filed in 20th District Court to 29 Counts Medicaid False Claims; Dismissed - By Court, 7/23/03 Case dismissed after prelim; 8/1/03 Attorney General appealed District Court's decision to dismiss case; 2/17/04 3rd Circuit Court dismissed AG's appeal.

PEOPLE v A DENTAL CENTER, P.C. - DEARBORN HTS, Wayne Circuit, 2/17/2004, 3/17/03 Complaint filed in 20th District Court to 29 Counts Medicaid False Claims; 7/23/03 Case dismissed after prelim; 8/1/03 Attorney General appealed District Court's decision to dismiss case; Dismissed - By Court, 2/17/3rd Circuit Court dismissed AG's appeal.

PEOPLE v A DENTAL CENTER, P.C. - ALLEN PARK, Wayne Circuit, 11/17/2003, 3/20/03 Complaint filed to 11 Counts Medicaid False Claims; 9/25/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 1/17/03 Plea entered to 1 Count Medicaid fraud; 11/17/03 Sentenced to \$1,000 Fine, \$500 Costs, \$7,430.48 Medicaid restitution.

PEOPLE v A DENTAL CENTER, P.C., Wayne Circuit, 11/17/2003, 3/14/03 Complaint filed to 13 Counts Medicaid False Claims; 10/24/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 11/17/03 Plea entered to 1 Count Medicaid fraud; 11/17/03 Sentenced to \$1,000 Fine, \$500 Costs, Medicaid Restitution \$1,662.29.

PEOPLE v ANGELA ALLEN, Wayne Circuit, 10/29/2003, 7/31/03 Complaint filed to 1 Count Embezzlement; 8/13/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 8/27/03 Plea entered to a Count Embezzlement less than \$20,000; 10/29/03 Sentenced to 2 years probation, 80 hours of community service, \$240 supervision fee to DOC, \$16,400 Restitution (recd), \$60 CVRA, must not be employed in position involving management of others funds, bank accounts, etc.

PEOPLE v RAM CZAND ARORA, Isabella Circuit, 05/01/2003, 4/22/02 Complaint filed in 76th District Court to 4 Counts False Pretenses over \$1,000, 1 Count Conspiracy to Commit False Pretenses and 13 Counts Attempted False Pretenses over \$1,000; 10/21/02 Bound over from 76th District Court as charged; Dismissed - By Plaintiff, 5/1/03 Case dismissed per plea agreement in companion case of Birmingham Rehabilitation.

PEOPLE v GEORGE CHRISTOPHER BAKER, Macomb Circuit, 10/5/2004, 6/15/04 Complaint filed in 39th District Court to 8 Counts Uttering and Publishing Financial Transaction; 6/30/04 Bound over to 116th Circuit Court as charged; Judgment - Plea Agreement, 8/30/04 Plea entered to 1 Count Uttering and Publishing Financial Transaction Device; 10/5/04 Defendant sentenced to 2 years probation, \$2,517.00 Medicaid restitution, \$60 CVRA.

PEOPLE v KENNETH MICHAEL BEHR, Hillsdale Circuit, 12/30/2002, 9/25/02 Complaint filed in 2B District Court to 1 Count of Embezzlement; 12/6/02 Bound over to 1st Circuit Court as charged; Judgment - Plea Agreement, 12/6/02 Plea entered to 1 Count Attempt Embezzlement - \$1,000 or more, but less than \$20,000; 12/30/02 Sentenced to \$60 CVRA, \$60 DNA, \$1,560 court costs, \$7,796.06 to Hillsdale Community Health Center, 24 months probation.

PEOPLE v SALVATORE DAVID BENISATTO, Ingham Circuit, 07/16/2003, 9/30/02 Complaint filed in 54B District Court to 2 Counts Medicaid False Claims; 1/6/03 Bound over to 30th Circuit Court as charged; Judgment - Plea Agreement, 6/10/03 Plea entered to 1 Count Medicaid Fraud - False Claim; 7/16/03 Sentenced to 4 years probation, \$10,000 fine, \$5,000 costs, \$79,000 Medicaid restitution, \$60 CVRA, \$60 DNA testing, \$1,440 supervision fee, 30 days jail.

PEOPLE v BIRMINGHAM REHABILITATION AND PHYSICAL THERAPY, Ottawa Circuit, 05/02/2003, 4/22/02 Complaint filed in 76th District Court to 4 Counts False Pretenses over \$1,000, 1 Count Conspiracy to Commit False Pretenses, 13 Counts Attempted False Pretenses over \$1,000; 10/21/02 Bound over from 76th District Court as charged; Judgment - Plea Agreement, 3/27/03 Plea entered to 1 Count False Pretenses \$1,000-\$2,000; 5/2/03 Sentenced to \$2,000 Fines, \$4,000 Costs, \$60 CVRA, \$14,893 Restitution (\$4,893 to Medicare, \$5,000 Investigative Costs to Attorney General, \$5,000 Investigative Costs to U.S. Department of Health and Human Services) to be paid over six-month period commencing May 9, 2003.

PEOPLE v JULIE ANN BRANK, Alpena Circuit, 12/04/2003, 7/31/03 Complaint filed to 1 Count Embezzlement; 10/14/03 Bound over from 88-1 District Court to 26th Circuit Court as charged; Judgment - Plea Agreement, 11/3/03 Plea entered to 1 Count Embezzlement Agent \$1,000-\$2,000; 12/4/03 Sentenced to 24 months probation, \$60 CVRA, \$600 costs, \$60 state minimum costs.

PEOPLE v ANN DENISE BROCKS, 46th District Court, 05/08/2002, 9/24/01 Complaint filed in 46th District Court to 1 Count Involuntary Manslaughter; Dismissed - By Court, 5/8/02 Order of Dismissal granting Defendant's Motion for Dismissal.

PEOPLE v ANN DENISE BROCKS, Oakland Circuit, 04/21/2003, 9/24/01 Complaint filed in 46th District Court to 1 Count Involuntary Manslaughter; 5/13/02 Claim of Appeal filed in 6th Circuit Court appealing dismissal of case in 46th District Court; Dismissed - By Court, 4/21/03 Opinion and Order issued by Oakland County Circuit Court affirming magistrate's decision to dismiss the Involuntary Manslaughter Charge following preliminary examination in district court.

