STATE OF MICHIGAN

IN THE SUPREME COURT

MUNICIPAL EMPLOYEES RETIREMENT SYSTEMS OF MICHIGAN,
a Statutory Tax Exempt Employee Retirement Trust

Petitioner-Appellee,

v

CHARTER TOWNSHIP OF DELTA

Respondent-Appellant.

_____/

Supreme Court Docket No. 129041

Court of Appeals Docket No. 260534-L

Michigan Tax Tribunal Docket No. 306773

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BRIEF FOR APPELLEE

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I. COUNTER-STATEMENT OF FACTS

At issue in this case are three parcels of real property acquired by Municipal Employees Retirement Systems of Michigan ("MERS") as part of its investment portfolio, and identified as Tax Parcel Nos. 23-040-042-900-020-00, 23-040-042-900-040-00, and 23-040-042-900-050-00 ("Property"), all of which are classified as Commercial. (Order of the Michigan Tax Tribunal, Appellant's Appendix, Tab 5, p 56a) ("Order"). MERS seeks affirmance of the decision of the Michigan Court of Appeals, which correctly concluded the Property is exempt from ad valorem taxation under MCL 211.7m.

MERS is a statutory public corporation created in 1945 by PA 135 and reconstituted under the authority of the Municipal Employees Retirement Act of 1984, MCL 38.1501 et seq. ("MERA"), as an instrumentality of participating Michigan municipalities and courts, which currently exceeds 650 entities and covers almost 70,000 participants. (Affidavit of Michael J. Moquin,[1] Appellee's Appendix, Tab 1, pp 1b-2b, ¶3 and ¶6) ("Moquin Affidavit"). Only public sector employees of a Michigan "municipality"[2] may participate in MERS. Pursuant to 1996 PA 20, which amended the MERA, MERS operated within the State of Michigan Department of Management and Budget until August 15, 1996, the date of its certification under the MERA. See Historical and Statutory Notes following MCL 38.1502a. As a result, MERS became (and is) a statutory public corporation and an instrumentality of its participating municipalities and courts. MCL 38.1502c(3). MERS is the only

[1] Michael Moquin is the Chief General Counsel for MERS. Mr. Moquin's Affidavit was Attachment A to MERS' August 30, 2004, Response to Delta Township's Motion for Summary Disposition filed with the Michigan Tax Tribunal. It is noted that Appellant filed no affidavits disputing any of the facts submitted by MERS at the Tribunal level, despite having a clear opportunity to do so.

[2] See MCL 38.1502b(2), as last amended by 2004 PA 490.

legislatively created statewide municipal and judicial employee retirement system in Michigan.[3] (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶ 5).

MERS exists for the express purpose of administering its tax-qualified, Internal Revenue Code § 401(a) public-pension "governmental plan" trust and related benefits on a statewide basis for the exclusive benefit of participating municipal and judicial employees, and in connection therewith, is solely responsible for investing and managing the assets of such plans. All plan assets are comprised of contributions by the employing municipality, employees (if contributions are required by the employer), and ongoing investment return on the pooled investment of all assets. (Affidavit of Jeb Burns,[4] Appellee's Appendix, Tab 2, p 4b, ¶4) ("Burns Affidavit"). MCL 38.1539 expressly directs MERS to invest the trust assets of the retirement system in accordance with the constraints of §§ 12 to 20i of the Public Employee Retirement System Investment Act, MCL 38.1132 to MCL 38.1140i[5] ("PERSIA"), which expressly authorizes investments in various types of assets including real property. MCL 38.1139(2).

In its administration of the plan, MERS must hold and invest all trust assets of the retirement system for the sole and exclusive purpose of meeting disbursements authorized under the MERA, which are essentially limited to two categories: (1) plan benefits promised by its participating municipalities and courts to their employees; and (2) administrative costs of management of the plan assets. (Burns Affidavit, Appellee's Appendix, Tab 2, p 4b, ¶ 5); See also MCL 38.1133(5). Critically, the greater the return that MERS realizes from its investments, the less of a contribution that is

[3] The employees of this Court and the Court of Appeals hired before March 31, 1997, are covered under the defined benefit provisions of the State Employees Retirement Act, MCL 38.13(1), unless the employee opted to convert to the defined contribution plan. MCL 38.50 to MCL 38.69. Trial Court employees are either covered under MERS, or under local government pension plans.

[4] Jeb Burns is the Chief Investment Officer for MERS. Mr. Burns' Affidavit was Attachment B to MERS' August 30, 2004, Response to Delta Township's Motion for Summary Disposition (See Appellant's Appendix, Tab 2, p 55a).

[5] As last amended by 2002 PA 728, PERSIA's statutory sweep now extends from section 12 through section 20m, MCL 38.1140m.

required from participating municipalities and courts to actuarially fund their defined benefit plans. (Burns Affidavit, Appellee's Appendix, Tab 2, p 4b, ¶ 10.)

MERS acquired the Property as an investment for the pension plan on January 24, 2003, asserting the exemption granted by MCL 211.7m. Thereafter, Appellant Delta Township issued notices of assessment to MERS for the three parcels, which established 2004 assessed values totaling $2,225,300. MERS protested these assessments and taxable values to the Board of Review for Delta Township on March 8, 2004, informing the Board that the Property was exempt from taxation, as well as over-valued. (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶¶ 8-10). On March 25, 2004, MERS received notification that the Delta Township Board of Review had denied its claim of exemption. (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶ 11). However, the Board of Review did revise the 2004 valuations by lowering the total to $1,917,100. Valuation of the Property is not at issue in these proceedings.

Following the Board of Review's denial of the exemption, on May 11, 2004, MERS filed with the Michigan Tax Tribunal its Petition for Exemption in which it requested that the Tribunal find that the Property is exempt from taxation under MCL 211.7m. Thereafter, on July 15, 2004, Delta Township filed a Motion for Summary Disposition and/or to Dismiss without supporting affidavits.

