

STATE OF MICHIGAN  
IN THE SUPREME COURT

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CITY OF SOUTH HAVEN,

Supreme Court Docket No. 131011

Plaintiff-Appellee,

Court of Appeals Docket No. 264269

v

Van Buren Circuit Court No.04-052643-CZ

VAN BUREN COUNTY BOARD OF  
COUNTY COMMISSIONERS, and  
KAREN MAKAY,

Defendants-Appellants,

and

VAN BUREN COUNTY BOARD OF COUNTY  
ROAD COMMISSIONERS,

Defendant-Appellee.

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**REPLY BRIEF ON APPEAL--APPELLANTS VAN BUREN COUNTY BOARD OF  
COUNTY COMMISSIONERS AND KAREN MAKAY**

**\*\*\*ORAL ARGUMENT REQUESTED\*\*\***

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## REBUTTAL ARGUMENT

### I.

In its Brief on Appeal, the City of South Haven contends that:

Appellants and their amicus seek to transform this appeal from a dispute of simple statutory interpretation into a challenge of the Legislature's authority and the constitutionality of the County Road Law. They assert it simply cannot say or mean what it plainly says and clearly means, because that interpretation would run contrary to the will of the electorate. Appellants further argue that, if the Law means what it plainly says, this Court MUST judicially re-write the law because it invariably leads to 'absurd results.' None of these arguments are worthy of merit however.

(Appellee's Brief on Appeal, p. 8)

The County's position, simply stated, is two fold. First, between 1978 and 2004, Appellant board of commissioners proposed to the electors of Van Buren County in six elections an increase in the road millage with the proceeds to be used specifically for county roads. Const. 1963, Art. IX, §§ 6, 31; MCL 224.20b(1) The tax revenues were allocated by the County and the Road Commission in a manner in which they were required to be distributed by a vote of the electors and by the Michigan Constitution. Const. 1963, Art. IX, §§ 6, 31; Niles Bryant School of Piano Tuning v. Bailey, 161 Mich 193, 126 N.W. 116 (1910) The manner in which the revenues were allocated was consistent with the County Road Law, specifically Section 20b, as the statute allows for the proposal and collection of a tax levy for either specific or general purposes. MCL 224.20b(1) The allocation formula set forth in Section 20b argued by the City would only be permissible in the event the tax levy was intended, and approved by the electors, for a general purpose.

Second, even if the Court were to agree with the City's interpretation argument, thereby requiring the allocation formula of Section 20b(2) to be followed even when to do so would be contrary to law (See Niles, supra.), the claims of the City are barred by the doctrines of estoppel and laches as the City did absolutely nothing for over twenty five (25) years to challenge the validity of the levy, to assert that it was not intended for a specific purpose, or to challenge the allocation of the revenues.

The City now takes the position that, regardless of their acquiescence over a quarter-century, and regardless of the fact that, between 1978 and 2004, there were no roads in the City over which the County had jurisdiction, it was entitled to a portion of the proceeds between 1978 and 2004 based upon the formula set forth in Section 20b of the County Road Law. MCL 224.20b

**A. The distinction set forth in the ballot language on six separate occasions that the proceeds of the increase in *ad valorem* taxes were to be used specifically for local county roads and primary county roads**

The City contends that the ballot language indicating that the tax proceeds were to be used for *local county roads* and *primary county roads* is irrelevant. (Appellee's Brief at p. 16). However, it is an overwhelming fact that the ballot measure approved by the electors of the county on six separate occasions indicated that the proceeds were to be used for a specific purpose (i.e., primary county roads and local county roads).

Between 1978 and 2003, the County Board of Commissioners had the option of presenting to its voters an increase in the tax levy for general highway, road and street purposes, OR for 1 or more specific highway, road or street purposes as may be specified by the board. MCL 224.20b(1) Between 1978 and 2003, the County Board of

Commissioners chose to present the electors with a ballot proposal for a tax levy with the proceeds to be used specifically on primary and local county roads. Each time the electors of Van Buren County passed the subject tax levy, the County and the Road Commission were required to utilize the funds generated therefrom for the purpose for which they were intended - primary and local county roads. See South Haven v. Van Buren Co. Comm'rs, 270 Mich.App. 233, 245 (fn 4), 715 N.W.2d 81 (2006) Between 1978 and 2003, there were NO primary or local county roads within the City's jurisdiction.

This makes the distinction between *general* and *specific* purposes all the more relevant. To accept the City's argument that the "specific versus general distinction is inapplicable and irrelevant" flies in the face of the City's argument that the "County Road Law is unambiguous and must be applied as written." (Appellee's Brief at p. 13) There is clearly a distinction between "general" and "specific" written into the statute. MCL 224.20b(1) The City asks this court to ignore the distinction and its effect on whether or not the allocation formula is to be followed.

