



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JOHN D. CHERRY, JR.
LT. GOVERNOR

July 21, 2009

Jacob M. Femminineo, Jr.
Chairman
Macomb County Charter Commission
10 North Main Street
Mt. Clemens, MI 48043

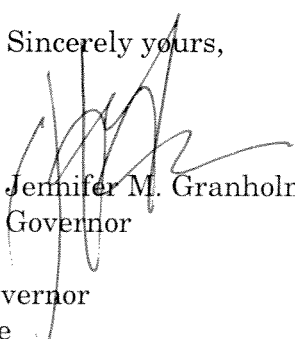
Dear Mr. Femminineo:

On June 24, 2009, as provided under Section 16 of 1966 PA 293, MCL 45.516, I received for approval a copy of the proposed charter for Macomb County, Michigan adopted by the Macomb County Charter Commission at a regular meeting on June 17, 2009. The proposed charter was transmitted to Attorney General Mike Cox for review and a written recommendation that the proposed charter conforms with the Michigan Constitution of 1963 and Michigan law. On July 20, 2009, I received the enclosed written response from the Department of Attorney General. While the Attorney General's response noted six areas of concern, the Attorney General did not explicitly indicate that the proposed charter failed to conform to the provisions of the Constitution and the statutes of this state.

Accordingly, based upon the authority vested in the Governor under Section 16 of 1966 PA 293, MCL 45.516, I approve the charter for Macomb County, Michigan adopted by the Macomb County Charter Commission on June 17, 2009. The commission may proceed with the submission of the charter to the electorate of Macomb County for approval at a special election as provided under 1966 PA 293.

I applaud the Macomb County Charter Commission for its diligent efforts and excellent work on behalf of the citizens of Macomb County.

Sincerely yours,



Jennifer M. Granholm
Governor

c: John D. Cherry, Jr., Lieutenant Governor
Terri Lynn Land, Secretary of State
Mike Cox, Attorney General

Enclosure

JMG/OLC:gmh

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

July 20, 2009

Honorable Jennifer M. Granholm
Governor, State of Michigan
The George Romney Building
Lansing, MI 48909

Hand Delivered

Attention: Steven C. Liedel
Legal Counsel to the Governor

Dear Governor Granholm:

Re: County of Macomb – proposed charter

In accordance with Section 16 of the Charter County Act (CCA) 1966 PA 293, MCL 45.501 *et seq*, you have referred for review the proposed charter for the County of Macomb that was adopted by the Macomb County Charter Commission on June 17, 2009. Section 16(1) of the CCA states that the proposed charter is to be submitted to the Governor for approval within 30 days after its completion by the Charter Commission. Section 16(1) goes on to provide that the Governor shall approve or disapprove the charter within 30 days of its submission "upon written recommendation of the attorney general that it conforms to the provisions of the constitution and statutes of this state." It should also be noted that *Lucas v Wayne County Board of Commissioners*, 131 Mich App 642, 662-664; 348 NW2d 660 (1984) recognized the Governor's authority to approve the Wayne County Charter notwithstanding the recommendation by the Attorney General that the county charter commission should make changes in that charter as proposed to eliminate 11 instances where the charter was at variance with constitutional or statutory law.

We have examined the proposed charter in light of the CCA, the Michigan constitution and other relevant provisions of state statutes and note the following six areas of concern:

1. Section 2.3 mandates that the Macomb County Board of County Commissioners adopt an ethics ordinance that addresses a list of substantive issues. The section does not include a

provision that the ordinance shall be subject to applicable law. Since any ethics ordinance to be adopted by the County Commission would be subject to applicable state law, an express reference to that effect will provide clarity.

2. Section 3.12 provides that the governor may remove a county executive for the same reasons and with the same due process as provided by law for the sheriff, prosecuting attorney, county clerk and county treasurer. While the Charter Commission has advanced this provision on the theory that it is within the home rule powers granted by the Act, there is no state law authorizing such a removal.

3. Section 6.6.3 provides that a vacancy in the office of county sheriff, prosecuting attorney, clerk and register of deeds, treasurer, or public works commissioner shall be filled within 90 days. The relevant state law, MCL 168.209, does not contain a 90-day requirement. Prior opinions of this office have concluded that a reasonable period of time can be inferred from the words of the statute. See, for example, OAG 1979-1980, No 5613, p 517 (December 21, 1979) and OAG 1981-1982, No 5946, p 291 (August 6, 1981).

4. Section 3.15 has ambiguous language about the succession in the event of a vacancy in the office of county executive. It is possible in the event of a vacancy that confusion could arise over the appropriate means to fill the vacancy. Substituting "or" for the penultimate "and" in Section 3.15(a) would appropriately cure the ambiguity.

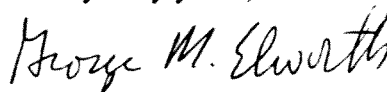
5. Section 6.6.5 provides certain limitations on legal actions to be brought by county-wide elected officials. This provision, if read independently, may purport to constrain the rights of litigants.

6. Section 8.11.2 provides that if the Macomb County Board of Commissioners does not act on appropriation amendments within 45 days following submittal by the County Executive, the appropriation amendments become effective. We believe that the correct word choice, in light of MCL 141.437, would have been "appropriation reduction" and not "appropriation amendment."

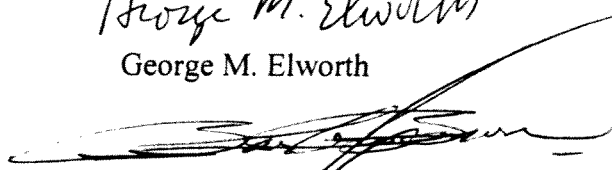
Finally, it is noted that 2009 PA 39, effective June 12, 2009, has amended MCL 224.6 to authorize a county charter commission to propose to the county voters at the time that a proposed charter is submitted for their approval a separate ballot question to reorganize the current board of county road commissioners. Section 11.5.2 anticipates such a ballot proposal by providing that if the county voters approve, pursuant to law, the reorganization of the board of county road commissioners, the current Road Commission of Macomb County shall cease to exist and all of its duties and functions shall be assumed by a Department of Roads to be established with its core functions remaining intact.

Subject to the foregoing, we advise in accordance with the Charter County Act that the proposed charter conforms to the provisions of the Constitution and statutes of the State of Michigan.

Very truly yours,



George M. Elworth



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Finance Division
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GME:jk
Encs.

c w/o enc: Michael P. McGee, Attorney