

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

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Governor Snyder Backs Legislation Addressing Unfunded Mandates

By Dennis R. Pollard

In our August 9, 2010 edition of *Community Watch*, we discussed a significant Michigan Supreme Court decision concerning enforcement of the prohibition on unfunded mandates contained in §29 of the Headlee Amendment to the Michigan Constitution, *Adair v State of Michigan* (decided July 14, 2010). While that decision remains a significant development in the effort to stop the ever increasing tendency of state legislation to require local units of government to provide activities and services without providing funding for their costs, a potentially more important development occurred last Monday, March 21, 2011.

Governor Snyder sent a letter to the Legislature on that date indicating his support for pending legislation to put a stop to this unconstitutional practice. This occurred in the context of several reforms that he seeks to have implemented regarding local funding and fiscal management issues.

By way of background, the Headlee Amendment put in place several discrete requirements on both state and local government in order to restrain the increases in state taxation that were occurring at that time. Section 25 of the Amendment sets out the objective sought to be accomplished relative to prohibiting unfunded mandates, expressed in part as follows:

“The state is prohibited from requiring any new or expanded activities by local governments without full state funding, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government.... Implementation of this section is specified in Sections 26 through 34, inclusive, of this Article.”

In §29 of the implementing section it is provided:

“A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government unless an appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.”

The voters' intent through this language is beyond reasonable dispute. However, despite these clear expressions of the purpose and intent of the voters, the Governors who have served during the intervening thirty plus years have given little or no credence to these limitations on state government. That is why it is so significant for Governor Snyder to express his support for state government adhering to this Amendment to the State Constitution.

SECRET WARDLE NOTES:

Governor Snyder chooses to support pending legislative reform to enforce the Headlee prohibition on unfunded mandates. The state's long standing practice of ignoring this Constitutional prohibition at the expense of local units of government may come to an end after 30 years of the state's non-compliance. The support of local officials for the pending legislation is imperative.

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The subject of the Governor's support is legislation presently pending in the House, HB 4038- 4041. This legislation was originally proposed by the Legislative Commission on Statutory Mandates to reform existing legislation adopted in 1979 ostensibly to implement compliance with the above quoted sections of the Headlee Amendment. As expanded upon in the December 31, 2009 Commission's report, this legislation was, in fact, wholly ignored by the Legislatures, the Governors, and state agencies. The reform bills are intended to bring this sad experience of constitutional defiance to an end.

The key element of the bills is a legislative device, used in several other states which have similar prohibitions on unfunded mandates, known as a "fiscal note" process. The concept is that when either bills are introduced in the Legislature or regulations are proposed by a state agency, potentially involving required services or activities by local units of government, a "fiscal note" process would be required to be initiated in the Legislature. Its purpose is to determine: a) whether additional or new costs will be implicated if the bill becomes law or the agency regulation is adopted; and b) if so, what will the statewide costs be for the affected local units of government. This analysis is to be done under the pending bills with legislative agencies, presumably House or Senate Fiscal Agencies, working in concert with representatives of local units; something that rarely, if ever, occurred in the past.

If the result of that process is that there are projected cost implications for local units, an appropriation bill would be required to be introduced to fund the projected costs. Only if the appropriation bill is adopted and implemented in order to timely disburse the funds necessary to pay those costs to local units - i.e., as they are incurred - would the law or regulation become enforceable. There would also be, under these bills, a look back process to determine whether the projected funding in the appropriation bill for a prior year was adequate to fully fund the costs of the mandated services to the local units. If not, the amount of funding would be required to be adjusted.

The whole idea of these sections of the Headlee Amendment is to force the Legislature to come to grips with the costs of what they are ordering local units to provide. In other words, if the state orders some service to be provided, they have to become aware of the associated costs proactively and not on an after-the-fact basis. Additionally, the Legislature would, of course, have to decide if the state can afford those costs. This may be an old fashion notion, but it is certainly timely as the financial fabric of state and local units of government unravel.

There are other facets to this proposed legislation as well, but the primary reform is the "fiscal note" process. This aspect of the reform is what Governor Snyder refers to in his letter of support of the pending bills. These bills died in House Committee during the last legislative term, but were re-introduced in January of this year. It is very important that local units of government make their voices known on this legislation. We are not reinventing the wheel on this concept of fiscal prudence because it arises directly out of the State Constitution adopted over thirty years ago. What is new, of course, is creating a meaningful way to implement this prohibition on unfunded mandates.

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