

October 1, 2014

Via Electronic Delivery

County of Antrim
c/o James L. Rossiter, Prosecuting Attorney
PO Box 520
Bellaire, Michigan 49615

Ladies and Gentlemen:

I am writing in response to a request from the County of Antrim (the "County") and the Mancelona Area Water Sewer Authority ("MAWSA") for a legal opinion regarding the legal authority for a county to expend funds to pay the portion of the cost of a water project that is necessary to make improvement to a local water system to provide safe drinking water to residents of a portion of the County. MAWSA is a Michigan public body corporate formed by the townships of Mancelona and Custer and the Village of Mancelona pursuant to Act 233, Public Acts of Michigan, 1955, as amended ("Act 233"). MASWA owns and operates a public water supply system (the "System") that serves these constituent municipalities and a portion of Kearney Township. The groundwater in a significant portion of the service area of the System is contaminated by a trichloroethylene (or TCE) plume that emanates from an old industrial site in Mancelona and that over time is moving in a northwesterly direction and spreading with the flow of the groundwater. We have been informed that the movement of this TCE plume is now posing a threat to MAWSA's Cedar River Well Field. We have been informed that MAWSA is currently working with the State of Michigan, acting through the Department of Environmental Quality, to develop and implement a plan to mitigate this threat and that the County is considering a request that the County assist MAWSA by providing County funds to pay a portion of the costs of this project.

Under the Michigan Constitution, the legislature has the authority to enact laws that authorize a county to join with townships, cities, villages, or districts or any combination of these entities to enter into contracts for the joint administration of any of the functions or powers that each would have the power to perform separately, to share the costs with one another or the state, and to lend their credit to one another in connection with any authorized publicly owned undertaking. Constitution of Michigan of 1963, Article VII, Section 28. In this case, MAWSA is a public body corporate, which is formed by and a cooperative endeavor of two townships and a village. The System is a publicly owned water supply system authorized by the incorporation documents of MAWSA and resolutions duly adopted by the MAWSA board.

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The legislature has enacted a number of statutes that implement authority granted in Article VII, Section 28 of the Constitution, including but not limited to Act 233, the Urban Cooperation Act, Act 7, Public Acts of Michigan, 1967 (Ex. Sess.) (“Act 7”) and the Municipal Partnership Act, Act 258, Public Acts of Michigan, 2011 (“Act 258”). Specifically, Section 10 of Act 233 authorizes the County and MAWSA to contract for the furnishing of water within the County. This provision is used frequently by nonconstituent municipalities to contract with an Act 233 authority to provide services to residents of that municipality. This can be done where service is provided to either all or a portion of the municipality. Under Act 233, the definition of municipality includes counties and a contract under this section would require MAWSA to provide water system services to county residents in MAWSA’s service area in exchange for any portion of project costs that the County may agree to provide.

Under either Act 7 or Act 258, the County and MAWSA are authorized to contract to act jointly to undertake an endeavor together that each is authorized to exercise separately. MAWSA and its constituent municipalities have the legal authority to own and operate a public water supply system pursuant to Act 233 and the Revenue Bond Act, Act 94, Public Acts of Michigan, 1933, as amended (“Act 94”). Like MAWSA and its constituent municipalities, the County also has the legal authority under Michigan statutes to provide for a public water supply system. Act 94 grants this power to a county. Additionally, legal authority for counties to provide public water systems is found in the County Department and Board of Public Works Act, Act 185, Public Acts of Michigan, 1957, as amended (“Act” 185). Section 7(a) of Act 185 provides a county the power to acquire a water supply system within one or more areas of the county. Section 12 of Act 185 authorizes the County to contract for a water system improvement and to pledge its full faith and credit to its obligation. Furthermore, the County Public Improvement Act of 1939, Act 342, Public Acts of Michigan, 1939, as amended (“Act 342”) also provides legal authority for counties to provide public water. Section 1 authorizes a county board of commissioners to establish water system improvements in the county and Section 8 authorizes the county to appropriate funds for this purpose. Since MAWSA and the County each independently have the power to provide public water, the two entities are legally authorized by Act 7 and by Act 258 to contract together to enter into an endeavor to provide for safe public drinking water.

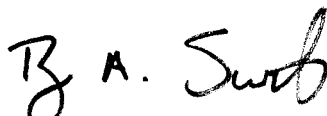
In order for the County and MAWSA to exercise the powers granted under Act 233, Act 7 or Act 258, they would enter into a contract with each other setting forth the terms of the endeavor. Presumably this contract would include terms governing the amount of the County’s contribution to the project costs, how MAWSA is obligated to use those funds and other terms the County and MAWSA may want to include.

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In conclusion, it is our opinion that Article VII, Section 28 of the Michigan Constitution of 1963, together with the authority granted by Act 233, Act 7 or Act 258 provide the necessary legal authority for the County and MAWSA to undertake a joint endeavor to safeguard the source of safe drinking water for the residents of the county within MAWSA's service area. Such a joint endeavor should be undertaken pursuant to a contract entered into by MAWSA and the County. We would be pleased to answer any further questions you may have on this matter or to assist in the preparation of the necessary contract. Please let us know if we can be of further assistance.

Respectfully submitted,

DICKINSON WRIGHT PLLC


Roger A. Swets

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