

Downtown Development Authorities, Open Meetings Act, and Freedom of Information Act

Oakland Main Street

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UNITED STATES

CANADA

MEXICO

POLAND

CHINA

QATAR

UKRAINE

DDAs: Statutory Authority

- Recodified Tax Increment Financing Authorities, Act 57, Public Acts of Michigan, 2018, as amended
 - Downtown Development Authorities - Part 2
 - Reporting Requirements – Part 9
 - Previously, Act 197, Public Acts of Michigan, 1975, as amended
-
- Continuation of Existing DDA members continued per Section 103 of Act 57 (MCL 125.4103)
 - Members of a board of an authority created under a statute or section of law repealed by this act with the same or similar name and functions shall continue in office for the duration of the terms of office for which they were appointed. Members shall be appointed under this act only as terms of the former members expire or vacancies occur.



Definitions – MCL 125.42001

Captured assessed value means the amount in any 1 year by which the current assessed value of the project area, including the assessed value of property for which specific local taxes are paid in lieu of property taxes as determined in subdivision (aa), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

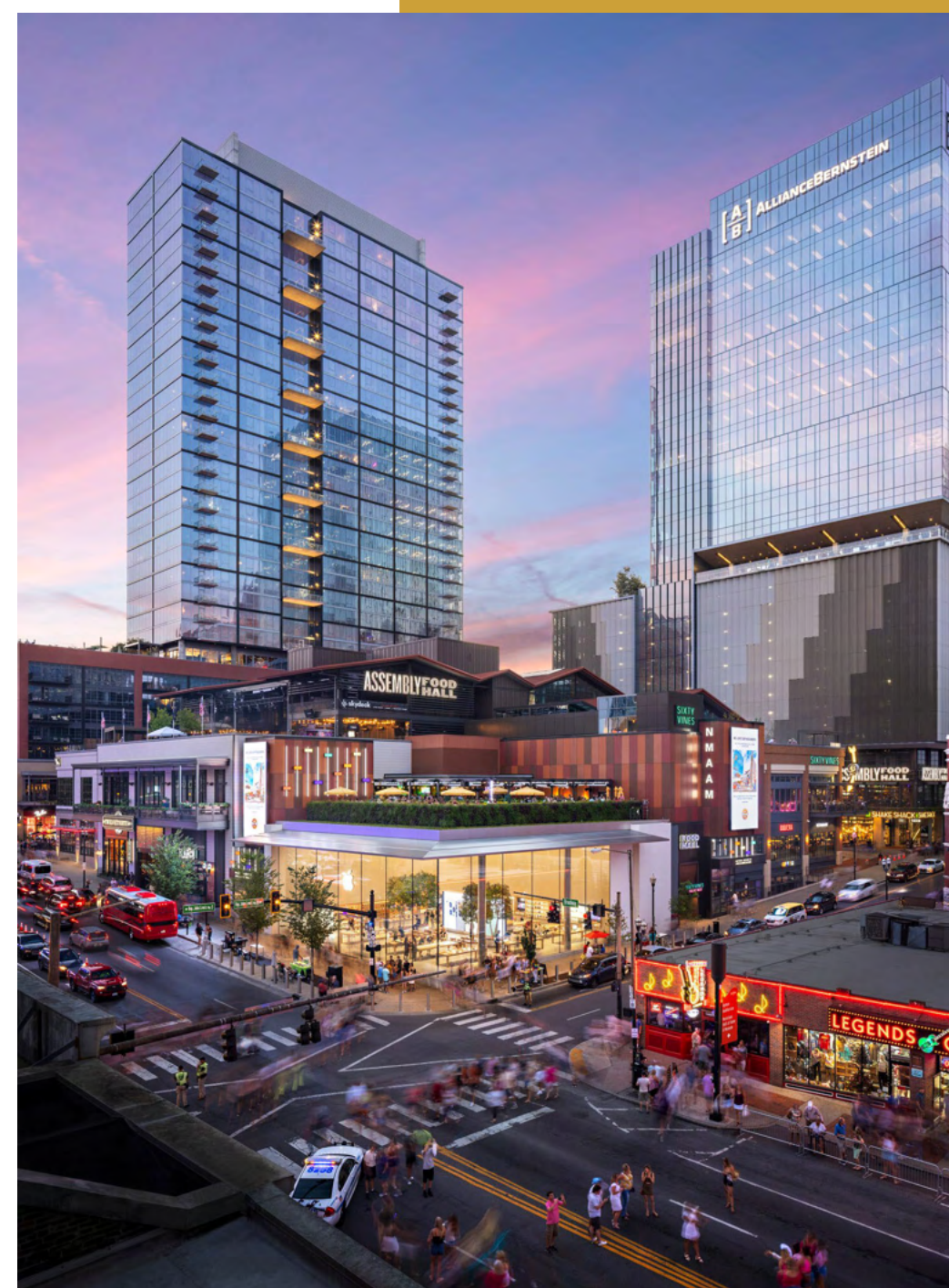
Development area means that area to which a development plan is applicable.

