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FOR PUBLIC RELEASE

May 17, 2024

**Ottawa County Board of Commissioners
Ottawa County Officer Compensation Commission**

RE: Request for Legal Opinion Regarding County Officer Compensation Commission.

Dear Commissioners:

We have received a request for a legal memorandum regarding the Ottawa County Officers Compensation Commission (hereinafter “Commission”). Our analysis, conclusions, and recommendations are as follows.

I. BACKGROUND:

Ottawa County has a County Officers Compensation Commission pursuant to MCL 45.471 et. seq. (hereinafter the “Act”). The role of the Commission is to “determine the compensation for the nonjudicial elected officials of the county.” MCL 45.471. The Commission consists of seven members pursuant to MCL 45.472(1). This year, however, one member resigned at the beginning of the process in March of 2024, thus leaving six active members. There is nothing in the statute that prohibits or nullifies the actions of the Commission if it is short one member. Being short one member does not change our legal opinion regarding the legal ramifications of what occurred.

The Commission shall only meet on even numbered years (MCL 45.474(1)) and shall not meet more than 15 times (MCL 45.474(1)). The Act states that the Commission “shall make its determination within 45 calendar days after its first meeting of the year.” MCL 45.474(1). Further, the Act makes no exceptions, nor does it provide any authority to act after the 45 days have elapsed.

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The Act defines a meeting of the Commission as any time the members of the Commission meet and a “quorum is present.” MCL 45.474(1). A quorum is defined by the Act as a meeting when a majority of the members of the Commission are present. MCL 45.474(2). Therefore, regardless of whether the Commission has six or seven current members, there is a quorum when at least four members of the Commission are meeting.

MCL 45.474(2) states in relevant part (emphasis added):

The commission **shall** not take action or make a determination without a concurrence of a **majority of the members appointed and serving** on the commission.

This also means that regardless of how many members were present at a meeting, a determination can only be made if it receives at least four “Yea” votes. For example, four members of the Commission could meet, and they would constitute a quorum. However, based upon the language of the Act, any determination made by those four members would have to be unanimous and requires four “Yea” votes in order to have any effect.

Once the Commission has made a proper determination of the compensation of the elected officials, “the determination shall be effective at the beginning of the first odd numbered year after the determination is made.” MCL 45.473. However, the determination of the Commission:

shall be the compensation of those officials **unless** the county board of commissioners rejects the determination by resolution adopted by 2/3 of the members elected to and serving on the board.”

MCL 45.473 (emphasis added).

The only role for the Ottawa County Board of Commissioners (hereinafter “BOC”) is the authority to reject the determination by the Commission. This means that if the BOC takes no action, a proper determination made by the Commission will automatically take effect the following year. There is nothing in the Act that requires the BOC to take any affirmative action or vote to approve the determinations of the Commission.

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The Act further states that if the BOC rejects a determination by the Commission, “the compensation then in effect for those officials shall continue.” MCL 45.473. There are no provisions in the Act that permit the BOC to simply lower the determination or make other determinations as to the compensation. The Act only gives the BOC the authority to reject a determination.

Moreover, there is nothing in the Act that requires the BOC to reject a determination in whole. The BOC can reject the determination of the Commission in whole or in part. Other counties have rejected a determination, in part, and there is nothing in the Act that would prohibit such a practice.

Finally, there is no reported case law regarding the Act. It appears there has never been a case in Michigan’s history (at least in the Court of Appeals or Supreme Court) regarding the interpretation of the Act. Therefore, our legal opinion is based on the plain reading of the Act and its terms.

II. APPLICATION.

The following is based upon our investigation into the matter and our understanding of what occurred. This year’s Commission consisted of six members because one member resigned at the very beginning of the process and prior to the first meeting. The first meeting of the Commission was held on March 11, 2024, where all six members were present and constituted a quorum. Pursuant to MCL 45.471(1), this means that all determinations by the Commission must have been made within 45 days of March 11, 2024, which was April 25, 2024. There are no exceptions to this mandate. Any determinations made after April 25, 2024, would be prohibited by the plain language of the Act and have no effect.

