

## LOCAL PROPERTY TAX LIMITATIONS IN MICHIGAN

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**LOCAL PROPERTY TAX LIMITATIONS IN MICHIGAN**

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## MAJOR FINDINGS

- \* At the general election in 1932, Michigan voters approved an amendment to the 1908 state Constitution, which limited property taxation to fifteen mills on assessed value. (A mill equals one-tenth of one cent.) The amendment excluded taxes levied to pay principal and interest on existing debt and permitted voters by a two-thirds vote to increase the limit to a maximum of fifty mills for not to exceed five years at any one time.
- \* Beginning in 1933, the state Supreme Court handed down a succession of decisions which, as the Court itself subsequently observed, resulted in the fifteen mill amendment being "bruised, beaten and backed to the brink of sterile and forceless words." These decisions held:
  - that the amendment did not extend to property taxes levied by home-rule cities, special-charter cities, fourth-class cities, incorporated villages and later, charter townships and school districts, because those units were municipal corporations-
  - that the Legislature could amend at will the charters of municipal corporations to require unlimited taxation for specific purposes;
  - that the amendment did not cover special assessments;
  - that the appropriate base against which local property taxes must be levied was county-equalized value and later, state-equalized value.
- \* The 1963 state Constitution provides for a fifteen mill limitation, or an alternative "local option" of up to eighteen mills, either of which may be increased by voters to a maximum of fifty mills for not to exceed twenty years any one time.
- \* Millage levied within the fifteen mill limitation is allocated among local units on an annual basis by a tax allocation board in each county, while millage levied under the local option is fixed by the local electorate. Voters in seventy of the state's eighty-three counties have adopted a fixed allocation as of 1988; in forty-eight instances the allocation has been fixed at fifteen mills.
- \* The fifteen, eighteen and fifty mill limitations apply only to operating millage levied by unchartered counties\* unchartered townships, and to millage for current operating expenses of school districts. Debt service millage levied by local units is excluded, as is operating millage imposed by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law. These exclusions explain why aggregate property taxes levied on some parcels of property exceed fifty mills. For example, the total property tax rates in the cities of Highland Park and Detroit during calendar year 1988 were 90.42 mills and 84.13 mills respectively.
- \* According to the state Attorney General, a township which incorporates after the effective date of the Headlee amendment (December 23, 1978) solely by virtue of a resolution and without a vote of the people remains an unchartered township for constitutional tax limitation purposes. Forty-four townships have incorporated by resolution since 1978 and are therefore subject to the Attorney General's ruling, assuming of course no subsequent validation by the

voters. Eleven other townships Incorporated by resolution during 1978 and would be affected if the resolutions were adopted between the 23rd and 31st of December 1978.

- \* Wayne County is the state's only charter county. In 1980, the state Legislature statutorily transferred from the fifteen mill limitation to the county charter the 6.07 operating mills then allocated to the county, thereby reducing the basic limitation governing school districts and unchartered townships in Wayne County to 8.93 mills.
- \* The Wayne County tax allocation board, according to its 1988 apportionment report, allocated millage in excess of the 8.93 mills lawfully available within the county. The unchartered township of Sumpter was allocated one mill, leaving only 7.93 mills to be allocated to any overlapping school districts. The boundaries of both the Huron and Van Buren school districts overlap with that of Sumpter Township; nevertheless, both school districts were allocated 8.65 mills.
- \* Apportionment data filed with the state tax commission in 1988 revealed four instances in which aggregate operating millage levied on parcels of property by a school district, unchartered county, and unchartered township is in excess of the constitutional fifty mill limitation.
- \* There appears to be no effective enforcement mechanism for the fifty mill limitations except for taxpayer lawsuits. While county commissioners are responsible for certifying all property taxes levied within a county, this appears to be a pro forma function.

**What the Fifty Mill Limitation Applies to:**

	<b>Operating Millage</b>	<b>Debt Millage</b>
<b>Unchartered Counties</b>	Included	Excluded
<b>Unchartered Townships</b>	Included	Excluded
<b>School Districts</b>	Included	Excluded
<b>Intermediate School Districts</b>	Included	Excluded
(special or vocational education operating millage)	Excluded	
<b>Cities</b>	Excluded	Excluded
<b>Villages</b>	Excluded	Excluded
<b>Charter Counties</b>	Excluded	Excluded
<b>Charter Townships</b>		
(incorporated before December 23, 1978)	Excluded	Excluded
(incorporated solely by resolution and without a vote of township electors on or after December 23, 1978)	Included	Excluded
<b>Charter Authorities, or Other Authorities</b> (such as district libraries and community colleges)	Excluded	Excluded

# LOCAL PROPERTY TAX LIMITATIONS IN MICHIGAN

## Introduction

The local property tax has long been the source of considerable public policy conflict, on occasion generating as much dissatisfaction from taxpayers as it has revenue for local units. The natural conflict between taxpayers and tax collectors is heightened with respect to property taxation, due to the nature of its chief object: the homestead is considered to be among the most sacred of possessions.

In 1932, this conflict culminated in a voter-initiated amendment to the state Constitution, limiting the aggregate rate of taxation. The adoption of the fifteen mill amendment represented the first time such a limitation upon the general power of taxation was placed in the fundamental law of the state, but the underlying conflict was not resolved. By 1963, when voters adopted a new state Constitution, the fifteen mill amendment had been so enervated through judicial interpretation, that it scarcely resembled what voters had originally enacted. The present state Constitution continues to limit the aggregate rate of property taxation, but there is much millage to which the limitations do not apply. Provisions were added to the state Constitution in 1978, again by voter initiative, to require voter authorization for local units of government to increase taxes or incur new full-faith and credit general obligation debt.

The Michigan Legislature has enacted more than twenty individual taxes to fund the operations of state government. Since revenue is derived from a number of sources, at the state level neither the need for revenue nor the likelihood of taxpayer dissatisfaction becomes linked to a single tax. In contrast, at the local level, property taxation is the primary revenue source and local units depend heavily upon it to fund governmental services. Local property tax collections were \$6.2 billion in 1988, based on the 1987 levy. Approximately \$4.4 billion, or seventy percent of this amount went to support local schools, while another \$960 million went to cities.

Due to this heavy dependence and the relative stability of the property tax, local officials generally view with disfavor any arrangement intended to limit that revenue. From this perspective, the only legitimate limit upon the level of taxation is the revenue needed to defray the cost of government. This perspective finds expression in advice given by bond counsel to local units of government that modern public finance demands unlimited taxing authority and in the deficit spending of some local units, which is justified on grounds that the importance of public services should take precedence over the availability of revenue.

A level of taxation seen by local officials as no more than necessary to fund governmental services, what the Michigan Supreme Court referred to in 1944 as "required revenue," may however, be viewed by taxpayers as unduly burdensome. Thus, Michigan taxpayers have on several occasions undertaken to limit property taxes, regardless of whether the resulting revenue was deemed sufficient by local officials. This report examines the history of these efforts, the treatment they have been accorded by state courts, and why these limitations have so often proven less effective than intended.

## **Part I. Origins of the Fifteen Mill Amendment**

### **A. Constitutional Background**

At the November 1932 general election, Michigan voters approved by a margin of 51.1 to 48.9 percent, an amendment to the 1908 state Constitution. The amendment resulted from an initiative petition and added Section 21 to Article 10. Section 21 provided that

[t]he total amount of taxes assessed against property for all purposes in any one year shall not exceed 1 and 1/2 per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases; Provided, that this limitation may be increased for a period of not to exceed 5 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a 2/3 vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation; Provided further, that this limitation shall not apply to taxes levied in the year 1532.

The amendment placed a limitation upon the millage which could be levied for all purposes -- operations and debt -- with one exception: taxes levied to pay principal and interest on existing debt could be levied without limitation as to rate or amount, this provision being necessary to ensure that obligations owed to existing creditors would not be impaired. The amendment provided that the fifteen mill limit could be increased to a maximum of fifty mills (5% of state-equalized value) for not to exceed five years at any one time, when approved by a two-thirds majority of the voters, or when provided for by the charter of a municipal corporation.

An economic depression provided the general context for passage of the amendment, as the number of foreclosures due to tax delinquencies grew and a substantial portion of the property tax levy was uncollected. Another factor was

the burden of the property tax was not distributed with reasonable equality between broad classes of taxpayers. The farmers had begun to lose ground economically prior to 1929. Since their wealth was chiefly invested in property which they felt was carrying too much of the cost of government, they were the first to start movements to broaden the tax base. They proposed an income tax, and propositions to amend the constitution to permit such a tax were voted on three times without success... Other efforts to broaden the tax base likewise met in failure. With these avenues of escape closed, the pressure on the property tax increased....

Real estate exploitation also proved an important factor in the situation. Especially in the Detroit area, but to a considerable extent in certain other cities and in resort areas, land had been subdivided out of all proportion to reasonable demand. A large number of citizens who had invested in vacant lots for speculative purposes suddenly found their investment slipping away, and were required to meet taxes out of other income. This group became sharply aware of the property tax and the burden it imposed. In the 1931 session of the legislature further efforts were made to broaden the tax base and thus relieve the property tax, but these again were confronted with constitutional inhibitions and with apathy on the part

of the legislature toward pursuing paths where such restrictions did not exist. The members of that legislature did nothing, being bound to tradition in tax matters and subjected to powerful minority interests which found it to their advantage to maintain the status quo. Meanwhile tax delinquency increased and property owners were threatened with loss of their property at tax sale....\*

In 1948, voters liberalized the fifteen mill amendment by permitting, the limit to be increased for up to twenty years at one time rather than five years, and by reducing the vote necessary to approve such increase from a two-thirds majority to a simple majority. Both alterations were advanced by school supporters as necessary for the construction of new buildings, with the former being Justified on grounds that approval of bonds would be easier to secure, that bonds could be issued more easily and at lower interest rates with a twenty year rather than a five year period.

