

Case by Case: Hot Legal Topics

Michael E. Fisher, Chief Assistant City Attorney, City of Livonia

Steven D. Mann, Principal, Miller Canfield, Detroit; City Attorney, City of Milan

Soni Mithani, Principal, Miller Canfield, Ann Arbor



Hot Legal Topics Special Assessments

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Steven Mann, Principal

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Presentation Outline

- An Overview of Special Assessment Authority
- Act 33 Police and Fire Special Assessments
- Future legislation
- Questions?



What is a special assessment?

“the theory of the special assessment is that a special benefit has been conferred, over and above that conferred upon the community itself.”

Fluckey v City of Plymouth
358 Mich. 447 (1960)



Is a Special Assessment a Tax?

“A special assessment is a levy upon property within a specified district. Although it resembles a tax, a special assessment is not a tax.”

Kadzban v. City of Grandville
442 Mich 495 (1993)
(quoting *Knott v City of Flint*,
363 Mich 483 (1961))



Is a Special Assessment a Tax?

- Special assessments are levied on real property
- Special assessments are not subject to capture by TIF districts
- Administrative tax collection fee does not apply to special assessments
- Property exempt from ad valorem taxes is not exempt from a special assessment*

*Except for Act 33 assessments.



Special Assessments

Home Rule City Act

Permitted power MCL 117.4d

Villages

Home Rule Village Act

General Law Village Act



Home Rule City Act

MCL 117.4d Permissible charter provisions; assessing costs of public improvement and boulevard lighting system; definitions.

Sec. 4d.

(1) Each city may in its charter provide:

(a) For assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district.

...

City Charter Provisions

Chapter Eleven. - Special Assessments

Section 11.1. - General power relative to special assessments.

The Council shall have the power to make public improvements within the city. As to public improvements which are of such a nature as to benefit especially any property or properties, the Council shall have the power to determine, by resolution, that the whole or any part of the expense of any such public improvement shall be defrayed by special assessment upon such property, in proportion to the benefits derived or to be derived.

City Charter Provisions

Chapter Eleven. - Special Assessments

Section 11.2. - Detailed procedure to be fixed by ordinance.

(a) The Council shall prescribe, by ordinance, the complete special assessment procedure governing the initiation of public improvement projects...

Common Public Improvements

- Roads
- Water System Improvements
- Sewer System Improvements
- Sidewalks, Bike Paths
- Street Lighting
- Garbage Collection and Disposal

Economic Challenges in Special Assessment Projects

Sec. 30-19. - Additional assessments.

(a) When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the council may make an additional pro rata assessment, but the total amount assessed against any one (1) parcel of land shall not exceed the benefits derived by the lot or parcel of land.

- Public hearing process
- Opportunity for appeals
- Future projects
 - Be wary of projects dependent on growth
 - Financial guarantees from land owner

Special Assessments for Police and Fire Protection



Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

Who?

- Townships
 - Adjoining Townships Acting Jointly (whether or not in the same County)
 - May hold joint meetings in any one of the participating Townships
- Incorporated Villages
- Qualified Cities
 - Population less than 15,000, or
 - Population of 15,000 or more and less than 70,000 if located in a County with a population of 200,001 and less than 235,000, and the question is approved by electors in the SAD.

Special Assessments for Police and Fire Protection

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

What?

- Police Services
- Fire Services
- Police and Fire Services
- Vehicles, apparatus, equipment and housing
 - Separate 10-mill limitation per year for each police and fire
 - No millage limit for operations
- Ambulance or non-transport pre-hospital life support services pursuant to MCL 333.20948

Special Assessments for Police and Fire Protection

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

How?

- Establish the district
 - May be Township-wide or just a portion of the Township
- Board initiated
 - Board may submit the question of establishing district to electors
- Petition initiated
 - Requires signatures from owners of 10% of the land in district
 - Valid petition mandates the question of establishing the district be submitted to electors

Special Assessments for Police and Fire Protection

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

How?

- Public hearing/election establishes the district
- Proceedings shall conform as near as practicable to Act 188
- Annual public hearings on the estimated costs/expenses of the police and fire departments and the estimated levy
- Assessment is levied on the taxable value of the property
- Beginning in 2002, land exempt from ad valorem taxes are exempt from Act 33 special assessments
- Annually appropriate that sum necessary for maintenance and operation of the police and fire departments

Special Assessments for Police and Fire Protection

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

How?

- Assessment is due and collected at the same time as other Township taxes
- If the Township levies in July, the July levy may not exceed 2 mills
- If collections are insufficient, Township may advance general funds to be repaid from subsequent collections



Special Assessments for Police and Fire Protection

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

Administrative Board

- Two or more Townships acting jointly may create administrative board
 - Each participating unit appoints 2 board members from its residents
 - Board appoints 1 additional member who is a resident of a unit
 - Members serve 6 year terms
- Single Township operating under Act 33 may create administrative board
 - Board consists of 5 members appointed by Township Board for terms of 6 years
 - Act does not mention a residency requirement

Special Assessments for Police and Fire Protection

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

Administrative Board

- Administrative Board oversees operations of the police and/or fire departments
- Prepares annual budget, subject to Township Board approval
- Carries out duties delegated to Administrative Board by Township Board
- May employ and appoint chiefs and personnel if authorized
 - Personnel are appointed on behalf of the individual units and the Administrative Board is not a new employer

Special Assessments for Police and Fire Protection

PENDING

Police and Fire Protection, Act 33 of 1951, MCL 41.801, et seq.

Who? Qualified Cities...

- **Senate Bill No. 109**

- Population of 15,000 or more ~~and less than 70,000~~ if located in a County with a population of 200,001 and less than ~~235,000~~, and the question is approved by electors in the SAD.
- Authority for such a city to levy would expire on Dec. 31, 2024.

- **House Bill No. 4259**

- Population of 15,000 or more ~~and less than 70,000~~ if located in a County with a population of 200,001 and less than ~~235,000~~, and the question is approved by electors in the SAD.

Questions?



Steven Mann is a senior principal with Miller, Canfield, Paddock and Stone, P.L.C. practicing in the area of public finance and municipal law. Steve specializes in the area of municipal finance, representing public agencies as bond counsel. His practice covers all facets of tax increment financing, special assessments, and economic development. Steve also specializes in complex issues related to the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA).

Steve co-authored the *Sunshine Laws and Local Government* (OMA/FOIA) chapter of the *Michigan Municipal Law* handbook published by the Institute for Continued Legal Education.

Steve has authored several *amicus curiae* briefs in both the Michigan Court of Appeals and the Michigan Supreme Court arguing on behalf of the Michigan Municipal League, the Michigan Townships Association, the Public Corporations Section of the State Bar of Michigan, and other municipal associations and their constituents.

Steve served twelve years on the Charter Township of Plymouth Board of Trustees (2000-2012), including one term as Township Supervisor and two terms as Trustee. He received his law degree, *cum laude*, from Thomas M. Cooley Law School in Lansing, and his B.B.A., *summa cum laude*, from Cleary University.

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EVALUATION

Outstanding

Very Good

Satisfactory

Marginal

Unsatisfactory



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