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May 22, 2012.

Senator Jim Marleau
P.O. Box 30036
Lansing, MI 48909-7536

Representative Tom McMillin
N-894 House Office Building
P.O. Box 30014
Lansing, MI 48909

Re: *Request for Attorney General Opinion*

Dear Senator Marleau and Representative McMillin:

Our office is legal counsel for the City of Rochester. I have been asked to submit a request to you to seek an opinion from the Attorney General's Office pertaining to budget requirements for entities created by an interlocal agreement under the Urban Cooperation Act of 1967 as set forth below.

QUESTION 1: Does an entity created by an interlocal agreement by multiple municipalities under the Urban Cooperation Act of 1967, MCL 124.501, et seq. have to comply with the requirements under the Uniform Budgeting and Accounting Act, MCL 141.421, et seq. or any other laws to have an approved budget before expending funds, whether funds are public monies provided by the local governmental units that created the entity, grants from federal or state entities, funds from other public sources, or funds from private sources?

QUESTION 2: If the answer to the foregoing question is "yes," and the entity created under the interlocal agreement spends monies without an approved budget, is it a violation of the Uniform Budgeting and Accounting Act and/or any other laws?

QUESTION 3: If the answers to the foregoing questions are both "yes," what are the consequences and/or ramifications if the board for the entity created under the interlocal agreement spends funds in a fiscal year where there has not been an approved budget for that fiscal year?

As brief background information underlying the above questions, the Cities of Rochester and Rochester Hills and Oakland Township are parties to an Interlocal Agreement for the

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purpose of joining together and establishing the Older Persons' Commission ("Commission") under the authority of the Urban Cooperation Act, MCL 124.501, et seq. to provide for the activities and services for older persons residing in the party municipalities. A copy of the Interlocal Agreement is included with this request.

Like other interlocal agreements, Article V of the Interlocal Agreement requires an annual budget be passed for the ensuing fiscal year. The budget is to be developed by the Commission and submitted to the member municipalities who then reviews and either approves, as presented or as modified, an identical budget no later than October 1 of each year. The Commission prepared a budget for the 2012 fiscal year (January 1, 2012-December 31, 2012) and submitted it to the member communities. The budget was not approved by one of the member communities, nor was any subsequent budget approved by all parties prior to the start of the 2012 fiscal year.

There was discussion on whether or not the Commission could expend funds in fiscal year 2012, despite not having an approved budget to do so. In fact, there is not an approved budget for the Commission as of the date of this request.

There is no question that the municipal parties to the Agreement are required to have an approved budget and a corresponding general appropriation. It is also not at issue that a local unit cannot incur expenditures without an underlying appropriation allowing for that expenditure. The questions, therefore, become whether or not an entity created by local units under the Urban Cooperation Act are subject to the same budgeting and appropriation requirements under the Uniform Budgeting and Accounting Act, or any other laws. The Uniform Budgeting and Accounting Act specifically provides that a member of the legislative body, the chief administrative officer, and administrative officer, or an employee of a local unit shall not authorize or participate in the expenditure of funds except as authorized by a general appropriations act. MCL 141.439. Further, this provision states that an expenditure shall not be incurred except in pursuance of the authority and appropriations of the legislative body of a local unit.

MCL 124.507 states that an interlocal agreement under the Urban Cooperation Act may provide for a separate legal or administrative entity to administer and execute the agreement which may be a commission, board, or counsel constituted pursuant to the interlocal agreement. The Commission is such an entity created under the Interlocal Agreement. The statute further provides that this entity shall be a public body, corporate or politic, for the purposes of the act. This entity does not have the power or authority to levy any type of tax or issue any type of bond in its own name. Further, it is not permitted to indebt the governmental unit participating in the agreement. MCL 124.507. Thus, it is entirely reliant upon the member governmental agencies to provide funding (taxpayer monies), or by other public or private sources.

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We believe that the answer to these questions will be of great importance not only to the Commission or the parties to this particular Interlocal Agreement, but would provide guidance and serve as a more authoritative source and direction to the municipalities and entities created under interlocal agreements State-wide. There has certainly been an increase in emphasis placed on municipalities to enter into cooperative arrangements and, as a result, we believe that more and more entities such as the Commission under the Urban Cooperation Act will be created. Thus, the Attorney General's position on budgeting requirements and repercussions is very important at this time. We appreciate your assistance in making a request to the Attorney General's Office for an opinion on these issues.

Very truly yours,

BEIER HOWLETT, P.C.



Jeffrey S. Kragt

JSK/lh
Enclosure

cc : Rochester City Council
Jaymes Vettraino, Rochester City Manager