Development plan means that information and those requirements for a development plan set forth in section 217.

Downtown District

Downtown district means that part of an area in a business district that is specifically designated by ordinance of the governing body of the municipality pursuant to this part.

Business district means an area in the downtown of a municipality zoned and used principally for business.



Governing Body, Initial Assessed Value

Governing body of a municipality means the elected body of a municipality having legislative powers.

Initial assessed value means the assessed value of all the taxable property within the boundaries of the development area at the time the ordinance establishing the tax increment financing plan is approved, as shown by the most recent assessment roll of the municipality for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero.

For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered to be property that is exempt from taxation.

Public Facility

Public facility means a street, plaza, pedestrian mall, and any improvements to a street, plaza, or pedestrian mall including street furniture and beautification, park, parking facility, recreational facility, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building, and access routes to any of the foregoing, designed and dedicated to use by the public generally, or used by a public agency.



Specific Local Tax

Specific local tax means a tax levied under 1974 PA 198 (Industrial Facilities Tax), MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL 211.181 to 211.182.



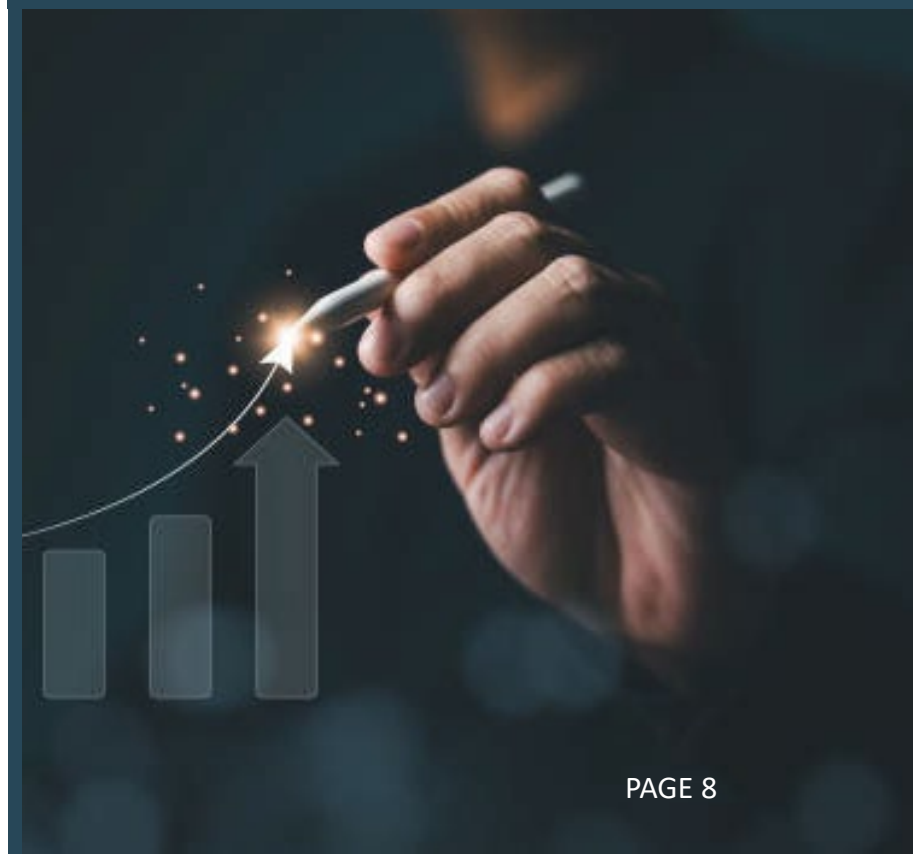
Tax Increment Revenues

Tax increment revenues means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to the following requirements:

