S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

TOWNSHIP OF CASCO, TOWNSHIP OF COLUMBUS, PATRICIA ISELER, and JAMES P. HOLK,

Plaintiffs/Counter-Defendants-Appellants,

v

SECRETARY OF STATE, DIRECTOR OF THE BUREAU OF ELECTIONS, and CITY OF RICHMOND,

Defendants-Appellees,

and

WALTER WINKLE and PATRICIA WINKLE

Intervening Defendants/Counter-Plaintiffs-Appellees.

FOR PUBLICATION
March 25, 2004
9:00 a.m.

No. 244101
Ingham Circuit Court
LC No. 02-000991-CZ

Updated Copy
June 18, 2004

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

ZAHRA, P.J. (*dissenting*.)

I respectfully dissent. The Home Rule City Act (HRCA), MCL 117.1 *et seq*., is not ambiguous as it relates to attachment and detachment elections. See *Williamston v Wheatfield Twp*, 142 Mich App 714, 718-719; 370 NW2d 325 (1985) ("There is no ambiguity in the detachment procedure provided for by the home rule cities act. Read literally, its provisions are clear. . . . [B]ecause the language of the provisions [MCL 117.9 and MCL 117.9b] now in effect is clear and unambiguous, we are precluded from construction or interpretation to vary that plain meaning."). The HRCA permits a single election to determine the detachment of property from one city to two townships. Accordingly, the Secretary of State was duty-bound to certify the petition and conduct the election. I would reverse.

I respectfully disagree with the majority's conclusion that the HRCA is ambiguous merely because the statutory language does not expressly sanction or prohibit a single election to detach territory from one city and attach it to more than one township. To determine whether a

statute is ambiguous, we must examine the relevant statutory provisions in context and determine whether the language of the statute is susceptible to more than one interpretation. If statutory provisions are in conflict, and therefore susceptible to more than one meaning, an ambiguity exists. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467, 480; 663 NW2d 447 (2003) (explaining that "if two provisions of the same contract irreconcilably conflict with each other, the language of the contract is ambiguous"); *American Alternative Ins Co, Inc v York*, 469 Mich 948; 670 NW2d 567 (2003) (Markman, J., concurring) (noting that the rules applicable to determining whether a contract is ambiguous may apply with equal force to matters of statutory construction). However, where, as here, a reasonable construction of the statute considered in context leads to but one conclusion, an ambiguity may not be declared.

MCL 117.6 provides for an election originating by a single petition to detach territory from, or add territory to, multiple cities, or for the consolidation of multiple cities, villages, or townships into one city:

> Cities may be incorporated or territory detached therefrom or added thereto, or consolidation made of 2 or more cities or villages into 1 city, or of a city and 1 or more villages into 1 city, or of 1 or more cities or villages together with additional territory not included within any incorporated city or village into 1 city, by proceedings originating by petition therefor signed by qualified electors who are freeholders residing within the cities, villages, or townships to be affected thereby . . . .

Admittedly, the present case involves a detachment from one city, rather than multiple cities. Additionally, the present petition was not initiated under MCL 117.6, but was initiated under MCL 117.11, which requires the involvement of the Secretary of State.[1] Nonetheless, MCL 117.6 shows that the Legislature intended to allow more than two cities, villages, or townships to be involved in a single detachment election. "It is a well-established rule of statutory construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 209; 501 NW2d 76 (1993). Significantly, no language in MCL 117.11 conflicts or is otherwise inconsistent with the language of MCL 117.6. Rather, the relevant portions of these statutory provisions are consistent.

Under MCL 117.11, once the Secretary of State certifies a petition, the Secretary of State is required to send a copy of the petition to the clerk of "each city, village or township to be affected," and "notice directing that at the next general election occurring not less than 40 days thereafter the question of making the incorporation, consolidation or change of boundaries petitioned for shall be submitted to the electors of *the district to be affected* . . . ." (Emphasis added.) MCL 117.9(1) explains the meaning of the phrase "the district to be affected" under the HRCA: "[t]he district to be affected by every such proposed incorporation, consolidation, or

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[1] MCL 117.11 brings the Secretary of State into the petition certification process where the territory to be affected by the proposed boundary change is situated in more than one county.

change of boundaries shall be deemed to include the whole of *each* city, village, or township *from which territory is to be taken or to which territory is to be annexed*." (Emphasis added.) This broad definition indicates that a single election district is established to determine a change of boundary lines affecting multiple cities, villages, or townships. The Legislature uses general language in describing "the district to be affected," allowing for the phrase to encompass more than just two cities, villages, or townships. Accordingly, because the Legislature refers to a single petition as it relates to "the district to be affected" in MCL 117.11, and the district to be affected is broadly defined to include multiple cities, villages, and townships, I conclude that the unambiguous language of the HRCA allows for a single election to be held to detach territory from a city to multiple townships. I would reverse.

/s/ Brian K. Zahra