On January 12, 2005, the Tribunal summarily entered an Order granting Delta Township's Motion for Summary Disposition, thereby denying MERS its requested exemption. (Order, Appellant's Appendix, Tab 5, p 59a.) The Order's material analysis consisted of a single paragraph and was based on the Tribunal's conclusion that it "is inherent" in MCL 211.7m that MERS make a "current public use" of the Property, and thus, the statute excluded property held for investment return by a public employee retirement trust. *Id.*

MERS appealed the decision of the Tribunal to the Michigan Court of Appeals, which, on May 24, 2005, unanimously reversed the Tribunal's decision and determined that the Property is exempt

under MCL 211.7m. *Mun Employees Ret Sys of Mich v Charter Twp of Delta*, 266 Mich App 510; 702 NW2d 665(2005) (Appellant's Appendix, Tab 9, p 128a). The Michigan Court of Appeals' decision applies the clear and unambiguous language of MCL 211.7m and is consistent with existing Michigan case law.

On July 5, 2005, Appellant filed an Application for Leave to Appeal the Court of Appeals decision on the basis that MERS does not "use" the Property. The Court of Appeals' analysis on this point, which Appellant carefully fails to quote in full, is as follows:

> Under MERA, "[a]ll money and other assets of the retirement system shall be held and invested for the sole purpose of meeting disbursements authorized in accordance with the provisions of this act and shall be *used* for no other purpose." MCL 38.1539(2). By the plain language of this statute, petitioner is required to *hold* and *invest* other assets, such as the land in question, for the purpose of meeting its disbursement requirements. Furthermore, the statute specifically states that the assets held or invested "shall be *used* for no other purpose." *Id.* (emphasis added). The phrase "used for no other purpose" necessarily contemplates that the only proper "uses" for assets under the act, is to hold or invest them. Consequently, the act of holding real property assets in petitioner's portfolio, ready for liquidation to meet its statutorily mandated disbursement requirements, is a present use rather than "an indefinite prospective use." *Mun Employees Ret Sys of Mich, supra* at 513-14 (Appellant's Appendix, Tab 9, pp 128a-129a) [citing *Traverse City v East Bay Twp*, 190 Mich 327, 331; 157 NW 85, 86 (1916)].

This Court granted Appellant's Application for Leave to Appeal on January 31, 2006, to be argued and submitted with the case *Mt Pleasant v State Tax Commission*, 267 Mich App 1; 703 NW2d 227 (2005), in which leave had earlier been granted on January 13, 2006. (Order, Appellant's Appendix, Tab 5, p 59a.) MERS respectfully requests that this Court reject Appellant's arguments and affirm the decision of the Michigan Court of Appeals, for the reasons fully explained below.

II. ARGUMENT

A. THE MICHIGAN COURT OF APPEALS WAS CORRECT IN DETERMINING THAT MERS IS ENTITLED TO AN EXEMPTION UNDER MCL 211.7m BECAUSE MERS USES THE PROPERTY IN QUESTION TO CARRY OUT ITS STATUTORILY MANDATED PUBLIC PURPOSE.

1. Standard of Review

This case involves an issue of statutory interpretation, which this Court reviews *de novo*. *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765, 772 (2004). In some cases in the past, Michigan courts have given some deference to an administrative agency's construction of a statute. However, the Michigan Court of Appeals has recently "question[ed] the continued viability of this precedent." *S Abraham & Sons v Dep't of Treasury*, 260 Mich App 1, 20, n 8; 677 NW2d 31, 41 n 8 (2003). As noted in *S Abraham & Sons*, *supra*, appellate courts review questions of statutory interpretation de novo, "which, by definition, precludes granting deference to a lower tribunal's interpretation of a statute." *Id.* Moreover, this Court stated in *Koontz v Ameritech Serv's, Inc*, 466 Mich 304, 324; 645 NW2d 34, 45 (2002), that "[a]n agency interpretation cannot overcome the plain meaning of a statute." *Id.* Additionally, "it is within the province of the courts, not administrative agencies, to determine and apply the law." *S. Abraham & Sons*, *supra* at 20, n8. In light of the foregoing, the Court should give no deference to the Tax Tribunal's extra-judicial and perfunctory interpretation of MCL 211.7m.

2. The Michigan Court of Appeals Correctly Determined, Consistent with Michigan Law, that MERS Qualifies for the Property Tax Exemption Contained in MCL 211.7m.

In its first argument in support of its Brief on Appeal ("Appellant's Brief"), Appellant devotes significant energy to attempting to convince this Court that the Michigan Court of Appeals' decision is contrary to Michigan law. MERS has clearly established that it is entitled to an exemption under MCL

211.7m, based on the language of the statute itself and based on Michigan case law as well as case law from other jurisdictions. The Michigan Court of Appeals agreed.

MCL 211.7m provides as follows:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition. *Id.* (emphasis added).

Among other things, this statutory section exempts from taxation property owned by an instrumentality or other legal entity whose members consist solely of a combination of political subdivisions of the State of Michigan, so long as such property carries out a public purpose. *Id.* MERS meets, and has met, all of these requirements since its inception of operations as a statewide, statutory retirement system in 1946.

The Michigan Court of Appeals stated in its opinion that the "relevant inquiry" in this case is whether MERS presently uses the Property for a public purpose. *Mun Employees Ret Sys of Mich, supra* at 513 (Appellant's Appendix, Tab 9, p 129a). In its analysis, the Michigan Court of Appeals clearly distinguished those cases cited by Appellant as controlling authority by acknowledging MERS position: MERS holds and manages all of its assets including real property for current and ongoing investment purposes to fulfill its statutory duty to provide pensions for municipal and judicial employees, funded from the separate trust assets of each participating municipality and court. *Id.* at 513 (Appellant's Appendix, Tab 9, p 129a). Other entities referred to in Appellant's argument (economic development commissions, schools, etc.) have merely held real property for ancillary

purposes. *Id.* at 513 (Appellant's Appendix, Tab 9, p 129a). These entities, unlike MERS, do not have a statutory duty to create and maintain a diversified investment portfolio, pursuant to the requirements of PERSIA for funding of municipal and judicial pensions. The Michigan Court of Appeals correctly distinguished the existing Michigan case law addressed in Appellant's argument by succinctly concluding that because MERS' only statutorily permissible use of the subject property is to hold it for investment, and under Michigan law, such property "shall be <u>used</u> for no other purpose" [MERA section 39(2), MCL 38.1539(2); and PERSIA section 13(3)(a) and (5), MCL 38.1133(a) and (5)], its use in accordance with statutory and fiduciary dictates is a present use. *Mun Employees Ret Sys of Mich, supra* at 513 (Appellant's Appendix, Tab 9, p 129a). As a requirement of its IRS Letter of Favorable Determination that MERS is a tax-qualified "governmental plan" under IRC section 401(a) and thus exempt from federal taxation under IRC section 501(a) (IRS Letter dated June 15, 2005, with prior IRS Letter dated July 8, 1997), MERS Plan Document section 55(6) commands:

> The assets of the retirement system shall be held and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and beneficiaries before satisfaction of all retirement system liabilities.