- state education tax act and taxes levied by local or intermediate school districts - excluded

Tax increment revenues do not include any of the following:

- Ad valorem property taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value or specific local taxes attributable to such ad valorem property taxes.
- Ad valorem property taxes excluded by the tax increment financing plan of the authority
- Ad valorem property taxes exempted from capture under section 203(3) or specific local taxes attributable to such ad valorem property taxes.
- Ad valorem property taxes levied under 1 or more of the following or specific local taxes attributable to those ad valorem property taxes:
 - The zoological authorities act, 2008 PA 49, MCL 123.1161 to 123.1183.
 - The art institute authorities act, 2010 PA 296, MCL 123.1201 to 123.1229.
- Except as otherwise provided in section 203(3), ad valorem property taxes or specific local taxes attributable to those ad valorem property taxes levied for a separate millage for public library purposes approved by the electors after December 31, 2016.
- Plus MORE (other protected obligations and catalyst development projects)



Board: Relationship with Municipality

The board shall consist of chief executive officer of the municipality or his or her designee from the governing body of the municipality and not less than 8 or more than 12 members as determined by the governing body of the municipality.

Members shall be appointed by the chief executive officer of the municipality, subject to approval by the governing body of the municipality.

Not less than a majority of the members shall be persons having an interest in property located in the downtown district or officers, members, trustees, principals, or employees of a legal entity having an interest in property located in the downtown district. Not less than 1 of the members shall be a resident of the downtown district, if the downtown district has 100 or more persons residing within it.

The chairperson of the board shall be elected by the board. The rules of procedure or the bylaws of the authority may provide that a person be appointed to the board in his or her capacity as a public official, whether appointed or elected. The rules of procedure or bylaws may also provide that the public official's term shall expire upon expiration of his or her service as a public official. In addition, the public official's membership on the board expires on his or her resignation from office as a public official.

Board: Relationship with Municipality

Approval of budget

The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Before the budget may be adopted by the board, it shall be approved by the governing body of the municipality. Funds of the municipality shall not be included in the budget of the authority except those funds authorized in this part or by the governing body of the municipality.

The governing body of the municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority, other than those committed, which cost shall be paid annually by the board pursuant to an appropriate item in its budget.

Board: Hiring

The Board employ and fix the compensation of a director, subject to the approval of the governing body of the municipality.

- Director: shall serve at pleasure of board.
 - Must take constitutional oath, and furnish bond in the sum determined in the ordinance establishing the authority
- Treasurer: shall keep the financial records of the authority and who, together with the director, shall approve all vouchers for the expenditure of funds of the authority
- Secretary, who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer
- Legal counsel to advise the board in the proper performance of its duties. The legal counsel shall represent the authority in actions brought by or against the authority.
- Other personnel as necessary



Board: Powers

- Prepare an analysis of economic changes taking place in the downtown district.
- Study and analyze the impact of metropolitan growth upon the downtown district.
- Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building, or a multiple-family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the board, aids in the economic growth of the downtown district.
- Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.
- Develop long-range plans to halt the deterioration of property values in the downtown district and to promote the economic growth of the downtown district.
- Implement any plan of development in the downtown district necessary to achieve the purposes of this part, in accordance with the powers of the authority as granted by this part.
- Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.



Board: Powers (continued)

- Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in property, which the authority determines is reasonably necessary to achieve the purposes of this part, and to grant or acquire licenses, easements, and options with respect to that property.
- Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair, and operate any building, including multiple-family dwellings, and any necessary or desirable appurtenances to that property, within the downtown district for the use, in whole or in part, of any public or private person or corporation, or a combination of them.
- Fix, charge, and collect fees, rents, and charges for the use of any building or property under its control or any part thereof, or facility therein, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.
- Lease any building or property under its control, or any part of a building or property.
- Accept grants and donations of property, labor, or other things of value from a public or private source.
- Acquire and construct public facilities.



