



Agenda

City Commission Business Meeting

City of Kalamazoo

Monday, November 28, 2022

5:30 PM

City Commission Chambers – 241 West South Street

- A. CALL TO ORDER/ROLL CALL**
- B. OPENING CEREMONY**
- C. ADOPTION OF FORMAL AGENDA**
- D. COMMUNICATIONS**
- E. PUBLIC COMMENTS**
- F. PUBLIC HEARINGS**
- G. CONSENT AGENDA**
- H. REGULAR AGENDA**
- I. REPORTS AND LEGISLATION**
- J. UNFINISHED BUSINESS**
- K. POLICY ITEMS**
- L. NEW BUSINESS**
 - 1. Approval of a recommendation from the City Attorney Recruitment Subcommittee to schedule interviews with three finalists for the City Attorney position: William Kim, Julianne Pastula, and James Porter; and to schedule a public meet and greet session with the candidates on Wednesday, November 30, 2022 at 4:00 pm in City Hall; and to schedule a special City Commission meeting on Thursday, December 1, 2022 at 8:30 am in the City Commission Chambers of City Hall for the purpose of conducting the interviews. **(Action: Motion to approve)**

M. COMMISSIONER COMMENTS

N. CLOSED SESSION

1. Closed session to consider attorney-client privileged material exempt from disclosure by state or federal statute. **(Action: Motion to go into closed session)**

O. ADJOURNMENT

ADDITIONAL INFORMATION

Get news, information, and alerts from the City of Kalamazoo. Sign up at www.kalamazoocity.org/connect, follow @KalamazooCity on Twitter, and search for The City of Kalamazoo on Facebook.

Questions regarding agenda items may be answered prior to the meeting by contacting the City Manager's Office at 269.337.8047. Persons who wish to contact members of the City Commission prior to the meeting to provide input about items on the meeting agenda may do so via email to CityCommission@kalamazoocity.org.

Agendas for the regular meetings of the Kalamazoo City Commission are available on the Internet at: www.kalamazoocity.org.

The Kalamazoo City Commission's business meetings are held on the first and third Mondays at 7:00 p.m. and are shown live on the Public Media Network (channel 190 for Charter customers, channel 99 for U-Verse customers). Committee of the Whole meetings are held immediately prior to business meetings at 5:00 p.m. Both meetings are also streamed live on the City's Facebook page (<https://www.facebook.com/KalamazooCity/>) and YouTube Channel (www.kalamazoocity.org/youtube).

Public Media Network rebroadcasts these meetings on Tuesdays at 8:00 a.m., Wednesdays, at 1:00 a.m., and Thursdays at 3:00 p.m.

Community members have the option to provide public comments over the phone for City Commission meetings. Members of the public who wish to provide comments by phone can call 888-382-9556 during the public comment period. They will enter a queue and will be prompted to offer their comments in turn. Callers will be commenting to the City Commission live and will no longer be able to leave a recorded message.



City Commission Agenda Report

City of Kalamazoo

Date: **11/28/2022**

Item: **L.1.**

TO: Mayor Anderson, Vice Mayor Cooney, and City Commissioners

FROM: City Attorney Recruitment Subcommittee of the City Commission (Mayor Anderson, Commissioner Decker, Commissioner Praedel)

DATE: November 28, 2022

SUBJECT: Selection of Finalists for the City Attorney Position and Approval of Next Steps

RECOMMENDATION:

It is recommended that the City Commission schedule interviews with three finalists for the City Attorney position:

William Kim
Julianne Pastula
James Porter

It is further recommended that the City Commission schedule a public meet and greet session with the candidates on Wednesday, November 30, 2022 at 4:00 pm in City Hall, and schedule a special City Commission meeting on Thursday, December 1, 2022 at 8:30 am in the City Commission Chambers of City Hall for the purpose of conducting the interviews.

BACKGROUND:

Shortly after City Attorney Clyde Robinson announced his pending retirement, Mayor Anderson created a City Commission subcommittee to work with city staff on the recruitment process for filling the City Attorney position. The subcommittee includes Mayor Anderson, Commissioner Decker, and Commissioner Praedel. It is assisted by the Human Resources Department and the City Manager's Office.

In June of this year the City Commission authorized the hiring of the Michigan Municipal League's Executive Search Service to assist in the recruitment and filling of the City Attorney position.

The subcommittee worked with the MML and the City Commission to prepare an updated job

description for the City Attorney, and a brief on-line community survey was opened to give the public an opportunity to have a voice in the preferred qualifications for a City Attorney.

As a result of this input, a recruitment brochure was produced by the MML (attached), and the job posting was closed on November 2, 2022.

Below is a summary of the recruitment outreach process used by the MML as prepared by recruiter, Mr. Jeff Mueller:

We are now preparing to move into the next phase of your selection process; determining whom the Commission wishes to interview for the open position.

The deadline for receipt of cover letters, resumes, references was Wednesday, November 2, 2022. Our various recruitment efforts encouraged 3 applicants to express a desire to be considered for employment in the City of Kalamazoo. We advertised on the following sites:

- *Michigan Municipal League*
- *International City Management Association*
- *Michigan Association of Municipal Attorneys*
- *International Municipal Lawyers Association*
- *National Bar Association*
- *Women's Lawyers Association of Michigan*
- *National Association of Women Lawyers*
- *Black Public Administrator's Association*
- *American Bar Association*
- *State Bar of Michigan*

In addition, we contacted the following:

- *Hispanic Bar of Michigan*
- *National Voice Hispanic Legal Community*
- *Women's Lawyers.org*
- *Women's Legal Association of Michigan*
- *National Association of Women Lawyers*
- *National Conference of Black Lawyers*

During our process I made contact with many firms and attorneys. While I had anticipated more than the number of applicants, no one is moving around and the employment landscape has changed. For instance, the City of Big Rapids City Attorney is retiring soon. The city sought out applicants only to hire a private firm, as the few candidates that applied did not meet their requirements.

While the numbers are small, there are some very good candidates.

You will find a copy of the brochure we produced and used during the recruitment of applicants so you can re-familiarize yourself with the requirements, skills and qualities we told potential candidates we were seeking. This “profile” will serve as our guide for assessing the qualifications and attributes of applicants as we move into this next phase of our selection process.

The subcommittee met with Mr. Mueller on November 9, 2022 and agreed to send three qualified candidates to the full City Commission for your consideration and to set a date for interviews.

The three candidates are aware that they are being recommended for an interview, and that their names and resumes will be part of the public record at this point.

STRATEGIC VISION ALIGNMENT:

Strategic Goal Impact:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

COMMUNITY ENGAGEMENT:

The public had an opportunity to help define the qualifications of the City Attorney position, and the meet and greet and interviews will be open to the public.

FISCAL IMPACT:

Employment Opportunity

City Attorney

City of Kalamazoo



City Attorney

City of Kalamazoo

The City of Kalamazoo is a vibrant, exciting and diverse community. The city is located in southwest Michigan, approximately half-way between Detroit and Chicago. The City of Kalamazoo is a full-service community providing the city and surrounding regions with services including public safety (police and fire protection), streets, water, sewer, inspections, community planning, economic development and parks and recreation.

The City of Kalamazoo is seeking a proven professional for the position of City Attorney. The position requires graduation from law school and ten year's experience as a practicing attorney with emphasis on municipal law work. Supervisory/management experience is required. The salary range is \$117,000 to \$168,000 per year plus an excellent benefit package including a defined benefit retirement plan.

The City of Kalamazoo is an Equal Opportunity Employer. "We strive to be a diverse, equitable, inclusive employer by creating an environment where different perspectives and experiences are welcomed and encouraged."