PEOPLE v CARYN DELYNN 5th District Court, 1/30/2004, 9/23/03 Complaint filed in 5th District to 1 Count Patient Abuse; 1/14/04 Amended Complaint filed adding 1 additional Count of Patient Abuse; Judgment - Plea Agreement, 1/14/04 Plea entered to 1 Count A&B; 1/30/04 Sentenced to \$100 fine, \$205 court costs, \$45 state costs or serve 40 days.

PEOPLE v SAM'S PRESCRIPTION DRUGS, INC., PAUL COBBIN WOODS, STANLEY BROWN, Ingham Circuit, 11/18/1992, Bound Over from 55th District Court No. 92-2071-FY to Ingham Circuit; Judgment - Plea Agreement, 11/18/1992 Plea entered; Sentenced to \$300 in costs and \$100 fine.

PEOPLE v ANGELA LYNECE CASSADIME, Court of Appeals, 09/09/2003, 9/27/01 Complaint filed to 1 Count Unauthorized Practice of a Health Profession and 1 Count Utter and Publishing; 11/29/01 Bound over f/14A-1 District Court as charged; 4/16/03 Application for Leave to Appeal filed by Plaintiff in Michigan Court of Appeals appealing Circuit Court's May 28, 2003, Order denying Plaintiff-Appellant's Motion for Rehearing or Reconsideration of January 15, 2003 Order dismissing Count 2 of the criminal Information; Reversed - In Full, 9/9/03 Opinion issued reversing trial court's decision to dismiss 1 Count of Complaint and reinstating the Count; Remanded back to trial court.

PEOPLE v DEANA CHAMBERS, Ingham Circuit, 8/4/2004, 9/27/02 Complaint filed in 54B District Court to 51 Counts Medicaid False Claims; 6/9/03 Amended Complaint filed to 31 Counts Medicaid False Claims; 4/27/04 Bound over 30th Circuit Court on 13 Counts of Medicaid False Claims; Judgment - Plea Agreement, 6/2/04 Plea entered to 1 Count Medicaid Fraud False Claim; 8/4/04 Sentenced to 18 months probation, \$180 MDOC supervision fee, 300 hours community service, 1 day in jail.

PEOPLE v APRIL COFFELT, Genesee Circuit, 09/02/2003, 6/3/03 Complaint filed in 68th District Court to 1 Count Embezzlement; 7/11/03 Bound over to 7th Circuit Court as charged; Judgment - Plea Agreement, 8/4/03 Plea entered to 1 Count

Attempt Embezzlement greater than \$1,000, less than \$20,000; 9/2/03 Sentenced to \$60 CVRA, \$60 DNA fee, \$500 defendant attorney fees, \$2,500 restitution fee to go to victim, probation.

PEOPLE v HERMES CRAWFORD, 36th District Court, 12/10/2004, 9/23/03 Complaint filed in 36th District Court to 3 Counts U&P and 1 Count Conspiracy; Dismissed - By Plaintiff, 12/4/03 Plaintiff filed Motion for Nolle Prosequi; 12/10/03 Rec'd order for Nolle.

PEOPLE v DAWN DAVIS-HANSON, LPN, 35th District Court, 10/26/2004, 9/8/04 Complaint filed in 35th District Court to 1 Count Use of Controlled Substance; Judgment - Plea Agreement, 10/25/04 Plea entered to 1 Count Controlled Substance Use; 10/26/04 Sentenced to 12 months probation; \$370 fines/costs; \$360 probation fees; complete substance abuse program.

PEOPLE v EATON MANOR NURSING HOME, INC., Ingham Circuit, 07/16/2003, 9/30/02 Complaint filed in 54B District Court to 2 Counts Medicaid False Claims; 1/6/03 Bound over to 30th Circuit Court as charged; Judgment - Plea Agreement, 6/10/03 Plea entered to 1 Count Medicaid Fraud - False Claim; 7/16/03 Sentenced to 1 year probation, \$10,000 fine, \$79,000 Medicaid restitution.

PEOPLE v EMERALD PHYSICAL THERAPY, P.C., Isabella Circuit, 05/02/2003, 4/22/02 Complaint filed in 76th th District Court to 8 Counts False Medical Records, 4 Counts Health Care Fraud, 2 Counts False Pretenses over \$1,000, 1 Count Conspiracy to Commit False Pretenses; 10/21/02 Bound over from 76th District Court on 8 Counts False Medical Records, 2 Counts False Pretenses over \$1,000 and 1 Count Conspiracy to Commit False Pretenses; Judgment - Plea Agreement, 2/28/03 Plea entered to 1 Count False Medical Records; 5/2/03 Sentenced to \$2,000 fines, \$4,000 costs, \$60 CVRA, \$17,544 restitution (\$7,544 to Medicare, \$5,000 investigative costs to Attorney General, \$5,000 investigative costs to U.S. Department of Health and Human Services). To be paid over six-month period commencing May 9, 2003.

PEOPLE v ENJOY DENTAL CARE, P.C., Ingham Circuit, 11/10/2003, 8/7/02 Complaint filed in 54-B District Court to 13 Counts Medicaid Fraud; 10/17/02 Defendant bound over to 30th Circuit Court as charged; Judgment - Plea Agreement, 10/8/03 Plea entered to 2 Counts Medicaid fraud; 11/10/03 Sentenced to \$500 court costs, \$60 state costs, \$60 CVRA, \$2,800 Medicaid restitution. Restitution monies to be joint with case number 02-1026-FH.

PEOPLE v ROBIN MARGUERITE FREDRICK, R.N., Ingham Circuit, 3/8/2004, 9/27/01 Complaint filed in 54B District Court to 3 Counts Medicaid False Claims and 9 Counts Medicaid Fraud, 1/24/02 Amended Complaint filed to 2 Counts Medicaid False Claims and 9 Counts Medicaid Fraud; 8/12/02 Bound over to 30th Circuit on 11 Counts Medicaid False Claims; Dismissed - By Court, 3/8/04 Defendant's Motion for Directed Verdict granted.

PEOPLE v LINDA JOY FUGERE, 85th District Court, 02/18/2003, 6/20/02 Complaint filed in 85th District Court on 2 Counts Patient Abuse; Judgment - Plea Agreement, 12/10/02 Plea entered to 1 Count Assault & Battery; 2/18/03 Sentenced to \$300 fine, \$300 costs, \$50 CVRA, 24 months probation.