Board: Powers (continued)

- Create, operate, and fund marketing initiatives that benefit only retail and general marketing of the downtown district.
- Contract for broadband service and wireless technology service in the downtown district.
- Operate and perform all duties and exercise all responsibilities described in this section in a qualified township if the qualified township has entered into an agreement with the municipality under section 203(7).
- Create, operate, and fund a loan program to fund improvements for existing buildings located in a downtown district to make them marketable for sale or lease. The board may make loans with interest at a market rate or may make loans with interest at a below market rate, as determined by the board.
- Create, operate, and fund retail business incubators in the downtown district.

Expanding a District

- Governing body determination that it is necessary for the best interests of the public to halt property value deterioration and increase property tax valuation where possible in its business district, to eliminate the causes of that deterioration, and to promote economic growth, the governing body may, by resolution, declare its intention to create and provide for the operation of an authority.
- Resolution of intent: set a date for a public hearing on the adoption of a proposed ordinance designating the expanded boundaries of the downtown district.
- Publish Notice: published twice in a newspaper of general circulation in the municipality, not less than 20 or more than 40 days before the date of the hearing.
- Mail Notice: Not less than 20 days before the hearing, to the property taxpayers of record in the proposed district and to the governing body (certified mail) of each taxing jurisdiction levying taxes that would be subject to capture.
- Post Notice: in at least 20 conspicuous and public places in the proposed downtown district not less than 20 days before the hearing.
- Contents: The notice shall state the date, time, and place of the hearing, and shall describe the boundaries of the proposed downtown district.
- A citizen, taxpayer, or property owner of the municipality or an official from a taxing jurisdiction with millage that would be subject to capture has the right to be heard in regard to the establishment of the authority and the boundaries of the proposed downtown district.

Expanding a District: Opt Out

- Not more than 60 days after a public hearing, the governing body of a taxing jurisdiction levying ad valorem property taxes that would otherwise be subject to capture may exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk of the municipality proposing to create the authority. The resolution takes effect when filed with that clerk and remains effective until a copy of a resolution rescinding that resolution is filed with that clerk.
- If a library levied Before January 1, 2017, and the authority alters or amends the boundaries of a downtown district or extends the duration of the existing finance plan, then the library board or commission may, not later than 60 days after a public hearing is held under this subsection, exempt all or a portion of its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk of the municipality that created the authority.

Expanding a District

- Not less than 60 days after the public hearing, if the governing body of the municipality intends to proceed with the establishment of the authority, it shall adopt an ordinance establishing the authority and designating the boundaries of the downtown district within which the authority shall exercise its powers.
- Subject to any applicable statutory or charter provisions in respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of an ordinance over his or her veto.
- This ordinance shall be filed with the secretary of state promptly after its adoption and shall be published at least once in a newspaper of general circulation in the municipality.



Financing Activities

- Donations to the authority for the performance of its functions.
- Proceeds of a tax
- Money borrowed and to be repaid as authorized by sections 213 and 213a.
- Revenues from any property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.
- Proceeds of a tax increment financing plan.
- Proceeds from a special assessment district created as provided by law.
- Money obtained from other sources approved by the governing body of the municipality or otherwise authorized by law for use by the authority or the municipality to finance a development program.
- Money obtained pursuant to section 213b.



Financing Activities (continued)

An authority with the approval of the municipal governing body may levy an ad valorem tax on the real and tangible personal property not exempt by law and as finally equalized in the downtown district.

- 1 mill if the downtown district is in a municipality having a population of 1,000,000 or more,
- 2 mills if the downtown district is in a municipality having a population of less than 1,000,000.

The tax shall be collected by the municipality creating the authority levying the tax. The municipality shall collect the tax at the same time and in the same manner as it collects its other ad valorem taxes. The tax shall be paid to the treasurer of the authority and credited to the general fund of the authority for purposes of the authority.

The municipality may at the request of the authority borrow money and issue its notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, in anticipation of collection of the ad valorem tax authorized in this section.



Financing Activities (Bonds)

Revenue Bonds, Municipality General Obligation Bonds, or Tax Increment Finance Bonds

Revenue Bonds

- To finance all or part of the costs of acquiring or constructing property in connection with the implementation of a development plan in the downtown district or to refund bonds or notes issued pursuant to this section.
- Costs which may be financed include the cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with the implementation of a development plan in the downtown district; any engineering, architectural, legal, accounting, or financial expenses; the costs necessary or incidental to the borrowing of money; interest on the bonds or notes during the period of construction; a reserve for payment of principal and interest on the bonds or notes; and a reserve for operation and maintenance until sufficient revenues have developed. The authority may secure the bonds and notes by mortgage, assignment, or pledge of the property and any money, revenues, or income received in connection therewith.