- **POPULATION**
73,598
- **SIZE**
26 sq. miles
- **STARTING SALARY**
\$117,000—168,000 DOQE

► THE COMMUNITY

Kalamazoo was originally a Native American name; although its exact origin isn't known. Over the years it's been known by "The Paper City" due to its paper mills, and the "Mall City" after construction of the first outdoor pedestrian shopping mall in the United States in 1959.

The city was incorporated in 1884 and instated a Commission-Manager form of government in 1918; one of the first cities in the United States to adopt this form of government.

Using the 2020 U.S Census, American Community Survey five-Year estimate, the population of Kalamazoo was 73,598, a decrease from the 2019 Census of 76,019.

The City Commission consists of seven members who are elected at-large on a non-partisan basis. City Commissioners are elected to staggered four-year terms, with three Commissioners elected every two years. The Mayor is elected on a separate ticket in each election to serve two-year terms, and the Commission candidate receiving the most votes each election serves as Vice Mayor. Elections are held in each odd numbered year.

The City of Kalamazoo embraces its diversity and strives to model an environment of equity and inclusion. The City has established the Office of

Diversity, Equity and Inclusion. Demographics for the City of Kalamazoo are 50.7 percent female, 68.2 percent White, and 38.7 percent Minorities. The minority breakdown within the city is, 22.2 percent African American, 7.6 percent Hispanic; 6.6 percent, two or more races, 2.1 percent Asian and .2 percent American Indian.

Since January 1, 2017, all new hires have been provided the opportunity to self-identify in EEO categories. In June 2017, a survey of existing employees was conducted to provide the opportunity to voluntarily self-identify in updated EEO categories.

As of January 1, 2022, the City of Kalamazoo employed a total of 624 employees. The current City employee demographics are 179 (35.9 percent) female employees and 114 (22.4 percent) minority employees. There are ongoing efforts to address areas of underrepresentation of females and minorities.

Kalamazoo is home to Western Michigan University, a major state university; Kalamazoo College, a private, nationally ranked liberal arts college; Kalamazoo Valley Community College (KVCC), and remote facilities of Cornerstone University and Spring Arbor University.





Philanthropy reigns in Kalamazoo. The Kalamazoo Promise began in 2005 with a group of anonymous donors pledging to provide scholarships to all Kalamazoo Public School graduates in perpetuity. Kalamazoo public school (KPS) graduates within the school district and enrolled for at least all four years of high school, are eligible. Depending on length of enrollment, 65 percent to 100 percent of tuition and fees are covered. The Promise can be used at any accredited public colleges and universities in Michigan, many private colleges, MCTI, and electrical union. As of 2019, the Kalamazoo Promise is partnering with the Michigan Regional Council of Carpenters and Millwrights to include apprenticeships. The council is Michigan's largest skilled-trades union. Skilled-trade students will soon have new opportunities for four-year apprenticeship programs. The programs include classroom learning and on the job training.

According to 2021 obtained data from the Upjohn Institute web site, 80 percent of eligible KPS graduates have taken advantage of this scholarship. The latest data also shows that as of 2021, 2,108 Promise students had obtained a Bachelors' degree, 552 an Associate degree and 260 a Certificate degree.

Also, of note, is the increased enrollment in KPS schools since the Promise began (up 25 percent) and the increase rate of graduation (76 percent compared to 64 percent). Also, Since the Promise, KPS has grown from 22 to 25 schools and a middle school alternative learning program. This increase also means more families are making Kalamazoo their home and contributing to the local economy and tax base. In 2021, Kalamazoo Public Schools had 734 graduates, compared to 454 graduates in 2005, when the Promise began.

The City of Kalamazoo is a, "Promise Partner," contributing to the success of the Promise through summer youth employment and volunteer efforts to prepare students for the workforce. Promoting city positions and hiring local candidates continues to be an important objective for the city in contributing to the Commission's goal of Shared Prosperity and poverty reduction in Kalamazoo.



Providing for innovative financial stability, in July 2016, a private group of donors proposed the creation of a foundation to stabilize the City's budget, significantly reduce property taxes and invest in infrastructure and neighborhood improvements, poverty reduction, youth programs (almost \$1 million has been committed for youth development) and economic development. In August 2017, the City Commission approved the formation of the Kalamazoo Foundation for Excellence (FFE) to fund a portion of the general fund, among other city-wide initiatives. The FFE directly supports the work of the City of Kalamazoo toward the Imagine Kalamazoo 2025 Strategic Vision.

Kalamazoo is committed to a safe community for all. The city has committed \$1 million to combat gun violence and is supportive of a county wide pilot program that coordinates services with mental health providers.

This general fund stabilization has since allowed for the implementation of a non-union, market-based compensation system. Competitive compensation will assist in addressing the ongoing issues of attracting and retaining qualified candidates, including females and minorities, especially in the technical, scientific and professional ranks. The donors committed \$70.3 million over three years and to raise \$503 million by August 2019 to provide perpetual funding thereafter.



The city offers a vast array of recreational opportunities. The city has 33 city parks that include 3 golf courses, a dog park, a splash pad, the Kalamazoo River Trail, Kik Pool, disc golf, Veterans Memorial, softball complex and Youth Development Center. The city is just 39 miles away from Lake Michigan which offers beautiful beaches, salmon and lake trout charter fishing.

There is a wide variety of things to do including: Air Zoo Aerospace/Science Museum, Kalamazoo Valley Museum, Gilmore Car Museum, and the Kalamazoo Farmers Market.

Kalamazoo boasts a solid arts culture from the Kalamazoo Institute of Art to concerts and other numerous events at the State Theatre, Miller Auditorium, and Wings Stadium. Visit kalamazooarts.org for more information



► THE ORGANIZATION

The City of Kalamazoo is currently seeking a proven legal professional to lead a department of six employees. The department has a budget of over \$870,000.

The City Attorney is hired by the City Commission to serve as the lead Attorney for the City. The City Attorney oversees a staff which includes for attorneys and two support staff. The current City Attorney is retiring after 24 years of dedicated service.

The City Attorney's work is performed directly under the executive direction of the City Commission and provides legal guidance to the Commission and all departments. This leadership position works closely with other members of top management.

The City Attorney's office prosecutes ordinance violations, including those that impact the quality of life in neighborhoods; review and prepares contracts and agreements, including those related to economic development and re-use of Brownfields; drafts ordinances and resolutions; represents the City in both state and federal courts and in administrative tribunals; and gives legal opinions and counsel on a wide variety of issues.



