TO: Assessing Officers
FROM: State Tax Commission

No. 7 - July 9, 1985
Attorney General Opinion
Charter Township Millage

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

CONSTITUTIONAL LAW: Const 1963, art 9, § 31--authority to levy taxes within tax rate limitation not approved by charter township electors

TOWNSHIPS, CHARTER: Establishment by final resolution of township board--authority to levy taxes within certain tax rate limitations

A charter township incorporated after December 22, 1978, the effective date of Const 1963, art 9, § 31, by final resolution of the township board and without an approving vote of the township electors, may not levy taxes within the limitation of rates specified in MCL 42.27; MSA 5.46(27), higher than the township's previously authorized millage limitation as a general law township.

Opinion No. 6285

APR 17 1985

Honorable John Strand
State Representative
The Capitol
Lansing, Michigan 48909

You have requested my opinion upon a question which may be stated as follows:

> When a general law township incorporates a charter township, by resolution and without a vote of the township electors, after the effective date of the 1978 amendments to Const 1963, art 9 (the Headlee Amendment), is the township prohibited from levying millage at a charter township rate which is higher than the rate it was previously authorized to levy as a general law township?

Since its enactment in 1947, the charter township act has provided that general law townships may incorporate as charter townships upon a vote of the township electors.[1]

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[1]MCL 42.1; MSA 5.46(1), through MCL 42.3; MSA 5.46(3).

Also, with the addition of MCL 42.3a; MSA 5.46(3a) in 1976,[2]

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provision was made for charter incorporation without a vote of the electors, but subject to a right of referendum. MCL 42.3a; MSA 5.46(3a), provides:

> "(1) Within 30 days after the effective date of this 1984 amendatory act and after each regular or special federal or state census, the secretary of state shall notify the clerk of a township which is not incorporated as a charter township pursuant to this act and which has a population of 2,000 or more inhabitants, excluding the population of any incorporated village, according to the most recently made regular or special federal or state census that the township may be incorporated as the charter township of.....under this act. [As amended by 1984 PA 361.]
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> "(2) After notification is received by the clerk, the township board may:
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> "(a) Adopt, by a majority vote, a resolution opposed to incorporation.
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> "(b) Adopt, by a majority vote, a resolution of intent to approve incorporation and if a petition of disagreement to the intent resolution relative to the incorporation is filed within 60 days before final passage of the resolution, the electors of the township have the right to a referendum on the incorporation question.
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> "(c) Adopt, by a majority vote, a resolution to place before the electorate the question of incorporation at the next regular or special election.
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> "(3) The clerk shall publish in a newspaper of general circulation in the township a notice of the right to referendum within 15 days after receipt of notification from the secretary of state. A second notice shall be published 7 days after the first notice. The petition under subsection (2)(b) shall be signed by not less than 10% of the number of electors of the township voting for township supervisor at the last election in which a supervisor was elected. The township clerk shall check the signatures on the petitions with those of the electors signing the petitions as they appear on the registration cards of the township. If the petitions bearing the required number of signatures of electors have been filed, the clerk shall do and perform all acts required for the submission of the question of incorporation at the next general or special election. The wording of the ballot shall be in accordance with section 2." [Emphasis added.]

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[2]Added by 1976 PA 90, and since amended by 1984 PA 361, effective March 29, 1985.

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The underscored portions of MCL 42.3a(2)(b); MSA 5.46(3a)(2)(b), provide for incorporation by final adoption of a resolution by the township board of intention to incorporate a charter township, subject to the right of referendum if a petition of disagreement to the intent resolution is timely filed containing the requisite signatures of township electors. The effect of MCL 42.3a(2)(b); MSA 5.46(3a)(2)(b), when the right of referendum has not been exercised, is to permit the transformation of general law townships into charter townships without a vote of the electors.[3]

With regard to the taxing power of townships, Const 1963, art 9, § 6, makes a distinction between general law (non-charter) townships and charter townships. General law townships are within the 15 mill limitations of paragraph one:

> "Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question."

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[3]The records of the Secretary of State, as of January 1, 1985, indicate that 76 townships have incorporated as charter townships since the enactment of the charter township act. Four charter townships have since become home rule cities. Of the remaining 72 charter townships, 38 were incorporated by election, and 34 were incorporated by resolution without a vote of the electors. Of the 34 charter townships incorporated by resolution, 9 were prior to the effective date of the Headlee Amendment (December 23, 1978), and 25 were post-Headlee.

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Charter townships are excepted from the foregoing limitations by paragraph 2:

> "The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for the payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or, subject to the provisions of Section 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law."

See, Butcher v Twp of Grosse Ile, 387 Mich 42; 194 NW2d 845 (1972), and Grosse Ile Committee for Legal Taxation v Grosse Ile Twp, 129 Mich App 477; 342 NW2d 582 (1983), lv den, 419 Mich 870 (1984), reh den, _____ Mich _____ (1984).

The millage limitations for charter townships are provided for by the charter township act, MCL 42.27; MSA 5.46(27), with an annual limitation of 1/2 of 1% (five mills), not to exceed 1/10 of 1% (one mill) in a village,[4] with an additional increase not to exceed a total of 1% (10 mills) for a period of not to exceed 20 years, by vote of the charter township electors.

By contrast, a general law township (non-chartered) is limited to the 15 mills in Const 1963, art 9, § 6, ¶ 1, supra, allocated between certain local units of government pursuant to the property tax limitation act, MCL 211.211; MSA 7.71, and also limited by MCL 41.3; MSA 5.3. Nat'l Steel Corp v Bates Twp, 374

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[4] See, Bailey v Charter Township of Pontiac, 114 Mich App 426; 319 NW2d 595 (1982), vacated and remanded, 417 Mich 881 (1983), aff'd after remand, _____ Mich App _____; _____ NW2d _____, Docket No. 69522 (November 6, 1984).