### **B. Statutory Background**

In April of 1933, the Legislature adopted Public Act 62, known as the property tax limitation act. Act 62 provided for the creation of county tax commissions within each county to allocate among participating local units' millage permitted by the fifteen mill amendment. (County tax commissions were renamed county tax allocation boards when Act 62 was amended in 1941.) Each local unit within a county was required to file its budget with the commission by the third Monday in March of each year. It was the commission's responsibility to examine the various budgets and to fix an aggregate millage rate to be levied within the county, exclusive of debt service taxes. Consistent with **School District of City of Pontiac v City of Pontiac**, (262 Mich 338; 1933), decided the month before Act 62 was adopted, millage levied by a city or village pursuant to a charter or general law was excluded.

The statute provided that if the aggregate of the millage rates requested exceeded the rate allowed, the commission was required to allocate the lesser of the millage requested, or three mills to the county and four mills to schools. Townships were not mentioned in this regard. Once the minimum allocation was accomplished any remaining millage was to be allocated on the basis of several factors, including services that might have to be curtailed, the need of local units to construct or repair public works, the transfer of functions from one local unit to another, and any other facts deemed relevant by the commission.

### **C. The Court Interprets the Fifteen Mill Amendment**

The fifteen mill amendment was not long in existence before the state Supreme Court was called upon to resolve a number of questions, notwithstanding that the amendment was written in straightforward language. These questions generally regarded whether the limitation extended to all purposes for which property taxation could be imposed, or if not, what purposes were excluded. The first in a series of cases analyzed below, was decided within six months of the amendment's adoption. The cumulative effect of these decisions gradually eroded the effectiveness of the amendment.

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\* Harold D. Smith, "Tax Limitations in Michigan," Property Tax Limitation Laws, ed. Glen Leet and Robert M. Paige (Chicago: Public Administration Service, 1936), at 64.

## 1. The Exclusion of Municipal Corporations

In **School District of City of Pontiac v City of Pontiac**, (262 Mich 338; 1933), the fifteen mill amendment was challenged on the grounds here relevant that it did not apply to home-rule cities. Pontiac had incorporated under the provisions of Public Act 279 of 1909, the home rule cities act, and had adopted a charter limiting property taxes to twenty mills.

The Court began its analysis by noting that the fifteen mill amendment itself provided two exceptions thereto: taxes which were levied for payment of obligations already incurred, and the provision which allowed the limit to be increased, not to exceed fifty mills for not to exceed five years.

The Court then concluded that the drafters of the amendment had intended the phrase “or when provided for by the charter of a municipal corporation,” to constitute a third exception. At the time the amendment was adopted, municipal corporations were comprised of home-rule cities, special-charter cities, fourth-class cities, and incorporated villages. (The state Supreme Court later added charter townships in 1954, and school districts in 1957.) Thus, the Court concluded that Pontiac, as a municipal corporation, was excluded from the fifteen mill limit. The **Pontiac** decision in effect rewrote the pertinent portion of the fifteen mill amendment as though it read:

Provided, That this limitation may be increased for a period of not to exceed 5 years at any one times to not more than a total of 5 per cent of the assessed valuation, by a 2/3 vote of the electors of any assessing district, or [that this limitation may be increased] when provided for by the [present or future] charter of a municipal corporation. (262 Mich at 351.)

The phrase, “or when provided for by the charter of a municipal corporation,” might simply have been construed as one of two methods by which the fifteen mill limit could be increased: “by a 2/3 vote of the electors of any assessing district,” or “when provided for by the charter of a municipal corporation,” but by neither method in excess of fifty mills, nor in excess of five years. As interpreted by the Court however, the limit-could be increased even beyond fifty mills -- if a charter so authorized -- and without limitation as to the duration of such increase.

## 2. The Fifteen Mill Amendment and Home Rule

The **Pontiac** case implied that subjecting cities to the fifteen mill amendment would have been incompatible with home rule. The Court reasoned that “it would be a strange governmental operation... that the charters of the various cities of this State should be summarily amended by a constitutional provision which in spirit, if not in letter, was diametrically opposed to the recently developed policy of home-rule government in this State.” (262 Mich at 350.) This reasoning found little support in the 1908 Constitution.

While the concept of home rule, as embodied in Sections 20 and 21 of Article 8, was predicated upon local autonomy, there was no suggestion that local units would be the sole Judge regarding whether to limit their rate of taxation. To the contrary, Section 20 required the Legislature to establish a limit by general law. The fact that the Legislature selected twenty mills as the outer limit did not amount to a legislative finding that such millage was requisite to home rule. Given the tax climate in which the fifteen mill limit was adopted, it was not inconceivable that its draft-

ers intended to place all local units, including municipal corporations, on an equal footing by making fifteen mills the general rule.

Seconds excluding municipal corporations from the fifteen mill amendment relegated municipal residents to statutory or charter protection against unlimited property taxation. The drafters of the amendment doubtless selected a constitutional limitation because of the belief that it would be more difficult to circumvent. But among the reasoning implicit in **Pontiac** was that a constitutional limit was unnecessary since a municipal charter provided its own limit, one which could only be increased by a favorable vote of municipal residents. This conclusion stems from the statement that the fifteen mill amendment, as judicially interpreted, applied “to all taxing districts except those wherein by local action a higher percentage of taxation for local needs is expressly authorized.” (262 Mich at 351.) This statement failed to consider that charters were susceptible to legislative alteration, without a local vote.

In **Harsha v City of Detroit**, (261 Mich 586; 1933), the Court had held that the Legislature could statutorily “modify the charters of municipal corporations at will and that the State still retained authority to amend charters and enlarge and diminish their powers.” (261 Mich at 591; emphasis supplied.) And in **Hall v Ira Townships** (348 Mich 402; 1957), the Court stated that it was “the established law in Michigan that charter provisions of municipal corporations come into being by legislative enactment as well as adoption by local electors.” (348 Mich at 407.)

Since municipal charters were dependent upon enabling legislation, they could be amended indirectly by the Legislature whenever it amended the enabling legislation. Furthermore, in cases such as Public Act 359 of 1947 as amended, under which townships could incorporate, the Legislature had actually provided that the enabling legislation was the charter of the municipality. Thus, the protection against unlimited property taxation afforded by charter was tenuous indeed: precisely how tenuous was revealed in **City of Hazel Park v Municipal Finance Commission**, (317 Mich 582; 1947).

In April of 1946, the voters of Hazel Park approved the issuance of \$416,000 in general obligation bonds to finance a sewage disposal system. That November, the city council authorized the issuance of the same and an accompanying notice of sale, stating that the bonds would be payable “from ad valorem taxes within the 1.8 per cent [18 mill] charter tax limit for city purposes.” (317 Mich at 586.)

Public Act 202 of 1943, the municipal finance act, required the payment of principal and interest from ad valorem taxes without limitation as to rate or amount, notwithstanding the provisions of any charter. When the municipal finance commission refused to approve the bonds unless the notice of sale was amended accordingly, the city brought suit to compel approval. The city claimed that unlimited taxation would be unconstitutional since it had been subject to the fifteen mill limit until amending its charter to increase that limit to eighteen mills.

The state Supreme Court rejected the city's view, holding that “every municipal charter is subject to the Constitution and general laws of this State. The municipal finance act, supra, is a general law of the State, and applies here.” (317 Mich at 599.) In effect, the Court incorporated into the city charter that section of the municipal finance act which required payment of principal and interest from ad valorem taxes without limitation as to rate or amount. The **Hazel Park** decision and its progeny, when read together with the 1933 **Pontiac** decision, produced an ironic result:

having held that cities were not subject to the fifteen mill amendment because, among other reasons, it would have been incompatible with home rule to limit cities to less millage than authorized by charter, the Court now upheld the authority of the Legislature to statutorily supersede those same charters to require unlimited taxation for certain purposes.

The Court also addressed itself to the city's finances. Whether the city could meet its obligations within the eighteen mill limit established by its voters was no doubt a matter considered by the city council before authorizing issuance of the bonds. In any event, the financial health of Hazel Park was not an issue before the Court. Nevertheless, as in the **St. Ignace** case (See page 8), where the Court pondered the ability of local units to generate the “required revenue,” the Court in **Hazel Park** was not revenue neutral, noting that

we also assume that under that limitation [eighteen mills], if these bonds be issued and sold, the result will be that the city will not be able to pay the principal and interest thereon and in addition raise sufficient money by taxation to defray the necessary municipal expenses, unless the annual tax rate should exceed 1.8 per cent. (317 Mich at 599.)

**Voluntary Inclusion.** Two years after the **Pontiac** decision, the Court held in **City of Pontiac v Simonton**, (271 Mich 647, 656; 1935), that a home-rule city could amend its charter to bring itself “within the operation of the 15-mill amendment to the Constitution, as provided in article 10, section 21.” The charter amendment in question also required debt service taxes to be entered separately upon the assessment roll, and the Court held this provision did not impair the contractual obligation owed to bondholders. Prior to the charter being amended by voters in November 1934, debt service taxes were levied as part of general city taxes, the reason therefor being “to prevent any person advocating the payment of the general city taxes and the nonpayment of debt service taxes.” (271 Mich at 650.)

### **3. Refinancing of Existing Indebtedness**

It was held in **Wilcox v Board of Commissioners of Sinking Fund of City of Detroit**, (262 Mich 699; 1933), that the fifteen mill amendment did not prohibit issuance of bonds to refund or refinance obligations which existed when the amendment was adopted. This was so even if the new evidences of indebtedness bore a higher rate of interest than the old. “If, then, issue of new evidences of indebtedness to continue existing obligations require a different rate of interest, the amendment does not prohibit the levy of such rate on property.” (262 Mich at 703.)