► THE POSITION

Duties and Responsibilities

- Administers the operations and staff of the department
- Plans, organizes, and directs the programs and activities of the department
- Assigns, prioritizes and evaluates the work of employees in the department
- Prepares and administers the department budget
- Work with departments on legal issues relative to their local, state, and federal agencies which they deal with on a regular basis
- Assures that proper legal standards are maintained and that the work in the law office is carried out properly and effectively
- Prepares correspondences, reports, and summaries related to work
- Develops and implements policies and staff development for the department
- Attends meetings with the City Commission, City Manager, other city staff, and the general public on matters related to legal concerns or matters involving the city
- Meets with civic and community groups, media and responds to media inquiries
- Responds to Freedom of Information (FOIA) inquiries
- Performs other duties as assigned

Minimum Training and Experience Requirements

- Graduate of a law school accredited by the American Bar Association with a juris doctorate degree
- License to practice law in the State of Michigan
- Ten years of experience as a practicing municipal attorney, with 10 years of municipal experience preferred
- Management experience
- Authorized to practice in applicable Federal district and appellate courts
- Valid Michigan driver's license

Necessary Skills and abilities

- Ability to create an environment of diversity, equity, and inclusion
- Be fair and impartial
- Strong understanding of Michigan law
- Clear communicator and excellent interpersonal skills; proven ability to effectively and positively communicate with the public and all levels within the organization
- Demonstrate a sense of urgency, prioritize well, shows energy, responds to opportunities, instill urgency in others and meet deadlines
- Skill in negotiating agreements which accommodate conflicting interests and viewpoints
- Strong organizational skills
- Know when it's okay to farm out certain tasks as Kalamazoo has many departments
- High level of integrity
- Be transparent
- Supportive of City Commission goals
- Look through the lens of a culturally diverse city
- Consensus builder
- Ability to empower the team
- Life of the law should be righteous and just
- Be unbiased
- Anti-racism
- Understand equity and inclusion
- Ability to collaborate
- Visionary
- Leadership skills
- Ability to deal with the media
- Ability to explain to a non-legal audience
- Managerial skills
- Ability to educate the staff and community
- Knowledge of the Freedom of Information Act (FOIA)
- Ability to delegate
- Knowledge of the Open Meetings Act
- Ability to collaborate with all departments
- Negotiation skills
- Be a mentor
- Passion for the community
- Comfortable with all people

The incoming city attorney will find the following opportunities awaiting their arrival in the City of Kalamazoo:

► CHALLENGES

- Poverty and racial disparity
- Home ownership
- Responding to the challenges of our “Houseless” community
- Intergenerational wealth opportunity
- Accountability
- Violence
- Lack of housing
- Affordable housing
- Transparency
- Building trust with the Kalamazoo Public Safety department
- Empathy
- Need to expand upon community policing
- Older housing stock needs updates and improvements
- Community sustainability plan adopted in 2022
- Continue to establish and build/rebuild trust
- Legitimacy in building relationships

► OPPORTUNITIES

- Great City Commission to work with
- Wonderful place to live
- The spirit of giving is alive in Kalamazoo
- Arts community is fabulous
- Family oriented
- City adopted Housing Ordinance that deals with affordable housing
- The most affordable city to retire to and the most affordable city in the Midwest
- In the next 5-10 years, Kalamazoo will be considered the coolest innovative city
- There is great stuff in the works
- Accessible neighborhoods
- Community is growing
- Kalamazoo can be the model for solving problems
- Big city, but we are small enough to wrap our arms around issues

► GOALS AND OBJECTIVES

- Streamline the Freedom of Information (FOIA) process
- Update ordinances as it relates to decriminalizing of relative offenses
- Empower City Attorney staff
- Keep Commission informed in a timely manner
- Build new relationships with the City Commission and staff

APPLICATION PROCESS

APPLY BY CLOSE OF BUSINESS November 2, 2022

Please submit resume, cover letter, consent form, and five professional references to:

Email:

execsearch@mml.org

Subject Line: Kalamazoo Search

Questions can be directed to MML Executive Recruiter, Jeff Mueller at jmueller@mml.org.

Candidates desiring confidentiality of their interest, as allowed for and provided by Michigan law, must indicate such in a separate subject line above the body of the cover letter.

This search is conducted by an Equal Opportunity Employer.



WILLIAM Y. KIM

October 30, 2022

Dear Mayor, Vice-Mayor, and City Commissioners of the City of Kalamazoo,

I write this letter to express my interest in the position of City Attorney for the City of Kalamazoo. Most recently, I have been serving as the City Attorney for the City of Flint. In that capacity, I have had the privilege of leading the attorneys and staff of the City of Flint's Law Department.

My primary objective for the Law Department has been to provide the City of Flint with effective and economical legal representation and counsel. To that end, my focus has been to fill open positions, develop systems and procedures to increase the Law Department's effectiveness, and increase the responsiveness of the Law Department to our front-line departments. As a result of those efforts, for the first time since the emergence of the Covid-19 pandemic, the Flint Law Department is now fully staffed. Assistant City Attorneys have been assigned to the various City departments as primary points of contact. Furthermore, by streamlining and refining the departments systems and procedures, the Flint Law Department has been able to increase City revenue and engage in carefully targeted litigation to help address various City priorities.

Before becoming City Attorney, I served primarily as a civil litigator, defending cases in state and federal court. I've successfully litigated multiple cases to favorable jury verdicts in state and federal court and I've also argued multiple other matters before state and federal courts and agencies, including the federal 6th Circuit Court of Appeals and the Michigan Supreme Court. Of particular note, I've developed and implemented the City's litigation strategy concerning the Flint Water Crisis. This complex, multi-party litigation has been ongoing since late 2015. My involvement has included leading a team of both in-house and outside counsel from multiple firms in a collaborative effort to protect the interests of the City, its officials, and its employees.

One of the best thing about municipal law is that – at times – municipal lawyers can see tangible effects on the lives of their city's residents. To that end, I believe that I can bring my experience and training to help the Kalamazoo City Attorney's office more effectively address the issues faced by the City of Kalamazoo.

Thank you for your time and consideration.

Best Regards
/s/ William Kim

WILLIAM Y. KIM

PROFESSIONAL SUMMARY Dedicated municipal attorney experienced in complex litigation, transactional law, and local policy/regulatory development. Persuasive communicator with both legal and non-legal audiences. Practiced at building teams of diverse individuals to accomplish shared goals and objectives.

BAR ADMISSIONS State Bar of Michigan (2012)
U.S. District Court for the Western District of Michigan (2014)
U.S. District Court for the Eastern District of Michigan (2015)
U.S. Sixth Circuit Court of Appeals (2016)
United States Supreme Court (2017)

PRACTICE AREAS

- Constitutional/Civil Rights law
- Contract/Purchasing law
- Criminal Procedure/Prosecution
- Election law
- Labor and Employment law
- Environmental law
- Ethics law
- Insurance law
- Municipal finance law
- Administrative/Regulatory law

SKILLS

Leadership and personnel management	Multitasking
Operational planning	Initiative
Problem solving and critical thinking	Persuasive writing
Adaptability and flexibility	Oral communication and argument

LEGAL EMPLOYMENT HISTORY *City Attorney/Assistant City Attorney – City of Flint (May 2015 - Present)*

- Appointed City Attorney in February 2022 and confirmed in April 2022, after serving as an Assistant City Attorney for almost 7 years
- Lead department of 7 attorneys, 1 legal fellow, 3 interns, and 2 paralegal staff to address criminal prosecution, civil litigation, and in-house counsel responsibilities
- Oversaw departmental budget of approximately \$800,000 and litigation budget of approximately \$1.5 million
- Developed strategy and managed the City of Flint's response to the Flint Water Crisis litigation – complex, multi-party actions involving over 100 separate cases in state and federal courts
- Retained and worked with multiple outside counsel advising/representing the City of Flint or its officials/employees in lawsuits and other legal actions
- Secured favorable jury verdicts, negotiated settlements, and judicial decisions as the lead attorney representing the City of Flint, its officials, and/or its employees in state and federal courts and administrative proceedings – including multiple federal and state jury trials to verdict, settlement negotiations, motion practice, discovery, and appellate briefing/argument
- Advised Mayor, City Council, City Administrator, and other City officials and employees on complex legal issues and risk mitigation strategies
- Drafted updates and assisted with implementation of the City's rental property licensing ordinance and blight elimination efforts.
- Drafted ordinances, resolutions, contracts, and legal opinions
- Trained police officers and command staff on professional development issues including civil rights, criminal procedure, and ethics

