PLUNKETT COONEY

February 19, 2025

VIA E-MAIL

Mr. Gary Rosema
Interim County Administrator
Ottawa County
12220 Fillmore St. Room 310
West Olive, MI 49460
grosema@miottawa.org

Re: Agreement Between Ottawa County and Chester Township Dated 12/10/2024

Dear Mr. Rosema:

We have been requested to provide an opinion on the validity of an Agreement between Ottawa County and Chester Township approved by the Ottawa County Board of Commissioners on December 10, 2024. The Agreement is titled: "Agreement for the Care, Management, and Maintenance of Land Located at Crockery Lake," and authorizes the appropriation of $563,404.00 from the Ottawa County General Fund for the purpose of funding the Agreement.

The Recitals in the Agreement state in part that the County Board of Commissioners (BOC) has decided to use settlement funds from the Monsanto settlement in the general fund in combination with a portion of the County's own funds "for the purpose of caring, managing, and maintaining **the property** located at Crockery Lake that includes, but is not limited to, restoring the quality of waters of Crockery Lake, which is located within the County, in the Township of Chester, and **upon which the County owns riparian property (Parcel #: 70-01-15-100-031) that is used for public park purposes**, including a boat launch (the 'Property') pursuant to MCL 46.11(l) and MCL 123.51, et. seq." (Emphasis added).

The Agreement recites that it is entered into as an Intergovernmental Agreement as authorized by PA 1951, No. 35 and PA 1967, No. 7.

For the reasons that follow it is our opinion the Agreement is not valid.

PA 1951, No. 35 (MCL 124.2) states:

> Any municipal corporation shall have power to join with any other municipal corporation, or with any number or combination thereof by contract, or otherwise as may be permitted by law, for the ownership, operation, or performance, jointly, or by any 1 or more on behalf of all, of any property, facility or service **which each would have the power to own, operate or perform separately**. (Emphasis added).

PA 1967, No. 7 (MCL 124.504) states:

> A public agency of this state may exercise jointly with any other public agency of this state, with a public agency of any other state of the United States, with a public agency of Canada, or with any public agency of the United States government **any power, privilege, or authority that the agencies share in common and that each might exercise separately**. (Emphasis added).

Holland-W. Ottawa-Saugatuck Consortium v. Holland Educ. Ass'n, 199 Mich. App. 245, 250, 501 N.W.2d 261, 264 (1993), holds that intergovernmental agreements are valid to the extent that each party to the agreement has the authority to undertake the activity that is the subject of the agreement. It is our opinion Ottawa County did not have the authority to agree to fund the "care, management, and maintenance of land located at Crockery Lake."[1]

The authority of a county board of commissioners is limited to those activities authorized by the Constitution or state statute.

> [T]he Constitution of the State of Michigan vests all governmental power in the tripartite executive, legislative and judicial divisions of government. Local governments have no general or inherent powers. *Mason County Civic Research Council v. Mason County*, 343 Mich. 313, 72 N.W.2d 292 (1955). Their limited powers rather, are only those expressly conferred upon them by the Constitution of the State of Michigan, by acts of the Legislature, or necessarily implied therefrom. *Alan v. Wayne County*, 388 Mich. 210, 200 N.W.2d 628 (1972).

[1] It should be noted that MCL 41.418 explicitly authorizes a township board to appropriate funds for inland lake weed control; no such statute authorizes a county board of commissioners to make such appropriations. Moreover, MCL 41.418a permits two **townships** to enter into a joint agreement for weed control of inland lakes. There is no statute authorizing a township and a county to enter into such a joint agreement.

Crain v. Gibson, 73 Mich. App. 192, 200, 250 N.W.2d 792, 795 (1977). The Court of Appeals went on to state: "The limited powers that a County Board of Commissioners does have are legislative and administrative … . The few powers the Board does have are to be exercised as a board and not individually. *Id.* Thus, contrary to the virtually unlimited authority of the State Legislature, a county board of commissioners can exercise only that limited authority granted to it by the Legislature.