It is critically important to stress that MERA section 39(2); PERSIA section 13(3)(a) and (5); and Plan section 55(6) all are in specific furtherance of the requirements of IRC section 401(a), commanding that a trust shall only be deemed a "qualified trust" as follows:

> (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries . . . . *Id.*

Appellant relies heavily on a recent decision of the Michigan Court of Appeals in its attempt to argue that there is conflicting case law with respect to this issue. As set forth below, Appellant's argument fails. The recent case relied on by Appellant is *Mt Pleasant, supra,* appended as Attachment

A.[6] In *Mt Pleasant*, the City argued that land it owned for future development was being used for a public purpose and should be exempt under MCL 211.7m. *Id.* at 2-3. The Michigan Court of Appeals reasoned that MCL 211.7m did not provide the City of Mt. Pleasant with an exemption because economic-development programs are provided property tax exemptions by the Legislature in several other statutory schemes. *Id.* at 4. The City of Mt. Pleasant was not engaging in any economic-development activities under any of these statutory schemes. *Id.* at 4. The court stated that "the existence of the specific economic development programs providing property tax exemptions suggests that the exemptions only exist under the terms of their enabling statutes." *Id.* at 4.

Accordingly, the City of Mt. Pleasant could not claim an exemption under a general property tax exemption statute when it had numerous exemptions available to it under its economic development governing legislation, provided it was engaging in economic development statutory schemes. It must act within the parameters of economic-development programs providing specific exemptions in order to be eligible for an exemption. *Id.* at 4.

The court's decision in *Mt Pleasant*, *supra*, is not contrary to the court's decision in the present case for several reasons. First, MERS' primary if not sole obligation as trustee under state and federal law is to create and administer an investment portfolio (including real estate) for the "exclusive benefit" of its municipal and judicial pension plan retirees and beneficiaries, on behalf of each participating municipality and court whose employees earn benefits. (Moquin Affidavit, Appellee's Appendix, Tab 1, p 1b, ¶4.) This is a present, ongoing and long-term duty imposed on pension trusts.

[6] This case is being heard by this Court at the same time as the instant matter ("Companion Case"). Appellee acknowledges that one of the primary issues in the Companion Case is whether the Michigan Court of Appeals erred in requiring that a use under MCL 211.7m be a "present" use. While Appellee agrees that MCL 211.7m does not require a "present" use, it asserts that the resolution of this issue is irrelevant to the outcome of Appellee's case because Appellee does presently use the Property. However, whether a "present" use is required is different than whether the use must be a "physical" use, which is a requirement repeatedly inserted into MCL 211.7m by Appellant. As such, this artful but gratuitous insertion is extraneous "surplusage."

Unlike the City of Mt. Pleasant, MERS' purchase of real property is not secondary to its express statutory purpose—it is indivisible from its primary purpose.

Second, MERS is fully operating within the confines of the MERA, unlike the City of Mt. Pleasant, which was not operating a program pursuant to applicable economic-development statutes. Accordingly, the case at hand and the recent *Mt Pleasant* case are fully distinguishable and not in conflict.

Appellant illogically argues that if the Legislature intended MERS to be entitled to a property tax exemption, it would have granted such exemption under MERA (Appellant's Brief, pp 21-23). This argument, uniformly applied, means that MCL 211.7m would have no purpose whatsoever, since it is bereft of any specific exemption. Basically, using Appellant's logic, the Legislature would have to specifically determine in advance each and every instance that a tax exemption should apply, and to whom, and specifically place such exemption in the enabling or governing legislation for the relevant party. This nonsensical approach to law making would lead to many injustices (because one cannot cover all situations), and place a significant and inefficient time and financial burden on the Legislature. The language is as "reasonably precise as the subject matter requires." *Ann Arbor v Natl Ctr for Mfg Servs*, 204 Mich App 303, 308; 514 NW2d 224, 227 (1994). Appellant has completely misunderstood the Court of Appeals' analysis in *Mt Pleasant* on this point. The Court of Appeals in *Mt Pleasant* clearly reasoned that some entities are granted tax exemptions in their enabling (or governing) legislation. Those entities, when working within the confines of that legislation, are entitled to exemptions under that legislation and not under general exemption statutes such as MCL 211.7m (because the specific exemption in their governing legislation must control and be given full effect). Also, because those entities are granted specific exemptions in their governing legislation (or at least, legislation that governs certain programs that they administer), they are only entitled to those exemptions—they cannot perform acts outside the parameters of their relevant governing legislation

(although the acts may be authorized) and be eligible for any general tax exemption such as MCL 211.7m. As set forth above, MERS, acting fully within the confines of its governing legislation, sought an exemption under MCL 211.7m because, similar to every other entity that claims an exemption under MCL 211.7m, its governing legislation does not directly provide for any real property tax exemptions (although, as previously stated and acknowledged by the Court of Appeals, MERS is authorized to hold and invest in real property) nor would it be practical for it do so because requiring such specific exemptions to only be provided in governing legislation would render MCL 211.7m useless, a disfavored "repeal by implication." Clearly, that was not the Legislative's intent, given the choice of language employed in MCL 211.7m.

3. The Michigan Court of Appeals' Decision in this Matter is Straightforward and is a Correct Application of the Rules of Statutory Construction.