WILLIAM Y. KIM

LEGAL	<i>Assistant City Attorney – City of Lansing (June 2013 - December 2014)</i>
EMPLOYMENT HISTORY (CONT)	• Researched and drafted legal opinions on legal issues affecting the City of Lansing to assist in developing or executing City policies • Represented the City of Lansing, its officials, and its employees in state and federal courts and administrative hearings • Prosecuted criminal cases from complaint authorization through jury trial <i>Staff Attorney/Law Clerk – Michigan Department of Financial and Insurance Services (DIFS) (May 2010 – May 2011; August 2011 – May 2013)</i> • Administratively prosecuted violations of insurance, finance, and mortgage statutes and regulations enforced by the agency • Drafted regulations and legal opinions in financial, insurance, and mortgage law <i>Legal Extern – Hon. Janet T. Neff, U.S. District Court Judge (May 2011 – July 2011)</i> • Researched & drafted opinions and orders for matters pending before Judge Neff
PRE-LEGAL EMPLOYMENT HISTORY	<i>Campaign Manager – Fred Johnson for Congress, Democratic Candidate MI-02 (July 2007-November 2008)</i> • Recruited and directly supervised 4 senior staff and indirectly managed over 50 paid and volunteer staff in the 11 counties in Michigan’s 2nd Congressional District • Administered budget more than \$100,000 along with associated reporting and Federal Election Commission compliance requirements • Developed and executed communications strategy involving paid and earned media • Supervised all campaign operations, including polling, opposition research, candidate preparation/training, speechwriting, fundraising, and reporting <i>Technical Writer/Financial Tracker – Delphi Automotive (2002-2007)</i> • Worked with subject matter experts to draft technical documentation for highly complex, specialized, and often unique machines • Tracked project spending for divisional projects in multiple locations globally
EDUCATION	<i>Michigan State University College of Law – East Lansing, MI</i> Juris Doctor, 2012 – <i>cum laude</i> <i>Activities:</i> Notes Editor, Editorial Board, <i>Michigan State Law Review</i> Vice-President, Law Students for Reproductive Justice <i>Hope College – Holland, MI</i> Bachelor of Arts, 1999
LEGAL PUBLICATIONS	• William Y. Kim, “<i>The Whole is Greater than the Sum of its Parts: Maynard, Jones, and the Integration of GPS and the 4th Amendment</i>”, 8 CRIM. L. BRIEF, no. 2, Spring 2013, at 31. • William Y. Kim, “<i>Global Warming Heats Up the American-Canadian Relationship: Resolving the Status of the Northwest Passage Under International Law</i>”, 38 CAN.-U.S. L.J. 167 (2013)

Julianne V. Pastula

November 2, 2022

Re: Confidentiality of Interest Respectfully Requested

Re: Application for the City Attorney Position

Greetings:

I am excited to submit my application materials for consideration for the City Attorney position. The above-referenced position would allow me to both continue my career in public service and leverage my strong foundation of local government experience. This position would allow me to advance the goals of the City of Kalamazoo in not only the provision of services and the expansion of programs but also in increasing opportunities for residents. My application materials demonstrate that I am a hard-working and detail-orientated individual with relevant experience. I firmly believe my unique background, both personal and professional, would be a tremendous asset to the City Attorney's office and the City's mission.

Based on my research, Kalamazoo has clearly embraced initiatives and projects, such as gun violence prevention and Shared Prosperity Kalamazoo, that not only strive to improve residents' quality of life but also uplift important diversity and equity principles. The City's goals, supported by external stakeholders such as the Foundation for Excellence, are broad and multi-faceted. Most importantly, it appears to be a dynamic and forward-looking approach to not only solving present-day challenges but mitigating future issues while protecting growth and successes. My application materials demonstrate a compatibility with this holistic and comprehensive approach to providing services and support to residents.

My background, particularly in the positions of Chief Legal Counsel of Operations for the City of Detroit Law Department, General Counsel to the MICRC, and Senior Assistant Corporation Counsel, have provided me the expertise to successfully perform the duties and responsibilities of City Attorney. In addition to the expected work of a municipal attorney, a significant portion of my professional experience has been handling emergencies that arise in a political environment. Therefore, I am well-accustomed to a fast paced and dynamic environment where adaptation is key. I firmly believe communication, building trust and relationships are key to achieving not only an excellent work product, they are essential components of establishing an environment that fosters not only collaborative problem-solving, but also learning and growth.

During my tenure at the City of Detroit, my work has been rooted in the analysis and application of a local unit of government's powers and its interaction with varying levels of the government and the public. I have taken on numerous leadership roles and spearheaded significant policy initiatives on behalf of clients. Notable local legislation that I have drafted (subsequently enacted by Council) includes graffiti/blight amendments to our property maintenance code and the restructuring of the Department of Appeals and Hearings. I have extensive knowledge of operations as well as the interaction between local ordinances and state and federal laws.

I also have strong written and verbal communication skills which include transmitting information to both the public and internal stakeholders. This includes not only the presentation of complex information in an approachable format but also negotiating and drafting a wide range of documents on behalf of a governmental entity. My various roles within the City have involved interpretation and implementation of not only current laws, but also constant monitoring of proposed legislation and what impact, if any, it would have on our operations. Often, this resulted in the identification of legislative proposals that could be advanced at the local or state level to assist the City in achieving its policy goals.

Julianne V. Pastula

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As a LEAN/Six Sigma Green Belt and a certified Project Management Professional (PMP) I understand the importance of tracking data and using metrics to drive process improvements, increase efficiencies, and standardize workflows. I also have experience drafting both administrative and internal policies and procedures to concretize operating protocols. I believe that both organization and tracking are key components of governmental work in setting goals, prioritizing work, monitoring progress, and shifting strategy, as necessary.

Equally important to my professional experience, I have also had the opportunity in my volunteer work to advocate for victims of domestic violence, engage in numerous community projects and serve as a facilitator in Citizen Detroit's voter education initiatives.

To conclude, I am committed to the positive impact that collaboration, metrics, and the promotion of integrity have on operations as well as providing the best foundation for communication and efficiencies. These guiding principles would easily translate into serving as City Attorney to deliver innovative, effective solutions tailored to the diverse needs of the City of Kalamazoo. This opportunity incorporates and builds upon my favorite aspects of my work experience and would allow me to utilize my skill set while engaging in dynamic work. I would welcome an opportunity to discuss in greater detail how my skills could benefit the City of Kalamazoo and I thank you for your consideration.

Sincerely,



JVP:hs

Enclosures: Resume and References (Consent Form to be sent under separate cover)

Julianne Veronica Pastula

EXPERIENCE

City of Detroit Law Department

Chief Legal Counsel of Operations, May 31, 2022 to the present.

In this role, I am responsible for a wide variety of department wide operational activities, serve as Chief of the FOIA Division, spearhead efficiency actions and related project implementation, provide support to the Municipal Section, advise the Board of Ethics, and undertake assigned legal work.

- Evaluate and implement process improvements on various initiatives to streamline departmental operations. These initiatives include work instructions, operations manuals, travel and seminar policies, and the annual performance metrics process.
- Participate in budget process and human resource activities.
- Identify key performance indicators for each Division in the Law Department and create a performance metric framework to measure productivity in qualitative and quantitative terms.
- Manage the department's 15-member FOIA team, which processes over 7,500 records requests per year.
- Provide direct client support and draft appropriate documentation, such as memorandums, opinions, and ordinances, to achieve client goals.
- Advise and counsel the City's Board of Ethics and provide support to its Executive Director and assigned counsel.
- Provide direct assistance to the Municipal Division, undertake special projects, and facilitate the establishment of municipal civil infractions in the City of Detroit.