### **4. The Meaning of Electors**

In **Wilcox**, the Court was also called upon to determine whether the term “electors” as used in the amendment with reference to the vote needed to increase the fifteen mill limit, meant all electors of an assessing district, the registered electors, or only those electors voting upon the increase. The Court noted that other provisions of the 1908 Constitution defined electors with more precision. For example, Section I of Article 5, dealing with the initiative and referendum, used the phrase “qualified and registered electors,” while Section 29 of the same Article, dealing with local acts, employed the phrase “electors voting thereon.”

Thus, “[o]rdinarily, the fact that different language is here used [in the fifteen mill amendment] than elsewhere in the Constitution would prompt a different construction, because it would indicate a different intention.” (262 Mich at 704.) However, the Court held that electors as used in the amendment meant those qualified and voting on the question noting somewhat caustically that the amendment was “so generally confusing and careless of language that difference in words has no force of indication that a different rule was intended.” (262 Mich at 704-705.)

## 5. Special Assessments

The question initially 'at issue in **Graham v City of Saginaw**, (317 Mich 427; 1947), was whether certain special assessments levied by the city were valid. The trial court had ruled them invalid on grounds the city charter did not require that special assessments be levied in proportion to the benefits derived. The trial court had further held that notwithstanding the charter, the special assessments would still have been invalid, no certificate having been filed to indicate that the levy was, in proportion to benefit.

The state Supreme Court, after a brief rendition of the facts, turned its attention to the question whether the fifteen mill amendment applied to special assessments, a question not even addressed by the trial court, since it had found the special assessments invalid on the other grounds above noted. The Supreme Court held that special assessments were excluded from the limit, noting that “[t]he distinction between taxes levied for general purposes and special assessments is well recognized.” (317 Mich at 431; emphasis supplied.)

The distinction between general property taxation and special assessment above referred to, had been consistently recognized in opinions of the state Attorney General, and in state court cases beginning with **Lefevre v Mayor, etc., of Detroit**, (2 Mich 586; 1853). The distinction is that the former is levied on an ad valorem basis within an entire assessing district, while the latter is only levied within a limited area against property which is especially benefited by an improvement. A special assessment is, however, a tax in the general sense that it constitutes a burden upon property which the owner thereof must discharge. The Court apparently found no significance in the all-inclusive language of the fifteen mill amendment which provided that “[t]he total amount of taxes assessed against property for AU purposes in any one year” was not to exceed fifteen mills. (Emphasis supplied.)

## 6. The Meaning of Assessed Valuation

Revenue generated by a tax is a function of its rate times the base to which it applies. The fifteen mill amendment limited both components of the local property tax. In addition to limiting the rate to fifteen mills, the amendment required property taxes to be levied on the basis of assessed valuation. Thus, the protection afforded by the amendment could be reduced either by placing certain millage without the fifteen mill rate, or by defining the base so as to broaden it. The 1933 **Pontiac** decision and that portion of the **Wilcox** decision which concerned refinancing existing debt, were examples of the former. There also emerged a series of cases discussed in this section which had the latter effect.

**County-Equalized Value.** The state Supreme Court defined “assessed valuation” in the case of **St. Ignace City Treasurer v Mackinac County Treasurer**, (310 Mich 108; 1944). In **St. Ignace**, the city assessor and board of review set the assessed value of city property at

\$1,310,378. The county board of supervisors equalized the property, thereby adding \$205,002 to the base, and then directed the city treasurer to levy the eight mills allocated for county purposes upon this higher equalized base.

The city treasurer, interpreting assessed valuation to mean that fixed by the city assessor and local board of review, proceeded to levy taxes upon that base. The Court concluded, however, that local assessments were tentative in nature and not to be considered final “until equalized by the board of supervisors and, upon appeal, by the State tax commission.” (310 Mich at 117.)

The city treasurer had also contended that statutory provisions relative to county equalization were repealed by the fifteen mill amendment, a contention with which the Court disagreed. It reasoned that the constitutional requirement of uniformity of taxation could only be given effect through the process of equalization. In this regard, it was noted that state law authorized county boards of supervisors to equalize assessments among taxing districts within a county. The statute further provided for taxpayer appeal from such equalization, and authorized the state tax commission to correct improper county equalization. Thus, the Court concluded that “the term ‘assessed valuation’ as used in the amendment [meant] the equalized valuation as determined by the board of supervisors and State tax commission.” (310 Mich at 115.)

The Court added by way of dictum that to eliminate county equalization would “result in a chaotic inequality of assessments and undoubtedly in a failure to produce the required revenue.” (310 Mich at 118; emphasis supplied.) While the Court failed to define “required revenue,” the phrase would be repeated with approval in the subsequent case of **Waterford Township v Oakland County Tax Allocation Board**, (312 Mich 556; 1945), where it was held that the millage allocated to townships should also be levied against county-equalized value.

**State-Equalized Value.** In 1954, the Court decided the case of **School District No. 9t Pittsfield Townships Washtenaw County v Washtenaw County Board of Supervisors**, (341 Mich 388; 1954). The initial question resolved in **Pittsfield** was whether the county board of supervisors could alter millage allocations fixed by the county tax allocation board. The Court noted that Public Act 62 of 1933, the property tax limitation act, classified the county as a local unit, and as such, the county was required to submit its proposed budget to the tax allocation board. Act 62, as amended in 1952, provided that a local unit which disagreed with the actions of the tax allocation board could appeal to the state tax commission. Since the county was a local unit subject to the tax allocation board procedure, and since the sole basis of appeal therefrom was to the state tax commission, the Court concluded the county board of supervisors was without authority to alter the division of millage.

The **Pittsfield** case is best remembered for requiring the local property tax to be levied on state-equalized value. Regarding this, the Court noted that state-equalized value was already the accepted basis with respect to inter-county school districts. Thus, if county-equalized value was regarded as appropriate for an intra-county school district,

and other local taxing units wholly within said county, it is apparent that a disparity, or inconsistency at once arises. In other words, we would have true cash value as fixed by the State board of equalization applicable to inter-county districts, and the materially lesser county-equalized valuation used elsewhere. (341 Mich at 406.)

The revenue impact of redefining assessed value as county-equalized value, and later as state-equalized value, was noted in Citizens Research Council of Michigan Report No. 208, entitled "A Comparative Analysis of the Michigan Constitution," Volume II, (October, 1960), prepared for the 1961 Constitutional Convention. Property values within the state in 1960 were locally assessed at \$16.6 billion. The process of county equalization increased this amount to \$20.8 billion, an increase of 25.3 percent. State-equalized value, as finally fixed by the state tax commission, was \$24.9 billion. This represented a 19.7 percent increase over county-equalized value and a fifty percent increase over local assessments. Thus, **St. Ignace** and Pittsfield greatly expanded the property tax base against which millage rates were levied and therefore the amount of revenue made available to local units.

The decision in **Pittsfield** would be recalled seven years later on the floor of the 1961 Constitutional Convention, when a delegate noted that

[w]hen we wrote that [fifteen mill amendment] into the constitution, we said 15 mills on assessed valuation. Now, those were not unknown words. We had used the term assessed valuation for generations. We thought we knew what they meant. But in the course of time, the [state] supreme court said, 'You didn't know what you were talking about when you said assessed value. You didn't mean assessed value, you meant state equalized value.' So just at one stroke the 15 mill limitation became about a 30 mill limitation. I Official Record, Constitutional Convention 1961, at 921.

## **7. Judicial Expansion of the Municipal Corporations Category**

Excluding municipal corporations from the fifteen mill amendment contained in the 1908 Constitution made it necessary to determine what types of local units were considered to be municipal corporations. As was noted above, at the time the amendment was adopted, the category consisted of home-rule cities, special-charter cities, fourth-class cities, and incorporated villages. Beginning in 1954, with the case of **Charter Township of Warren v Municipal Finance Commission**, (341 Mich 607; 1954), the Court broadened this category to include several other types of local units.

**Charter Townships.** Warren Township had incorporated in 1950, under the terms of Public Act 359 of 1947 as amended. In April of 1954, the voters of the township approved several bond issues, the aggregate of which amounted to \$900,000. The township board approved a notice of sale indicating that the principal and interest on said bonds would be subject to the fifteen mill amendment and Public Act 62 of 1933, the property tax limitation act. At the April 1954 election, the township voters had also increased the limit by one mill specifically to pay principal and interest on the bonds.

As in **Hazel Park** (See pages 5-6), the municipal finance commission refused approval of the notice of sale unless it was amended to provide payment of principal and interest from ad valorem taxes, without limitation as to rate or amount. The township thus brought suit to compel approval by the commission. The township claimed that its tax rate was subject to the fifteen mill amendment and that a charter township was not a municipal corporation, as the term was used therein. The Court summarized the township's position as being that

the only municipalities excepted from the operation of the 15-mill constitutional amendment, by virtue of the decisions of this Court in **School District of the City of Pontiac v City of Pontiac**, 262 Mich 338, and **City of Hazel Park v Municipal Finance Commission**, 317 Mich 582, are incorporated cities and villages. (341 Mich at 615-616.)

Charter townships however, were held to be in the same category as villages and fourth-class cities, which the **Pontiac** case had concluded were municipal corporations. In so holding, the Court in **Warren Township**, noted that Section 1 of Act 359, under which the township incorporated, stated that the act constituted the charter for such municipal corporations. Thus, the municipal finance commission was not required to approve the notice of sale unless it was amended to provide payment of principal and interest from ad valorem taxes without limitation as to rate or amount.