PEOPLE v JOHN ALLEN FULLER, 63-1 District Court, 08/22/2003, 9/30/02 Complaint filed in 63-1 District Court to 1 Count Patient Abuse; Verdict - Court, 7/1/03 Bench trial held; Defendant found guilty; 8/22/03 Sentenced to 12 months probation, \$955.00 in fines and \$205 costs.

PEOPLE v STUART LESTER GORELICK, Court of Appeals, 10/19/2004, 11/12/02 Complaint filed in 54-B District Court to 16 Counts Medicaid False Claims and 24 Counts Health Care False Claims; 9/30/03 Bound over to 30th Circuit Court

as charged. 8/18/04 Defendant filed with the Court of Appeals Application for Leave to Appeal 30th Circuit Court's decision on Motion to quash dated 7/27/04. Leave to Appeal - Denied, 10/19/04 Defendant's Leave to Appeal denies for lack of merit.

PEOPLE v CAROLYN GRAHAM, 36th District Court, 01/08/2003, 7/3/02 Complaint filed in 36th District Court to 1 Count Patient Abuse; Judgment - Plea Agreement, 1/8/03 Plea entered to Assault and Battery; 1/8/03 Sentenced to 1 year probation, \$200 fine, \$50 CVRA, \$200 costs.

JENNIFER M. GRANHOLM, EX REL PEOPLE OF THE STATE OF MICHIGAN v MEMORIAL HEALTHCARE CORPORATION, Ingham Circuit, 11/27/2002, 8/14/02 Civil complaint filed in 30th Circuit Court; Dismissed - By Plaintiff, 11/27/02 Plaintiff filed Order of dismissal. Settlement received by Plaintiff was \$651,207.04; half of which was program income and half Medicaid restitution.

PEOPLE v GREAT LAKES FAMILY DENTAL GROUP, P.C., Ingham Circuit, 08/20/2003, 6/3/03 Complaint filed in 54-B District Court to 1 Count Attempt Medicaid False Claims; 6/4/03 Bound over to 30th Circuit Court as charged; Judgment - Plea Agreement, 7/16/03 Plea entered to 1 Count Attempt Medicaid Fraud - False Claim; 9/20/03 Sentenced to \$60 CVRA, \$250 costs; \$1,000 fine.

PEOPLE v STANLEY WILSON GREER, Oakland Circuit, 06/02/2003, 2/7/03 Complaint filed to 2 Counts Check-Non Sufficient Funds \$500 or More; 3/13/03 Bound over as charged; Judgment - Plea Agreement, 3/24/03 Plea entered to 2 Counts NSF Check \$500 or more; 6/2/03 Sentenced to \$7,336 to victim \$300 costs, \$60 CVRA, \$720 supervision, \$60 DNA testing, 12 months probation.

PEOPLE v HEALTH INFORMATION RESOURCES, INC. D/B/A RX90, Hillsdale Circuit, 12/30/2002, 9/25/02 Complaint filed in 2B District Court to 1 Count of Embezzlement; 12/6/02 Bound over 1st Circuit Court as charged; Judgment - Plea Agreement, 12/6/02 Plea entered to 1 Count Embezzlement by agent or trustee - \$1,000 or more, but less than \$20,000; 12/30/02 Sentenced to 2 months probation, \$60 CVRA.

PEOPLE v HEALTH SYSTEM TRANSPORTATION, INC., Oakland Circuit, 04/28/2003, 2/7/03 Complaint filed in 45B District Court to 2 Counts Check-Non-Sufficient Funds \$500 or more; 3/13/03 Bound over as charged; Judgment - Plea Agreement, 3/24/03 Plea entered to 2 Counts NSF Check - \$500 or more; 4/28/03 Sentenced to 1 year probation, \$60 DNA fee, attorney fees to be determined, \$300 costs, \$7,336 restitution, \$720 supervision, \$60 CVRA.

PEOPLE v LUTHER HEMMINGWAY, 36th District Court, 2/9/2004, 6/2/99 Complaint filed in 36th District Court on 18 Counts Medicaid False Claims; 6/10/99 entered into LEIN; Dismissed - By Plaintiff, 2/9/04 Motion/Order of Nolle Prosequi signed by Judge dismissing case without prejudice.

PEOPLE v RICHARD HILLEGAS, St. Clair Circuit, 4/1/2004, 9/15/03 Complaint filed in 72nd District Court to 1 Count Embezzlement; 10/29/03 Bound over to 31st Circuit Court as charged; Judgment - Plea Agreement, 3/2/04 Plea entered to 1 Count Embezzlement \$20,000+; 4/1/04 Sentenced to 60 months probation, \$779.26 attorney fee, \$60 CVRA, \$100 fines, \$34,726.56 restitution to Defendant's parents, \$100 court costs.

PEOPLE v KAREN LEE HODGE, Allegan Circuit, 07/22/2003, 9/25/01 Complaint filed in 57th District Court to 1 Count Delivery of a Controlled Substance and 1 Count Practicing Medicine without a License. 11/6/01 Bound over to 48th Circuit Court on 1 Count Possession of a Controlled Substance; Judgment - Plea Agreement, 7/29/02 Defendant entered a plea to 1 Count Controlled Substance Possession less than 25 grams and was put on voluntary one-year probation and a one-year delayed sentence. She was also ordered to pay \$1,500 in costs. On 7/22/03 Defendant's plea

was changed to a misdemeanor of 1 Count Controlled Substance Use and her 1 year probation was terminated.

PEOPLE v JASON HOLLADY, M.D., Shiawassee Circuit, 01/16/2001, 12/1/99 Complaint filed to 6 Counts Obtain Money Under False Pretenses; 1 Count Conspiracy for Fraud, Obtain Money Under False Pretenses; 23 Counts False Claims; 1 Count Insurance Fraud; 1 Count Conspiracy to Commit Insurance Fraud; 5/24/00 bound over to 35th Circuit Court from 66th District Court as charged; Judgment - Plea Agreement, 10/23/01 Pled to 2 Counts Health Care Fraud False Claims; 1/16/01 Sentenced to \$5,000 fine, \$2,000 costs, \$60 CVRA, 48 months probation; 9 months jail, work release, \$347,463 restitution to Blue Cross/Blue Shield, probation supervision fee \$1,440; 200 hours community service. 10/15/04 Defendant's Delayed Application for Leave to Appeal is denied for lack of merit.