Michigan Independent Citizens Redistricting Commission (MICRC)

General Counsel, January 11, 2021 to February 25, 2022.

In this role, I was responsible for serving as primary legal counsel and assisting the MICRC in fulfilling its constitutional obligations.

- Utilize solution-oriented and collaborative leadership skills serving as main legal advisor for the MICRC and its staff through both written and oral legal advice.
- Interpret relevant law and provide legal counsel to the first citizens-led redistricting in the State of Michigan.
- Draft all operational documents including policies, guidelines and rules of procedure for newly created MICRC. This includes procurement, conflicts of interest, and hybrid/remote attendance policies.
- Serve as contract administrator and facilitate communication and workflow with outside legal counsel.
- Research, synthesize and communicate complex information on national legal trends and court filings.
- Distribute work assignments, manage internal workflow, and perform supervisory functions.
- Draft and issue legal opinions, memoranda, and advice on all administrative and legal issues.
- Prepare and present reports and presentations to internal and external stakeholders including interaction with media representatives.
- Serve as parliamentarian and FOIA coordinator for the MICRC.

Julianne Veronica Pastula

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City of Detroit Law Department

Senior Assistant Corporation Counsel, June 30, 2014 to January 8, 2021.

In this role, I was responsible for a wide variety of legal functions in support of City operations, evaluating the impact of adopted and potential State and Federal laws, and drafting legal documents to assist both the Administration and City Council in decision-making.

- Spearheaded negotiations between branches of government and related departments to resolve critical issues such as election matters, parking, blight, municipal identification, dangerous dogs as well as affordable housing and draft legislative solutions for implementation.
- Researched and coordinated the updated Executive Organization Plan across all City departments and agencies.
- Led a multi-departmental team through my LEAN project which was charged with reducing the time for contract processing, resulting in significant efficiencies.
- Responsible for the coordination and management of City-wide implementation of records retention protocols.
- Facilitated engagement with internal and external stakeholders, including community groups.
- Extensive experience in legal research, legislative drafting, and advising clients across broad governmental topics as well as emerging areas of the law.
- Presented options and draft corresponding executive orders, emergency protocols and promulgate administrative rules based on client needs.
- Extensive experience in FOIA, FOIA appeals and OMA matters.
- Local prosecution activities including appellate matters.

General Counsel to the Board of Ethics, November 2017 to May 2020.

In this role, I was responsible for all legal functions to support the work of the Board of Ethics including analysis and application of ethics rules and regulations to all internal and external requests.

- Prepared preliminary analysis with recommendations for action on all filings with the Board.
- Routinely performed legal interpretation and application of Ethics ordinance.
- Advised on parliamentary procedures and sunshine laws (FOIA and OMA).
- Extensive communication with internal and external stakeholders.
- Created and maintained tracking system for ethics files and benchmarking goals.

Liaison to the Detroit City Council, November 2017 - November 2018.

In this role, I was responsible for coordinating all interactions between the Law Department and the City Council, attending all Council meetings and providing prompt responses to requests for information or legal advice.

- Facilitated the flow of information and documents between Council and the numerous sections of the Law Department.
- Created a departmental tracking system for City Council requests.
- Maintained complete confidentiality and discretion in relaying information and documents.
- Established relationships and maintained open communication with City Council offices and Administrative departments to encourage collaboration and efficiently resolve policy issues.

Julianne Veronica Pastula

Page 3

Research & Analysis Division of the Detroit City Council, Detroit, Michigan

Public Policy Analyst, November 3, 2003 – June 6, 2014.

In this role, I was responsible for a variety of legal functions in support of City Council operations, including research and action on a wide range of legislative topics.

- Coordinated and facilitated community forums and meetings to advance public/private partnerships. Participated in the coordination of legislative retreats and conferences.
- Brainstormed and crafted public policy solutions and legislative proposals to address critical issues facing the city to improve the quality of life for residents.
- Performed contract review to ensure compliance and provided substantive analysis for all contracts before City Council.

EDUCATION

University of Detroit Mercy School of Law, Juris Doctorate, Cum Laude, May 2010

Dean's Honor Society, Women's Law Caucus, Dickinson Wright Women's Network Scholar

University of Michigan, Bachelor of Arts, December 1997

Major: Sociology; Minor: Political Science

ACCOMPLISHMENTS AND TRAINING

Project Management Professional (PMP), Project Management Institute, December 2020

City of Detroit Supervisor Training Program Certification, January 2020

Michigan Municipal League 16/50 Project Women's Municipal Leadership Program, 2019

LEAN Six Sigma Green Belt Certification, Law/Procurement Time Reduction Project, June 2017

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Appointed Member of the Michigan State Bar Public Outreach & Education Committee

Member of Women's Lawyers Association of Michigan and American Bar Association

Emerging Leader in Michigan Municipal Executives through the 16/50 Project

Served multiple years on National Conference Planning Committee for the Council on Governmental Ethics Laws

Moderator, International Municipal Lawyers Association Annual Conference, *Hotels in the Neighborhood: How Municipalities are Addressing AirBnB Vacation Rentals, Group Homes, and Other Transitory Lodging Uses in Residential Districts*, October 17, 2017

Speaker, 21-Hour Philo Invitational Seminar, *Citizens Redistricting Commission*, September 10, 2021

Panelist, Council on Governmental Ethics Laws Annual Conference, *Redistricting Around the Country: Who's Been Naughty and Who's Been Nice*, December 6, 2021

Volunteer with University of Detroit Mercy Law School for Mock Interview Program, Professionalism and Ethics Program as well as Moot Court

Volunteer with Citizen Detroit to provide non-biased, non-partisan, fact-based voter education and increase participation of residents in the electoral process, particularly our youth

JAMES W. PORTER, PLLC
Attorney at Law

Michigan Municipal League
Jeff Mueller, Executive Recruiter
1675 Green Road
Ann Arbor, Michigan 48105

October 27, 2022

Mr. Jeff Mueller:

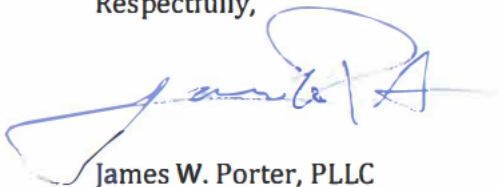
I would like to express my interest in the City of Kalamazoo Attorney position. My practice for the past thirty six years has focused mainly on Municipal Law. I am a long-term resident of Kalamazoo area and have practiced law in the communities surrounding Kalamazoo for multiple townships.

In addition, I have included a clientele list that offers a brief overview of my experiences of: Townships, Court of Appeals of Michigan and Supreme Court of Michigan.

I bring over thirty-six years of experience and valuable knowledge of Kalamazoo and the surrounding municipalities in Michigan. I would respectfully request the opportunity to discuss my experience that would add extensive value to the City of Kalamazoo.

Thank you for your time and consideration. I look forward to hearing from you at your earliest convenience.

Respectfully,

A handwritten signature in blue ink, appearing to read "James W. Porter", followed by a large, stylized capital letter "A".

James W. Porter, PLLC

Enclosures



michigan municipal league

MICHIGAN MUNICIPAL LEAGUE EXECUTIVE SEARCH REFERENCE INVESTIGATION CONSENT

I, **James W. Porter**, authorize the Michigan Municipal League and/or its agents, on behalf of the City of Kalamazoo, as part of the application process to verify the information given by me in my application to make any investigation of my background deemed necessary. I authorize former employers and any other third party contacted by the Michigan Municipal League to release to the Michigan Municipal League any information they have regarding me without providing written notice to me.