First, it is important to note that Appellee's standard of proof with respect to its entitlement of an exemption under MCL 211.7m is a "preponderance of the evidence" standard, not "beyond a reasonable doubt" as incorrectly argued by Appellant [See Appellant's Brief, p 6; *ProMED Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002)]. Appellant quotes *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422, 425 (1980), which quotes 2 Cooley, Taxation (4th ed), § 672 pp 1403-04, for the proposition that "exemptions will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. . . ." *Id.* However, *ProMED*, *supra*, clarifies the use of this quote in *Ladies Literary Club*, *supra*:

> [W]e note that the *Ladies Club* decision did not directly consider the appropriate burden of proof in tax exemption cases, and merely included the above quotation during its general explanation of tax exemption principles. . . . [T]he beyond a reasonable doubt standard applies when the petitioner attempts to establish that an entire class of exemptions was intended by the Legislature. [citation omitted]. However, the preponderance of the evidence standard applies when the petitioner attempts to establish that it is a member of an already exempt class. *ProMed, supra* at 492 [citing *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Slyvan Twp,* 92 Mich App 560, 563; 285 NW2d 375, 377 (1979), *rev'd on other grounds*, 416 Mich 340; 330NW2d 682 (1982).

This distinction in the burden of proof set forth in *ProMED* had been earlier reaffirmed by the court in *Holland Home v Grand Rapids*, 219 Mich App 384, 393; 557 NW2d 118, 122 (1996). Accordingly, the appropriate burden to place on Appellee is preponderance of the evidence because the class of exemption already exists pursuant to MCL 211.7m. Appellee is merely establishing membership in that class.

In terms of the application of the statute itself, it is true that, as a general proposition, tax exemption statutes are construed in favor of the taxing unit. *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32-33; 568 NW2d 332, 335 (1997). However, this rule does not allow the Tribunal to sit as a super-Legislature or Court and construe an exemption in a manner adverse to the Legislature's express intent. *Id.* at 32. Tax exemption statutes, like all statutes, must not undergo judicial or agency construction where, as here, the statutory language is clear and unambiguous. *Id.* The Tax Tribunal itself has recognized that the general rule of interpreting exemption statutes in favor of the taxing unit "does not mean that we should give a strained construction which is adverse to the Legislature's intent." *Wayne Co v City of Romulus*, 7 MTTR 334 (Docket No. 110923, June 11, 1992), appended as Attachment B. Thus, the Tribunal, under the guise of construing the statute in favor of the taxing unit, was not free to go beyond the plain language of MCL 211.7m, and (1) superimpose a physical occupation requirement, or (2) add an exclusion for property held in a public employee retirement trust, where no such condition or restriction was contained in the statute.

Appellant seems to argue that strict construction and statutory construction are two different things. According to Appellant's argument, the Court of Appeals ignored the principles of strict construction and applied statutory construction principles to determine that MERS is exempt under MCL 211.7m. First, Appellant fails to show how strict construction of the statute does not result in an exemption for MERS. Second, Appellant assumes, incorrectly, that MCL 211.7m is ambiguous or

unclear on its face so as to warrant statutory construction by the Tribunal or a Court. Appellant continues to construe MCL 211.7m (silently, but intentionally) as requiring some sort of "physical" or "tangible" use of the property, which words are clearly not in the statute. As discussed further below and in Section II.A.3, there is nothing ambiguous about MCL 211.7m.

The Michigan Court of Appeals made the foregoing abundantly clear in *Rose Hill Ctr*, *supra*. In that case, the petitioner operated a mental-health facility, and claimed that the property was exempt from taxation under MCL 211.7o. *Rose Hill Ctr*, *supra* at 28. The Township, however, claimed that the petitioner was not entitled to an exemption because its facility was not licensed under the Public Health Code. *Id.* at 30-31. The Tribunal, and ultimately the Michigan Court of Appeals, disagreed with the Township. After first acknowledging that (1) the Tribunal may <u>not</u> construe an exemption in a manner contrary to the Legislature's intent; and (2) the Tribunal may <u>not</u> construe a statute at all when the language is clear and unambiguous, the Michigan Court of Appeals concluded as follows:

> Respondent contends that because petitioner is not licensed under the Public Health Code, it is not entitled to the exemption. We disagree. The statute does not contain any language restricting the exemption to facilities licensed under the Public Health Code. <u>If the Legislature had intended such a limitation, it could easily have included such language</u>. *Rose Hill Ctr*, *supra* at 34 (emphasis added).

Because MCL 211.7m contains neither a physical occupation requirement, nor any restriction on property held as an investment in a public employee retirement trust, the Tribunal's, and subsequently, Appellant's, reliance on its unsubstantiated view that such notions were "inherent" in the statute was clear legal error as found by the Michigan Court of Appeals.

Essentially, the Tribunal in this case applied a standard of statutory construction that applies only when a statute is ambiguous—which the present statute is not—and then apparently felt that the standard obligated it to add conditions and restrictions that were not contained in the statute in order to make it extraordinarily difficult for the taxpayer to qualify for the exemption. Under *Rose Hill Ctr*, *supra*, doing so is improper. As discussed thoroughly below, and as done by the Michigan Court of

Appeals, an application of the plain terms of MCL 211.7m, as it was written, leads to the conclusion that the subject Property is exempt from taxation.

4. The Language of MCL 211.7m is Clear and Unambiguous.

Appellant incorrectly asserts that MCL 211.7m is ambiguous because it does not expressly provide MERS an exemption for its investment property. It is absurd to render a statute ambiguous merely because it does not specifically provide for every type of factual situation that may confront it. If that were the case, then virtually the only specified exemption allowed would be for "parks . . . open to the public generally," (MCL 211.7m) and would eviscerate the exemption provided by the Legislature. Such circumstances do not render a statute ambiguous that is absolutely clear on its face. By labeling MCL 211.7m as ambiguous, Appellant attempts to use inapplicable case law to impose additional requirements on MERS which are not in the statute.

First, nowhere does MCL 211.7m contain any physical occupation requirement, nor does it exclude property held by a public employee investment trust. As this Court has held, when a statute is clear and unambiguous, a court must not read into a statute language that is not contained therein. *Elezovic v Ford Motor Co,* 472 Mich 408, 418; 697 NW2d 851, 857 (2005) [citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528NW2d 681, 684 (1995)]. The focus of this case is on the first sentence of MCL 211.7m, which consists of two separate clauses. The first clause applies to property "owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district," and the property must be "used for public purposes." MCL 211.7m. MERS is not a county, township, city, village, or school district, and so it is not relying on the first clause.