**School Districts.** In 1957, in the case of **Hall v Ira Township**, (348 Mich 402; 1957), the Court held that school districts were likewise municipal corporations for purposes of the fifteen mill amendment. This result was consistent with a line of cases beginning with **School District No. 4 of the Township of Marathon v Frank W. Gage**, (59 Mich 484; 1878), which had held that school districts were municipal corporations within other contexts. The Court also noted that the municipal finance act, which was here again in question included school districts within the term “municipality.” Therefore, the Court viewed the **Hazel Park** decision as dispositive in the instant case. The municipal finance act was considered to be a part of the school codes which in turn was treated as the school charter.

The **Hall** case revealed a shortcoming in the approach adopted by the Court to determine whether a local unit was a municipal corporation for purposes of the fifteen mill amendment. The approach was grounded in the view that the Legislature had provided statutory charters. There was no assurance however, that a statutory charter would contain all the safeguards which local residents might deem appropriate were they to frame and adopt their own charter. Illustrative of this point is that the school code contained no limit upon the levy of taxes for basic operations. To the contrary Section 563 of the code required the board of every school district to “vote to levy such taxes as may be necessary for all school operating purposes....” As a result, school districts were placed in the unique position of being subject to neither constitutional nor statutory limitation. The practical effect of treating charter townships and school districts as municipal corporations is that counties and unchartered townships were the only local units left subject to the amendment.

In due course, the Court also held operating millage levied by a county school district for special education to be exempt from the fifteen mill amendment. **Kent County Board of Education v Kent County Tax Allocation Board**, (350 Mich 327; 1957). The Court observed that voters of the school district had approved adoption of the relevant sections of the school code and had limited the taxes to be imposed for special education to one half of one mill. Thus, the Court concluded that “so far as concerns this distinct subject of special education, these sections [of the code] form the statutory charter of each ratifying county school district.” (350 Mich at 331.)

**Authorities.** Charter townships and school districts were held to be municipal corporations, and therefore beyond the reach of the fifteen mill amendments by the Court through its interpretation of the 1908 Constitution as amended. After the **Warren Township** and **Hall** cases, it became

apparent however, that the Legislature might also establish new taxing entities and denominate them municipal corporations. If this approach were allowed, the fifteen mill amendment might be entirely circumvented.

The state Supreme Court was confronted with this situation in the 1958 case of **Bacon v Kent-Ottawa Metropolitan Water Authority**, (354 Mich 159; 1958). At issue in **Bacon** was Public Act 4 of 1957. Act 4 was the latest in a series of laws under which Grand Rapids and several other local units sought to address a water shortage. Under one of the prior acts, several local units had attempted to establish an authority with power to construct and finance a water-supply system. Each participating local unit would have contracted to purchase water from the authority and would have been required to pledge its full faith and credit to finance its share of costs. Several of the local units were townships subject to the fifteen mill amendment, and it was thought that the limitation would render participation by the townships infeasible.

The Legislature then adopted Act 4, Section 16 of which provided that taxes to pay the bonded indebtedness of the authority were to be levied without limitation as to rate or amount. Seven local units, of which three were townships, proceeded to form an authority, claiming that it was a municipal corporation for purposes of the fifteen mill amendment and thus, exempt therefrom.

Justice Eugene Black, writing for the majority in **Bacon**, began with the observation that

[t]hrough and by means of an attritional series of judicial decisions the 15-mill amendment has been bruised, beaten and backed to the brink of sterile and forceless words. No intervening act of the electorate brought this about. (354 Mich at 164.)

The question to be resolved by the Court might be framed as follows: could the Legislature create taxing entities denominated as municipal corporations provide them with statutory “charters,” and thereby use the judicially established municipal corporations exception to circumvent the amendment? “As we shall see, our duty in exploring this question is to scrutinize the prevailing conditions and the 'existing laws' which unitedly formed the circumstances under which this amendment of 1932 was conceived and voted into the Constitution.” (354 Mich at 168.)

Guided by this principles the Court concluded that under existing law in 1932, municipal corporations were understood to refer to home-rule cities, special-charter cities, fourth-class cities, and incorporated villages; and as later augmented by the Court itself, charter townships and school districts. Thus, the Court held unconstitutional legislative attempts to circumvent the fifteen mill amendment “by calling any legislative creature a 'municipal corporation' when that creature would not, in 1932, have been properly classed as a 'municipal corporation.'” (354 Mich at 177.)

It should be noted however, that the holding in **Bacon** did not affect the authority of the Legislature to establish municipal corporations for purposes unrelated to the fifteen mill amendment. Nor did it remove the possibility that the Court might further expand the municipal corporation category.

To summarize at this point, the state Supreme Court held in 1933, that municipal corporations (i.e., home-rule cities, special-charter cities, fourth-class cities, and incorporated villages) were not covered by the fifteen mill amendment. Then, having so concluded, the Court later upheld the authority of the Legislature to amend at will the charters of such local units. Along the way,

costs resulting from refinancing existing indebtedness and special assessments were also held to be outside the amendment. In addition, the Court required local property taxes to be levied against county-equalized value, and later, against state-equalized value. Finally, in 1954 and 1957 respectively, the Court expanded the municipal corporation category to include charter townships and school districts.

This was the condition of the fifteen mill amendment on the eve of the 1961 Constitutional Convention. In viewing the amendment from the vantage point of the late 1950s, it seemed clear that in construing the amendment, the “Court visibly and admittedly ha(d) looked with jaundiced eye on efforts of the people to restrict taxation by constitutional means.” **Lockwood v Commissioner of Revenue**, (357 Mich 517, 575; 1959). Furthermore, the Court failed to follow the approach long ago set forth in **ex rel Bay City v State Treasurer**, (23 Mich 499; 1871). It was said in **Bay City** and quoted with approval in **Bacon**, that

[c]onstitutions do not change with the varying tides of public opinion and desire; the will of the people therein recorded is the same inflexible law until changed by their own deliberative action; and it cannot be permissible to the courts that in order to aid evasions and circumventions, they shall subject these instruments, which in the main only undertake to lay down broad general principles, to a literal and technical construction, as if they were great public enemies standing in the way of progress, and the duty of every good citizen was to get around their provisions whenever practicable, and give them a damaging thrust whenever convenient. They must construe them as the people did in their adoption, if the means of arriving at that construction are within their power. (23 Mich at 506.)

## Part II. Present Constitutional Provisions

The fifteen mill limitation is now contained in the first paragraph of Section 6 of Article 9 of the 1963 state Constitution as amended, and provides that

[e]xcept as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of assessed valuation of property as finally equalized. Under procedures provided by **law**, which shall guarantee the right of initiative separate limitations for any county and for townships and school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution voting on the question.\*

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\* Section 6 of Article 2 provided that only a property owner, or the husband or wife thereof, could vote “for an increase of the ad valorem tax limitation imposed by Section 6 of Article 9 for a period of more than five years, or for the issue of bonds.” Section 6 of Article 2 was rendered unconstitutional by **City of Phoenix, et al v Kolodzejski**, (399 US 204; 1970). In that case, the United States Supreme Court held that restricting the right to vote on the issue

In addition to the fifteen and fifty mill limitations, both of which were features of the 1932 amendment, the current Section 6 also provides for an alternative eighteen mill limitation. These provisions are best understood through an examination of events at the 1961 Constitutional Convention.

## **A. Developments at the 1961 Constitutional Convention Relative to the Fifteen Mill Limitation**

### **1. The Nature of the Problem**

The proposal which became Section 6 was introduced in the Convention on February 9, 1962. Committee Proposal 56 originated from the Convention's committee on finance and taxation. The committee sought to eliminate what it perceived to be the divisive competition for millage waged each year by taxing units then subject to the fifteen mill amendment. Delegate Brake, who was chairman of the committee, described this competition as follows:

It has been something that nobody has liked, particularly the good men and women who had the responsibility for making the determination on the tax allocation boards. There have been all kinds of charges, all kinds of dissatisfaction. The county government people have quite frequently claimed the boards were loaded in favor of the schools; the school people have very commonly claimed that the boards were loaded in favor of the county government; and townships have generally felt that they were ignored no matter what their needs were, and I think in some instances that was probably true. There has been general dissatisfaction. 1 Official Record, Constitutional Convention 1961, at 913-14.

The solution proposed by the committee was to provide a fixed maximum for non-voted millage for each taxing unit then subject to the fifteen mill limit. The tax limitation for each taxing unit would have been equal to the highest millage that had been allocated to that taxing unit during the last five years preceding 1962 (1957 through 1961). Thus, for example, if during a particular year within the last five years, a county tax allocation board had given that county ten mills and the remaining five to school districts, and the following year had reversed the allocation, both the county and school districts would have been entitled to a maximum of ten non-voted mills. Because some townships had often received no millage from tax allocation boards, townships would have been guaranteed a minimum of one mill. It was readily conceded by supporters of this approach that the aggregate taxation in some counties might be greater than fifteen mills, but it was thought such an increase would be slight; “[g]enerally it would be 16 or 16.25 [mills], right along in there.” Id, at 922.

Throughout the debate over Proposal 56, there was evidence of a philosophical split between those delegates who believed that the fifteen mill limit should be removed from the Constitution altogether -- either because it had, in their opinion, outlived its usefulness or because of the view that the Legislature should be permitted to establish maximum rates by statute -- and those dele-

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ance of general obligation bonds to property owners violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Footnote 11 of the case listed Michigan as one of thirteen other states imposing such a restriction.

gates who believed the fifteen mill limit ought to be retained, if only because it was, in their opinion, of symbolic importance to the voters.

This philosophical split was quite clear from the moment the delegates began to discuss Proposal 56. After substantial debate, the Convention adopted, by a vote of eighty-four to thirty-five, an amendment to Proposal 56 (the Turner amendment), which in effect reinstated the fifteen mill limit contained in the 1908 state Constitution. The only substantive difference was that a provision was added dealing with school districts which extended into more than one county.