I acknowledge in the event that an entity or record source requires an alternative release form or additional identifying characteristics in order to release the requested information, I agree to provide the additional information and sign any additional release authorizations, if so requested by the City of Kalamazoo.

The following is my true and complete legal name and all information is true and correct. I understand that omissions, and/or false information and representations may disqualify me from consideration for employment, or, if I am hired or already work for the City of Kalamazoo that I may be disciplined, up to and including termination.

James William Porter

Full Name

Maiden Name or Other Names Used

Present Address

October 11, 2022

Signature

Date

Would you like the contents of your application to remain confidential unless an invitation to interview is extended?

Yes

Yes or No

Where did you hear about this opportunity?

Online

*For data purposes only

**The above information is required for identification purposes only. The Michigan Municipal League is an Equal Opportunity Employer, and does not discriminate on the basis of sex, race, color, religion, creed, national origin, veteran status, age, disability or on the basis of any other classification protected by federal, state, or local law.



EDUCATION

THOMAS M. COOLEY LAW SCHOOL

Lansing, Michigan
J.D. Award December 1985
Class Rank 11/144
Cum Laude

CORNERSTONE UNIVERSITY

Grand Rapids, Michigan
Bachelor of Arts – Business Administration
Cumulative G.P.A. 3.87/4.0
Summa Cum Laude
Salutatorian

EXPERIENCE

ASSOCIATE

Bauckham, Reed, P.C.
Attorneys at Law, Kalamazoo, Michigan
1986 - 1989
Municipal Law
Business Law
Estate Planning

Early, Lennon, P.C.
Attorneys at Law, Kalamazoo, Michigan
1990 – 1992
Municipal Law
Business Law
Estate Planning

PARTNER

Reed, Stover & O’Conner, P.C.
Attorneys at Law, Kalamazoo, Michigan
1992 – 2000
Municipal Law
Business Law
Estate Planning

PARTNER

Bauckman, Sparks, P.C.

Attorneys at Law, Kalamazoo, Michigan

2000 – 2006

Municipal Law

Business Law

Estate Planning

OSHTEMO CHARTER TOWNSHIP

In House Legal Council

2006 – Present

Providing Legal Counsel to:

- Planning & Zoning
- Zoning Board of Appeals
- Downtown Development Authority
- Township Board
- Parks & Recreation Facilities
- Ordinance Enforcement
- Public Works
- Fire Department
- Personnel HR
- Assessing Department
- Capital Improvements
- Southwest Michigan Building Authority

KEY CASES

Application of Michigan Electric Transmission Co.	Court of Appeals of Michigan (2014)
Oshtemo Charter Township v. Kalamazoo County Road Commission	Court of Appeals of Michigan (2010)
Toll Northville, LTD v. Township of Northville	Supreme Court of Michigan (2008)
Toll Northville, LTD v. Township of Northville	Court of Appeals of Michigan (2006)
Niles Township v. Berrien County Board of Commissioners	Court of Appeals of Michigan (2004)
WPA Acquisition Co. v. City of Troy	Court of Appeals of Michigan (2002)
Shultz v. Denton Township	Court of Appeals of Michigan (2002)
Township of Bingham v. RLTD Railroad Corp.	Supreme Court of Michigan (2001)
Fairplains Tp. v. Montcalm County Board of Commissioners	Court of Appeals of Michigan (1995)
Richland Tp. V. State Tax Com'n	Court of Appeals of Michigan (1995)

MUNICIPAL CLIENTS

Townships

Other

Bertrand Bridgewater Charleston Climax Columbia Convis Cooper Dalton Haring Heath Ironwood Kalamazoo Lawrence	Leonidas Marion Marquette Norwich Pentland Rutland Sheridan Tekonsha Wakeshma Wayland	• The Oshtemo Historical Society • Long Lake Board • Gun Lake Sewer and Water Authority • Gull Lake Sewer and Water Authority • South County Water & Sewer Authority • Bloomingdale Water Authority
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2021 WL 4487019

Only the Westlaw citation is currently available.
Court of Appeals of Michigan.

OSHTEMO CHARTER
TOWNSHIP, Petitioner-Appellant,
v.
KALAMAZOO COUNTY & Kalamazoo County
Board of Commissioners, Respondents-Appellees.

No. 355634

|
September 30, 2021, 9:00 a.m.

Synopsis

Background: Charter township appealed county board of commissioners' rejection of its request to allow it to levy additional .5 mills for general tax purposes. The Tax Tribunal rejected township's arguments, and township appealed.

[Holding:] The Court of Appeals, Shapiro, J., held that township was not required to obtain voter approval for its proposal to raise property tax rate.

Reversed and remanded.

Procedural Posture(s): Review of Administrative Decision.

West Headnotes (9)

- [1] **Taxation** ⇌ Scope of review
If fraud is not alleged, Tax Tribunal's decision is reviewed for misapplication of law or adoption of wrong principle.
- [2] **Taxation** ⇌ De novo review
In reviewing Tax Tribunal's decision, Court of Appeals reviews de novo questions of law.
- [3] **Constitutional Law** ⇌ Intent in general
Primary objective when interpreting constitutional provisions is to realize intent of

people by whom and for whom constitution was ratified.

- [4] **Constitutional Law** ⇌ Plain, ordinary, or common meaning
Common understanding of constitutional provision is typically discerned by applying each term's plain meaning at time of ratification.
- [5] **Constitutional Law** ⇌ Policy and purpose in general
Constitutional Law ⇌ Contemporary circumstances
When interpreting constitutional provision, courts may consider circumstances surrounding provision's adoption and purpose sought to be accomplished by provision.
- [6] **Municipal Corporations** ⇌ Submission to voters, and levy, assessment, and collection
Headlee Amendment excludes from its scope levying of tax, or increased rate of existing tax, that was authorized by law when that section was ratified. Mich. Const. art. 9, § 31.
- [7] **Municipal Corporations** ⇌ Submission to voters, and levy, assessment, and collection
Headlee Amendment's exemption of taxes authorized by law when it was ratified permits levying of previously authorized taxes even where they were not being levied at time Headlee was ratified and even though circumstances making tax or rate applicable did not exist before that date. Mich. Const. art. 9, § 31.
- [8] **Municipal Corporations** ⇌ Submission to voters, and levy, assessment, and collection
Township that was general law township when Headlee Amendment was adopted, but subsequently became charter township, was not required to obtain voter approval for its proposal to raise property tax rate from .9703 mills to

1.4703 mills, even though general law townships could only levy property taxes at rate not greater than one mill at time of Amendment's adoption; charter township millage rate was not "new" tax, but previously authorized one that township was now eligible to levy. Mich. Const. art. 9, § 31; ^{Mich.} Mich. Comp. Laws Ann. §§ 42.27(2), 211.211(4).

- [9] **Municipal Corporations**  Submission to voters, and levy, assessment, and collection Tax is exempt from requirement of voter approval if there was pre-Headlee Amendment authority for tax and local unit of government is eligible to levy tax because of post-Headlee change in circumstances. Mich. Const. art. 9, § 31.

Tax Tribunal, LC No. 19-003982-TT

Before: Beckering, P.J., and Shapiro and Swartzle, JJ.

Opinion

Shapiro, J.