PEOPLE v FRANK JAMES HORTON, Wayne Circuit, 2/2/2004, 12/16/03 Complaint filed in 36th District Court to 1 Count Telecommunication Fraud and 1 Count Identity Theft; 12/23/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 1/16/04 Plea entered to 1 Count Telecommunications Fraud and 1 Count Obtaining Personal Identity; 2/2/04 Sentenced to 1-5 years jail, dismiss Docket No. 03-6392-01, credit for 99 days, \$60 CVRA, \$150 Forensic Lab Test, \$60 DNA sample.

PEOPLE v J&J SLEEP, INC., Ingham Circuit, 8/25/2004, 4/21/03 Complaint filed to 17 Counts Medicaid False Claims and 14 Count Health Care False Claims; 6/24/03 Bound over to 30th Circuit Court as charged; Verdict - Jury, 5/27/04 Jury Trial, Guilty. 8/25/04 Sentenced to \$513,536.84 BCBS restitution, \$26,063.97 to Michigan Department of Community Health, \$500 Attorney fees, \$60 state costs, \$60 CVRA, \$600 MDOC supervision fee, 60 months probation with last 36 months to be non-reporting.

PEOPLE v ANDERSON JACKSON, JR., Wayne Circuit, 02/28/2001, 8/8/00 Complaint filed in 32A District Court to 3 Counts U&P; 2/14/01 Bound over to 3rd Circuit Court as charged, adding 1 Count Habitual Offender; 2/28/01 remanded back to 32-A District Court; Remanded - Without Decision; 3/21/01 bound over again as charged; 10/31/01 Plea entered to 1 Count U&P; 11/20/01 Sentenced to 18 months - 14 years jail, \$60 CVRA, \$150 assessment for forensic lab test.

PEOPLE v KEITH ALLEN JAMES, Wayne Circuit, 09/29/2003, 6/2/03 Complaint filed in 36th District Court to 3 Counts Embezzlement, 10 Counts Forgery, 10 Counts Uttering and Publishing; 7/28/03 Bound over to 33rd Circuit Court as charged; Judgment - Plea Agreement, 9/27/03 Plea entered to 2 Counts U&P; 9/29/03 Sentenced to 4 years probation, \$60 CVRA, \$660 costs, \$112,227.32 restitution to victim, \$60 DNA testing, 100 hours community service.

PEOPLE v SHARON PATRICIA JAMES, Wayne Circuit, 11/14/2003, 6/2/03 Complaint filed in 36th District Court to 2 Counts Aid and Abet Embezzlement, 2 Counts Aid and Abet Forgery, 2 Counts Aid and Abet U&P; 9/5/03 Bound over to 3rd Circuit Court as charged, Judgment - Plea Agreement, 10/24/03 Plea entered to 1 Count Attempt Embezzlement/Agent less than 20M; 11/14/03 Sentenced to 5 years probation, \$60 CVRA, \$165 costs, \$55,000 restitution to victim, \$3,000 supervision fee.

PEOPLE v ASHANTAY RENEE JENKINS, 48th District Court, 12/19/2002, 9/30/02 Complaint filed in 48th District Court to 1 Count of Patient Abuse; Judgment - Plea Agreement, Defendant entered a plea to 1 count abuse of a patient - nursing home. Defendant was sentenced on 12/19/02 to 12 months probation.

PEOPLE v CLARENCE MARSHALL JONES, Ingham Circuit, 09/18/2002, 9/11/01 Complaint filed in 54B District Court to 1 Count Criminal Enterprise; 1 Count Practicing Medicine without License; 2/12/02 Bound over to 30th Circuit

Court as charged; 4/8/02 Amended Information filed to 1 Count Attempt Criminal Enterprise; Judgment - Plea Agreement, 4/9/02 Defendant pled to 1 Count Attempt Criminal Enterprise with remaining counts dismissed; 9/18/02 Sentenced to 5 years probation, \$60 DNA testing, \$60 CVRA, 90 days jail. Since this appeal dealt with restitution in the lower court's criminal case, defense counsel elected not to pursue this appeal as a Stipulation and Order was entered in the lower court as to restitution.

PEOPLE v JOHN S. JONES, RN, Midland Circuit, 11/20/2003, 8/27/03 Complaint filed in 75th District Court to 12 Counts Falsification of Medical Records; 10/8/03 Bound over to 42nd Circuit Court as charged; Judgment - Plea Agreement, 10/1/03 Plea entered to 1 Count Medical Record - Intent, Place False Information. 11/20/03 Sentenced to 1 year probation, \$600 attorney fees, \$60 CVRA, \$400 court costs, \$200 fines, \$60 state minimum costs.

PEOPLE v SHARON JOY JONES, 36th District Court, 05/07/2003, 9/30/02 Complaint filed in 36th District Court to 1 Count of Patient Abuse; Judgment - Plea Agreement, 5/7/03 Plea entered to one count Assault and Battery; 5/7/03 Sentenced to fine \$200, costs \$200, CVRA \$50, six months probation, no employment in health care facility. Defendant has six months to pay.

PEOPLE v MATTHEW JUSTUS, D.D.S., 20th District Court, 07/23/03, 3/17/03 Complaint filed to 25 Counts Medicaid False Claims; Dismissed - By Court, 7/23/03 Case dismissed in 20th District Court after prelim. 8/1/03 Attorney General appealed District Court's decision to dismiss case. 2/17/04 3rd Circuit Court dismissed AG's appeal.

PEOPLE v MATTHEW JUSTUS, D.D.S., Wayne Circuit, 2/17/2004, 3/17/03 Complaint filed to 25 counts Medicaid False Claims; 7/23/03 Case dismissed after prelim. 8/1/03 Claim of Appeal filed in 3rd Circuit Court appealing District Court's dismissal; Dismissed - By Court, 2/17/04 3rd Circuit Court dismissed AG's appeal.

PEOPLE v JACK A. KINGEN, Ingham Circuit, 8/25/2004, 4/21/03 Complaint filed to 17 Counts Medicaid False Claims and 14 Counts Health Case False Claims; 6/24/03 Bound over to 30th Circuit Court as charged; Verdict - Jury, 5/27/04 Jury Verdict, guilty. For judgment of sentence see AG #2003008537B (J&J Sleep). Restitution on J&J Sleep covers both defendants and is not duplicative.