Thus, the Convention as a whole had apparently reaffirmed its commitment to the fifteen mill limit. However, shortly thereafter -- on the same day -- the Convention again amended Proposal 56, this time to eliminate the fifteen mill limit; this latest amendment (the McCauley amendment), which was adopted by a vote of sixty-five to fifty-threes allowed the Legislature by general law to fix the rate of property taxation levied by counties, townships, school districts and other political subdivisions.

## **2. The Compromise Proposal**

Proposal 56, in the form of the McCauley amendment, had scarcely been referred to the committee on style and drafting before members of the finance and taxation committee began work on another substitute proposal. Thus, by the time the style and drafting committee reported Proposal 56 back to the Convention on April 19, 1962, having added only the phrase "real and tangible personal property," to clarify the base to which ad valorem rates would apply, the Convention was presented with a so-called "compromise settlement." The compromise attempted to steer, a middle course between those delegates who wished to retain the fifteen mill limit and those who wished to eliminate tax allocation boards. This first objective, retaining the fifteen mill limit, was achieved through adoption of language which provided that

[e]xcept as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of assessed valuation of property as finally equalized. 2 Official Record, Constitutional Convention 1961, at 2628.

**The Optional Eighteen Mill Limitation.** The second objective, eliminating the tax allocation board process, was achieved by providing a separate limit which could be established by local option. Under procedures provided by laws the voters of a county were authorized to adopt, in lieu of the fifteen mill limit, a separate limit for the county, together with townships and school districts contained therein. Voters within a county adopting this option would establish a fixed allocation of millage among each taxing entity, thus obviating the need for a tax allocation board. Delegate Brake offered the following explanation in support of the compromise settlement:

We provide here that any county which, by a vote of the people, so desires may adopt a fixed division of millage; so much for the schools, so much for the townships, so much for the county, which shall stand without any action on the part of any allocation board until such time as the people themselves change it. It would not be necessary for any negotiations or any hearing every year. Until it proves that the people are dissatisfied with the divisions that is it year after year. Id.

Therefore, the second sentence of Section 6 as adopted, provided that

Under procedures provided by law, which shall guarantee the right of initiative, separate limitations for any county and townships and school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. Id.

Perhaps anticipating the question being asked why the maximum rate of the local option was set at eighteen mills rather than fifteen mills, Delegate Brake further noted that

Now we were convinced that in order to get such a thing adopted by the people of any county you would have to have pretty generally the agreement of the schools, the counties, and the townships. We were convinced that you would not generally be able to get that agreement and still stay within the 15 mills; that there would have to be a little leeway in order to come to such an agreement. We have therefore suggested to you a maximum of 18 mills. Id.

Voters in seventy of Michigan's eighty-three counties have adopted a fixed allocation of millage under the local option provision as of 1988. It is noteworthy that in the majority of instances the allocation has been fixed at fifteen mills.\*

**The Fifty Mill Limitation.** The third sentence of Section 6 provides that taxes levied under either the fifteen mill limitation or the local option may be increased by the voters 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, it being in addition to that which is allocated, either by tax allocation boards or by the voters.

The fifty mill limit was nearly eliminated by the Convention. The aforementioned compromise proposal added the phrase, "except as otherwise provided by law," after the phrase the fifteen and eighteen mill limitations "may be increased to an aggregate of not to exceed 50 mills on each dollar of such valuation." The added language would have permitted the Legislature to exceed the limitation by statute.

Delegate Brake was of the opinion that the phrase in question had been "put in on the floor, not in the committee on finance and taxation," (actually, the record indicates it was part of the compromise proposal which Delegate Brake presented on April 19, 1962), and that it meant "the legislature could raise the 50 mill limit or put it down. You could go either up or down." 2 Offi-

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\* Otsego, (13.06); Alcona, Alger, Alpena, Antrim, Arenac, Barry, Benzie, Berrien, Branch, Calhoun, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Delta, Dickinson, Eaton, Emmet, Genesee, Gogebic, Grand Traverse, Hillsdale, Houghton, Iosco, Iron, Isabella, Jackson, Kalamazoo, Kent, Lake, Lapeer, Leelanau, Luce, Mackinac, Manistee, Marquette, Montcalm, Montmorency, Muskegon, Ontonagon, Ottawa, Presque Isle, Roscommon, St. Clair, St. Joseph, Tuscola, Van Buren, (15); Saginaw, (15.20); Gladwin, Sanilac, (15.25); Oscoda, (15.30); Huron, Mecosta, Menominee, (15.50); Lenawee, (15.55); Missaukee, (15.80); Gratiot, (15.82); Allegan, Bay, Cass, Oceana, Osceola, (16); Oakland, (16.46); Wexford, (16.80); Ingham, (17); Midland, Ogemaw, Washtenaw (18). Millage rates shown are authorized rates; rates actually levied may be lower.

cial Record, Constitutional Convention 1961, at 3163. However, the style and drafting committee interpreted the language as meaning the limit could only be increased, and the phrase was deleted by the Convention. *Ids* at 3164.

## **B. The Nonapplication of Limitation Clause**

The second paragraph of Section 6, often referred to by courts as the nonapplication of limitation clause, provides that

[t]he foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or, subject to the provisions of Section 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority the tax limitations of which are provided by charter or by general law.

### **1. The Butcher Decision**

The second paragraph of Section 6 has been the source of considerable controversy and litigation, since the expansiveness of the language employed appears in conflict with, if not repugnant to, the protection accorded by the first paragraph. This matter was addressed by the state Supreme Court in **Butcher v Township of Grosse Ile**, (387 Mich 42; 1972). Of the two questions confronting the Court in **Butcher**, the first was of constitutional dimension, and therefore pertinent here. That question was whether Grosse Ile township could

levy ad valorem taxes--without limitation as to rate or amount--that are required to pay an assessment imposed upon the township by a drainage district board under chapter 20 of the drain code, there being no approving vote of the electorate? (387 Mich at 52; emphasis in original.)

The Court concluded there was no constitutional restriction preventing local units from borrowing in anticipation of taxes to be imposed at a later date. It mattered not whether borrowing was in the form of bonds or other evidences of indebtedness, or whether the proceeds were used to pay assessments or contract obligations. The Court concluded that in all such cases, taxes could be levied without constitutional limitation as to rate or amount, even if the revenue produced thereby was used for operating expenses. The Legislature could of course provide a statutory limitation, but there no longer existed a constitutional limitation.

During the course of its opinions the Court pondered whether voters had been misled as to the content of Section 6 when they adopted the 1963 Constitution. For example, a concurring opinion in **Butcher** stated that

[w]hat purports to be a 15-mill general ad valorem tax limitation upon real and tangible personal property in the first paragraph of Section 6 is, if not illusory, certainly a much more miniscule limitation than was depicted to the people in the

Address to the People accompanying the proposed 1963 Constitution. (387 Mich at 66.)

In this regard, the majority opinion examined the explanatory statement in the “Address to the People” which indicated that Section 6 was “a revision of Sec. 21, Article X, of the present constitution which continues in substance the 15-mill limit on property taxes.” 2 Official Record, Constitutional Convention 1961, at 3399. But, the Court questioned whether the “substance” of the limit had in fact been retained, since the issuance of debt no longer required voter approval. (The present requirements of electoral approval in Section 6, were added thereto by a voter-initiated tax limitation amendment in 1978, and therefore postdate the **Butcher** decision.)

The majority opinion concluded that the Constitutional Convention had by means of the Address to the People, “yensed,” that is misled, voters regarding the actual content of Section 6. This conclusion was speculative at best, if not disingenuous. The language examined by the Court, that the “substance of the fifteen mill amendment was continued,” could have meant the substance of the amendment, not as originally enacted by the voters in 1932, but rather as bequeathed them by the Court when the delegates convened in 1961, a substance which was “bruised, beaten and backed to the brink of sterile and forceless words.” **Bacon v Kent-Ottawa Metropolitan Water Authority**, (354 Mich 159, 164; 1958). And as likewise noted in **Bacon**, this condition resulted from “an attritional series of judicial decisions,” without an “intervening act of the electorate.” *Id.*

Secondly, the paragraph by paragraph examination of the Address to the People undertaken in the majority opinion, omitted reference to the one-sentence paragraph which stated quite starkly that “[a]ll bond issues of local units of government will have unlimited tax support.” 2 Official Record, Constitutional Convention 1961, at 3399. There was no intimation that issuance would be contingent upon voter approval; and since such provisions as voter approval are generally considered to be in derogation of the general power to tax, no such restriction could be presumed.

### C. Millage Rates to Which Limitations Do Not Apply

As a result of **Butcher**, the following may be stated: the constitutional limitations contained in the first paragraph of Section 6 apply only to operating millage levied by unchartered counties, unchartered townships, and to millage for current operating expenses of school districts. Debt service millage levied by local units is excluded. Likewise excluded is millage “imposed for any other purpose [operating millage] by any city, villages charter county, charter township, charter authority or other authority the tax limitations of which are provided by charter or by general law.” These two broad categories of exclusions are examined below.

#### 1. Debt Service Millage

Taxes imposed, with voter approval, for the payment of principal and interest on debt are excluded from the constitutional limitations of Section 6, regardless of whether such debt is in the form of bonds, or other evidences of indebtedness, or payments for assessments or contract obligations. In contrast, the fifteen mill amendment excluded only millage levied for the payment of principal and interest on existing debt, an exclusion made necessary so as not to impair the contractual obligations of existing bondholders. Taxes levied in payment of debt issued after the ef-

fective date of the amendment fell within the fifteen mill limitation, or such higher limitation not to exceed fifty mills as authorized by the voters.

