



Noteworthy 2011 Foster Swift Events – A Quick Summary

Foster Swift Municipal Law News

January 2012

PRACTICE AREAS

Municipal & Public Entity Law

FOSTER SWIFT WEBINARS

Foster Swift presented three free webinars for municipal officials in 2011:

- Mike Homier, Ron Richards and Laura Garlinghouse presented "The Medical Marijuana Act – And the Issues it Presents Municipalities."
- Melissa Jackson and Samuel Frederick hosted a webinar entitled "Social Media: Developing and Implementing an Effective Policy for Your Municipality."
- Anne Seuryneck presented "Open Meetings Act: What Every Municipality Should Know."

By popular demand, Foster Swift's free webinar series continues in 2012. Scheduled topics for the April and June free webinars are below. Look for more dates and topics for other webinars in future newsletters. Also, if you have a topic you would like to see as a subject of an upcoming webinar, please email Ron Richards.

SAMPLING OF COURT SUCCESSES

Court Upholds Township's Agricultural Zoning Against Developer's Challenge

The Court of Appeals upheld the dismissal of a developer's suit against a township. *DF Land Development, LLC v Charter Twp of Ann Arbor*, unpublished per curiam opinion of the Court of Appeals (Docket No. 298858, dec'd 11/17/11). The developer argued that the property's existing zoning, agricultural or residential on ten-acre lots, was illegal by depriving it of a more economically viable use of the land. The Court rejected the claim. The *Court* upheld the zoning as reasonable – the zoning preserved the rural character, natural features, and availability of open areas by limiting residential development on the property through density restrictions.



The developer also argued that the zoning ordinance was exclusionary since the zoning ordinance created a particular zoning classification (R-7, multi-family units at a higher density) but the township had no properties designated as that on the township's map. The Court rejected that argument too. It explained that about 1/3 of the residential units in the township were multi-family housing. Therefore, there was no exclusion. Foster Swift's Tom Meagher successfully represented the Township.

Court Holds State Aid Rules for Libraries Are Unlawful

In a published opinion issued on August 16, 2011, the Michigan Court of Appeals held that the Michigan Department of Education lacks authority to promulgate the State Aid Rules, which tried to impose new conditions on public libraries' eligibility to receive critical state funding. The Court also concluded that the State Aid Rules' requirement that libraries provide identical services to contract service areas is contrary to the Michigan Constitution. *Herrick v Dep't of Educ*, ___ Mich App ___ (Docket No. 300393, dec'd 8-16-11).

Herrick District Library ("Herrick") sued the Michigan Department of Education ("MDE") and the Library of Michigan in 2009, seeking a declaration that MDE's now-defunct predecessor, the Department of History, Arts and Letters ("HAL") lacked authority to adopt the State Aid Rules and that the State Aid Rules are contrary to Michigan law. The Ottawa County trial court agreed with Herrick.

The Court of Appeals affirmed the trial court's decision. The Court first held that agencies like HAL and MDE only have rulemaking authority that is implied by an enabling law – but here, no law gave HAL or MDE any express or implied rulemaking authority. Consequently, MDE does not have the authority to adopt rules to govern distribution of state aid to public libraries. The Court then held that the State Aid Rules conflict with the Michigan Constitution, which was intended to promote local control of libraries.

As a result of this decision, the State Aid Rules remain invalid and unenforceable. It is unknown whether MDE will attempt to enforce its "minimum standards" for state aid, which are substantively identical to the constitutionally deficient State Aid Rules.

Herrick was represented in both the trial court and the Court of Appeals by Foster Swift's own Anne Seurnyck, Mike Homier, and Laura Garlinghouse.

FOSTER SWIFT SPEAKING EVENTS

In 2011, Foster Swift attorneys gave many presentations on a variety of municipal matters. They included the following:

- Mike Homier spoke to the Berrien County Assessor's Association in St. Joseph, Michigan, regarding preparing for Michigan Tax Tribunal cases in April.
- Mike Homier spoke for the Michigan Townships Association on "urban chickens," zoning and land use, medical marijuana/wind regulations, and ordinances in Frankenmuth, Gaylord and Lansing in June.
- Anne Seurnyck hosted a series of free webinars for library trustees this past summer. View recordings of the webinars (look under the "Events" heading).



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- Anne Seuryneck and John Kamins spoke on different topics at the 13th Annual Public Corporation Law Section's Summer Educational Conference. Anne was a panelist on an Open Meetings Act topic, and John was a panelist on "Computer Networks, Social Media and Cloud Computing."
 - John Kamins talked on "Significant Developments in Municipal Finance" at the 33rd Annual Michigan Municipal Treasures Association's (MMTA) Fall Conference in October.
 - Anne Seuryneck and Michael Homier presented on "Top 10 Open Meetings Act Mistakes & How to Avoid Them" at the Michigan Municipal League's Annual Convention in October.
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