Mich 58; 130 NW2d 882 (1964). See also, OAG, 1975-1976, No 5043,
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p 516 (June 24, 1976). The effect of this distinction in millage limitations is that the limitation for a general law township is approximately one mill, as compared to the five mill limitation of a charter township.

Const 1963, art 9, as amended by the Headlee Amendment,[5] provides, at § 31:

> "Units of Local Government[6] are hereby prohibited from levying any tax not authorized by law or charter[7] when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors[8] of that unit of Local Government voting thereon." [Footnotes added.]

With different millage limitation provisions authorized by law for general law townships and for charter townships, it is clear that a change from general law township status to charter township status would involve an increase in the authorized millage limit (from the approximate one mill to five mills).

Prior to the effective date of the Headlee Amendment (December 23, 1978), charter townships incorporated pursuant to MCL 42.3a(2)(b); MSA 5.46(3a)(2)(b), by resolution and

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[5]Section 6 was amended and sections 25 through 34 were added to Const 1963, art 9, by the approval of the electors of Proposal E (the "Headlee Amendment") at the November 7, 1978, general election. The amendments became effective on December 23, 1978.

[6]"Local government" is defined in Const 1963, art 9, § 33, as including townships and charter townships.

[7]See, OAG, 1979-1980, No 5562, p 389 (September 17, 1979).

[8]An unexercised right of referendum, under MCL 42.3a(2)(b); MSA 5.46(3a)(2)(b), would not be the approval of a majority of the electors. Similarly, an unexercised right of referendum under MCL 42.3a(2)(b); MSA 5.46(3a)(2)(b), would not be a "direct voter approval" within the contemplation of Const 1963, art 9, § 25.

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without a vote of the township electors, became authorized to levy millage to the 5% limit provided for charter townships by the charter township act, MCL 42.27; MSA 5.46(27). The new millage limitation was authorized by virtue of charter township incorporation, because a vote of the electors was not at that time required. However, when Headlee became effective, with the requirement of voter approval, an increase in the millage limitation could not thereafter be accomplished solely by charter incorporation without a vote of the electors. An increase in the authorized millage for a general law township to the authorized millage for a charter township, after Headlee and without a vote of the electors, would contravene the Headlee requirement.

> "The Headlee Amendment grew 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 spending under direct popular control." Waterford School Dist v State Bd of Educ, 98 Mich App 658, 663; 296 NW2d 328 (1980), lv den, 409 Mich 934 (1980). See also, Grosse Ile Committee for Legal Taxation v Grosse Ile Twp, supra.

In Lockwood v Comm'r of Revenue, 357 Mich 517, 557-558; 98 NW2d 753 (1959), the Michigan Supreme Court said:

> "A constitutional limitation must be construed to effectuate, not to abolish, the protection sought by it to be afforded. It was Mr. Justice CAMPBELL who wrote as long ago as the 13th volume of the Michigan reports that:
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> "'If the people, in establishing their government, see fit to place restrictions upon the exercise of any privilege, it must be assumed that in their view the exercise of the privilege without the restriction would be inexpedient and dangerous, and would not, therefore, have been permitted. Every restriction imposed by the Constitution must be considered as something which was designed to guard the public welfare, and it would be a violation of duty to give it any less than the fair and legitimate force which its terms require. What the people have

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without a vote of the township electors, became authorized to levy millage to the 5% limit provided for charter townships by the charter township act, MCL 42.27; MSA 5.46(27). The new millage limitation was authorized by virtue of charter township incorporation, because a vote of the electors was not at that time required. However, when Headlee became effective, with the requirement of voter approval, an increase in the millage limitation could not thereafter be accomplished solely by charter incorporation without a vote of the electors. An increase in the authorized millage for a general law township to the authorized millage for a charter township, after Headlee and without a vote of the electors, would contravene the Headlee requirement.

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> said they design, they have an absolute and paramount right to have respected.'"
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> . . . .
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> "The presumption of constitutionality cloaking all the acts of our co-ordinate branch of government cannot prevail where the statute is 'prohibited by the express language of the Constitution or by necessary implication.'"

While the Headlee Amendment did not impose a requirement of voter approval upon the incorporation of a charter township, it did impose a requirement of voter approval for the increase in authorized millage resulting from a change from general law township status to charter township status. Thus, the Headlee Amendment superceded the authorized millage limitation for a charter township, MCL 42.27; MSA 5.46(27), when a charter township became incorporated subsequent to the effective date of Headlee, without a vote of the township's electors pursuant to MCL 42.3a(2)(b); MSA 5.46(3a)(2)(b). Such a township would continue as a general law township for purposes of its taxing authority unless and until a vote of the township's electors approved the higher millage levy, as required by the Headlee Amendment. As indicated in footnote 3 above, 25 such charter townships are already in existence. With the reduction in the population requirement of 1984 PA 361, from 5,000 to 2,000, an additional 301 general law townships will be eligible to adopt charter township status by final resolution only.

It is my opinion, therefore, that charter townships incorporated after December 22, 1978, the effective date of Const 1963, art 9, § 31, by final resolution of the township board and

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without an approving vote of the township's electors, are prohibited from levying millage at a charter township rate higher than the township's previously authorized millage limitation as a general law township.

FRANK J. KELLEY
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