*1 The Headlee Amendment provides that a local unit of government may not levy a tax without voter approval unless the tax was authorized at the time of Headlee's ratification in 1978. At that time, Michigan law permitted general law townships to levy property taxes at a rate not greater than one mill, while charter townships were permitted to levy property taxes up to five mills.¹ When Headlee was adopted, petitioner was a general law township, but in 1979 it became a charter township by resolution of the township board.²

In 2019, petitioner determined that its property tax rate, which was .9703 mills, was insufficient to service the needs of its 24,000 residents, and its Board passed a resolution requesting that the Kalamazoo County Board of Commissioners allow it to levy an additional .5 mills for general tax purposes.³ The Board of Commissioners denied the request, relying on an opinion from the Attorney General, OAG 1985-1986, No. 6285 (April 17, 1985), p. 46, concluding that charter townships that incorporated after the Headlee Amendment

was ratified remain limited to the millage rate for general law townships as provided by the Property Tax Limitation Act, MCL 211.201 *et seq.*, unless a higher tax rate was approved by a vote of the township electors. Petitioner appealed to the Michigan Tax Tribunal (MTT) seeking a ruling that it could levy up to five mills for general tax purposes pursuant to ^{Mich.} MCL 42.27(2) of the Charter Township Act, MCL 42.1 *et seq.* The MTT, relying primarily on the Attorney General opinion, rejected petitioner's arguments and petitioner appealed to this Court.⁴

[1] [2] The question before us, therefore, is whether petitioner remains limited to the tax rate for general law townships because it was a general law township at the time Headlee was adopted or whether, having later become a charter township, the relevant limit on its taxing authority is the limit applicable to charter townships at the time Headlee was adopted. We conclude that the Attorney General opinion is inconsistent with later-decided caselaw from the Michigan Supreme Court and that petitioner may levy the charter township millage rate. Accordingly, we conclude that the MTT made an error of law and reverse its judgment.⁵

I. ANALYSIS

*2 [3] [4] [5] The primary objective when interpreting constitutional provisions "is to realize the intent of the people by whom and for whom the constitution was ratified." ^{Mich.} *Toll Northville LTD v. Twp. of Northville*, 480 Mich. 6, 11, 743 N.W.2d 902 (2008) (quotation marks and citation omitted). The "common understanding" of a constitutional provision is typically discerned "by applying each term's plain meaning at the time of ratification." ^{Mich.} *Wayne County v. Hathcock*, 471 Mich. 445, 468-469, 684 N.W.2d 765 (2004). Courts "may also consider the circumstances surrounding the adoption of the provision and the purpose sought to be accomplished by the provision." *Taxpayers for Michigan Constitutional Government v. Michigan*, --- Mich. ---, ---, --- N.W.2d --- (2021) (Docket Nos. 160658, 160660); slip op. at 7, 2021 WL 3179659.

[6] "The Headlee Amendment added §§ 25 through 34 to Article 9 of the Michigan Constitution." ^{Mich.} *Michigan Ass'n of Home Builders v. Troy*, 504 Mich. 204, 208 n. 3, 934 N.W.2d 713 (2019). This case specifically concerns Section 31 of the Headlee Amendment, which provides in relevant part:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31.]

“The plain language of art 9, § 31, excludes from its scope the levying of a tax, or an increased rate of an existing tax, that was authorized by law when that section was ratified.” *American Axle & Mfg., Inc. v. Hamtramck*, 461 Mich. 352, 362, 604 N.W.2d 330 (2000).

[7] [8] In *American Axle*, 461 Mich. at 357, 604 N.W.2d 330, the Supreme Court approved a line of Section 31 cases from this Court standing for the proposition “that the Headlee exemption of taxes authorized by law when the section was ratified permits the levying of previously authorized taxes even where they were not being levied at the time Headlee was ratified and even though the circumstances making the tax or rate applicable did not exist before that date.” Petitioner argues that this case falls squarely within this formulation of the “authorized by law” exemption. We agree.

American Axle observed that “[i]n several cases, changes in circumstances after the ratification of Headlee have been found to make levy of taxes constitutional where, without those changed circumstances, the increases would have been forbidden.” *Id.* For our purposes, the most instructive case is *Saginaw County v. Buena Vista Sch. Dist.*, 196 Mich. App. 363, 493 N.W.2d 437 (1993). In that case, the county voters had approved property tax limitations in 1974 generally limiting school districts to 9.05 mills but allowing districts located entirely within one city or charter township to levy an additional mill. *Id.* at 364, 493 N.W.2d 437. In 1990, the defendant-school district redrew its borders so that it was located entirely within one charter township. *Id.* at 365, 493 N.W.2d 437. This Court held that the district could levy the higher millage without voter approval:

The Headlee Amendment requires voter approval only if a unit of local government wants to impose taxes at a rate higher than that authorized by law at the time of its adoption. Const. 1963, art. 9, § 31. In 1978, school districts in Saginaw County located entirely within a charter township were authorized by law to levy taxes at a rate of 10.05 mills. We find that, because it is now located entirely within Buena Vista Charter Township, defendant’s tax rate of 10.05 mills is not above the rate authorized by law at the time the Headlee Amendment was ratified. The category of school district into which defendant now fits existed in 1978, the tax in question was authorized by law (it was not a new kind of tax), and the rate (10.05 mills) was an authorized rate. *When defendant’s geographical configuration changed, it then became eligible to tax according to the applicable preexisting tax structure.* Furthermore, before the Headlee Amendment, a simple rearrangement of boundaries would have empowered the defendant to increase the tax from 9.05 to 10.05 mills. That is all that occurred post-Headlee. Therefore, no voter approval was required for defendant to raise its millage to 10.05 mills. *Id.* at 366, 493 N.W.2d 437 (emphasis added), quoted in *American Axle*, 461 Mich. at 358-359, 604 N.W.2d 330.]

*3 We agree with petitioner that *Saginaw County* is highly analogous to the instant case. As in *Saginaw County*, the tax in question was authorized by law when Headlee was ratified. Further, townships were able to incorporate as charter townships by resolution in 1978, and had petitioner’s resolution to incorporate become final before Headlee was ratified, it could have levied a charter millage

without voter approval. But, like *Saginaw County*, the necessary change in circumstances for petitioner to levy the disputed tax did not occur until after 1978. When that change occurred, the charter township millage rate was not a “new” tax, but a previously authorized one that petitioner was now eligible to levy.

Respondents argue that *Saginaw County* does not control the outcome here because there is a difference between changing the boundaries of a school district (which authorized an additional mill in taxes) and a change of structure from a general law township to a charter township (which allows a tax increase of about four mills). Respondents fail to explain, however, why these are *material* distinctions such that a different result is warranted.⁶ The question is simply whether the tax was authorized by law when Headlee was ratified; the amount of the tax and the nature of the changed circumstances making it applicable are not relevant to that inquiry.

[9] Similarly, the MTT did not adequately explain its conclusion that this case is distinguishable because a township incorporating as a charter township by resolution is not a “mere” change in circumstances. We agree with the amicus brief that this creates an arbitrary standard to determine whether the requirement of voter approval applies in these types of Section 31 cases. More important, it deviates from the clear standard established by *American Axle* that a tax is exempt from the requirement of voter approval if there was pre-Headlee authority for the tax and the local unit of government is eligible to levy the tax because of a post-Headlee change in circumstances. See *American Axle*, 461 Mich. at 357, 604 N.W.2d 330. Any other consideration is not relevant to whether the tax was authorized by law when Headlee was ratified, which is all that the exemption requires.

The MTT also relied on the fact that *Saginaw County* distinguished that case from the Attorney General opinion addressing the question at issue in this case:

The two opinions of the Attorney General plaintiff cites, OAG, 1985-1986, No 6285, p. 46 (April 17, 1985), and OAG, 1989-1990, No 6588, p. 149 (June 16, 1989),^[7] deal with a quite different situation, the effect of a township becoming

a charter township. Such a change exposes property owners to a new category of taxes. [*Saginaw County*, 196 Mich. App. at 365, 493 N.W.2d 437.]

