# STATE OF MICHIGAN

# COURT OF APPEALS

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GEORGE FREDERICK COOK and
RONALD JEROME WEBBER,

Plaintiffs-Appellants,

v

NORMAN TOWNSHIP BOARD OF TRUSTEES,

Defendant-Appellee.

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UNPUBLISHED
May 22, 1998

No. 200473
Manistee Circuit Court
LC No. 96-008141 CZ

Before: Markey, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the trial court denying their motion for a temporary restraining order and/or a preliminary injunction. In their "Request for Temporary Restraining Order," plaintiffs challenged the rescheduling of the annual meeting of the electors of Norman Township. We affirm the trial court's order.

## I. Basic Facts and Procedural History

Sections (1) and (2) of MCL 41.8; MSA 5.8 provide:

> (1) Except as otherwise provided in this section, an annual meeting of the electors of each township shall be held on the last Saturday in the last month of each fiscal year, at the time and place selected by the township board. *However, the annual meeting may be held on an alternate date if the alternate date is approved by a majority of the township board and is in the last month of the township's fiscal year.*
>
> (2) The business performed at a meeting of the electors of a township shall be conducted at a public meeting held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. *Public notice of the time, date, and place of the meeting shall be given by the township clerk in the manner required by Act No.*

*267 of the Public Acts of 1976, as amended*[1]*, and as provided by section 2 of Act No. 43 of the Public Acts of the Second Extra Session of 1963, being section 141.412 of the Michigan Compiled Laws*[2]…. [Emphasis supplied.]

Pursuant to this provision, the annual meeting of the electors of Norman Township was originally set for June 29, 1996, the last Saturday in the last month of Norman Township's fiscal year.

On June 12, 1996, however, the defendant Norman Township Board of Trustees (the "Township Board")[3] held a public hearing regarding Norman Township's 1996-1997 Fiscal Year budget.[4] Following the public hearing, the Township Board, at approximately 8:30 p.m., voted to reschedule the annual meeting of electors from June 29, 1996, to June 15, 1996. The Township Board rescheduled the meeting because neither Township Supervisor Sylvester Wood nor Township Clerk Michele M. Wood could attend on June 29, 1996.[5]

The rescheduling of the annual meeting of the electors was the topic of a front page story in the Manistee News Advocate on June 13, 1996. Notice was also posted on June 13, 1996 on both sides of the time and temperature sign located on Highway M-55.[6] On June 14, 1996, further notices, signed by Township Clerk Weaver, were posted at the Wellston Post Office at approximately 8:55 a.m. and at the Norman Township Fire Hall at 9:00 a.m.

On June 14, 1996, plaintiffs filed suit, seeking a temporary restraining order to prevent the rescheduled annual meeting of the electors. Plaintiffs further sought an order to hold the annual meeting of electors on June 29, 1996, as originally scheduled. On June 14, 1996, the trial court entered an order denying plaintiffs' request for a temporary restraining order. However, the trial court's order also required the Township Board to show cause on June 17, 1996, why any acts and actions that took place at the rescheduled annual meeting of the electors on June 15, 1996 should not be declared null and void and why another annual meeting of the electors should not be held.

The Township Board represents that the attendance at the rescheduled annual meeting of the electors held on June 15, 1996 was between eighty to one hundred people, as opposed to at most twenty people during previous years. The Township Board represents that the only action taken at the rescheduled annual meeting of the electors was the approval of the minutes of the 1995 annual meeting. The Township Board represents that no other action was proposed and no other actions were taken at the rescheduled annual meeting of the electors and that the rescheduled annual meeting was adjourned after approximately one-half hour. Plaintiffs were in attendance at the rescheduled annual meeting of the electors.

The trial court held a show cause hearing on June 17, 1996, and at the conclusion of that meeting ordered the parties to file briefs on the issue of whether the Township Clerk had given proper notice of the rescheduled annual meeting of the electors. The parties filed such briefs and the trial court held a hearing on December 5, 1996, on the motion for preliminary injunctive relief. At the conclusion of the hearing, the trial court rendered its opinion that the rescheduled annual meeting of the electors was a regular meeting of the electors that was rescheduled more than eighteen hours in advance, in conformity with the requirements of the Open Meetings Act, MCL 15.261-15.275; MSA 4.1800(11)-

4.1800(25). The trial court considered MCL 141.412; MSA 5.3328(2) to be in pari materia with the Open Meetings Act and concluded that the six-day publication requirement of MCL 141.412; MSA 5.3328(2) applied only when there was a public hearing on the proposed budget. Since the rescheduled annual meeting of the electors was not a hearing on the proposed budget, the trial court determined that the six-day publication provisions of MCL 141.412; MSA 5.3328(2) regarding a public hearing on the proposed budget did not apply.

On December 20, 1996, the trial court issued an order, incorporating its December 5, 1996 opinion by reference, that denied plaintiffs' motions for a temporary restraining order and/or a preliminary injunction. It is from this order that plaintiffs appeal as of right.