The municipality shall not be liable on bonds or notes of the authority issued pursuant to this section and the bonds or notes shall not be a debt of the municipality. The bonds or notes shall contain on their face a statement to that effect.



Financing Activities (Bonds)

Municipality General Obligation Bonds

- Issued by the municipality
- FF&C of the municipality may be pledged
- Estimate of tax increment revenues
- Majority vote of governing body
- Subject to Act 34 of 2001

Tax Increment Bonds

- Issued by the DDA
- Pledge solely the tax increment revenues of the development area
- May be secured by other revenues per section 211
- FF&C of municipality cannot be pledged
- Can include capitalized interest

Tax Increment Financing Plans

When the authority determines it necessary, the board shall prepare and submit a tax increment financing plan to the governing body of the municipality.

The tax increment financing plan shall include of the following:

- a development plan,
- a detailed explanation of the tax increment procedure,
- the maximum amount of bonded indebtedness to be incurred, and the duration of the program

The plan shall contain a statement of the estimated impact of tax increment financing on the assessed values of all taxing jurisdictions in which the development area is located.

The plan may provide for the use of part or all of the captured assessed value, but the portion intended to be used by the authority shall be clearly stated in the tax increment financing plan.

The authority or municipality may exclude from captured assessed value growth in property value resulting solely from inflation. The plan shall set forth the method for excluding growth in property value resulting solely from inflation.

Development Plans

When a board decides to finance a project in the downtown district by the use of revenue bonds or tax increment financing, it shall prepare a development plan.

The development plan shall contain all of the following:

- Boundaries (in relation to highways, streets, streams, or otherwise)
- The location and extent of existing streets and other public facilities within the development area
- A description of existing improvements in the development area to be demolished, repaired, or altered, a description of any repairs and alterations, and an estimate of the time required for completion.
- The location, extent, character, and estimated cost of the improvements including rehabilitation contemplated for the development area and an estimate of the time required for completion.
- Construction stages
- Open space and the use contemplated for the space.
- Description of desired zoning changes and changes in streets, street levels, intersections, or utilities.
- An estimate of the cost of the development, a statement of the proposed method of financing the development, and the ability of the authority to arrange the financing.
- Designation of the person or persons to whom all or a portion of the development is to be leased, sold, or conveyed
- Other material that the authority, local public agency, or governing body considers pertinent.

TIF and Development Plans - Adoption

The governing body shall hold a public hearing on the TIF and development plan.

Publication: twice in a newspaper of general circulation designated by the municipality, the first of which shall be not less than 20 days before the date set for the hearing.

Posting: in at least 20 conspicuous and public places in the downtown district not less than 20 days before the hearing.

Mailing: to all property taxpayers of record in the downtown district not less than 20 days before the hearing.

Mailing: Certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the development plan or the tax increment financing plan is approved or amended.

TIF and Development Plans - Notice

Notice Contents:

- a description of the proposed development area in relation to highways, streets, streams, or otherwise
- a statement that maps, plats, and a description of the development plan, including the method of relocating families and individuals who may be displaced from the area, are available for public inspection at a place designated in the notice, and that all aspects of the development plan will be open for discussion at the public hearing; and other information that the governing body considers appropriate.

At the time set for hearing, the governing body shall provide an opportunity for interested persons to be heard and shall receive and consider communications in writing with reference to the development plan. The hearing shall provide the fullest opportunity for expression of opinion, for argument on the merits, and for introduction of documentary evidence pertinent to the development plan. The governing body shall make and preserve a record of the public hearing, including all data presented thereat.

