

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

December 30, 2014

The Honorable Greg MacMaster
State Representative
The Capitol
Lansing, MI 48909

Dear Representative MacMaster:

Attorney General Bill Schuette has asked me to respond to your letter asking a question regarding the power of a county to participate in the funding of improvements to a water system owned by an authority that is situated within that county. Due to the subject matter of your request, I asked staff in the Finance Division to review your letter. The following represents their findings.

You ask whether Antrim County can contribute \$250,000 to the Mancelona Area Water and Sewer Authority (MAWSA) to provide funding for temporary improvements to the MAWSA water system to address the possible contamination of local wells. MAWSA is a water authority created pursuant to the Municipal Sewage and Water Supply Systems Act, 1955 PA 233, MCL 124.281 *et seq.* (Act 233), by the Village of Mancelona, Mancelona Township, and Custer Township. It provides drinking water to its constituent members as well as to Kearney Township by contract. MAWSA was created to address a trichloroethylene (TCE) plume, which has contaminated the ground water near the Village of Mancelona and is moving in a northwesterly direction. The TCE plume is expected to impact the well fields that serve MAWSA and the Shanty Creek Resorts within the next several years. Antrim County does not own its own water system and does not currently contract with MAWSA to provide drinking water services to county residents.

Const 1963, art 7, § 28 provides that the Legislature shall authorize two or more counties, townships, cities, villages, or districts to enter into contracts with one another, to jointly administer any of the functions or powers that each would have the power to perform separately, to share costs, to transfer functions or responsibilities to one another, and lend their credit to one another. One such implementing statute is the Urban Cooperation Act, 1967 PA 7, MCL 124.501 *et seq.*, and another is the Municipal Partnership Act, 2011 PA 258, MCL 124.111 *et*

seq. Under either of these statutes, the county and MAWSA may contract with each other to jointly undertake powers that each is authorized to exercise separately.

Several statutes provide a county with authority to participate in public water systems. Section 10 of Act 233 authorizes a county to contract with a water authority for the furnishing of water to all or a portion of the county. MCL 124.290(1). Public Act 185 of 1957, MCL 123.731 *et seq.*, providing for County Department and Boards of Public Works, authorizes a county to establish a board of public works and “acquire a water supply system within 1 or more areas in the county and to improve, enlarge, extend, operate, and maintain the system.” MCL 123.737(a). Similarly, County Public Improvement Act, 1939 PA 342, MCL 46.171 *et seq.*, authorizes a county to establish a water system and make improvements to that system. And additionally, pursuant to the Revenue Bond Act of 1933, 1993 PA 94, MCL 141.101 *et seq.*, a county is “authorized to purchase, acquire, construct, improve, enlarge, extend or repair 1 or more public improvements and to own, operate and maintain the same.” MCL 141.104.

Because the Constitution and implementing statutes authorize a county and a water authority to contract with each other for a joint endeavor of powers that each can exercise separately, and because both MAWSA (also through Act 233 and the Revenue Bond Act of 1933) and the county each independently have the power to establish a water system and make improvements to that system, the county may legally contract with MAWSA to provide funding for improvements to MAWSA’s system to provide safe drinking water within MAWSA’s service area situated within the county.

Additional information obtained in conjunction with your request revealed a concern regarding whether a transfer of funds for the short-term improvements would impose liability on the county to partially fund costs of the permanent improvements based on an assumption of duty theory. Because there is ample statutory authority for the county to enter into a contract with MAWSA for system improvements, and because the contract should detail the specific project (portion of short-term improvements to the system) that the county’s contribution would be funding, it does not appear that the county would be liable for any further cost sharing of future improvements.

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

Sincerely yours,



Matthew Schneider
Chief Legal Counsel