MERS instead relies on the second clause, which applies to "property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a

political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state." MCL 211.7m. The types of entities seeking exemption under this second clause need not show that the property is "used for public purposes"; they need only use the property to "carry out" a public purpose.

Thus, the "carry out" language is contained in the second clause, but not the first. In interpreting MCL 211.7m, the Tribunal was required to presume that every word was used for a purpose and to give effect to every clause and sentence. *Pohutski v Allen Park*, 465 Mich 675, 683-684; 641 NW2d 219, 226 (2002). The omission of a provision in one part of the statute that is included in another part should be construed as intentional. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76, 80 (1993). Therefore, the Legislature's deliberate inclusion of the phrase "carry out" in the second clause, and its omission of the same term from the first clause, was intentional and meaningful.

By including the "carry out" language in second clause, the Legislature recognized that governmental entities seeking exemption under the second clause, not being counties, townships, cites, villages, or school districts, but rather instrumentalities thereof, should have their exemptions determined under a less stringent standard. Unlike entities seeking exemption under the first clause, those seeking exemption under the second clause do not have to "use" the property for a public purpose, but only to "carry out," i.e., to further, a public purpose. Thus, as long as the property carries out or furthers the public purpose, it is exempt. The second clause requires nothing more. For the Tribunal to disregard the Legislature's distinct language in the second clause, and instead focus on physical occupation, was clearly erroneous.

<u>MERS urges no more than a straightforward reading of the statute as written</u>. The Appellant, on the other hand, pushes for the executive or judicial addition of requirements not imposed by the

Legislature in the statute. The plain language of MCL 211.7m does not require that a public use be a physical walking upon the land or some other tangible use.

Equally troubling is the fact that the requirement of "current public use," which, according to Appellant, is "inherent" in the statute, is contrary to the Tribunal's own precedent. In *Lake Charter Twp v Bridgman*, 10 MTTR 547 (Docket No. 238072, February 8, 1999), appended as Attachment C, a case involving the first clause of the first sentence of MCL 211.7m, the township owned real property within a city, and the township leased the property to the state for use as a police post. In granting tax-exempt status to the property, the Tribunal held that "present use" for a public purpose did not require the governmental body that owned the property to be the one using the property for a public purpose. *Lake Charter Twp, supra.* Rather, the Tribunal's focus was on whether the purpose was governmental. The Tribunal made special note of the fact that, while other provisions of the General Property Tax Act required "occupying" of the property, MCL 211.7m did not. *Lake Charter Twp, supra.* The Michigan Court of Appeals affirmed the Tribunal's decision. *Lake Charter Twp v Bridgman,* unpublished per curiam opinion of the Michigan Court of Appeals, issued August 8, 2000 (Docket No. 217708), appended as Attachment D. Therefore, whether the owner makes physical use of the property is irrelevant.

In summary, MERS purchased and manages its investment in the Property in order to "carry out" its public purpose, i.e., to carry out its statutory duties as the administrator of municipal retirement plans. As an entity listed in the second clause, physical occupation of the Property was not a requirement and ownership by a public employee retirement trust qualifies for the exemption.

5. MERS' Investment in Real Property for the Benefit of a Public Employee Retirement Trust Clearly Carries out a Public Purpose, and thus Qualifies for Exemption from Taxation.

Based upon a plain reading of MCL 211.7m and a review of MERS' purposes, the Michigan Court of Appeals determined that MERS uses the Property to carry out a public purpose because by

express statutory language, the only use which MERS can make of the Property is to hold it as part of its investment portfolio for the "exclusive purpose" of paying the pension benefits which have been earned by court and municipal employees. *Mun Employees Ret Sys of Mich, supra* (Appellant's Appendix, Tab 9, p 128a). Appellant's arguments to the contrary fail.

As part of its express statutory duties, MERS is charged with administering and investing the trust assets of a municipal employees retirement fund that provides retirement benefits for public employees of over 600 (and now, over 650) political subdivisions of the state. (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶ 7.) Its investments, including the parcels at issue, provide income and long-term returns for a purpose that would otherwise require additional funding by the governmental entities sponsoring the retirement plans. (Burns Affidavit, Appellee's Appendix, Tab 2, p 4b, ¶ 4.) The promisor units of government are each contractually responsible, constitutionally speaking, under the "unambiguous command" of the Michigan Constitution of 1963, Article 9, Section 24, for current funding of the "accrued financial benefits" arising from their individual municipal pension obligations. See *Studier v MPSER Board,* 472 Mich 642; 698 NW2d 350 (2005). Thus, MERS' investments and return on pension trust assets lighten the public burden (required pension contributions from each MERS court or municipality to fund its individual obligations) on both a "present" and ongoing basis. Therefore, the parcels at issue fulfill a current public purpose and are entitled to exemption under MCL 211.7m.

To qualify for the MCL 211.7m exemption from ad valorem taxation, MERS must show (1) that it is an instrumentality or other legal entity whose members consists solely of a combination of political subdivisions of the State of Michigan, and (2) that the property is "used to carry out a public purpose." MCL 211.7m. As the Tribunal itself has recognized, the exemption applies to qualifying property no matter where the property is located. *Lake Charter Twp v Bridgman, supra* at 553, appended as Attachment C. Further, "the modern trend of decisions is to expand and liberally construe

the term 'public use' in considering State and municipal activities sought to be brought within its meaning." *Id.* [quoting *Gregory Marina, Inc v Detroit*, 378 Mich 364, 396; 144 NW2d 503, 516 (1966)].

The parties do not dispute that MERS (as a statutory public corporation) satisfied the first criteria: "Delta Township concedes that MERS, a public entity, owns the property at issue." (Appellant's Brief in Support of Motion for Summary Disposition, Appellant's Appendix, Tab 3, p 17a. Further, Delta Township has never disputed that MERS' office building and the land on which it is located are exempt under MCL 211.7m. (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶ 12.) However, according to the Appellant, investment property held in a tax exempt public employee retirement trust does not carry out a "public purpose" within the meaning of MCL 211.7m.

