

ROAD RELINQUISHMENT

House Bill 5940 as enrolled
Public Act 342 of 2000
Second Analysis (1-4-01)

Sponsor: Rep. Tony Stamas
House Committee: Transportation
Senate Committee: Transportation and
Tourism

THE APPARENT PROBLEM:

Under Public Act 51 of 1951, the transportation funding act in Michigan, there is a county system of roads and highways, maintained by county road agencies in partnership with the state government through the Department of Transportation.

On occasion county road commissions relinquish or abandon roads within their jurisdiction, usually in remote areas having little to no population, with the intention to save money that would be spent on snow removal and maintenance. When relinquishment occurs, the road reverts to private ownership, and the private property owners become responsible for the road's upkeep. However, there remains on the law books a provision adopted in 1909 and not now utilized, which seems to allow a road commission to relinquish a road to a township. That anachronistic law reveals that at one time in Michigan's history, jurisdiction and control of a road could "revert to the township or municipality within which the road is situated." This provision in the law is at issue in a recent court ruling, rendered by a circuit court judge when he decided a suit called *Holmes Twp. v. Board of County Road Commissioners of Menominee County* (Opinion No. M97-8126-CZ). See *BACKGROUND INFORMATION*.

Generally in the matter of road jurisdiction, relinquishment or abandonment of roads should not be confused with the transfer of roads. On occasion county road commissions transfer the jurisdiction of roads. When this occurs the road is transferred into the jurisdiction of the city or village in which it is located. Further, if the road falls into the jurisdiction of a city or village, the law requires that both the county and the city or village agree to the transfer of responsibility for the road. However, if the road falls into the jurisdiction of a township, there can be no transfer since townships have no road jurisdiction. Consequently, the law is silent. [When a transfer is

necessary in a township and outside a city or village, the road reverts to private ownership.]

Recently in Menominee County, the board of county road commissioners claimed to have first relinquished, and then in a subsequent action abandoned, a one-half mile segment of road, commonly known as Aman Road, in Holmes Township. The road was relinquished to the township without the consent of township officials since townships have no road jurisdiction, and therefore consent is not required under the law. According to court records the road had not been properly maintained before the time of relinquishment, despite the fact that the road segment was included on the maps the road commission prepared for purposes of gasoline tax reimbursement from the State of Michigan under Public Act 51.

During the court action in which the township and the road's single resident filed suit against the county road commission, Holmes Township argued that it had never consented to the county's attempt to relinquish the road. The county road commissioners concurred, but pointed out that although relinquishment was allowed, consent was not required under Public Act 283 of 1909 (MCL 224.18).

After the relinquishment to the township, the one area resident who lived on Aman Road experienced a medical emergency. Because the road was impassable, an emergency vehicle was not able to rescue him. This emergency episode prompted the Holmes Township supervisor and the road's single resident to sue the county road commission, claiming the county road commission should not have relinquished the road without the township's consent, and that failure to obtain consent negated their attempt. The township argued that because a proper procedure had not been followed, the county road commission was the agency responsible for the upkeep of the road. In making its claim, the township argued it should be treated in the

same manner that a city or village is treated by a county under another statute: Public Act 296 of 1969 (MCL 247.851 et al.). That statute, which went into effect in March 1970, concerns the transfer of highways (defined to mean highways, roads, or streets) between the state and counties with consent, or the transfer of highways between counties and cities or villages with consent.

On August 1, 2000, the circuit court judge found in favor of the county road commission, citing the legality, but questioning the fairness, of the provision in Public Act 283 of 1909 that allows for the relinquishment of a road to a municipality or township, with no mention of mutual consent.

In order to give townships the authority to accept or refuse the transfer of roads from the county road commission, legislation has been proposed.

THE CONTENT OF THE BILL:

The bill would allow a county board of road commissioners to transfer jurisdiction of a county road to a township or municipality when there is notice by the county to the township.