The Agreement cites MCL 46.11(l) and MCL 123.51 et. seq. as the authority for entering into the Agreement. MCL 46.11 sets forth the powers of a county board of commissioners. MCL 46.11(l) states a board of commissioners may "have the care and management of the property and business of the county **if other provisions are not made**." (Emphasis added). The "care and management" of Grose Park, the County park located on Crockery Lake, was the justification for the Board's decision to approve the Agreement.

However, Grose Park is under the authority of the Ottawa County Parks and Recreation Commission. The Commission was created in 1987 by a Resolution of the Board of Commissioners pursuant to Public Act 261 of 1965. "The Ottawa County Parks and Recreation Commission is responsible for all functions of the County Parks and Recreation Department including land acquisition, planning, development, operations, and community engagement programs and initiatives."
https://boards.miottawa.org/board/parks-recreation-commission/#:~:text=The%20Ottawa%20County%20Parks%20and%20Recreation%20Commission%20is%20responsible%20for%20all%20functions%20of%20the%20County%20Parks%20and%20Recreation%20Department%20including%20land%20acquisition%2C%20planning%2C%20development%2C%20operations%2C%20and%20community%20engagement%20programs%20and%20initiatives.

Public Act 261 of 1965 is codified as MCL 46.351, et. seq. MCL 46.354 states that the Board of Commissioners may provide for the expenses of the Parks and Recreation Commission "which shall be limited in its expenditures to amounts so appropriated unless a further appropriation is made by the board of supervisors." The 2025 budget for the Parks Commission approved by the BOC is $7,308,898.00.

MCL 46.358 provides that the Parks Commission "may acquire in the name of the County … suitable real property … for public parks, preserves, parkways, playgrounds, recreation centers, wildlife areas, lands reserved for flood conditions for impounding runoff water, and other conservation purposes." MCL 46.361 provides that the Parks Commission may "plan, develop, preserve, administer, maintain and operate park and recreational places and facilities." MCL 46.362 states that the Parks Commission "**shall** have the custody, control and

management of all real and personal property acquired by the county … for public parks, preserves, parkways, playgrounds, recreation centers, wildlife areas, lands reserved for flood conditions for impounding runoff water, and other county conservation or recreation purposes." (Emphasis added).

By creating the Parks Commission under MCL 46.351 et. seq., the BOC "made other provisions" for the care and management of the County's parks and recreation property. It is the Parks Commission that must decide in the first instance whether the "care, management, and maintenance" of Grose Park located at Crockery Lake should be undertaken as outlined in the Agreement in question. Because the Parks Commission was not part of the deliberations that resulted in the Agreement, and because the Parks Commission did not authorize or request the BOC appropriate additional funds for its budget to undertake the activities outlined in the Agreement, it is our opinion the BOC did not have the authority to enter into the Agreement.

The Recitals also rely on MCL 123.51 et. seq. as a basis for the Agreement. That statute states: "Any city, village, county or township may operate a system of public recreation and playgrounds; acquire, equip and maintain land, buildings or other recreational facilities; employ a superintendent of recreation and assistants; vote and expend funds for the operation of such system." In the absence of a Parks Commission created under MCL 46.351 et. seq., the BOC might have authority to expend funds at their discretion on "a system of public recreation." However, by creating the Parks Commission (which can only be done by a county or a regional authority – not by a city, village, or township), the BOC ceded authority for the care and maintenance of county parks to the Parks Commission. Therefore, it is our opinion that MCL 123.51 does not authorize the BOC to enter into the Agreement.

Additionally, it is our opinion the Agreement is not valid for a separate reason. The Natural Resources and Environmental Protection Act (MCL 324.101 through 324.90106) is a comprehensive set of statutes that govern virtually all aspects of natural resources and environmental protections in Michigan, including inland waters. Article III, Chapter 1 of the Natural Resources and Environmental Protection Act is titled "Habitat Protection." MCL 324.30101 through 324.36507 addresses Inland Waters.

MCL 324.30101(n) defines "project" as an activity that requires a permit under Section 30102. MCL 324.30102 sets forth activities undertaken by any person that require a permit from the DNR. Use of a pesticide for weed control requires a permit from the DNR.[2] MCL

[2] This Opinion refers to the permitting "department" as the DNR (Department of Natural Resources) as that is the label most people associate with the department overseeing the

41.418b. The lake restoration program associated with Crockery Lake (attached to the Agreement as Exhibit A) specifically references the need for permits from EGLE. MCL 324.30103 lists multiple activities that do not require a permit. None of the actions identified in Exhibit A to the Agreement are on the list of activities that do not require a permit. Thus, it is our opinion the Crockery Lake improvement plan meets the definition of a "project" under the Act.