The second paragraph of Section 6 attempts to draw a distinction between operating millage, some of which is subject to limitations and debt service millage, all of which is excluded, if approved by the voters. Any constitutional limitation which applies solely to operating millage, and not also to debt millage, invites creative attempts to avoid such limitation by characterizing operating expenses as debt. This has occurred to some extent under the provisions of Section 6s as will be examined below.

In a general sense, debt may arise by either of two methods: through the issuance of bonds or other evidences of indebtedness, commonly referred to as borrowing; or from an excess of expenditures over operating revenues, commonly referred to as deficits. While Section 6 does not distinguish between the two methods by which debt may be incurred there are significant differences from the standpoint of public policy.

The issuance of evidences of indebtedness is a traditional means of generating revenue to finance capital projects such as building construction or other improvements. Typically, evidences of indebtedness mature over a substantial period of time which corresponds to the useful life of the capital project, with the project financed serving as one source of collateral which bondholders may reach in the event of default. Implicit in this method of financing is the view that it would be inequitable for current taxpayers to bear the entire cost of financing a capital project which will, because of its useful life, provide benefit to future taxpayers as well. For this reason, the use of operating revenues to finance capital projects has generally been deemed inappropriate. There are of course alternative methods of financing long-term capital projects which do not involve borrowing, an example of which are school district building and site funds.

In contrast to debt incurred to finance long-term capital projects, debt incurred in the form of deficits advances no legitimate public policy objective. To the contrary, deficits -- particularly chronic deficits -- suggest the inability of a unit of government to live within its revenue. However, whether a deficit results from the well-intentioned inability of a local unit to balance its budget, or from intentional over expenditures, it constitutes a legal obligation in satisfaction of which a creditor can demand payment. There are essentially two methods by which an operating deficit can be transformed into debt outside of constitutional limitation: by court-ordered judgment levy, or through use of operating deficit funding bonds.

**Judgment Levies.** Public Act 236 of 1961, the revised judicature act authorizes a court to order the levy of ad valorem taxes to pay a money judgment entered against enumerated types of municipalities. The question remains whether authorizing courts to impose taxes violates the separation of powers principle. Section 2 of Article 3 of the 1963 Constitution provides that “[t]he powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” The imposition of taxes is a legislative function. Quite apart from the separation of powers question is the additional concern raised by the fact that judgment levies are not constrained by tax limits and do not require voter approval.

Creditors of local units have availed themselves of the revised judicature act on numerous occasions. In 1984 for example, Hamtramck failed to honor contractual pay increases granted some

of its employees through arbitration. The city presented residents with a proposal to increase taxes. The purpose of the proposal has never been clear: since the city was already taxing at the maximum rate permitted by its charter and by state law, city residents could not have lawfully approved additional millage, even had they been so inclined. In any event, city residents were not so inclined and the proposal was defeated. The following day however, a judgment was entered against the city in circuit court, the effect of which was that over nine mills were levied outside of existing tax limits to pay a \$1.4 million judgment.

The constitutional and public policy question raised by judgment levies is not whether a creditor is entitled to payment, but whether payment should come from existing revenues, or from additional taxes imposed outside of existing limits. Unfortunately, this question has not received adequate consideration in judgment levy proceedings to date, principally because the litigants have had no compelling interest in raising the matter. On the one side have been municipal officials whose refusal to pay valid obligations -- because to do so might have required budgetary reductions which the officials were unwilling to make -- gave rise to litigation in the first instance. On the other side have been creditors, often constituent parts of the municipal government such as pension boards or public employee unions, with a financial stake in maintaining existing services.

The appropriate course would be for a court issuing a judgment levy to order that it be satisfied from existing revenue and leave it to municipal officials to decide what budgetary adjustments, if any, would be necessary for compliance. (Such a court order could be enforced under pain of contempt directed at appropriate municipal officials.) After all, the proper role of a court which issues a judgment against a municipality is to ensure that the judgment will be honored, not to relieve municipal officials from having to make budgetary decisions by permitting the judgment to be paid from court-ordered taxes levied outside of existing limitations.

**Operating Deficit Funding Bonds.** The state Supreme Court has upheld legislation authorizing a local unit to issue bonds to fund an accumulated operating deficit. **Advisory Opinion re Constitutionality of 1973 PA 1 and 2**, (390 Mich 166; 1973). The advisory opinion concerned legislation relative to school district operating deficits and held that

whether the purpose of the authorized bond issue be for the funding of capital expenditures, or as contemplated here, the funding of accumulated operating deficits the limitations of art 9, sec 6 do not apply and non-voted millage may be levied to pay principal and interest on such bonds. (390 Mich at 183.)

Permitting the discharge of accumulated operating deficits by bonded indebtedness is problematic for the same reasons which arise with respect to judgment levies. In both cases, obligations incurred in the course of daily- operations are not paid, but rather, are allowed to accumulate as debt. Once recognized as debt and bonds having been issued to finance the same, taxes can be levied without limitation as to rate or amount. Thus, the local unit is freed from the constraints which would have applied had the obligations been properly paid from operating millage. However, since the 1978 tax limitation amendment, such bonds can no longer be issued without voter approval.

## 2. Charter and Authority Millage

**Cities and Villages.** There are 271 cities and 263 villages in Michigan, the millage levied by which is excluded from the constitutional limitations of Section 6. Selected data are set forth in **Table 1.**

**Table 1**  
**City and Village Millage Rates**  
**(Based on 1987 Levy)**

	<b>Statewide Average</b>	<b>Lowest (Local Unit)</b>	<b>Highest (Local Unit)</b>
Cities*	16.69	2.50 (Stephenson)	39.52 (Hamtramck)
Villages	12.51	0.00 (Carney)	28.25 (Almont)

Source: State Tax Commission, 1987 Ad Valorem Tax Levy Report. \*Includes only that portion of city tax levy used for city purposes.

**Charter Townships.** There were ninety-eight charter townships in Michigan as of October 1988, the millage levied by which is considered to be excluded from the constitutional limitations of Section 6. Public Act 359 of 1947 as amended, the charter township act, provides two methods by which townships may incorporate: by a vote of the township electors or by resolution of the township board of supervisors, the latter method being added by amendment in 1976. Fifty-five of the above-mentioned townships incorporated by board resolution, while the remaining forty-three townships incorporated by a vote of the electors, according to a list compiled by the Michigan Townships Association. The mode of incorporation is of importance due to a recent ruling by the state Attorney General.

On June 16, 1989<sup>o</sup> the state Attorney General issued a significant opinion with respect to charter townships and the 1978 tax limitation amendment requirement of voter approval of new or increased taxes. Unchartered townships are allocated a minimum of one mill. By contrast, the charter township act authorizes charter townships to levy up to five mills without voter approval. The Attorney General concluded that “[b]y operation of law, the effect of the Headlee requirement for voter approval of a new or increased tax was to preclude the change in the millage limitation, from 1 to 5 mills, when a general law township became a charter township by resolution of the township board, but without a vote of the electors.” (OAG 1989, No. 6588 at 5.)

According to the Attorney Generals a township which incorporates after the effective date of the tax limitation amendments solely by virtue of a resolution and without a vote of the people, remains an unchartered township for constitutional tax limitation purposes. The tax limitation amendment took effect on December 23<sup>s</sup> 1978. Of the fifty-five charter townships which incorporated by resolution, forty-four of the resolutions were adopted after 1978 and would therefore be subject to the Attorney General’s rulings assuming of course that there was no subsequent validation by the voters. Eleven other charter townships were incorporated by resolution during 1978 and would be affected if the resolutions were adopted between the 23<sup>rd</sup> and 31<sup>st</sup> of December 1978. (See Appendix A.)

**Charter Counties.** Section 2 of Article 7 of the state Constitution authorizes any county to frame, adopt, amend or repeal a charter, subject to general law. Three years after the Constitution was adopted, the Legislature enacted Public Act 293 of 1966, the charter county act. Act 293 was subsequently amended and in November 1981, Wayne County voters adopted a proposed charter, making Wayne County the sole charter county in Michigan.

The county, and other unchartered local units therein, were subject to the fifteen mill limit at the time the charter was drafted. The county tax allocation board authorized the county to levy 6.07 operating mills from within such limit. The remaining 8.93 operating mills were allocated by the board to school districts and unchartered townships. Since charter millage is outside the fifteen mill limit, according charter status to the county would have permitted the tax allocation board to reallocate to school districts and unchartered townships the 6.07 mills previously allocated to the county. It was felt that this potential tax increase might jeopardize passage of the charter.

The Legislature responded by passing Public Act 24 of 1980, which amended Public Act 62 of 1933, the property tax limitation act. The amendatory provisions authorized the county to levy 6.07 mills. Any increase -- up to a limit of ten mills -- required voter approval. (Similar provisions were also placed in the charter.) Act 24 in affect transferred the county's operating millage from within the fifteen mill limit to the charter. Thus, the basic limitation governing school districts and unchartered townships in Wayne County was reduced from fifteen mills to 8.93 mills.

Two questions may be asked with respect to Public Act 24. First, was it within the authority of the Legislature to direct the allocation of millage from within the fifteen mill limit to a local unit no longer subject to it, by virtue of having become a charter unit? The state Attorney General concluded that to be the legislative intent. (OAG 1981-82, No. 6001.) Secondly, was it the intent of the Legislature that the 6.07 mills transferred from the fifteen mill limit also be removed from the fifty mill limit? In other words, was the intent to also reduce the fifty mill limit to a 43.93 mill limit (fifty mills minus 6.07 mills), or to add the 6.07 mills to that which could be levied subject to voter approval? The statute itself suggests the Legislature intended only to reduce the fifteen mill limit.