TIF and Development Plans - Findings

The governing Body must

- determine whether the development plan or tax increment financing plan constitutes a public purpose
- Adoption of plans by ordinance

Approve or reject the plan, or approve it with modification, by ordinance based on the following considerations:

- The findings and recommendations of a development area citizens council, if a development area citizens council was formed
- Meets the requirements set forth in the Act
- Proposed method of financing the development is feasible and the authority has the ability to arrange the financing.
- Development is reasonable and necessary to carry out the purposes of this part.
- Land included within the development area to be acquired is reasonably necessary to carry out the purposes of the plan and of this part in an efficient and economically satisfactory manner.
- Development plan is in reasonable accord with the master plan of the municipality.
- Public services, such as fire and police protection and utilities, are or will be adequate to service the project area.
- Changes in zoning, streets, street levels, intersections, and utilities are reasonably necessary for the project and for the municipality.

Open Meetings Act (OMA)

OMA - Intent

The intent of the Open Meetings Act is to provide openness and accountability in government and is interpreted to accomplish this goal

Booth Newspapers v Wyoming City Council 168 Mich App 459 (1988)

Judicial Treatment

The OMA is construed liberally in favor of openness

Wexford County Prosecutor v Pranger 83 Mich App 197 (1978)

Attempts to avoid the OMA are regularly met with disapproval by the courts

Booth Newspapers v Wyoming City Council 168 Mich App 459 (1988)

OMA – Meeting Requirements

- All meetings of a public body shall be open to the public

- All decisions of a public body shall be made at a meeting open to the public

- All deliberations of a public body constituting a quorum shall take place at a meeting open to the public, except for closed sessions

- OMA requirements can even apply to meetings of a sub-quorum of members (discussed later)

MCL 15.263(1); MCL 15.263(2); MCL 15.263(3)

OMA – Definitions

■ Public Body

A State or local legislative or governing body, empowered by the State Constitution or a State statute, or by local charter, ordinance, resolution, or rule, to exercise governmental or proprietary authority or function

Examples

Council

Board

Authority

Commission

Committee

Subcommittee

MCL 15.262

OMA – Definitions

■ Meeting

The convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy

MCL 15.262

■ Closed Session

A meeting or part of a meeting of a public body which is closed to the public

MCL 15.262

■ Decision

A determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by the members of the public body is required and by which a public body effectuates or formulates public policy

MCL 15.262

■ Deliberation – not defined by statute

- Includes “discussing,” which, in turn, is defined as “the act of exchanging views on something”
 - Hoff Spoolstra, unpublished, 2008 (COA No. 272898)
- The act of carefully considering issues and options *before* making a decision or taking action, such as by analyzing and discussing and exchanging views
 - Ryant v Cleveland Twp., 239 Mich App 430 (2000)

OMA – Deliberations by Email

Citizens for a Better Algonac Community Schools v. Algonac Community Schools, 317 Mich. App. 171 (Sept. 8, 2016)

- Board undertakes search for superintendent

- Board votes to offer position to neighboring superintendent and “begin contract development asap

- Board members exchange emails regarding contract negotiations, drafts, and final terms

- Board approves contract “unanimously, swiftly, and without discussion”

- Plaintiff files suit alleging emails constituted deliberations of a public body in violation of OMA

- Plaintiff sought: (i) declaratory judgement of OMA violation; (ii) order compelling compliance; and (iii) attorney fees/costs

- Court finds that the board “violated the [OMA] by conducting deliberations...outside of a public meeting”

- Court of Appeals overturns on other grounds

OMA – Deliberations by Email

Markel v. Mackley, Case No. 327617
(Mich. Ct. App., Nov. 1, 2016) (Unpublished)

- Public body consisting of elected officials

- Four of the seven members engage in email exchanges regarding matters soon to come before the public body

- Three of the seven members actively exchanged thoughts and plans to handle the matters

