



Attorneys at Law

4190 Telegraph Road, Suite 3000
Bloomfield Hills, Michigan 48302-2082

John D. Staran
Direct (248) 731-3088
jstaran@hshclaw.com

Main (248) 731-3080
Fax (248) 731-3081

May 2, 2012

VIA E-MAIL

City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Police Millage Proposal***

Dear City Councilmembers:

During the discussion that followed the Police-Road Tech Committee's presentation, at the last City Council meeting, about proposed police millage options, councilmembers pondered how to craft a millage proposal that will: (1) establish authorize a dedicated police millage in a sufficient amount that the current 2.5 mills subsidy from general fund will no longer be necessary, and (2) commit the City Council to correspondingly reduce the general fund levy by 2.5 mills without taking away the ability of the Council to deal with changing or unforeseen circumstances that may arise and require funding from general fund.

The Tech Committee struggled with the same issue and discussed it at length. As at least one councilmember observed at the last council meeting, it may not be possible to have it both ways – that is, to make a binding commitment to reduce the general fund millage levy without leaving current and future city councils hamstrung to levy and spend general fund millage for public purposes or needs that may arise. A legal impediment stands in the way, as well. A basic rule of municipal law prevails in Michigan and throughout the nation that, with few exceptions,¹ a local governing board cannot make a contract or commitment that will bind the governmental discretionary powers of the board's successors in office. See, for example, *Inverness Mobile Home Community v Bedford Twp*, 263 Mich App 241, 248 (2004) and *Plant Food Co v City of Charlotte*, 214 NC 518, 199 SE 712 (1938). According to the court in *Plant Food*, these discretionary powers include the powers to adopt and repeal ordinances, lay out and maintain streets, preserve order, set and regulate rates, and to levy (and spend) taxes and special assessments. This is meant to ensure that each government can be free to revisit the policy choices of their predecessors and respond to the wants and needs of its electorate without being bound by past preferences.

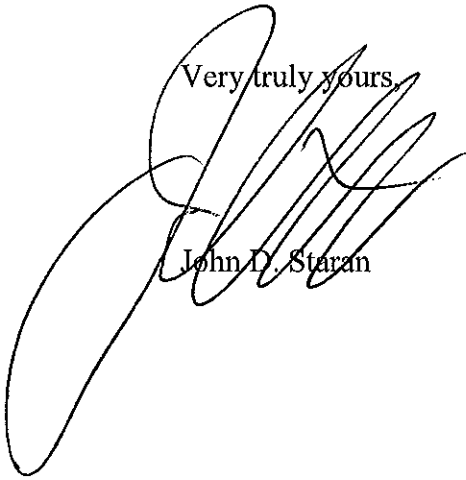
¹ The exceptions appear to be limited to such things as entering into contracts of a business or proprietary nature, general obligation bond pledges, and some appointments to offices and positions.

This basic rule that limits the current Council's ability to bind future City Councils makes good sense, but leaves the current Council with a quandary. Council may include language in a ballot question or may adopt a separate resolution expressing Council's desire or intent to eliminate the general fund subsidy for police and to make a corresponding reduction in general fund tax levy, but this will be, at best, a non-binding expression of intent. Expressing such intent in a ballot proposal or council resolution will not bind or constrain the City Council from revisiting its general fund levy and expenditures in the future. Indeed, the City Council must, by charter and law, annually adopt the City's budget and tax rate.

It would appear the only way to obligate the Council to reduce general fund levy and expenditures by the amount of the current general fund subsidy for police services would have to take the form of a charter amendment whereby the charter would be amended to establish a permanent, dedicated millage for police services, but to also reduce the City's general operating millage cap (i.e., the charter tax rate) in City Charter section 4.2.1 from 5 mills to 2.5 mills. This approach was considered and rejected by the Tech Committee out of concern that such a reduction of the maximum general operating millage the City could lawfully levy would tie the hands of council too much and possibly render council unable to deal with pending and pressing circumstances.²

In summary, the Council's options appear to be limited to making a non-binding expression of intent to reduce the general fund levy if the police millage is approved, or amending the charter to establish a dedicated police millage with a corresponding reduction to the charter tax rate.

Very truly yours,



John D. Staran

JDS/ijd

cc: Mayor Bryan K. Barnett

² It was observed that if the maximum operating millage in charter section 4.2.1 was reduced in this manner, the City would still have the ability to ask the voters to approve special millages pursuant to charter section 4.2.7. However, the Committee felt this may become too cumbersome, slow and unpredictable, and would leave elected officials without discretion to make funding decisions in a timely manner to address the needs of the City.