Section 4(3) of Act 24 provides:

Each county which adopts a charter shall be allocated for charter county purposes, from the maximum tax rate which is fixed pursuant to section 6 of article 9 of the state constitution of 1963 without approval of the voters, a tax rate in mills equal to the number of mills allocated to the county either by a county tax allocation board or a separate tax limitation under this act in the year immediately preceding the year in which the county adopts a charter. (Emphasis supplied.)

The object of Section 4(3) is operating millage. The only operating millage contained within Section 6 of Article 9 of the state Constitution which may be levied without voter approval is that contained within the fifteen mill limit.

Also of relevance in this regard is the charter county act. Section 14(m), as originally enacted referred to both the fifteen and eighteen mill limits, but made no mention of the fifty mill limit. Section 14(m) provided:

For the levy and collection of taxes and the fixing of an ad valorem property tax limitation of not to exceed one percent of the state equalized value of the taxable property within the county. Not less than one half of such levy shall come from within the constitutional 15 to 18 mill limitation.

The above interpretation of Act 24 is also supported by the result reached in **Grosse Ile Committee For Legal Taxation v Grosse Ile Township**; (129 Mich App 477; 1983). In **Grosse Ile**, it was alleged that the 66.71 mills levied by the township were in excess of that permitted by the fifty mill limit. The court remanded the case to the state tax tribunal for a factual determination concerning whether the limit was in fact exceeded. The case had originally been dismissed by the tribunal on grounds that the proper forum was the Court of Appeals since plaintiffs' questions involved the 1978 tax limitation amendment. It was stipulated that 10.52 mills were excluded from the limit, leaving a balance of 56.19 mills in question. The tribunal then deducted another 10.64 mills, leaving a balance of 45.55 mills.\* Clearly 45.55 mills would have exceeded the 43.93 mills remaining if Act 24 had the effect of removing the county millage from the fifty mill limit.

It would appear that the Wayne County tax allocation board has in several instances allocated millage in excess of the 8.93 mills lawfully available. According to the 1988 county apportionment report, the unchartered township of Sumpter was allocated the one mill minimum required by Public Act 62 of 1933 as amended, the property tax limitation acts leaving only 7.93 mills to be allocated to any overlapping school districts.

The boundaries of both the Huron and Van Buren school districts overlap with that of Sumpter Township; however, both school districts were allocated 8.65 mills. The last sentence of Section 6 of Article 9 provides that “[i]n any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.” (Emphasis supplied.) While both Huron and Van Buren are inter-county school districts, the vast majority of the geographic area of each lies within Wayne County.

**Charter Authorities and Other Authorities.** Millage imposed by a charter or unchartered authority is excluded from the constitutional limits of Section 6. Clearly the intent of the Convention in placing authorities within the nonapplication clause was to adjust for their exclusion from the optional eighteen mill limit. At the time, some authorities were allocated millage from within the fifteen mill limit. The concern was that if the voters of a county adopted the local option of a fixed allocation, authorities would be deprived of any millage. 2 Official Record, Constitutional Convention 1961, at 3162. This was so because the eighteen mill option applied only to counties, together with townships and school districts therein. While the concern might have been resolved by adding authorities to the local units placed within the eighteen mill limit, the Convention chose instead to exempt them from the limitations of Section 6.

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\* The tax tribunal opinion indicates the stipulated millage consisted of: 1.80 mills for schools; 0.80 mills for the community college; 0.25 mills for the Huron-Clinton Metropolitan Authority; 1 mill for road improvement; 5.60 mills for sewer; and 1.07 mills for the intermediate school district. The tribunal deducted another 10.64 mills consisting of: 7.07 mills for the county, including debt millage; 1.32 mills for a township special assessment; and debt millage in the amount of 2.25 mills for a township water line.

The nonapplication of limitation clause does not define the term “authority.” Therefore, the question arises whether the Legislature could circumvent the constitutional limits of Section 6, either by redefining as authorities the only local units still subject thereto (school districts, unchartered counties and unchartered townships), or by establishing new taxing entities and designating them as authorities. For example, community colleges have been held to be charter authorities and therefore exempt from the constitutional limits of Section 6. (OAG 1980-81, No. 5866.) Public Act 331 of 1966, the community college act, constitutes a statutory charter for community colleges and limits the taxes which may be imposed for such purposes to five mills.

Establishing numerous authorities and providing them with statutory charters would be analogous to the legislative approach undertaken with respect to municipal corporations under the former fifteen mill amendment. **Bacon v Kent-Ottawa Metropolitan Water Authority**, (354 Mich 159- 1958). That approach was rejected by the state Supreme Court on the grounds that the term in question had to be construed as it was understood at the time the constitutional provision was adopted.

However, not all authorities have been held to be exempt under the nonapplication clause. An example of this type of authority was contained in Public Act 164 of 1955 as amended, the district libraries act. Under the terms of Act 164, any two municipalities, one of which was authorized to maintain or establish a library, could form a district library.

Section 4a of the act, added by Public Act 465 of 1978, provided that such municipalities “shall constitute an authority under section 6 of article 9 of the state constitution.” Thus, it appears the legislative intent was to place district library millage outside the fifty mill limitation. However, the Legislature did not set forth in the district libraries act, or by other general law, any limit upon the amount of millage which could be levied for such a purpose. This omission formed the basis of a 1979 state Attorney General opinion which concluded that, since no statutory millage limit had been provided, any millage levied in support of a district library must come from within the fifty mill constitutional limit. (OAG 1979-80, No. 5506.)

In the same opinion, it was noted that a district library was not a separate body corporate and did not itself impose a tax. Therefore, it was concluded that “a district library established pursuant to the act is not invested with any of the indicia of an 'authority' as that term appears within the context of Const 1963, art 9, sec 6.” (OAG 1979-80, No. 5506 at 200.)

Although two cases have been decided regarding district libraries, neither appears inconsistent with the reasoning employed by the Attorney General. For example, in **Jackson District Library v Jackson County #1**, (146 Mich App 392 1985), the Court of Appeals held that a district library was an “eligible authority” as defined by the single business tax act and was therefore entitled to its proportionate share of inventory reimbursement revenue from the state.

Also of interest in this regard is **Jackson District Library v Jackson County**, (428 Mich 371; 1987) decided by the state Supreme Court. In that case, the county entered into an agreement with the city of Jackson to establish a district library. In November 1982, county commissioners reduced the millage levied by the library, claiming the rollback was required by Public Act 5 of 1982, the truth in taxation act. That act requires a local unit to “rollback” its operating millage rate if, due to growth in the existing base, the rate would generate more revenue in the ensuing

year than in the concluding year. The act excludes from the rollback requirements operating millage of one mill or less levied by enumerated local units, including authorities.

The library argued that it was not subject to the rollback procedure because it levied only one mill and because it was an authority. The county argued however, that the rollback was required because the one mill library tax was a county tax. The county's position was that "it is the individual municipalities which join to create a district library [and not the district library itself] that constitute authorities--separate authorities--within the definition [of the truth in taxation act]." (428 Mich at 377.) The Supreme Court held that the district library was an authority for purpose of the truth in taxation act and that therefore its one mill was not subject to rollback.

The Court of Appeals and Supreme Court decisions concerning the Jackson district library held the district library to be an authority for purposes of the single business tax act and the truth in taxation act, respectively. Neither case addressed the Attorney General's conclusion that a district library is not an authority for purposes of Section 6 of Article 9 of the State Constitution. Likewise, neither case conflicts with the factual conclusion of the Attorney General that, since the Legislature had provided no statutory tax limitation, district library millage must come from within the fifty mill constitutional limit. (OAG 1979-80, No. 5506.)

Three statutes affecting district libraries were adopted on May 22, 1989, the most significant of which is Public Act 24. There are several noteworthy differences between Act 24 and the former district libraries act which Act 24 repealed. The former act, Public Act 164 of 1955 as amended, provided that the municipalities which joined to form a district library constituted an authority for purposes of Section 6 of Article 9. In contrast, Act 24 provides that a district library itself constitutes an authority.

Secondly, Act 24 provides a statutory tax limitation, thus excluding such millage from Section 6 of Article 9. A district library may levy with voter approval a district-wide tax not to exceed two mills. As noted above, the former act provided no tax limitation. In addition, Act 24 invests a district library with indicia of an authority by authorizing a governing board to acquire property, enter into contracts, and issue bonds. A separate statute, Public Act 25 of 1989, limits the indebtedness which may be incurred to five percent of the state-equalized value of property within the district.

District libraries organized under former Public Act 164 of 1955 have one year from the effective date of Act 24 to comply with its terms. It is unclear whether a district library which levied millage under the prior act can continue to do so under Act 24 without voter approval. Resolution of the question turns upon whether millage authorized by Act 24 constitutes new taxes for purposes of the 1978 tax limitation amendment. Although Act 164 predated the tax limitation amendment, Act 164 was repealed by and replaced with Act 24, an act which postdates the tax limitation amendment.

### **3. Other Millage**

Operating millage levied by an intermediate school district for purposes of special or vocational education is treated as exempt from the constitutional limits of Section 6. Due to the reasons discussed below, there is a question whether this treatment comports with the present state Constitution.

As was discussed in **Part I**, the state Supreme Court held in **Kent County Board of Education v Kent County Tax Allocation Board**, (350 Mich 327; 1957), that special education operating millage was exempt from the fifteen mill amendment, since voters of the school district had in effect adopted various sections of the 1955 school code as a statutory charter for purposes of special education. In 1981, the present school code was amended to accord similar treatment to operating millage levied by an intermediate school district for purposes of vocational education.