Included in the statutes covering inland waters are provisions that permit the creation of lake improvement boards. MCL 324.30902(1) states:

> The local governing body of any local unit of government in which the whole or any part of the waters of any public inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, **may provide** for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.

(Emphasis added). The creation of lake improvement board is permissive, not mandatory to carry out improvements to inland lakes. This conclusion is confirmed by EGLE as well as by the fact that while there are over 11,000 inland lakes in Michigan, there are roughly 100 lake improvement boards, 46 of which are in Oakland County. In other words, .009% of inland lakes in Michigan have lake improvement boards. If the creation of a lake improvement board were mandatory before any activities that require a DNR permit would be allowed, 99.991% of inland lakes in Michigan could not be "improved." The statute regarding creation of lake improvement boards is permissive, not mandatory.

The primary benefit to the creation of a lake improvement board is that the board has the authority to establish a special assessment district "including within the special assessment district all parcels of land and local units which will be benefited by the improvement of the lake." MCL 324.30908. This spreads the cost of lake improvements equally among benefitted properties and does not rely on voluntary contributions or contributions through other means (such as associations). Nowhere in the Natural Resources and Environmental

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State's natural resources and environment. The current iteration of the department is EGLE. The name of the department changes with each incoming administration.

Protection Act are there any statutory provisions that improvements to inland lakes are contingent on the creation of a lake improvement board.

In the event a lake improvement board is created, MCL 324.30905 authorizes a county BOC to create a revolving fund to pay for preliminary costs of improvement and then be reimbursed when special assessments are collected:

> The county board of commissioners may provide for a revolving fund to pay for the preliminary costs of improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the lake board after notice of the hearing is given pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and shall be repaid to the fund where the project is not finally constructed.

Germane to the Agreement at issue, a separate statute, MCL 324.30911, limits the amount a county BOC is authorized to contribute to a lake improvement project: "The county board of commissioners may provide up to 25% of the cost of a lake improvement project on any public inland lake."

It could be argued that because this statute is included in the series of statutes addressing lake improvements and lake improvement boards, it applies only to projects undertaken by lake improvement boards. In our opinion this is not an accurate interpretation of the statute. It is a broadly worded statute that applies on its face to any lake improvement project. As discussed above, the Crockery Lake improvement plan meets the definition of "project" in MCL 324.30101(n). Moreover, if it were intended to apply only to lake improvement board projects it would have immediately followed MCL 324.30905. The language of the statute is clear and unambiguous. "Unambiguous statutes are enforced as written." *Clam Lake Twp. v. Dep't of Licensing & Regulatory. Affairs/State Boundary Comm'n*, 500 Mich. 362, 373, 902 N.W.2d 293, 300 (2017).

The amount approved by the BOC to fund the Agreement with Chester Township of $563,404.00 constitutes 100% of the entire projected cost of the Chester Lake improvement project. (Agreement, Exhibit A). This obviously exceeds the 25% limitation contained in MCL 324.30911. It is therefore our opinion the BOC lacked authority to enter into the Agreement.

Conclusion

It is our opinion the December 10, 2024 Agreement with Chester Township is invalid because the BOC lacked the authority to enter into the Agreement for two distinct reasons: (1) the BOC ceded authority to make improvements to County parks to the Parks Commission, and (2) the BOC is limited to in the amount it can contribute to a lake improvement project to 25% of the cost of the project. Because the BOC lacked the authority to enter into the Agreement, it is unenforceable. "'[A]n executory contract of a municipal corporation made without authority may not be enforced....' *Webb* [*v. Wakefield Twp*.], 239 Mich. [521] at 526–528, 215 N.W. 43 [(1927)]." *Harbor Watch Condo. Ass'n v. Emmet County Treasurer*, 308 Mich. App. 380, 388, 863 N.W.2d 745, 750 (2014).

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