A board of county road commissioners may make an improvement, and extend and enlarge an improvement, in a road *under its control*. MCL § 224.19(1) This distinction of the County Road Commission having authority *only over roads within their control* is dispositive on this point. The County Road Law is replete with provisions making the distinction of funds being used only for "county roads" more than relevant because a county commission may:

- lay out, alter, and vacate or discontinue roads;
- construct bridges and culverts on the line of the road, and repair and maintain roads, bridges, and culverts; MCL 224.19

- purchase private property for the laying out, widening, changing, or straightening of a road, and to pay for the property out of the funds under its control, and the lands shall then be conveyed to the county for the use and purpose of a road; MCL § 224.111;
- require interested parties to participate fully or partially in costs of improvements; MCL § 247.651c
- hold title to land or an interest in land, or sell and convey in the board's name and or an interest in land, or improvements located on the land, when these are not a part of a public street, highway, or park, or are not required to be used for a public street, highway, or park; MCL § 224.9(3)
- finance, with certain limitations, the construction, repair, and maintenance of roads, bridges, and culverts;
- act as "county park trustees," to provide for the lighting of county roads; MCL § 123.66
- designate county local roads as natural beauty roads; MCL §§ 324.35701, et seq.
- change the width or location or straighten the line of a road over which it takes jurisdiction. MCL § 224.111 subd (1)
- maintain in its own name an action for injury to a county road, or a part of the road as laid out and established, or to an improvement on the road, and money recovered is paid to the county treasurer and credited to the county road fund. MCL § 224.11a

But, the county road commissioners may only engage in these and other activities upon roads over which it has jurisdiction, specifically, county primary roads and county local roads. MCL 247.669 The only way the a board of county road commissioners could cause a road to be constructed within a city would be with the city's consent and if the proposed road is physically a part of county road system as adopted and approved. See Op.Atty.Gen.1945-46, No. O-2339, p. 19.

To ignore the availability of proposing a tax levy for a specific purpose would result in the application of the distribution of proceeds championed by the City. It was on this basis that the trial court correctly concluded that the subject millage was for a specific purpose (county roads) and, that, *given that distinction*, the funds generated

from said millage need not be allocated pursuant to the formula set forth in Section 20b of the County Road Law. (Appendix, p. 148a)

Yet, the City maintains that “the distinction between general and specific road millage proposals relied upon by the trial court, the County and the MTA is wholly without a difference, and it is entirely irrelevant to the application of the County Road Law’s mandatory funding formula.” (Appellee’s Brief, p. 18) Apparently, the City is of the opinion that the legislature could not have intended such a distinction despite utilizing the language creating a distinction.

In discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute, and must consider “both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’” Shinholster v. Annapolis Hosp., 471 Mich. 540, 549, 685 N.W.2d 275 (2004)(citations omitted) Although Appellee asks this court to read and interpret the statute “as written,” it asks this court to ignore the implication of the legislature’s giving county boards of commissioners the option of seeking a tax levy for a general purpose (“a tax levy for highway, road and street purposes), “or” a tax levy for a specific purpose (“one (1) or more of a tax levy for highway, road and street purposes”). MCL 224.20b(1) If the distinction was not relevant and is “inapplicable” as the City asserts, then, according to Appellee’s own logic the legislature would not have included the language found in MCL 224.20b(1)

The primary rule of statutory construction is to determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished. Frankenmuth Mut. Ins. Co. v. Marlette

Homes, Inc., 456 Mich. 511, 515, 573 N.W.2d 611 (1998) If judicial interpretation is necessary, the Legislature's intent must be gathered from the language used, and the language must be given its ordinary meaning. Id. In determining legislative intent, statutory language is given the reasonable construction that best accomplishes the purpose of the statute. Id.

In this instance, judicial interpretation is necessary. The statute allows two options for the board of commissioners. If the board were to choose to propose a tax levy for a general purpose, then the law would allow for the allocation pursuant to the formula set forth in MCL 224.20b(2). If the board were to choose to propose a tax levy for a specific purpose, as the County did here, it would not be permitted to allocate the proceeds pursuant to MCL 224.20b(2) as to do so would violate the Michigan Constitution for having used the funds for a purpose other than that approved by the electors. See Niles, supra.