PEOPLE v AUGUSTINE K. KOLE-JAMES, Ingham Circuit, 11/21/2002, 9/11/01 Complaint filed in 54B District Court to 1 Count Criminal Enterprise, 9/18/02 Bind Over to 30th Circuit Court as charged; Dismissed - By Court, 11/21/02 Defendant's Motion to Quash granted; case dismissed.

PEOPLE v LEISURE LIVING MANAGEMENT OF LANSING, INC., Clinton Circuit, 05/27/1002, 9/30/02 Complaint filed in 65A District Court to 1 Count Involuntary Manslaughter; 1/16/03 Bound over to 29th Circuit Court as charged. Judgment - Plea Agreement, 5/27/03 Plea entered to 1 Count Homicide Manslaughter Inv. 5/27/03 Sentenced to \$7,500 fines/library fund, \$60 CVRA, \$750 court costs.

PEOPLE v KENT COMMUNITY HOSPITAL, Ingham Circuit, 05/12/2003, In re matter of investigation of Ruth Lieberman; Claim of Appeal filed by Kent regarding sealed subpoena; Dismissed - By Court, 5/12/03 Order issued denying People's Motion for in Camera Review of Records Seized pursuant to a Search Warrant and Denying Kent Community Hospital's Motion for Sanctions; Circuit Court reversed District Court's decision; Attorney General then appealed to Court of Appeals.

PEOPLE v KENT COMMUNITY HOSPITAL (RUTH LIEBERMAN), Court of Appeals, 03/11/2003, 0/08/99 Defendant filed appeal of Ingham Circuit Court decision regarding interpretation of peer review privilege (judge extended statute beyond subpoena to search warrant; Leave to Appeal - Denied, 3/11/03 Court of

Appeals affirmed Circuit Court decision.

PEOPLE v KENT COMMUNITY HOSPITAL (RUTH LIEBERMAN), Michigan Supreme Court, 03/05/2003, 10/08/99 Defendant filed appeal of 30th Circuit Court's decision regarding interpretation of peer review privilege (judge extended statute beyond subpoena to search warrant; 5/22/02 Office of Attorney General appealed Court of Appeals decision; Leave to Appeal - Denied, 3/5/03 Supreme Court denied Attorney General's Application for Leave to Appeal March 8, 2002 Court of Appeals decision affirming Circuit Court's decision.

PEOPLE v TABITHA NSHOYA MAGOTI, Kalamazoo Circuit, 03/04/2002, 4/20/01 Complaint filed in 8th District Court on 7 Counts U&P; 5/2/01 Bound over to 9th Circuit Court as charged; Verdict - Jury, 1/23/02 guilty; 3/4/2002 Sentenced to 18 months probation, \$350 court costs, \$2,430 supervision costs. 9/30/03 Michigan Court of Appeals affirmed the lower court's decision. Win for the Plaintiff.

MICHAEL A. COX, EX REL PEOPLE v SHERMAN L. ALLEN, D.D.S., KERRY HEUHS, MARIE HEUHS AND K.M.H. DENTAL MANAGEMENT, L.L.C., D/B/A ADVANCED TECHNOLOGY DENTAL CENTER, Ingham Circuit, 07/22/2003, 3/6/03 Civil Complaint filed in 30th Circuit Court requesting in excess of \$25,000.00; Dismissed - By Court, 7/22/03 Dismissed by court for lack of progress.

PEOPLE v KAREN LYNN MITCHELL, R.N., Ingham Circuit, 3/8/2004, 9/27/01 Complaint filed in 54B District Court to 2 Counts Medicaid False Claims and 18 Counts Medicaid Fraud; 8/12/02 Bound over to 30th Circuit Court on 20 Counts Medicaid False Claims; Dismissed - By Court, 3/8/04 Defendant's Motion for Directed Verdict granted.

PEOPLE v KENNETH DARNELL MITCHELL, 54-B District Court, 10/02/2003, 6/19/03 Complaint filed in 54-B District Court to 1 Count of Practicing Medicine without License. Dismissed - By Plaintiff, 10/2/03 Plaintiff filed Motion of Nolle Prosequi; case dismissed without prejudice.

PEOPLE v GABRIEL SAGUN ORZAME, Michigan Supreme Court, 07/03/2001, Bound over to Berrien Circuit Court from 5th District Court 7/18/95; 4/5/00 Defendant appealed 3/27/00 Circuit Court Order denying his Motion for Post Judgment Relief and to Withdraw Plea of Nolo Contendere; 12/28/00 Application for Leave to Appeal filed in Michigan Supreme Court appealing decision of Berrien County Circuit Court; Leave to Appeal - Denied, 7/3/01 Supreme Court denied Defendant's Application for Leave to Appeal the December 11, 2000, decision of the Court of Appeals. 4/9/02 Supreme Court denied Defendant's Motion for Reconsideration.

PEOPLE v I. DENNIS POTOCSKY, D.D.S., P.C., Wayne Circuit, 11/17/2003, 3/20/03 Complaint filed to 20 Counts Medicaid False Claims; 6/16/03 Bound over to 3rd Circuit Court as charged.; Judgment - Plea Agreement, 10/15/03 Plea entered to 1 Count Medicaid fraud; 11/17/03 Sentenced to \$3,000 fine, \$1,000 costs and \$17,453.56 Medicaid restitution.

PEOPLE v PRESCRIPTION SERVICES, INC., D/B/A LITCHFIELD PHARMACY, Hillsdale Circuit, 12/30/2002, 9/25/02 Complaint filed in 2B District Court to 1 Count of Embezzlement; 12/6/02 Bound over to 1st Circuit Court as charged; Judgment - Plea Agreement, 12/6/02 Plea entered to 1 Count Embezzlement by agent/trustee - \$1,000 or more, but less than \$20,000. 12/30/02 Sentenced to 24 months probation, \$60 CVRA.

PEOPLE v PROPELLED, Wayne Circuit, 12/20/2002, 6/6/01 Complaint filed in 36th District Court to 24 Counts Medicaid False Claims; 7/27/01 Bound over from 36th District Court to 3rd Circuit Court as charged; Verdict - Jury, 4/10/02 Jury

Verdict: Guilty of 4 Counts Medicaid Fraud Claim; 12/20/02 Sentenced to \$500 fine, \$500 court costs.