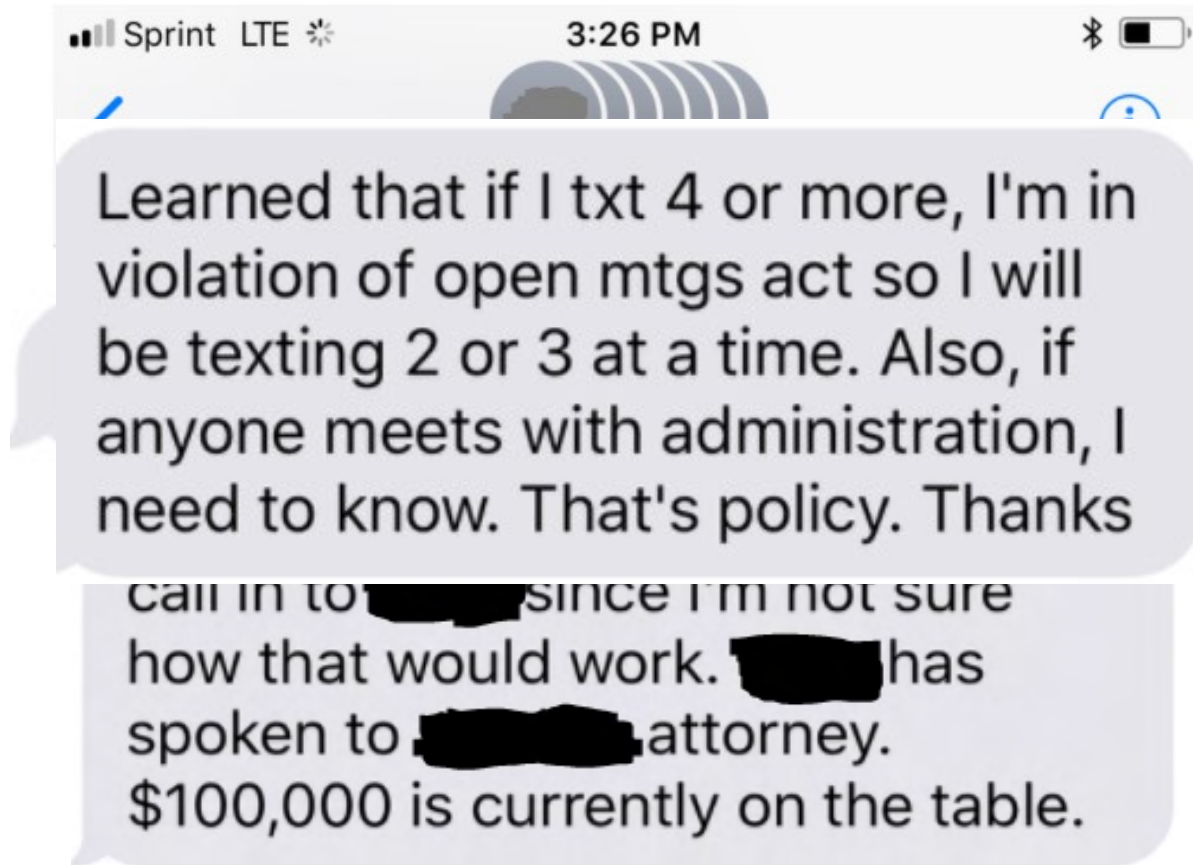
- The fourth member included on the email exchanges simply received the messages and did not actively participate

- At subsequent public meetings, the matters were handled just as had been planned in the email exchange

- Court finds that the group emails constituted a “meeting” under OMA because a quorum was present

- Court stated that, because Section 3(3) requires deliberations to be public, the OMA had been violated by the private email exchanges

OMA – Deliberations by Text



OMA – Deliberations by Text

- There is currently no caselaw directly on the question of whether or not text messages can be violations of OMA
- Best practice, however, is to assume that text messages, like emails, are subject to the requirements of OMA
- It is therefore important not to text about issues concerning business of the board

OMA – Sub-Quorum Application

Even a sub-quorum of members of a public body can be in violation of OMA:

- Sub-quorum deliberations of a city council over two-day period violated OMA

Booth v. Wyoming, 168 Mich.App. 459, 425 N.W.2d 695 (1988)

- Sub-quorum committee given authority to act in selecting a new university president violated OMA by making “decisions” via “round-the-horn” phone calls

Booth Newspapers, Inc. v. Univ. of Michigan Bd of Regents, 192 Mich.App. 574, 481 N.W.2d 778 (1992)

- Sub-quorum committee given the authority to make only a recommendation on policy regarding evaluation of administrators violated OMA

Schmiedecke v. Clare School Bd, 228 Mich App 259; 577 N.W.2d 706

OMA – Sub-Quorum Application

- Sub-quorum committee given the authority to act regarding the selection of a university president violated the OMA – note – reversed on unrelated constitutional grounds

Federated Publications, Inc. d/b/a Lansing State Journal v. Michigan State University, 221 Mich App 103; 561 N.W.2d 433 (1997), rev'd on other grounds 460 Mich 755 (1999)