The City's claim is that the ballot proposal of a tax levy to be used for "local county roads" and "primary county roads" constituted a tax levy for a general purpose. However, had the County desired to impose a tax levy for the most general of purposes, it simply could have utilized the language in the statute and declared in the ballot proposal that the levy was to be used for "highway, road and street purposes." MCL 224.20b(1). Instead, the County included the more specific purpose of using the funds for county roads. For example: Gremps Street is a street within the limits of the Village of Paw Paw, in Van Buren County. When imposing a tax levy to be used for "highway, road and street purposes," the County would be mandated to follow the formula prescribed in MCL 224.20b(2). Had the County proposed a tax levy to be used for local

county roads and primary county roads, as it did in this case between 1978 and 2003, the County would not be so required. The distinction is that, while that portion of Gremps Street which is within the Village of Paw Paw limits is a street in Van Buren County, it is NOT a county road within the jurisdiction of the County or Road Commission. See MCL 247.669

**B. The absence of a formal, written agreement between Appellant and Appellee allowing the tax levy to be distributed in a manner inconsistent with the formula set forth in Section 20b of the County Road Law does not *ipso facto* equate to there being no agreement**

In its Order granting leave to appeal in this matter, this Court posed the following question:

Given that the City of South Haven did not contest the allocation of the proceeds of the revenues derived from the tax levy for a period of 28 years, during which it was continuously renewed and allocated solely to the Van Buren County Board of Road Commissioners, in accordance with the ballot proposal so providing, from 1976 through the City of South Haven's first challenge of the allocation in 2004, was the conduct of the parties sufficient to evidence that they "otherwise agreed" upon a different allocation of the revenues derived from the tax levy than that prescribed by the statute within the meaning of MCL 224.20b(2)?

The City contends that, because there was no *formal* agreement between the County and the City, that the County could only distribute the tax revenues per the formula set forth in Section 20b(2) of the County Road Law. MCL 224.20b(2) This contention, and the argument in support of the contention, fails to respond to the question posed by this Court. The Court has the record and is cognizant of the fact that no formal agreement existed between the parties. However, the question posed by this court was not whether or not such an agreement existed, it is whether or not the parties,

*by their conduct, have otherwise agreed* upon an allocation different from that prescribed by Section 20b.

The City's reliance upon the County's "admission" in the pleadings that there was no such agreement, nor was such an agreement sought, further deflects the question posed by this Court. While the County would agree that there was no formal agreement between the parties, the County has never admitted that the City, *by its conduct*, cannot be considered to have *otherwise agreed* to the allocation by the County in a manner other than that set forth by the subject formula.<sup>1</sup> The County could not have admitted nor denied such an assertion because the City never made such an assertion in its pleadings.

The County did, however, plead the affirmative defenses of estoppel and laches, alleging that the conduct of the City should act to bar their claims against the County.

**C. The absence of a formal, written agreement between Appellant and Appellee allowing the tax levy to be distributed in a manner inconsistent with the formula set forth in Section 20b of the County Road Law does not absolve Appellee City for its 25 year long failure to challenge the validity of the distribution.**

The City further contends that "[the County has] presented no evidence demonstrating a lack of diligence by South Haven, and no evidence that [the County was] prejudiced in any way by the mere passage of time." (Appellee's Brief, p. 38) The lapse of time between the first passage of the subject tax levy and the City's first objection to the manner in which the funds were distributed must not be ignored,

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<sup>1</sup> The City's contention that the County "freely admitted" in their pleadings "that they also failed to even consider entering into such an agreement" (Appellee's Brief, p. 32), is incorrect, as there was no allegation nor response indicative of whether or not the County "even considered" such an agreement.

however. The City's failure for twenty five years to do or say *anything* regarding the subject tax levy or revenues constitutes a lack of due diligence on the part of the City. Eberhard v. Harper-Grace Hospitals, 179 Mich. App. 24, 445 N.W.2d 469 (1989); Matter of F. Yeager Bridge and Culvert Co., 150 Mich. App. 386, 389 N.W.2d 99 (1986); Bennington Tp. v. Maple River Inter-County Drain Bd., 149 Mich. App. 579, 386 N.W.2d 599 (1986); Zlydasdyk v. Lucas, 29 Mich. App. 584, 185 N.W.2d 838 (1971) That lack of due diligence, which the City politely asks this court to ignore, in conjunction with the undisputed fact that to require a retroactive payment to all municipalities of the proceeds from the subject tax levy between 1978 and 2004 demonstrates the prejudice to the County. The money has already been spent on its intended, specific purpose - county roads. To require payment to all municipalities absent an agreement to the contrary would impose an economic hardship on the County. The City's claim should be deemed inequitable and, therefore, barred by the doctrine of laches. Kuhn v. Secretary of State, 228 Mich. App. 319, 579 N.W.2d 101 (1998); Eberhard, *supra*.

The City asks this court to ignore the undisputed fact that it did *nothing* with regard to objecting to, or otherwise challenging, the subject tax levy or its allocation for a period over twenty five years. Should this Court agree with the City's interpretation of Section 20b of the County Road Law, thereby mandating the County follow the distribution formula set forth therein, the City cannot be absolved of its responsibility to assert its claim in a timely manner and without prejudice to the County.

**RELIEF REQUESTED**

Based upon the foregoing, Appellant Van Buren County and Appellant Karen Makay, respectfully request that this Honorable Court reverse the Court of Appeals ruling and affirm the ruling of the trial court.

Dated: March \_\_\_\_\_, 2007

Respectfully submitted,

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