As the MTT recognized, this statement is nonbinding dicta because it was not necessary to this Court's resolution of the question before it. See *Auto-Owners Ins. Co. v. All Star Lawn Specialists Plus, Inc.*, 497 Mich. 13, 21 n. 15, 857 N.W.2d 520 (2014). Nor was this statement referenced or adopted in *American Axle*. See *American Axle*, 461 Mich. at 358-359, 604 N.W.2d 330. Nonetheless, the MTT was persuaded that a change from a general law township to a charter township allows a township to levy “new taxes.” But no explanation has been offered for why the tax in this case should be considered “new,” while the one in *Saginaw County* should not. In both cases, the local unit of government “became eligible to tax according to the applicable preexisting tax structure” after a post-Headlee change in circumstances.

Saginaw County, 196 Mich. App. at 366, 493 N.W.2d 437.

The increased millage rate in *Saginaw County* was not a “new kind of tax” because it was authorized by law at the time of Headlee's ratification. See *id.* The same is true of the charter township millage rate.⁸

*4 As for the opinion of the Attorney General, we decline to follow it for several reasons.⁹ See *Mich. Ed. Ass'n Political Action Comm. v. Secretary of State*, 241 Mich. App. 432, 441-442, 616 N.W.2d 234 (2000) (“[O]pinions by attorneys general do not constitute binding authority.”). First, *American Axle* is binding precedent that postdates OAG 1985-1986, No. 6285. *American Axle* did not address the precise question at issue in this case, but for the reasons discussed its adoption of caselaw from this Court and its guidance on when the “authorized by law” exemption applies controls the outcome here. Second, while it was appropriate for the Attorney General to consider that Headlee arose from a “tax revolt” and that a constitutional provision should be interpreted in a way that effectuates its purpose, see *Lockwood v. Comm'r of Revenue*, 357 Mich. 517, 557, 98 N.W.2d 753 (1959), the Attorney General seemed to presume that any post-Headlee tax increase requires voter approval. See OAG 1985-1986, No. 6285, p. 49. This ignores, however, that “[t]he plain language of art 9, § 31, excludes from its scope the levying

of a tax, or an increased rate of an existing tax, that was authorized by law when that section was ratified.” *American Axle*, 461 Mich. at 362, 604 N.W.2d 330. In other words, the fact that the disputed tax will result in increased taxes is not dispositive; it must be first examined whether the tax was “authorized by law” when Headlee was ratified, which the Attorney General failed to adequately consider.

Finally, the Attorney General's conclusion that charter townships like petitioner remain general law townships for taxing purposes is inconsistent with the statutory acts governing township taxing authority. The Charter Township Act provides the millage rates for charter townships,  MCL 42.27(2); *Bailey v. Charter Twp. of Pontiac*, 138 Mich. App. 742, 743-744, 360 N.W.2d 621 (1984), and the Property Tax Limitation Act controls the millage rate for general law townships, MCL 211.211(4). The Property Tax Limitation Act specifically excludes charter townships from its scope: “The [county tax allocation] board shall approve minimum tax rates ... for townships *other than charter townships*, of 1 mill[.]” MCL 211.211(4) (emphasis added). Accordingly, there is no statutory basis for a charter township to continue as a general law township for taxing purposes. In contrast,

our holding that petitioner may levy a charter millage has the benefit of harmonizing Headlee with the statutory acts because the taxing authority for all charter townships will be governed by the Charter Township Act.¹⁰

II. CONCLUSION

The MTT erred by concluding that petitioner may not levy a charter millage. Binding caselaw from the Supreme Court establishes that the tax at issue in this case falls within Section 31's “authorized by law” exemption. We decline to follow the nonbinding Attorney General opinion that predated the Supreme Court caselaw.

Reverse and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs because a public question is involved.

All Citations

--- N.W.2d ----, 2021 WL 4487019

Footnotes

- 1 See MCL 211.211(d) (governing general law townships), as amended by 1978 PA 359;  MCL 42.27 (governing charter townships), as amended by 1976 PA 90. These statutory limitations have not been changed to date. See MCL 211.211(4);  MCL 42.27(2).
- 2 A township having a population of 2,000 or more may incorporate as a charter township. See MCL 42.1(2). Eligible townships may incorporate by a majority vote of the electors. MCL 42.2. In 1976, the Charter Township Act was amended to allow the township board to adopt a resolution of intent to approve incorporation, subject to the electors' right of referendum. See MCL 42.3a(2)(b), as enacted by 1976 PA 90.
- 3 Petitioner also requested a proposed road millage levy of .5 mills, which was also denied by the Board of Commissioners. The MTT reversed this decision, holding that the proposed road millage was authorized by law pursuant to MCL 247.670. Respondents did not cross-appeal that decision, and therefore the road millage will not be further addressed.
- 4 The Michigan Townships Association has filed an amicus brief in support of petitioner's position on appeal.
- 5 If fraud is not alleged, the MTT's decision is reviewed “for misapplication of the law or adoption of a wrong principle.”  *Wexford Med. Group v. City of Cadillac*, 474 Mich. 192, 201, 713 N.W.2d 734 (2006). This Court

reviews de novo questions of law. *Foster v. Van Buren County*, 332 Mich. App. 273, 280, 956 N.W.2d 554 (2020).

- 6 Respondents also argue that  *Saginaw County* is distinguishable because the voters in that case had approved the property tax rates and “so Headlee’s requirement of voter approval had been met.” But  *Saginaw County* did not hold that the electorate’s approval of the tax rates satisfied Headlee’s voter-approval requirement. Rather, this Court held that the disputed tax did not require voter approval.  *Saginaw County*, 196 Mich. App. at 366, 493 N.W.2d 437.
- 7 In OAG 1989-1900, No. 6588, the Attorney General addressed a derivative question based on the conclusion in OAG 1985-1986, No. 6285, that charter townships like petitioner are limited to the general township millage rate. But only OAG 1985-1986, No. 6285, substantively addressed the question currently before this Court.
- 8 *American Axle* also approved of our decision in  *Smith v. Scio Twp.*, 173 Mich. App. 381, 433 N.W.2d 855 (1988), in which the township electorate passed two proposals, one to incorporate as a charter township and a second to limit its millage authority to the level of a general law township.  *Id.* at 384-384, 433 N.W.2d 855. This Court held that specific voter approval for the charter township millage rate was not required and that the electorate could not limit the charter township’s taxing authority.  *Id.* at 388-391, 433 N.W.2d 855. Although this case concerned a related subject matter, it did not address—either directly or by analogy—the question before us, which concerns the application of Headlee when the charter township incorporates by resolution rather than by vote of the electorate. Thus, both parties’ reliance on this case is misplaced. See *People v. Seewald*, 499 Mich. 111, 121 n. 26, 879 N.W.2d 237 (2016) (explaining that to derive a rule law from the facts of a case “when the question was not raised and no legal ruling on it was rendered, is to build a syllogism upon a conjecture.”).
- 9 Petitioner’s argument that the MTT improperly relied on extrinsic evidence by considering the Attorney General opinion is without merit. Extrinsic evidence may not be considered when a constitutional provision is unambiguous.   *Nat’l Pride At Work, Inc. v. Governor of Michigan*, 481 Mich. 56, 80, 748 NW2d 524 (2008). But an opinion of the Attorney General is not extrinsic evidence; it is opinion on a question of law that is properly considered by courts.
- 10 We note that  MCL 42.27(2) does not require charter townships to levy the full charter millage of five mills, but rather limits the township to that rate without voter approval. And if a township board chooses to increase its millage rate, the township voters can express their approval or disapproval at the next election.