

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212  
LANSING, MICHIGAN 48909

BILL SCHUETTE  
ATTORNEY GENERAL

September 5, 2012

Honorable Tom McMillin  
State Representative  
The Capitol  
Lansing, MI 48933

Dear Representative McMillin:

Attorney General Schuette has asked me to respond to your letter regarding the Rochester Hills-Rochester-Oakland Older Persons Commission (the Commission). In your letter, you ask whether its expenditures must be authorized by appropriations in an approved budget, and what the ramifications would be if the Commission's expenditures were not authorized by appropriation in an approved budget. Because of the subject matter, I asked staff in the State Operations Division, which handles matters involving intergovernmental cooperation, to review your letter. The following represents their findings.

The Uniform Budgeting and Accounting Act (UBAA), MCL 141.421 *et seq.*, prohibits an expenditure of a local unit of government in the absence of a lawful appropriation in an approved budget. See MCL 141.436 and MCL 141.439.

The definition of a local unit that is subject to the requirements of the UBAA is found in section 2d(4) of that act, MCL 141.422d(4), and includes an entity, such as the Commission, if it is an "authority or organization of government established by law that may expend the funds of the authority or organization." An agreement under the Urban Cooperation Act (UCA), MCL 124.501 *et seq.*, that creates a separate legal entity to implement cooperative activity typically provides that the newly-created legal entity will be expending funds to implement the agreement's cooperative purposes. Under the UBAA, the governing body of a unit subject to the UBAA is required by that act to adopt a budget approving the authorized expenditures for each fiscal year. MCL 141.436. Without such an approved budget and its appropriations, there would be no basis for the expenditure of the funds of a unit that is subject to the requirements of the UBAA.

As to the ramifications of UBAA violations, they include the potential for exceptions in the audits required under the UBAA that are to be filed with the Michigan Department of Treasury, the potential for a special audit being conducted of the unit by the State Treasurer, and enforcement action against the unit and the unit's officials and employees under the provisions of section 40 of the UBAA, MCL 141.440. In addition, for any separate legal entity established under the UCA that is subject to the UBAA but is systematically expending its funds in violation of its requirements, it is likely that such actions would lead to the dissolution of the entity by the

Honorable Tom McMillin  
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parties or otherwise, or to a reorganization of the entity that would enable the entity to conduct its activities going forward in compliance with the UBAA's requirements.

Thank you for bringing this matter to our attention. I hope this information is helpful to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard A. Bandstra".

Richard A. Bandstra  
Chief Legal Counsel

AG \_\_\_\_\_ Communications \_\_\_\_\_  
Chief Deputy \_\_\_\_\_ A. Cropsey \_\_\_\_\_  
R. Bandstra \_\_\_\_\_  
Date Original to Opinions Division 8/9/12

2012-0019808

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STATE REPRESENTATIVE

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GOVERNMENT OPERATIONS  
REGULATORY REFORM

AUG 10 2012

August 6, 2012

The Honorable Bill Schuette  
Attorney General, State of Michigan  
G. Mennen Williams Building, 7th Floor  
P.O. Box 30212  
Lansing, MI 48913

DEPT. OF THE  
ATTORNEY GENERAL

AUG 08 2012

Signed to \_\_\_\_\_

Re: The Older Persons Commission

Dear Attorney General Schuette:

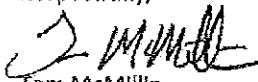
My office received the attached documentation, regarding the Older Persons Commission, from The City of Rochester.

There are a number of issues The City of Rochester has raised regarding the Older Persons Commission. Below are the 3 questions the city is asking for the Attorney General to answer.

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?
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 the Uniform Budgeting and Accounting Act and/or any other laws?
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?

If Attorney General's opinion was requested on these matters, would the Attorney General issue a substantive answer?

Respectfully,

  
Tom McMillin  
State Representative  
District 45