House Bill 5940 would amend the county road law, Public Act 283 of 1909 (MCL 224.18), which concerns, among other things, the vacating and closing of highways. Under that law, a board of county road commissioners must, within 20 days, act to grant or deny a petition for absolute abandonment and discontinuance of a road, if the petition contains the signatures of all the owners of record and occupants of land abutting the road. In all other cases, the board must issue a written notice within 20 days, stating the object of the petition, and appointing a time and place for a hearing. Currently that hearing notice is served via first-class mail to the owners and occupants of property along the road, at least 30 days before the hearing. House Bill 5940 would require that this notice also be mailed to the township board of the township in which the road was situated. Further and under the bill, the township board would have first priority to retain the property, or a portion of the property. In addition, the bill specifies that if the board of county road commissioners determined to abandon any county road or portion of a county road to a township, it would be required to quitclaim deed the property, if the interest was nontransferable to the township. Finally, under the bill, the township would be required either to retain the property or allow it to revert to the adjoining landowners.

BACKGROUND INFORMATION:

The ruling in *Holmes Twp. v Board of County Road Commissioners of Menominee County*. On August 1, 2000, the 41st circuit court judge serving Menominee County found in favor of the county road commission in an opinion for File No.: M97-8126-CZ.

In his decision, the judge noted two sections of law in which the effects differ, depending on the local unit of government involved in the relinquishment of a road:

MCL 224.18, under which the county road commission proceeded when it relinquished Aman Road to the township, and in contrast, MCL 247.851, under which the township argued the county road commission should have proceeded. MCL 224.18 does not require consent by a township when the county road commission relinquishes jurisdiction of a county road in a township. MCL 247.851 et seq. does require consent by both the entity relinquishing jurisdiction and the entity receiving jurisdiction; however, the list of entities specified does not include townships.

In making his ruling, the judge states: "The Court has examined applicable statutes very closely. The Court is of the opinion that the statute on which the Menominee County Road Commission proceeded, M.C.L. 224.18, is the applicable statute. The procedure under this statute was complied with properly by the road commission and does not require consent from Holmes Township. This statute may be, or may not be, a fair statute. However, the Court is convinced that it is the prevailing law and the legislature will have to change it, if there is to be a change."

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no state or local fiscal implications. (1-4-01)

ARGUMENTS:

For:

Townships should not be forced to take jurisdiction over a county road commission's sub par roads, without a right of refusal. To require jurisdiction would increase township government's exposure to legal liability since a local unit of government bears responsibility for the safety of its roads. Townships cannot meet that responsibility under Michigan law because they are ineligible to receive state transportation funds for the repair and maintenance of the roads. If townships are to be granted road

jurisdiction in Michigan, it must be accompanied by funding. Township government officials should enjoy the same right to accept or refuse a road as do their counterparts in county, city, and village government.

For:

This legislation would give townships notice when county road commissions abandoned a road, enabling the township government to retain or reject the property. It would also give township government quitclaim deed to the property if the interest was nontransferable to the township. If the township did not retain the property, the legislation would require that it revert to the adjoining landowners.

Against:

The court ruling that prompts this legislation is in error, and this legislation is unnecessary. Section 11 of Public Act 296 of 1969 (MCL 247.861) plainly states that provisions for relinquishment of jurisdiction of a county road in Public Act 283 of 1909 are superceded with the enactment of Public Act 296 of 1969. Townships do not have road jurisdiction under Michigan law.

Further, spokespersons for the Michigan Townships Association have argued that county road commissions are clearly responsible for the road system in the state. They cite Attorney General Opinion 5142, issued on January 17, 1977, which provides that “people whose property abuts a road that has been abandoned and whose access to their property is dependent upon the existence of the road, may object to the abandonment and may also make a claim for compensation against the county road commission for the taking of a vested property right of ingress and egress.” Township officials point out that this opinion vests responsibility for county roads with the county road commission, and makes no mention of the township within which the roadway is located.

Against:

Michigan has long had a county road system. Throughout the state and since the middle of the last century, local road agencies have coordinated their road construction and repair services, in partnership with the state Department of Transportation. This bill would change that configuration of responsibility for the roads within the state, and for the first time give township government authority over roads.

Response:

Although this legislation would give townships road jurisdiction, the possibility seems remote since the jurisdiction would be financially constrained.

Essentially, the bill would provide townships with the right to refuse jurisdiction for a road. This would seem to be their likely course of action if the bill were to become law, since townships are not authorized to receive money from the state transportation fund to construct, repair, and maintain roads.

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