- Sub-quorum discussions on termination of city attorney violated OMA

Hoff v. Spoelstra, et al, unpublished opinion per curiam of the Court of Appeals, issued July 8, 2008, (Docket No. 272898)

OMA – Enforcement

- The OMA provides a three-tiered enforcement scheme for private litigants to enforce OMA requirements
 - 1) An action to invalidate a decision made in violation of OMA
 - 2) An action for injunctive relief enjoining ongoing OMA violations and compelling compliance
 - 3) An action for damages for intentional OMA violations

OMA – Takeaways

- All meetings of the board must be open to the public (with the exception of closed meetings)
- All decisions and deliberations of the board must be made at a meeting open to the public
- Various forms of communication are subject to the Open Meetings Act, including email and text messages
- Even actions, deliberation, and decisions by a sub-quorum of members can violate the Open Meetings Act

Freedom of Information Act (FOIA)

FOIA – Intent

- Public Access to Government Information
- Access to the affairs of governmental and official acts of public officials
- Participate in the democratic process
- FOIA is a pro-disclosure statute
 - Exemptions are narrowly construed
 - Duty to provide access to non-exempt records

FOIA – Records Subject to Disclosure

- All public records are subject to full disclosure under the act unless the material is specifically exempt under an express statutory exemption.

Swickard v. Wayne County Medical Examiner, 438 Mich. 536, 544 (1991)

FOIA – Records Subject to Disclosure

- A public record is a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created Public record does not include computer software

FOIA – Electronic Messaging

- Text messages are a writing and satisfy the statutory definition of a public record if they capture communications by public officials in the performance of an official function
 - *Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. MI 2008)
 - It is important to remember that text messages can violate both the FOIA and OMA
- Social media, text messages, emails, and other personal messaging applications can lead to FOIA and OMA violations

FOIA – Records Requests

- A public body must respond to a FOIA request within five business days of receipt of the request
- If more time is needed to respond, the public body may give written notice extending their response time by up to an *additional* ten business days

FOIA – Records Requests

- A FOIA request is “received” when:
 - If delivered by hand or mail: the day it is actually received
 - If received by fax, email, or other electronic communication: one business day after the electronic transmission
 - If a request by email goes to the public body’s spam or junk mail folder, the request is not considered received until 1 day after the public body first becomes **aware** of the request (must keep a log of such occurrences/receipts)

FOIA – Records Requests

- Responses come in three flavors:
 - 1) Granting the request
 - 2) Issuing a written notice to the requesting party denying the request
 - 3) Granting the request *in part* and issuing a written notice to the requesting party denying part of the request

FOIA – Denials

- A written notice of denial must include the following:
 - Right to appeal to the head of the public body
 - Right to judicial review in circuit court
 - Right to receive attorney's fees and damages
 - Exempt Material – basis for exemption
 - No Public Record – certification that record does not exist
 - Redacted Material – a description of a record or information that has been redacted

Record Retention

- “A record that is required to be kept by a public officer in the discharge of duties imposed by law, that is required to be filed in a public office, or that is a memorial of a transaction of a public officer made in the discharge of a duty is the property of this state and shall not be disposed of, mutilated, or destroyed except as provided by law.”

MCL 399.811 (Michigan History Center Act governing record retention).

Record Retention

- “A person shall not willfully carry away, mutilate, or destroy the books, papers, records, or any part of a book, paper, or record described in subsection (1) and shall not retain and continue to hold the possession of those books, papers, or records, or parts of those books, papers, or records and refuse to deliver up those books, papers, records, or parts of those books, papers, or records to the proper officer having charge of the office to which those books, papers, or records belong upon demand being made by that officer or, if the office is defunct, the Michigan history center created in the Michigan history center act, 2016 PA 470, MCL 399.801 to 399.812. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00.”

MCL 750.491 (Michigan Penal Code).

Policy Considerations OMA & FOIA

Applicable to email, text messaging and social media platforms

- Recognize record retention requirements
 - Practical challenges of retention, reproducing, disclosing
- Recognize OMA/FOIA Concerns
 - Discourage discussions or deliberations by board members
 - Have media/management staff post and respond on social media, not board members
- Discourage use of personal accounts for public business
- Consult with your legal counsel regarding policies

CONTACT

Questions?

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