MERS is a retirement trust which was created and exists for the express purpose of administering IRC § 401 public pension plans and related benefits on a statewide basis (Burns Affidavit, Appellee's Appendix, Tab 2, p 3b, ¶ 3) for the benefit of covered plan participants, employees and retirees of Michigan municipalities and courts. MERS is an instrumentality of more than 650 participating Michigan municipalities and courts that comprise the system, and its exclusive purpose is the management and investment of public trust assets and the payment of benefits on behalf of participating public employers for their retired employees. (Burns Affidavit, Appellee's Appendix, Tab 2, p 4b, ¶ 5.) Section 36 of the MERA (as last amended by 2004 PA 490) enunciates the powers and duties of the retirement board, which was created under the Act to administer the municipal and judicial employee retirement system. Specifically, Section 36(10)(b) of the MERA, MCL 38.1536(10)(b), provides that the chief executive officer shall "invest the assets of the retirement system, as directed by the retirement board, consistent with PERSIA, 1965 PA 314," PERSIA, and the Legislature has imposed on the Board the same PERSIA obligation by Section 39(2), MCL 38.1539(2). In turn, PERSIA expressly authorizes investments in real property. MCL 38.1139(2).

Thus, the Appellant's argument, at its fundamental essence, is that a statutory public corporation, an admitted instrumentality of political subdivisions of the State of Michigan, when carrying out its express statutory public duties, does not "carry out a public purpose." Such a conclusion is nonsensical.

MERS invested in the Property as part of a well-diversified portfolio with a goal of maximizing the assets that the participating municipalities and courts have available to pay accrued benefits to retired municipal and judicial employees as funding requirements arise. The more successful MERS' investment returns, the lesser the amount of present (current) and future contributions that will otherwise be required from MERS' participating governmental units. (Burns Affidavit, Appellee's Appendix, Tab 2, p 4b, ¶4.) Accordingly, contrary to Appellant's argument that allowing an exemption to MERS under MCL 211.7m would increase the public burden, MERS' investments lessen the burden on the participating governmental units, and because the assets and investment return are for the exclusive benefit of the employees and retirees of courts and municipalities, then as part and parcel of MERS' tax qualified status as an IRC 401(a) trust, it is tax exempt under IRC section 501(a) and, therefore, Michigan law. The same result logically follows from investment return arising from real estate investment under MCL 211.7m.

MERS is not aware that any Michigan court has considered the issue of whether investments in real property by Michigan public employee retirement funds carry out a "public purpose," and thus are exempt from ad valorem taxation. This is likely because MERS is the only statewide municipal and judicial retirement system in Michigan (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶5), and the likely only beneficiary of the Michigan Court of Appeals ruling below. Accordingly, the central issue presented before this Court is not widely applicable. As discussed below, however, other states have reached a conclusion consistent with the Michigan Court of Appeals' ruling in this matter.

In *Utah State Ret Office v Salt Lake Co*, 780 P2d 813 (Utah, 1989), the local taxing authority attempted to impose ad valorem property taxes on certain vacant property owned by the Utah State Retirement Fund. As in the instant matter, the purpose of the fund was to handle investments in connection with the administration of several separate public retirement systems, including retirement systems for firefighters, police, and other public employees. Utah law, like Michigan law, expressly allowed the fund to invest in real property. *Id.* at 814.

The Utah Supreme Court held that the vacant investment property was exempt from local taxation under state law. One of the arguments that the local taxing authority raised was that granting an exemption to the fund's property violated principles of equal protection set forth in the Utah Constitution because private investors were not entitled to the same exemption. *Id.* at 816. The Utah Supreme Court rejected the argument, finding that granting the exemption furthered a valid "public purpose":

> The Utah State Retirement Fund is largely composed of public money and provides for public employees of the state and political subdivisions of the state. The Fund's investment property provides income for a purpose which otherwise must be supported by taxation and thus helps to lighten the public burden. Therefore, the ad valorem property tax exemption, like the Fund's exemption from all state, county, and municipal taxes, furthers a valid public purpose and remains consistent with the uniform operation of the laws clause of the Utah Constitution. *Id.* at 816 (emphasis added).

Thus, under the same basic facts as the present case, the Utah Supreme Court held that an investment fund's investment in vacant property to ensure the payment of accrued benefits to retired government employees qualified as furthering a "public purpose."

In *State ex rel Beeler v Nashville*, 178 Tenn 344; 157 SW2d 839 (1942), the city attempted to tax land held in trust by the state for investment purposes, the income from which was devoted exclusively to a state-owned educational institution. The Tennessee statute at issue exempted from taxation governmentally-owned property "'that is used exclusively for public[,] county or municipal

purposes.'" *Id.* at 841 (quoting from the relevant statute in that case) (emphasis added). The Tennessee Supreme Court found that the property qualified for the exemption because "[i]nvestment property of the State . . . used exclusively for the public purposes is exempt and such property is used exclusively for public purposes when the income therefrom is exclusively so applied." *Id.* at 841 (emphasis added). Similarly, in *Commonwealth v Dauphin Co*, 354 Pa 556; 47 A2d 807 (1946), the Pennsylvania Supreme Court rejected an attempt to tax real property acquired by the Pennsylvania State Workmen's Insurance Fund as part of its statutory authority to invest its surplus and reserve funds. In reaching that result, the Court ruled that "[t]he money so authorized to be invested is public property and the investment for the purposes of the Fund is a public purpose; the activity is governmental." *Id.* at 559 (emphasis added).

In each of the Utah, Tennessee and Pennsylvania Supreme Court decisions cited above, the party seeking the exemption was a governmental entity operating statewide (like MERS) with a primary statutory mission of investment of assets in order to minimize the public cost of a retirement, insurance or other public program. The reasoning in the Utah, Tennessee and Pennsylvania Supreme Court decisions that an investment in real estate for the benefit of a government employee retirement fund, or for the purpose of meeting a public financial need or obligation, fulfills a "public purpose," and should be exempt from taxation, is just as applicable to MERS. MERS' express and exclusive statewide purpose since its creation in 1945 is to serve Michigan municipal retirement plans, which is undeniably a public purpose. As noted above, the MERS Board is statutorily obligated to direct the investment of the retirement system assets [MERA, MCL 38.1536(11)(b) and MCL 38.1539] in accordance with PERSIA, which expressly authorizes investments in real estate [MCL 38.1139(2)] for the "exclusive benefit" of members [MERA, MCL 38.1539(2) and MERS Plan Documents Section 55(6); PERSIA, MCL 38.1133(3)(a) and (5); and IRC section 401(a)(2)]. Such investments in real property are an integral part of its comprehensively diversified investment strategy and are in

furtherance of its ongoing mission. To find MERS' investment in the Property as taxable, as argued in Appellant's Brief, is to hold that MERS' does not carry out a public purpose when it maximizes the return on municipal and judicial retirement plans, thereby reducing the contributions otherwise required from Michigan municipalities and courts. Such a conclusion is no more appropriate in Michigan than it was in Utah, Tennessee or Pennsylvania.

