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Sharon Lollo
Assistant Legislative Director
Office of Attorney General Bill Schuette
(517) 335-7215

Re: Additional Information MAWSA Request

Dear Ms. Lollo,

The Mancelona Area Water and Sewer Authority, MAWSA, was created under Public Act 233 of 1955. The constituent members are the Village of Mancelona, Mancelona Township, and Custer Township. MAWSA provides services to its constituent members, and also provides service to Kearney Township under contract. According to its financial statement, the purpose of MAWSA is "to provide safe water in order to protect public health and the local economy in response to any local underground contamination". MAWSA was created in response to the TCE plume, which has affected groundwater beginning near the Village of Mancelona and extending in a northwesterly direction. The course of the plume is not certain, but many believe it may impact the well-fields that serve MAWSA and Shanty Creek Resorts. The plume is estimated to travel between 300-450 feet per year. It is estimated the Cedar River Well Field, which serves MAWSA, may be impacted in 2-4 years; the wells serving Shanty Creek/Summit Village may be impacted in 5-7 years.

Earlier in 2014, Antrim County United Through Ecology (ACUTE) presented a multi-phase proposal to address concerns regarding the movement of the plume and possible contamination of existing wells. ACUTE then requested the County transfer \$250,000 in support of the proposed remediation effort regarding the TCE plume. In a letter seeking public support of the requested transfer, the stated purpose of the project was to "credibly reduce the negative stigma associated with investing in property in the affected area."



The request was later made by MAWSA in the form of a letter to the Antrim County Board of Commissioners. The specific language in the request from MAWSA was “to help pay for the installation of a set of short-term improvements in the public water system.” The funding requested from the County would be used to assist in the completion of the first phase of a multi-phase project. The first phase is estimated to cost \$1.253 million; the overall project is estimated to be \$5.7 million.

The funding for the first phase of the project has not been finalized. The proposed sources of funding are currently the MDEQ (\$750,000) and Antrim County (\$250,000). As stated in a July 03, 2014 letter from Robert Wagner, Chief – Remediation and Redevelopment Division, the \$750,000 would consist of \$500,000 already committed, and an additional \$250,000 “in the event the community is able to contribute \$250,000” towards the improvement efforts. MAWSA stated it would actively pursue the balance of the funding (\$253,000) from “other local units of government, local businesses, and alternative sources.” At this time, I have not been provided any information on active fund-raising efforts on behalf of the community or MAWSA. The remaining phases of the project are not funded at this point.

The first phase of the project consists of the installation of storage tanks, a booster station, and an emergency generator. The proposal from the engineering firm states it would serve 1500 existing users in Mancelona and Custer Townships; it would also serve future users at Shanty Creek, Chief, and residential lots (it was not stated if those residential lots are developed at this point.)

Antrim County recognizes the TCE plume is a problem and needs to be addressed; however, there is not a consensus within the Board of Commissioners as to how the issue should be addressed. While some members of the board would like to provide the requested funding, it is based on the desire to assist MAWSA on a one-time basis with no future or on-going liability.

As civil counsel for the County, I do not believe the County is able to make such a transfer on a one-time basis; however, I do believe the County is permitted to become involved in the furnishing of, or contracting for, water.

Various public acts authorize counties, in several ways, to become involved in the operation of water systems. (See PA 342 of 1939 (MCL 46.171 *et seq*), PA 185 of 1957 (MCL 123.731 *et seq*), PA 233 of 1955 (MCL 124.281 *et seq*)). Under these Acts, counties may establish a department of public works, create an authority, or otherwise contract for the furnishing/delivery of water. However, the County has not indicated a desire to become involved in the furnishing of water as provided for in these Acts. Those favoring a transfer of funds would simply like to provide funding on a one-time basis, with no liability or further involvement.

MAWSA and ACUTE are relying on Public Act 233 of 1955, specifically MCL 124.290(1), which provides a municipality can contract with the authority for the furnishing of water. By the plain language in its letter, MAWSA is requesting funds for *improvements* to the system – it is not requesting to contract for the furnishing of water. In addition to it being a request for improvements, this phase does not add any new users to the current water system. MCL 124.290(1) addresses contracting for the furnishing of water, not improvements to a system.

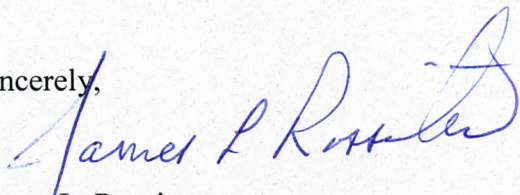
Act 233, specifically MCL 124.287, does allow for municipalities to contract with the authority for improvements to a water system. However, the contracting municipalities must be *constituent* municipalities. Antrim County is not a constituent municipality and the request from MAWSA clearly states the requested funds are for the purpose of improvements to the system.

If the County were to contract for the furnishing of water, does it matter that the recipients of the water are living within the municipalities that are already constituents of MAWSA or municipalities contracting with MAWSA? If the multi-phase plan were completed, the recipients, as identified in the engineering documents, are located within Custer and Kearney Townships. Custer Township is a constituent member of MAWSA, while Kearney has contracted with MAWSA.

Assuming the County could make the requested transfer of funds on a one-time basis, there is a concern regarding liability. The liability concern is based on an assumption of duty theory. Has the County assumed a duty – funding 20% of the cost of the initial phase – that will expose it to future liability throughout the entire project?

I have attached copies of the additional documents I have referred to above. Please contact me with any further questions.

Sincerely,



James L. Rossiter
Prosecuting Attorney/Civil Counsel
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