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A. April 11, 2024 Meeting.

Our understanding is that the Commission held a total of five meetings. At the first three meetings, no determinations were made. At the fourth meeting held on April 11, 2024, only four members of the Commission were present. This meant that they had the four members necessary to constitute a quorum, but it also meant that all four members would have to vote unanimously to make any proper determinations. It is our understanding that at the April 11, 2024 meeting, the following votes were held:

- **VOTE: 4 Yea, 0 Nay.** The Prosecutor, Sheriff, Treasurer, Clerk/Register of Deeds, and Water Resources Commissioner shall have a salary increase of 8% effective January 1, 2025 and a salary increase of 6% effective January 1, 2026.
- **VOTE: 4 Yea, 0 Nay.** The Chairperson of the Ottawa County Road Commission shall have a salary set to \$15,500 per year effective January 1, 2025 and a 0% increase effective January 1, 2026, and all other Commissioners of the Ottawa County Road Commission shall have a salary set to \$12,500 per year effective January 1, 2025 and a 0% increase effective January 1, 2026.
- **VOTE: 3 Yea, 1 Nay.** The Chairperson of the Board of Commissioners shall have a salary increase of 60% effective January 1, 2025 and a 0% increase effective January 1, 2026. The Vice-Chairperson of the Board of Commissioners shall have a salary increase of 60% effective January 1, 2025 and a 0% increase effective January 1, 2026. All other Commissioners shall have a salary increase of 60% effective January 1, 2025 and a 0% increase effective January 1, 2026. All Commissioners on the Board of Commissioners shall receive a monthly stipend of \$1,000 for purposes of compensation for healthcare coverage.

Again, the Act requires that all proper determinations of the Commission be by a majority of the “members appointed and serving on the commission.” MCL 45.474(2). Since six members were “appointed and serving” on the Commission at that time, all determinations therefore required at least four “Yea” votes. Thus, the only proper determinations that were made on April 11, 2024 were the first two votes for the increases for the Prosecutor, Sheriff, Treasurer, Clerk/Register of Deeds, and Water Resources Commissioner, and for the increases for the Ottawa County Road Commission members.

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Since the vote to increase for the Ottawa County Board of Commissioners' compensation did not receive the required four "Yea" votes, it was not a proper determination by the Commission and cannot be enforced. Finally, no meeting minutes were prepared for the April 11, 2024 meeting.

B. May 2, 2024 Meeting.

The Commission held a fifth meeting on May 2, 2024. It appears the primary purpose of that meeting was to give further pay increases to the Treasurer and Water Resources Commissioner in order to bring their salaries in line with the Clerk/Register of Deeds. All six members of the Commission were present at the May 2, 2024 meeting. It is our understanding that the Commission voted unanimously to approve the following:

- **VOTE: 6 Yea, 0 Nay.** Approve additional salary increases for the Treasurer and Water Resources Commissioner to make their compensation match the Clerk/Register of Deeds effective January 1, 2025 and provide a 6% increase to their salaries effective January 1, 2026.

The Chairperson of the Commission then signed a resolution memorializing what occurred on April 11, 2024, and May 2, 2024.

The primary issue with the May 2, 2024 meeting was that it was held after 45 days had elapsed. The first meeting of the Commission was held on March 11, 2024, which therefore required all determinations be made on or before April 25, 2024. The Act is clear that the Commission "**shall** make its determination within 45 calendar days after its first meeting of the year." MCL 45.474(1) (emphasis added). When a statute uses the word "shall," it means it must be followed. The Michigan Court of Appeals held that "[t]he word 'shall' as used in a statute is considered to require mandatory conduct." *Hughes v Almena Twp*, 284 Mich App 50, 62; 771 NW2d 453 (2009). "[T]he term 'shall' is universally recognized as requiring mandatory adherence." *Goldstone v Bloomfield Twp Pub Library*, 268 Mich App 642, 657; 708 NW2d 740

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(2005). “The word "shall" is indicative of a mandatory directive, not a discretionary one.” *Warren City Council v Buffa*, 333 Mich App 422, 435; 960 NW2d 166 (2020).