6. MERS' Ownership of the Property Is A Current Public Use.

Even if the phrase "current use" or "present use" were contained in the statute, which it is not, MERS has satisfied that requirement. MERS purchased the Property to serve a present public purpose as part of its ongoing function of investing in diversified and balanced assets (including real estate) as part of its express statutory responsibilities. In order to serve the approximately 650 participating Michigan municipalities and courts, and their active and retired employees, MERS must on an ongoing basis maintain a well-diversified portfolio, including investments in real property as authorized by MCL 38.1139(2). The duty to invest trust assets is not a static obligation, or one that may only be fulfilled in the future. The Property's value is an important component of MERS' portfolio because it meets the present and ongoing need to hold interests in well-diversified, appreciating and income-producing assets for the benefit of retired employees of municipalities and courts, so as to meet their constitutional pension obligations. (Burns Affidavit, Appellee's Appendix, Tab 2, p 4b, ¶ 6-10.) To hold for MERS in this matter does not necessitate a blanket ruling that any investment in real property by a tax exempt entity entitles it to a tax exemption. The critical distinction in this case, as in the cited Utah, Tennessee and Pennsylvania decisions, is that investment of trust assets by MERS is a duty imposed upon it by state and federal law, and prudently maximizing tax-free returns for the "exclusive benefit" of the former employees of municipalities and courts that are responsible for funding the promised benefits is at the core of its entire reason for existence. Its sole mission is the investment, management and distribution of municipal and court retirement trust assets for benefit purposes so as

to reduce the governmental burden associated with funding the retirement programs and benefits offered to their employees. It is not the sale of the investment property which creates the only current use, it is the ongoing investing and holding of the appreciating property to optimize investment return for the "exclusive benefit" of public sector retirees and beneficiaries, and to the benefit of participating municipalities in the funding of such promised benefits, which is the integral core "use."

Throughout the course of this litigation, Appellant has considered only one possible meaning for the phrase "use" or "used"—a physical or tangible occupation. As discussed above, the statute, on its face, does not require the use to be a physical, tangible, or present use. In addition, if a physical, tangible, or present use is required, how does one then define such use? Is occupancy required? Must one physically be touching the land or may the owner rent the land to someone else and be physically and actively using it because income is presently being earned on the land? Appellant's proposed addition of language or judicial imposition of a physical or tangible requirement to MCL 211.7m cannot be practically applied, because it narrows the meaning of the word "use" so much so that it would be impossible to apply. Where and how do you draw the line and determine that although the use may, by definition, be a use, it is not really what the Legislature intended when it used the word "used"? It is a basic principle of statutory interpretation, even with tax exemption statutes, that "[a] fair and reasonable construction of the statute . . . must always be adopted, giving the language used its ordinary meaning. . . . Strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption." 2 Cooley, Taxation (4th ed), § 674 pp 1416-17. (citations omitted). The word "use" has a very broad definition, which includes the following: "[t]he purpose served; a purpose, object or end for useful or advantageous nature[;] . . . to carry out a purpose or action by means of; . . . . The 'use' of a thing means "to carry out a purpose or action by means of" or "that one is to enjoy, hold, occupy, or have some manner of benefit thereof." Black's Law Dictionary (5th ed.). Courts, including the United States Supreme Court, turn to dictionaries when

determining the ordinary meaning of words in statutes. For example, in *Smith* v *United States*, 508 US 223; 113 S Ct 2050; 124 L Ed 138 (1993), the Court consulted Webster's and Black's Dictionaries to determine the ordinary meaning of the term "use" in the applicable statute. The definitions were similar to those quoted above, and it was these definitions that controlled the Court's application of the statute. See *Smith*, *supra* at 228-30.[7] Similarly, this Court should give the ordinary meaning to the word "used" in MCL 211.7m, as commanded by the statutory construction command of MCL 8.3 and 8.3a and affirm the Court of Appeals' decision that MERS' only permissible use of its Property is to hold it for investment purposes, so it is using the Property for a public purpose pursuant to MCL 211.7m.

7. The Appellant's "Authority" is Inapplicable.

In the Appellant's Brief, it cites several cases that purportedly support the contention that MERS does not qualify for the MCL 211.7m exemption. These cases, however, are wholly inapplicable to the instant issue.

Appellant cited *Traverse City v East Bay Twp*, 190 Mich 327; 157 NW 85 (1916), and *Rural Agricultural School Dist v Blondell*, 251 Mich 525; 232 NW377 (1930) for the proposition that land cannot qualify for the MCL 211.7m exemption if it will only fulfill a public purpose some time in the future. As an initial matter, in the *Traverse City* and *Blondell* cases, this Court was interpreting statutes that required the property to be "used" for public purposes, but did not contain the "carry out" language on which MERS relies in the present case. Importantly, *Traverse City* and *Blondell* involved significantly different facts than the present case. In both cases, investment management was not core

[7] In *Smith*, *supra*, the United States Supreme Court held that the Defendant had "used" a firearm during and in relation to a drug trafficking crime when he traded his gun for drugs. The barter of the gun constituted the "use" of the drug. See also *United States v Davis*, 872 F Supp 1475 (ED Va, 1995), for further discussion of the *Smith* Court's definition of the term "use" and for an application of the term "used" with respect to real property. Specifically, the court in *Davis*, *supra*, held that the Virginia Housing Development Authority (VHDA) "used" property within the common meaning of the term "used," by making Section 8 subsidy payments to the owner of the property on behalf of the tenant. By making subsidy payments, VHDA <u>used</u> the property as its means to carry out its <u>purpose</u> of providing suitable housing to those in need. *Id.* at 1480.

to the governmental entity's purpose. See *Traverse City, supra*, and *Blondell, supra*. Rather, the land was held by school district and City entities that are specifically included within the first clause of MCL 211.7m as requiring a present "use", rather than a speculative purpose on the theory that it might serve a public purpose some time in the future. The Michigan Court of Appeals acknowledged this major factual distinction in its opinion below. See *Mun Employees Ret Sys of Mich, supra* (Appellant's Appendix, Tab 9, p 128a). Appellant's proffered authority involves "first clause" cases under section 211.7m, and inapposite to MERS which is a "second clause" situation. Under such circumstances, this Court was justifiably concerned that governmental entities would purchase property, do nothing with it, and thwart the intention of the statute by claiming an exemption. To allow such a practice would render the "public purpose" language of MCL 211.7m meaningless. MERS does not purchase real property for the purpose of claiming a tax exemption.