PEOPLE v RONNIE DEMARZE QUALLS, Wayne Circuit, 11/5/2004, 8/31/04 Complaint filed in 36th District Court to 1 Count Identity Theft/Financial Transaction Device and 1 Count Possession of Financial Transaction Device w/intent to deliver, circulate or sell. 9/16/04 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 10/1/04 Plea entered to 1 Count Identity Theft/Financial Transaction Device and 1 Count Possession of Financial Transaction Device. 11/5/04 Sentenced to 2 years probation, \$3,300 victim restitution, \$60 CVRA.

PEOPLE v BABUBHAI RATHOD, Isabella Circuit, 05/02/2003, 4/22/02 Complaint filed in 76th District Court to 8 Counts False Medical Records, 4 Counts Health Care Fraud, 2 Counts False Pretenses over \$1,000, 1 Count Conspiracy to Commit False Pretenses; 10/21/02 Bound over from 76th District Court to 8 Counts False Medical Records, 2 Counts False Pretenses over \$1,000 and 1 Count Conspiracy to Commit False Pretenses; Dismissed - Plea Agreement, 5/2/03 Case dismissed per plea agreement in companion case of Emerald Physical Therapy, P.C.

PEOPLE OF THE STATE OF MICHIGAN v SAM'S PRESCRIPTION DRUGS, INC., PAUL COBBIN WOODS, STANLEY BROWN, DRC Wayne, 04/25/1995, Bound over from 55th District Court No. 92-2068-fy on 8-4-92 to Ingham County Circuit Court No. #92-64581-fh; change of venue to DRC No. 95-10015, Judge Roberson on 4-25-95; Dismissed - By Court, 4/25/95 Case dismissed by court due to court losing the case file.

PEOPLE v SAADAT-BANO A. SHEIKH, M.D., 27-1 District Court, 09/30/2003, 6 Counts Medicaid Kickback; 1 Count Conspiracy - Kickback 1 Count Conspiracy-Medicaid False Claims; filed 2/11/97; Dismissed - By Plaintiff, Bound over from 27/1 District Court; 9/03/03 Plaintiff filed Motion/Order of Nolle Prosequi to 6 Counts Medicaid Kickbacks, 1 Count Conspiracy, Medicaid Kickback, 1 Count Conspiracy - Medicaid False Claims dismissing case without prejudice. People are unable to locate witnesses and unable to present sufficient evidence to prosecute this matter.

PEOPLE v KAREN SMERECK, D.D.S., Wayne Circuit, 1/14/2004, 3/20/03 Complaint filed to 26 Counts Medicaid False Claims; 9/25/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 12/12/03 Plea entered to 1 Count Medicaid Fraud; 1/14/04 Sentenced to 6 months probation.

PEOPLE v KEYONNA MARIE SMITH, 52-2 District Court, 5/26/2004, 8/19/03 Complaint filed in 52-2 District Court to 1 Count Nursing Home - Abuse of Patient, and 1 Count A&B; Judgment - Plea Agreement, 2/13/04 Plea entered to 1 Count A&B; 5/11/04 Sentenced to 12 months probation (93 days jail, delayed and suspended if probation completed), not work in health care facility during probation; \$650 fine, \$45 state costs, \$540 other costs/fees.

PEOPLE v KENNETH S. SPENCER, 54-B District Court, 12/12/2002, 9/30/02 Complaint filed in 54B District Court to 2 counts Medicaid False Claims; Judgment - Plea Agreement, 12/12/02 Attorney General dismissed case without prejudice.

PEOPLE v KEN SCOTT STROMAN, 22nd District Court, 03/07/2003, 9/30/02 Complaint filed in 22nd District Court to 1 count of Patient Abuse; Judgment - Plea Agreement, 11/6/02 Plea entered to 1 Count Nursing Homes - Abuse of a Patient; 3/7/03 Sentenced to 24 months probation, \$400 fine, \$9 costs, \$50 CVRA, \$360 supervision, no employment as caregiver, 45 days jail.

PEOPLE v ANGEL MARIA STRONG, Wayne Circuit, 11/1/2004, 8/31/04 Complaint filed in 36th District Court to 1 Count Identity Theft/Financial Transaction Device and 1 Count Possession of Financial Transaction Device w/intent

to Deliver, Circulate or Sell. 9/13/04 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 9/27/04 Plea entered to 1 Count Obtain Personal Identity and 1 Count Possession Credit Card. 11/1/04 Sentenced to 4 months - 5 years jail, \$2,519.41 in restitution to victim, \$60 CVRA.

PEOPLE v MICHELLE ANNTONETT THOMAS-HICKS, Wayne Circuit, 7/8/2004, 4/15/04 Complaint filed in 27th District Court to 1 Count Identity Theft, 1 Count Unlawful Use of Financial Transaction Device, 1 Count False Credit/Loan Application and 1 Count Driver's License, Forging with Intent to Commit Crime; 4/29/04 Bound over to 3rd Circuit Court as charged. Judgment - Plea Agreement, 5/13/04 Plea entered to Obtaining Personal ID; 7/8/04 Sentenced to 2 years probation, \$60 CVRA, \$165 costs, attorney fees TBD, \$60 fee, 125 hours community service, \$400 MDOC supervision fee; Not to work in position where Defendant has direct control over, access to, another person's money.

PEOPLE v DEWAND TERRELL THREATT, Wayne Circuit, 6/8/2004, 4/15/04 Complaint filed in 36th District Court to 1 Count Telecommunication Fraud; 5/5/04 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 5/17/04 Plea entered to 1 Count Telecommunication fraud; 6/8/04 Sentenced to 12 months jail.

PEOPLE v WALLACE LEE WALKER, JR., D.D.S., Ingham Circuit, 11/17/2003, 8/7/02 Complaint filed in 54-B District Court to 13 Counts Medicaid Fraud; 10/17/02 Bound over to 30th Circuit Court as charged; 03/11/12/03 Amended Information filed adding 1 Count Attempt Medicaid Fraud; Judgment - Plea Agreement, 10/8/03 Plea entered to 1 Count Attempt Medicaid Fraud; 11/12/03 Sentenced to 12 months probation, \$500 fine, \$500 costs, \$2,800 Medicaid restitution (to be joint with case number 02-1023-FH), \$60 CVRA, \$60 state minimum costs.

PEOPLE v TENIA YVETTE WALKER, Wayne Circuit, 12/12/2003, 9/23/03 Complaint filed in 36th District Court to 9 Counts U&P and 1 Count Conspiracy; 10/15/03 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 10/27/03 Plea entered to 1 Count U&P; 12/12/03 Sentenced to 3 years probation, \$4,625 restitution to victim, \$60 CVRA, \$165 costs.