This means that the Commission had no authority to make any determinations after April 25, 2024. The Commission had no discretion to make any further determinations after that date. Therefore, any determinations made at the May 2, 2024 meeting were done without any statutory authority, were not proper, and cannot take effect.

This also means that the only proper determinations that have been made by the Commission were the first two votes during the April 11, 2024 meeting regarding the increases for the Prosecutor, Sheriff, Treasurer, Clerk/Register of Deeds, and Water Resources Commissioner, and the Ottawa County Road Commission members.

III. IMPLICATIONS.

The above review and findings should not be interpreted as any indication as to the merits of what the Commission was attempting to do. Ottawa County has outstanding elected officials who certainly deserve to be fairly compensated for the hard work they do for the people of Ottawa County.

However, in our role as Corporate Counsel, we are simply providing our analysis of the law as it currently stands and applying that law to the facts that occurred. There can certainly be debate whether the Commission is a good or bad process, or whether it is good public policy. Nevertheless, the law must be followed as written, even if that leads to undesired outcomes.

IV. CONCLUSION/RECOMMENDATIONS.

In summary and based upon our review of the Act and the actions of the Commission, we make the following findings:

- A proper determination was made on April 11, 2024 regarding the salary increases for the Prosecutor, Sheriff, Treasurer, Clerk/Register of Deeds, and Water Resources Commissioner.

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- A proper determination was made on April 11, 2024 regarding the salary increases for the members of the Ottawa County Road Commission.
- No proper determination was made on April 11, 2024 regarding the salary increases and health care stipend for the Ottawa County Board of Commissioners because it failed to obtain the required four “Yea” votes.
- No proper determinations were made on May 2, 2024, because the meeting was held and the votes were cast after the 45 days had elapsed on April 26, 2024. In short, the Commission had no authority to make any determinations on May 2, 2024.

This obviously means that no proper determinations were ever made regarding any pay increases for the Board of Commissioners or in regard to the monthly health care stipend. Further, no proper determinations were ever made regarding a second pay increase for the compensation of the Treasurer and Water Resources Commissioner. Nevertheless, the Treasurer and Water Resources Commissioner will still receive the 8% and 6% raises that were properly voted upon at the April 11, 2024 meeting.

Moving forward, we recommend that the Commission do the following:

- Memorialize the determinations and votes that occurred on April 11, 2024, and prepare written meeting minutes.
- Issue a corrected resolution reflecting that the only proper determinations were made on April 11, 2024, and were properly authorized by the Act, including:
 - The Prosecutor, Sheriff, Treasurer, Clerk/Register of Deeds, and Water Resources Commissioner shall have a salary increase of 8% effective January 1, 2025, and a salary increase of 6% effective January 1, 2026.
 - The Chairperson of the Ottawa County Road Commission shall have a salary set to \$15,500 per year effective January 1, 2025, and a 0% increase effective January 1, 2026, and all other Commissioners of the Ottawa County Road Commission shall have a salary set to \$12,500 per year effective January 1, 2025 and a 0% increase effective January 1, 2026.

The Act only requires that “determinations” be made within 45 days, which did occur on April 11, 2024. However, there is nothing in the Act preventing the Commission from, at a later date, memorializing what occurred in order to provide an open and transparent record. This would

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also assist County departments and staff as it should be clear as to what increases were actually and properly approved and determined.

Once the minutes and resolution are prepared, it will then be in the discretion of the BOC whether to reject those determinations in whole or in part. However, if the BOC takes no action, then the determinations from April 11, 2024, will automatically take effect next year.

If anyone has any questions or concerns, please do not hesitate to contact our office.

Sincerely,

Jack C. Jordan
David A. Kallman
Stephen P. Kallman
Lanae L. Monera
Ottawa County Corporate Counsel