The instant case involves entirely different circumstances. Here, MERS does not own the Property because it might satisfy a public purpose in the future. Rather, MERS purchased the Property to serve its present (ongoing) public purpose in discharge of its statutory obligation to invest all its trust funds in diversified and balanced assets (including real estate). A favorable decision in this matter in no way threatens to render meaningless the "public purpose" language of MCL 211.7m; to the contrary, any other conclusion renders meaningless the statutory distinction evident in the differing language of the first and second clauses. MERS is statutorily charged with the duty to administer the trust assets for the exclusive purpose of its participating municipalities and courts in their meeting their pension obligations to retired public employees. For MERS to act otherwise would violate its statutory function, and imperil its status as a tax-exempt IRC § 401(a) trust. Thus, there is no chance that MERS will ever use the Property for any purpose other than the sole purpose for which MERS exists—to benefit participating municipalities and courts and their retired employees.

The Appellant also heavily relies on the Michigan Court of Appeals' decision in *Mt Pleasant, supra*, to argue that the Michigan Court of Appeals has decided these two cases inconsistently. As thoroughly discussed above at pages 4, and 7-9, that case is fully distinguishable from the instant matter.

8. The Court of Appeals Decision Does Not Give MERS an Unfair Advantage.

Appellant argues that a decision favorable to Appellee could have a broad effect of "removing the property from the tax rolls and reducing the tax revenues for local governments, the State of Michigan and other taxing jurisdictions" Appellant's Brief, p 19. However, Appellant ignores the fact that MERS is the only statutory statewide municipal and judicial employee retirement system in Michigan. (Moquin Affidavit, Appellee's Appendix, Tab 1, p 2b, ¶5.) MERS believes, and Appellant has offered no contrary examples, that the Court of Appeals decision singularly applies to MERS by the very nature of the MERS enabling legislation. Further, the tax exemption directly increases the income in the Managed portfolio, thereby providing a similar increase in the MERS investment fund earnings returned to the reserve accounts of the participating government units.

Appellant asserts that material injustice results if MERS is granted a tax exemption under MCL 211.7m because it will give MERS an unfair advantage over private investment funds. This assertion is illogical and fails for many reasons. MERS qualifies for the exemption under MCL 211.7m just like many other entities qualify for this exemption and many other types of tax exemptions. Statutory tax exemptions at the federal and state level are common. MERS is a "governmental plan" under the Internal Revenue Code, just like all such plans operated by the State of Michigan, and governmental plans are not subject to ERISA (Employee Retirement Income Security Act of 1974), which applies solely to private (non-governmental) plans. Just because MERS fits into one of the categories provided by the Legislature for an exemption does not mean that a material injustice results. If that

were so, then any municipality that does not have a public park in another taxing unit, but does have such a park in its jurisdiction, could claim material injustice. Similarly, just because churches, charities, and governmental instrumentalities may fit into a category for a particular tax exemption does not mean that a material injustice results. Appellant's assertion leads to the conclusion that any entity that qualifies for a tax exemption has an unfair advantage over other entities that may have some common characteristics but that do not meet the exemption. Thus, it seems, according to Appellant's logic, any tax exemption would create a material injustice. Tax exemptions cannot be so construed because the whole purpose of a tax exemption for qualifying entities like MERS is to lessen the burden on that particular entity for the good of the whole. Any lightening of the burden is not that of MERS (the instrumentality of its participating municipalities and courts) itself, but of its participating employers, whose burden is lessened by MERS' exemption. Similarities can always be drawn between the activities of entities that qualify for a particular tax exemption and those that do not. Appellant may be able to draw similarities between the activities of MERS and the activities of private investment funds, but that is not the point. The critical fact is that private investment funds are not instrumentalities of the state, and they are not subject to the pension funding obligations imposed by the Michigan Constitution of 1963, Art 9, Section 24. Unlike MERS, the amount of money that private investment funds are ultimately required to pay out to their participants does not directly impact the finances of the state or local units of government. (Burns Affidavit, Appellee's Appendix, Tab 2, p 3b). Accordingly, no material injustice results in granting MERS an exemption provided under MCL 211.7m which is not granted to a private investment fund because MERS is not the same as a private investment fund, and because the tax exemption serves to relieve the governmental burden of the municipalities and courts who participate in MERS.

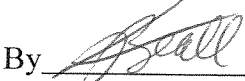
III. CONCLUSION

MERS, as the sole, statutory statewide-pension plan, administers and invests the assets of a trust fund that provides retirement benefits for public employees of the political subdivisions of the state. Its real estate investments, including the Property, are made in accordance with MERS' statutory duty to provide maximum "prudent" investment return for municipal and judicial employee pension plans, a purpose that lightens the public burden by reducing the current and future contributions otherwise required from public funds (and additional taxation) to fund the accrued benefits under each local plan. Therefore, the Property clearly fulfills a public purpose, and is entitled to exemption under MCL 211.7m.

WHEREFORE, MERS prays that this Court affirm the decision of the Michigan Court of Appeals and deny Appellant's Appeal therefrom. As the Michigan Court of Appeals correctly decided, MERS is entitled to an exemption under MCL 211.7m. This is a case of narrow applicability, allowing the exemption relieves a governmental burden, and therefore, no injustice results in allowing the prior decision to stand.

Dated: May 2, 2006

MUNICIPAL EMPLOYEES RETIREMENT SYSTEM OF MICHIGAN

By 

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