

Council Comments:

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CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C)(3) TAX EXEMPT ORGANIZATION

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ENFORCEMENT OF THE FIFTY MILL LIMITATION

THE ISSUE IN A NUTSHELL

In September of 1989, the Research Council issued a study, Local Property Tax Limitations in Michigan (Report No. 295), which concluded that “[t]he enforcement of the fifty mill limitation is not self executing. Rather, responsibility for its enforcement appears to rest with county commissioners.” In August of 1990, the State Attorney General issued an opinion that concluded it is indeed the legal responsibility of the board of commissioners of each county to ensure that the fifty mill limitation of the state Constitution is not violated in any local unit of government within a county. This **Council Comments** provides a brief background of the issues, followed by a summary of the Attorney General’s opinion.

Background

Section 6 of Article 9 of the state Constitution provides limitations upon the rate of local ad valorem property taxation of fifteen, eighteen, and fifty mills. (A mill is equal to one-tenth of one cent or one dollar per thousand.) Millage levied within the **fifteen** mill limitation is allocated on an annual basis among unchartered counties unchartered townships, and school districts by a tax allocation board in each county.

As an alternative to the fifteen mill limitations the voters of a county may adopt under procedures provided by law a separate, fixed allocation for the county, townships, and school districts of not to exceed **eighteen** mills. Because the allocation remains fixed unless altered by county voters, there is no need for a county tax allocation board to annually divide up the allowable millage. Voters may increase both the fifteen and eighteen mill limitations to a maximum of **fifty** mills, for not to exceed twenty years at any one time. Such millage is generally referred to as “extra-voted,” because it is in addition to that allocated within the fifteen or eighteen mill limitations.

The fifteen, eighteen, and fifty mill limitations apply to operating millage levied by unchartered counties, unchartered townships, and to millage levied by school districts for current operating expenses. However, these limitations do not apply to debt service millage, nor to operating millage levied by any city, village, charter county, charter township, charter authority, or other authority the tax limitations of which are provided by charter or general law. So much millage is excluded from the limitations that the 1990 statewide average millage rate was 57.17 mills and the total millage rate in eight municipalities -- Benton Harbor, Detroit Ecorse, Highland Park, Inkster, Leslie, Melvindale, and Oak Park -- exceeded eighty mills.

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The Responsibility for Enforcing the Fifty Mill Limitation

The general property tax act requires county commissioners to convene each October to apportion such millage rates within each county “as shall be authorized by law.” There is some question, however, regarding the extent to which county commissioners attempt to determine, before apportioning taxes, whether proposed operating millages would, in the aggregate, exceed fifty mills. The above-referenced 1989 Research Council report, which utilized data from county apportionment reports filed annually with the state tax commissions identified instances in four counties in which county commissioners had approved aggregate operating millages in excess of the fifty mill limitation.

The 1990 Attorney General’s opinion reached four basic conclusions. First, it is the lawful responsibility of the board of commissioners of a county to ensure that the fifty mill limitation of the state Constitution is not violated in any local unit of government within a county. (OAG 1989-90P No. 6654.) Second, should the board of commissioners of a county fail to discharge this responsibility, any interested party aggrieved by such failure may appeal to the state tax tribunal.

Third, the opinion noted that if county commissioners determine at their October meeting that millage proposed to be levied by a local unit of government will cause the limitation to be exceeded, the commissioners must reduce the rate of the proposed millage by an amount sufficient to prevent the aggregate millage from exceeding the constitutional limitation. The proposed millage to be reduced is that which was last authorized by voters, a “last in, first out” approach. “Thus, it is this millage which must be reduced by an amount sufficient so as to result in the total mills levied being within the 50 mill limitation.” (OAG 1989-90, No. 6654 at 366.) Finally, the millage rate to be used in determining compliance with the fifty mill limitation is the authorized rate, as reduced by any rollbacks required by Section 31 of Article 9 of the state Constitution, or by statute. The levied rate cannot, of course, exceed the authorized rolled-back rate.