PEOPLE v TRACY WASHINGTON, Wayne Circuit, 10/12/2004, 8/31/04 Complaint filed in 36th District Court to 1 Count Identity Theft/Financial Transaction Device and 1 Count Possession of Financial Transaction Device w/Intent to Deliver, Circulate or Sell. 9/16/04 Bound over to 3rd Circuit Court as charged; Judgment - Plea Agreement, 10/12/04 Plea entered to 1 Count Obtain Personal Identity. 11/9/04 Sentenced to 2 years probation, CVRA \$60, victim restitution \$3,300, \$480 MDOC supervision fee, \$600 attorney fees, \$660 fines and costs, get GED in 12 months.

PEOPLE v YVONNE DENISE WATERS-BROWN, 46th District Court, 05/08/2002, 9/24/01 Complaint filed in 46th District Court to 1 Count Involuntary Manslaughter; Dismissed - By Court, 5/8/2002 Order of Dismissal entered by Court granting Defendant's Motion to Dismiss.

PEOPLE v YVONNE DENISE WATERS-BROWN, Oakland Circuit, 04/21/2003, 9/24/01 Complaint filed in 46th District Court to 1 Count Involuntary Manslaughter; 5/13/02 Claim of Appeal filed in 6th Circuit Court appealing dismissal of Complaint in 46th District Court; Leave to Appeal - Denied, 4/23/03 Opinion issued denying prosecution's appeal of the failure of the district court to bind over Defendant for involuntary manslaughter.

PEOPLE v LEON DEWAYNE WILLIAMS, 61st District Court, 03/11/2003, 4/25/02 Complaint filed in 61st District Court to 1 Count Patient Abuse; Judgment - Plea Agreement, 12/13/02 Plea entered to Assault and Battery; 3/11/03 Sentenced to 30 days jail, \$30 CVRA.

PEOPLE v JANET LINN WILLIAMSON, R.N., Ingham Circuit, 3/8/2004, 9/27/01 Complaint filed in 54-B District Court to 1 Count Medicaid False Claims, 21 Counts Medicaid Fraud, 1 Count Medicaid False Statements or Representations; 8/12/02 Bound over to 30th Circuit Court on 22 Counts Medicaid Fraud and 1 Count Medicaid False Statements or Representation; Dismissed - By Court, 3/8/04 Defendant's Motion for Directed Verdict granted.

PEOPLE v JEFFREY JOSEPH WOLOS, RN, Livingston Circuit, 12/2/2004, 6/7/04 Complaint filed in 53rd District Court to 1 Count Possession of a Schedule II Narcotic Drug (Fentanyl), 1 Count Larceny and 1 Count Patient Abuse. 7/9/04 Bound over to 44th Circuit Court as charged; Judgment - Plea Agreement, 11/23/04 Defendant pled to 1 Count Possession of Controlled Substance and 1 Count Patient Abuse. 11/23/04 Defendant was sentenced to 18 months probation, 90 days jail and \$340 in costs and miscellaneous fees.

PEOPLE v SAM'S PRESCRIPTION DRUGS, INC., PAUL COBBIN WOODS, STANLEY BROWN, DRC Wayne, 04/25/1995, Bound over from 55th District Court No. 92-2069-fy on 8-4-92 to Ingham County Circuit Court No. 92-64580-fh; 4-25-95 change of venue to DRC 395-10016; Dismissed - By Court, 4/25/95 Case dismissed by court due to court losing case file.

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concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting. (This opinion has been superseded by subsequent legislation.) 4

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Department of Natural Resources—State of Michigan payments in lieu of property taxes and appropriations regarding tax reverted lands—Section 404 of 2002 PA 525, section 1002 of 2001 PA 44, and section 1002 of 2000 PA 267, sections of three appropriations acts for the Department of Natural Resources, violate Const 1963, art 4 § 25, in that they alter or amend section 131 of the General Property Tax Act but do not re-enact and publish that section at length. Notwithstanding the unconstitutionality of certain provisions of the appropriations acts as determined in OAG, No 7132, the Department of Natural Resources is not required under section 131 of the General Property Tax Act to distribute to local tax collecting units the proceeds that were deposited in the land sale fund in fiscal years 2000 through 2003. Consistent with established principles advancing the interest of budgetary stability provided for under Michigan's Constitution, OAG, No 7132 applies prospectively only 33

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An executive directive issued in the exercise of the Governor's supervisory authority under Const 1963, art 5, § 8, does not have the force and effect of law and cannot amend a state statute consistent with the separation of powers doctrine embodied in Const 1963, art 3, § 2. Executive Directive 2003-13 simply communicates internal policy and procedure regarding the operation of the Michigan Public Safety Communications System by the Director of the Michigan State Police "consistent with . . . MCL 28.281 to 28.283." It does not purport to amend or have the effect of amending a law and, accordingly, does not violate Const 1963, art 3, § 2 132

The responsibilities of the Director of the Michigan State Police described in Executive Directive 2003-13 are consistent with the then current management and operation of the Michigan Public Safety Communications System; accordingly, the Governor did not by executive directive attempt to effectuate an interdepartmental transfer of functions within the executive branch requiring an executive order under Const 1963, art 5, § 2 132

Executive Directive 2003-13 replaces Executive Directive 2003-12 as originally issued in its entirety and supersedes the initial directive. Executive Directive 2003-13 provides for a governmental public safety agency's assumption of liability for any damage caused by the agency's equipment to the Michigan Public Safety Communications System, but it does not preclude modification of this provision or more detailed implementation of the directive's general policy by mutual written agreement of the parties 132

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State Employees' Retirement System—Payment of pension to retirant upon return to state employment—Assuming a bona fide termination of employment, there is no legal basis for the State Employees' Retirement System to suspend the Tier 1 pension of a retirant who returns to State employment and is entered upon the payroll on or after December 1, 2002, as a "qualified participant" in the Tier 2 plan pursuant to section 13(3)(f) of the State Employees' Retirement Act 174