## II. Standard of Review

The grant or denial of a temporary injunction by a trial court is discretionary. *Hiers v Detroit Superintendent of Schools*, 376 Mich 225, 234; 136 NW2d 10 (1965). We review the grant or denial of a temporary injunction for an abuse of discretion. *Detroit Public Works Dep't v Local 77, AFSCME,* 34 Mich App 159, 160; 190 NW2d 700 (1971). Statutory interpretation is a question of law which we review de novo. *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991).

## III. Injunctive Relief

The three prerequisites to a grant of injunctive relief are that (1) justice must require that the court grant the injunction; (2) there is no adequate remedy at law; and (3) there is a real and imminent danger of irreparable injury. *Peninsula Sanitation, Inc v Manistique*, 208 Mich App 34, 43; 526 NW2d 607 (1994).

With regard to a preliminary injunction, the four factors to be considered are (1) harm to the public interest if an injunction is issued; (2) whether harm to the party seeking the preliminary injunction outweighs the harm to the opposing party if the preliminary injunction is granted; (3) the strength of the moving party's showing that it is likely to prevail on the merits; and (4) a showing that the party seeking a preliminary injunction will suffer irreparable injury if the preliminary injunction is not granted. *MSEA v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984).

This Court has described the "irreparable injury" standard for injunctive relief as follows:

> In order to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages, or for which damages cannot be determined with a sufficient degree of certainty. The injury must be both certain and great, and it must be actual rather than theoretical. Economic injuries are not irreparable because they can be remedied by damages at law. A relative deterioration of competitive position does not in itself suffice to establish irreparable injury. [*Thermatool Corp v Borzym*, 227 Mich App 366, 377; ____ NW2d ____ (1998) (citations omitted).]

Here, plaintiffs had actual knowledge of the rescheduled annual meeting of the electors and attended the meeting. Further, plaintiffs offered no objection to the notice at the rescheduled annual meeting. Clearly, plaintiffs suffered no irreparable injury and the trial court did not abuse its discretion by denying injunctive relief.

## IV. Notice

### A. "Regular" Versus "Annual" Meetings

Plaintiffs argue that statutory construction of the terms "annual," "regular" and "special" as applicable to the various township meetings shows that they are separate, distinct and mutually exclusive. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643, 658; 521 NW2d 557 (1994). Nothing will be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself. *In re Marlin*, 198 Mich App 560, 564; 499 NW2d 400 (1993). The first criterion in determining intent is the specific language of the statute. *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). The Legislature is presumed to have intended the meaning it plainly expressed. *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7, 12; 551 NW2d 199 (1996). Moreover, "[s]tatutes relating to the same subject or having a common purpose are in pari materia and should be read 'as together constituting one law, although enacted at different times, and containing no reference one to the other.'" *State Treasurer v Schuster*, 456 Mich 408, 417; ___ NW2d ___ (1998) (citation omitted). The object of the in pari materia rule is to give effect to the legislative purpose as found in harmonious statutes. *Jennings v Southwood*, 446 Mich 125, 137; 521 NW2d 230 (1994).

Here, the plain meaning of MCL 41.8(2); MSA 5.8(2), and the manifest intent of the Legislature when providing for an annual meeting of electors of a township is that such a meeting shall be conducted in accordance with the provisions of the Open Meetings Act, including its notice requirements, *and* the provisions of §2 of MCL 141.412; MSA 5.3328(2). Since MCL 41.8(2); MSA 5.8(2) makes specific reference to the other two acts, these acts are clearly in pari materia. The only way to give effect to the legislative purpose as found in these harmonious statutes is to apply the reference to "regular meetings" in the Open Meetings Act to the "annual meeting" of electors of a township referred to in MCL 41.8(1); MSA 5.8(1), even though the Open Meetings Act does not make specific reference to an "annual meeting." The trial court's conclusion that the "annual meeting" in MCL 41.8(1); MSA 5.8(1) has to be seen as a "regular meeting" under the Open Meetings Act is the only possible logical one that leads to a harmonious interpretation of the statutes.

### B. Notice Under the Open Meetings Act

If the annual meeting of the electors required by MCL 41.8(1); MSA 5.8(1) is a regular meeting within the meaning of the Open Meetings Act, the next question to be addressed is whether a change in the date of such an annual meeting is a *change in the schedule* of a regular meeting or a *rescheduled* regular meeting. If such a change is a change in the schedule, then subparagraph (3) of Section 5 of the Open Meetings Act applies, as follows:

> If there is a *change in the schedule* of regular meetings of a public body, there shall be posted *within 3 days after the meeting at which the change is made*, a public notice stating the new dates, times, and places of its regular meetings. [MCL 15.265(3); MSA 4.1800(15)(3); emphasis supplied.]

If such a change results in a rescheduled regular meeting, then subparagraph (4) of Section 5 of the Open Meetings Act applies, as follows:

> Except as provided in this subsection or in subsection 6, *for a rescheduled regular* or a special *meeting* of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting…. [MCL 15.265(4); MSA 4.1800(15)(4); emphasis supplied.]