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Intermediate school district—Recall of intermediate school district board members—A member of a board of an intermediate school district who was elected by a body composed of one member of the board of each constituent school district pursuant to section 614 of the Revised School Code, MCL 380.614, is subject to recall pursuant to section 1105 of the Code, MCL 380.1105. In order to recall an intermediate school district board member, the petitions for recall must be signed by registered and qualified electors equal to not less than 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the constituent school districts that comprise the intermediate school district. If a member of the board of an intermediate school district who has been elected by school board members of the constituent districts is recalled, the vacancy is filled by the remaining members of the intermediate school board. If the vacancy is not filled within 30 days after it occurs, the vacancy shall be filled by the State Board of Education . . . 117

Public school academies—Charter school's authority to operate at multiple sites—Under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body 13

Public school academy board—Education—Enrollment in public school districts upon leaving public school academies after pupil membership count day—A public school academy is not a "school district" for purposes of section 1147 of the Revised School Code, MCL 380.1147. Rather, section 1147 applies to general powers school districts and first class school districts, which, in accordance with the clear language of that section, must enroll students who reside in the district 121

A public school district is obligated under section 1147 of the Revised School Code to enroll a student who elects to leave a public school academy and who resides in the district regardless of when in the school year the student chooses to enroll 121

If, after the pupil membership count day, a general powers school district enrolls former public school academy students, the district is entitled to receive a portion of the per pupil funds attributable to those students if the enrollment satisfies the statutory requirements described in section 25b of the State School Aid Act of 1979, MCL 388.1625b 121

A public school district must enroll a child who is qualified by age and residence and the district may not treat such a student who has exercised an educational option, such as attending a public school academy, as if that student were a nonresident of the district 121

*Public school academy board—Education—Quorum for transaction of business by public school academy board—Nonprofit corporation act—*The board of directors of a public school academy may transact business on behalf of the academy at a meeting of the board so long as a majority of the members of the board of directors then in office is present, unless the academy's articles of incorporation or bylaws require a larger number, regardless of whether the board at that time consists of fewer members than specified in the articles of incorporation, bylaws, authorizing resolution, or contract issued by the authorizing body. At a meeting at which a quorum is present, action may be taken by a vote of the majority of members present unless a larger number is required by the public school academy's articles of incorporation or bylaws 126

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*Requirements for changing a name on a driver license—*The Michigan Secretary of State may, but is not required to, accept an affidavit alone as sufficient legal proof to effectuate a common law name change on a person's driver license 77

STUN GUNS:

*County corrections officers—Peace officers—*County corrections officers who are also "peace officers" have been exempted from the ban on possession of stun guns and similar devices in sections 224a and 231 of the Michigan Penal Code, MCL 750.224a and MCL 750.231, but those county corrections officers who are not "peace officers" have not been so exempted 48

SUMMER RESORT OWNERS CORPORATION ACT:

*Vote required for assessment of dues by summer resort owners corporation—*Section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, requires an affirmative vote of a majority of a summer resort corporation's members for the assessment of annual dues. A summer resort corporation's bylaw authorizing the assessment of annual dues against its members by a vote of fewer than a majority of its members is inconsistent with section 19 of the Summer Resort Owners Corporation Act, MCL 455.219, and is therefore unenforceable 165

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Constitutional law—Headlee amendment—Constitutional rollback of voter-approved millages for sinking funds—A rollback of multi-year, voter-approved millages that create a sinking fund for the construction and repair of school buildings approved after May 31 of the tax year is required by Const 1963, art 9, § 31, and its implementing legislation in each year after the year of approval in which the percentage increase in the taxable value of the affected property exceeds the increase in the General Price Level from the previous year. Each year's millage is to be reduced by not only the millage reduction fraction for that year but also by the millage reduction fractions for previous years as well 27

Department of Natural Resources—State of Michigan payments in lieu of property taxes and appropriations regarding tax reverted lands—Property owned by the State of Michigan is not subject to forfeiture, foreclosure, and sale under the General Property Tax Act if the state fails to make the payments in lieu of property taxes required under Part 21, subpart 14 of the Natural Resources and Environmental Protection Act 33

Section 404 of 2002 PA 525, section 1002 of 2001 PA 44, and section 1002 of 2000 PA 267, sections of three appropriations acts for the Department of Natural Resources, violate Const 1963, art 4 § 25, in that they alter or amend section 131 of the General Property Tax Act but do not re-enact and publish that section at length 33

Notwithstanding the unconstitutionality of certain provisions of the appropriations acts as determined in OAG, No 7132, the Department of Natural Resources is not required under section 131 of the General Property Tax Act to distribute to local tax collecting units the proceeds that were deposited in the land sale fund in fiscal years 2000 through 2003. Consistent with established principles advancing the interest of budgetary stability provided for under Michigan's Constitution, OAG, No 7132 applies prospectively only 33

TOWNSHIPS:

Compatibility of membership on township planning commission and county planning commission—The offices of member of a township planning commission and member of a county planning commission are compatible and may be held simultaneously by the same person. Due to intervening legislation, OAG, 1995-1996, No 6837, p 19 (February 23, 1995), no longer expresses the opinion of the Attorney General 151

Positions of township clerk and member of local school board of education—Michigan election law—The offices of township clerk and member of a board of education of a local school district will become incompatible on January 1, 2005, the effective date of 2003 PA 302, an amendment to the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq*, which provides that local school boards must reimburse townships for conducting a school district's regular or special elections 128

Township Zoning Act—Open space preservation ordinances—If referendum petitions are filed with a township clerk within 30 days after publication of an open space preservation ordinance adopted by a

township board pursuant to section 16h of the Township Zoning Act, the ordinance does not take effect until the township clerk determines that the petitions are inadequate or until the registered electors of the township approve the open space preservation ordinance by majority vote at a referendum election. If an open space preservation ordinance is rejected at a referendum election authorized under section 12 of the Township Zoning Act, the township board may, but is not required to, subsequently adopt an open space preservation ordinance, but that subsequent ordinance is also subject to the referendum petition and election provisions of section 12 of the Township Zoning Act 79

V.

VETERANS RECORDS:

Military service discharges—Duties of county clerks regarding military discharge records—A county clerk must enter upon the county's record book all military service discharges presented for recording to the county clerk, including discharges presented by a veteran's service officer to aid the veteran, surviving spouse, or dependent in applying for benefits available to the veteran, surviving spouse, or dependent 145

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W.

WATER SUPPLY:

Regulation of waters of the State—Legislature--Police power—The Legislature has the authority under Const 1963, art 4, §§ 51 and 52, to regulate the withdrawal and uses of the waters of the State, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the State from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. That authority extends to all waters within the territorial boundaries of the State 154