We view the action of the Township Board on June 12, 1996 as resulting in a rescheduled annual meeting. However, we need not resolve this precise issue as the posting in this case regarding the new meeting date for the annual meeting complies with *both* subparagraph (3) and (4) of Section 5 of the Open Meetings Act.[7]

C. Notice Under MCL 141.412; MSA 5.3328(2)

Plaintiffs argue that MCL 41.8; MSA 5.8, requires that *both* the notice requirements of the Open Meetings Act *and* MCL 141.412; MSA 5.3328(2), be satisfied. If two statutes lend themselves to a construction which avoids conflict, that construction should control. *House Speaker*, *supra* at 568-569. "The construction should give effect to each statute without repugnancy, absurdity, or unreasonableness." *McCready v Hoffius*, 222 Mich App 210, 217; 564 NW2d 493 (1997). In this case, the use of the conjunctive "and" to enumerate two sets of notice requirements gives rise to an ambiguity in the statute because it can be read as meaning that both sets of notice requirements have to be satisfied in the case of an annual meeting of electors. However, the words "and" and "or" often have double meanings, as discussed in *Root v Ins Co of North America*, 214 Mich App 106, 109; 542 NW2d 318 (1995):

> The popular use of "or" and "and" is so loose and so frequently inaccurate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one read in place of the other in deference to the meaning of the context. [Citation omitted].

Accordingly, this Court must construe the word "and" to give effect to the Legislature's intent. See *People v Humphreys*, 221 Mich App 443, 452; 561 NW2d 868 (1997).

Since there is no statutory provision that requires that the public hearing on the proposed budget of a township be held in conjunction with the annual meeting of electors, the trial court's construction of MCL 141.412; MSA 5.3328(2), and MCL 41.8; MSA 5.8 is the only possible one that can give effect to each statute without repugnancy, absurdity or unreasonableness, *McCready*, *supra* at 217, and that

avoids conflict between the respective statutes. *House Speaker*, *supra* at 568-569. Accordingly, the strict meaning of the word "and" when it connects two sets of notice requirements in MCL 41.8(2); MSA 5.8(2) should be departed from in deference to the meaning implied by the context. "And" in this context cannot be construed to mean that the notice requirements of MCL 141.412; MSA 5.3328(2) apply "together with" or "in addition to" the notice requirements of the Open Meetings Act. The only way in which a harmonious construction of these statutes can be achieved is by holding, as the trial court did, that the six-day notice requirement in MCL 141.412; MSA 5.3328(2) only applies when the annual meeting of electors of a township also involves a hearing on the proposed budget. When the annual meeting of electors does not involve a hearing on the budget, the notice requirements of the Open Meetings Act control.

V. The Opportunity to Vote

Plaintiffs argue that the electors of a township must have the opportunity to vote regarding sums of money for township business at various township meetings. Since the issue was not addressed in the trial court, it is not preserved for appeal. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). We may review an unpreserved issue if it is a question of law and the facts necessary for the resolution of the question have been presented. *Westfield Cos v Grand Valley Health Plan*, 224 Mich App 385, 387; 568 NW2d 854 (1997); *Miller*, *supra* at 168. Since the facts necessary for the resolution of this question have not been presented, we decline to discuss it.

Affirmed.

/s/ Jane E. Markey
/s/ Richard Allen Griffin
/s/ William C. Whitbeck

[1] Section 5 of the Open Meetings Act, MCL 15.265; MSA 4.1800(15), provides, in relevant part, as follows:

> (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.
>
> (2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
>
> (3) If there is a *change in the schedule* of regular meetings of a public body, there shall be posted *within 3 days after the meeting at which the change is made*, a public notice stating the new dates, times, and places of its regular meetings.
>
> (4) Except as provided in this subsection or in subsection (6), *for a rescheduled regular* or a special *meeting* of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting…. [Emphasis supplied.]

[2] MCL 141.412, MSA 5.3328(2) provides:

> A local unit shall hold a public hearing on its proposed budget. The local unit shall give notice of the hearing by publication in a newspaper of general circulation within the local unit at least 6 days before the hearing. The notice shall include the time and place of the hearing and shall state the place where a copy of the budget is available for public inspection. The notice shall also include the following statement printed in 11-point boldfaced type: "The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing."

[3] In the trial court pleadings, Township Board members Sylvester Wood, Michele Weaver, Mary Kay St. John, Rita Crow and Judi Richards are the designated defendants, rather than the Township Board itself.

[4] Notice of this public hearing was given in the Manistee News Advocate on June 8, 1996.

[5] Both Township Supervisor Wood and Township Clerk Weaver are also members of the Township Board.

[6] According to plaintiffs, this posting took place some time after 2:00 p.m. on June 13, 1996. The Township Board alleged, however, that the notice was posted during the midmorning hours on June 13, 1996.

[7] The posting by the Township Clerk of the notice of the rescheduled annual meeting occurred, according to the Township Board, at 9:00 a.m. on June 14, 1996. The posting therefore occurred within three days of the date of the change and more than 18 hours before the meeting, satisfying both subparagraphs (3) and (4) of Section 5 of the Open Meetings Act.