The result in the **Kent County** decision turned upon the reasoning in **Hall v Ira Township**, (348 Mich 402; 1957), that school districts were municipal corporations for purposes of the fifteen mill amendment. That school districts, including intermediate school districts, may continue to be classed as municipal corporations is not in doubt. However, the nonapplication clause of the 1963 state Constitution does not exempt operating millage levied by any local unit that happens to be a municipal corporation. Rather, the clause exempts only that operating millage imposed by any “city, village, charter county, charter township, charter authority or other authority....”

Clearly, if intermediate school districts are to come within the scope of the nonapplication clause, it must be in the form of charter authorities or other authorities. In this regard, it is noteworthy that the Legislature has not amended the present school code to establish intermediate school districts as authorities for purposes of Section 6 of Article 9 of the state Constitution. Rather, the Legislature has established an anomalous situation whereby a portion of the operating millage levied by an entity not enumerated in Section 6 as exempt from constitutional limitation is treated as charter millage.

#### **4. Special Assessments**

As a result of the state Supreme Court decision in **Graham v City of Saginaw**, (317 Mich 427; 1947), special assessments are not subject to constitutional limitations which apply to general property taxes. **Graham** however, dealt with what might be called “traditional” special assessments, which were distinguished from general taxes by several factors.

Traditionally, special assessments were used to finance capital improvements by requiring owners of property especially benefited to bear a proportionate share of the cost. For example, construction of a sidewalk might be financed by assessing the owners of property abutting the sidewalks with the measure of benefit (and thus cost) being equal to the proportion which the front footage of each parcel bore to the entire length of the sidewalk. Thus, the appropriate basis of special assessment is not ad valorem but rather benefit derived.

Secondly, special assessments were levied within a special assessment district comprised of benefited property, rather than throughout an entire assessing district. In addition, special assessments have been restricted by law to real property only -- both exempt and non-exempts rather than being levied on real and tangible personal property not exempt as is customary with general property taxes.

Statutes have increasingly blurred these distinctions, making it difficult to distinguish between general property taxes, which are subject to limitation, and special assessments. For example, several laws authorize the imposition of special assessments to finance routine governmental operations. Public Act 33 of 1951 authorizes enumerated local units to levy a special assessment to purchase firefighting equipment and to operate and maintain a fire departments while Public Act

181 of 1951, authorizes townships to purchase police equipment and to operate and maintain a police department. Because routine operations benefit the general public rather than particular property owners, special assessments are often levied on an ad valorem basis throughout an entire assessing districts further blurring the distinction between them and general taxes.

Local units have made use of special assessment statutes to levy considerable amounts of millage outside constitutional limitations. Among the examples found in tax apportionment data which counties are required to file annually with the state tax commission, are Clinton Township in Macomb County, which in 1988 levied nine mills (five mills for police and four mills for fire protection) and Canton Township in Wayne County which levied 8.68 mills (5.2 mills for police and 3.48 mills for fire).

#### **D. The 1978 Tax Limitation Amendment**

At the November 1978 general election, Michigan voters approved a tax limitation proposal, which amended Section 6 of Article 9 and added ten new Sections (Sections 25 through 34) to the same Article. For purposes here relevant, the tax limitation amendment effected three changes: voter approval is now required before local units may impose new or increase existing taxes; voter approval is likewise required before local units may issue new general obligation debt; and property tax revenue is limited by requiring taxing districts to adjust maximum authorized rates to offset growth in assessed valuation in excess of inflation. Each of these facets is examined below.

##### **1. Voter Approval of Local Taxation**

The tax limitation amendment requires voter authorization for a local unit to levy a tax which was not authorized by law or charter when the amendment took effect, or to increase the rate of a then-existing tax above that authorized when the amendment took effect. In addition, if the base of an existing tax is broadened through redefinition, the maximum authorized rate levied on the new base by each local unit of government must be reduced so as to yield the same gross level of revenue generated on the prior base.

Because the tax limitation amendment “grew out of the spirit of 'tax revolt' and was designed to place specific limitations on state and local revenues,” **Waterford School District v State Board of Education**, (98 Mich App 658, 663; 1980), it would be novel to suggest that the amendment repealed constitutional tax limitation which already existed. Nevertheless, this argument was made in **Grosse Ile Committee For Legal Taxation v Grosse Ile Township**, (129 Mich App 477; 1983). (This case was examined earlier with respect to whether the millage removed from the fifteen mill limit in Wayne County upon adoption of its charter was also removed from the fifty mill limit.) In answer to the allegation that it was levying millage in excess of the fifty mill limit, defendant township claimed that the tax limitation amendment had repealed the fifty mill limit and provided in lieu thereof the requirement of voter approval.

This contention was based on a misreading of Section 25P the first sentence of which provides that “[p]roperty taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval.” The word “limitations” was apparently interpreted by the township to refer to those contained in the first paragraph of Section 6, one of which is the fifty mill limit. The Court of Appeals noted however, that the tax

limitation amendment did not amend the first paragraph of Section 6, but rather the second paragraph, which contains the exceptions to the foregoing limitations. Therefore, the court concluded that

[t]hus, it appears that the only effect the Headlee amendment had upon section 6 was to impose the additional requirement of electorate approval before the exceptions to the 50-mill limitation would be operative. There is no indication that the Headlee amendment had any other effect upon the 50-mill limitation provision contained in section 6. (129 Mich at 495; emphasis supplied.)

## **2. Voter Approval of General Obligation Indebtedness**

Secondly, voter authorization is now required before local units may incur new debt in the form of general obligation bonds or other debt instruments which are supported by the full faith and credit of the issuing government. Previously, as noted by the state Supreme Court in **Butcher**, general obligation debt could be issued under Section 6 without voter approval, and taxes levied to pay the principal and interest thereon could be imposed without limitation as to rate or amount. It should be noted however, that local units are not required to seek voter approval before issuing limited tax obligation bonds, which are supported by an existing revenue source rather than the full faith and credit of the issuing government. Recently, the use of limited tax obligation bonds has occasioned some controversy because several local units have issued them to finance capital construction projects after voters rejected the use of general obligation bonds. To the extent that the use of limited tax obligation bonds poses a public policy problem, the Legislature can at any time supply a statutory remedy by requiring that such bonds not be issued without voter approval .

## **3. The Property Tax Revenue Limitation**

Finally, the 1978 amendment placed a limit upon property tax revenue by requiring local units to downwardly adjust -- "roll back" -- the maximum authorized rate if the state-equalized value of existing property (exclusive of new construction and improvements) increases by a larger percentage than the cost of living, as measured by the consumer price index. A rollback may be overridden if approved by the voters. The intended result is that gross property tax revenues in a local unit not increase faster than the rate of inflation without voter approval.

In Michigan, the property tax base is comprised of several distinct classes of realty (residential, commercial, industrial, agricultural, developmental, and timber-cutover), some or all of which may be found within a given local unit of government. While increases in the assessed value of residential property are often substantial, increases in the assessed value of other classes of property may occur at a more modest rate or may actually decrease. Industrial property for example, may decrease in value as it is depreciated over the course of its useful life. Since the rollback mechanism applies to the average increase in state-equalized value across all classes of property in a local unit, substantial increases in residential assessments may be offset by decreases or modest increases in other classes, thus preventing or reducing the magnitude of a rollback. The legislation which implemented this constitutional requirement also provides for upward adjustments in rates when assessed values increase at less than the rate of inflation, a feature clearly not prohibited by the tax limitation amendment.

### E. Enforcing the Fifty Mill Limitation

The enforcement of the fifty mill limitation is not self executing. Rather, responsibility for its enforcement appears to rest with county commissioners. Section 37 of the general property tax act requires the board of commissioners of each county to annually apportion such millage rates within the county as shall be authorized by law. Consistent with that requirement, county commissioners may refer to the prosecuting attorney for an opinion any legal questions regarding proposed millage.

Notwithstanding the above, the state tax tribunal concluded that county commissioners are not required to determine whether requested operating millage would in the aggregate exceed the fifty mill limitation. In reaching its conclusion, the tribunal misplaced reliance upon **Delta College v Saginaw County Board of Commissioners**, (395 Mich 562; 1975). **Delta College** merely held that a board of commissioners has a clear legal duty to approve authorized taxes and that a “board’s inquiry is limited to the question of whether the levies are ‘authorized by law.’” (395 Mich at 567.) By definition, operating millage which is subject to the fifty mill limitation, but levied in excess thereof cannot be considered “authorized by law.”

It is not known to what extent, if any, county commissioners attempt to determine prior to apportioning taxes whether requested operating millage would in the aggregate exceed the fifty mill limitation. Two facts are known, however. First, apportionment data filed with the state tax commission in 1988 revealed four instances in which the aggregate operating millage levied on parcels of property by a school district, unchartered county, and unchartered township is in excess of the constitutional fifty mill limitation.

Secondly, neither the Legislature nor the courts have definitively addressed the method by which millage subject to the fifty mill limit, but levied in excess thereof, should be reduced. There are essentially two approaches. One would be to require the local unit last receiving voter approval to levy additional millage to reduce its rate sufficiently to bring the aggregate rate to fifty mills. This approach has been described as last in, first out. The other approach would be to require a proportionate reduction among all local units subject to the fifty mill limit.

The issue of excess millage reduction was raised in **Grosse Ile Committee For Legal Taxation v Grosse Ile Township**, (129 Mich App 477; 1983), but the Court of Appeals appropriately declined to decide the matter, pending a determination by the tax tribunal whether excess millage was in fact being levied. While the tax tribunal concluded that the fifty mill limit was not exceeded in that case, the underlying issue is likely to grow in significance because there are an increasing number of instances where the aggregate operating millage levied by schools, unchartered counties, and unchartered townships is at or near fifty mills. (A list of those instances in which the aggregate operating millage levied on parcels of property exceeds forty-five mills is set forth in Appendix B.) As the number of units approaching the fifty mill limit increases, so will the likelihood that the limit will continue to be exceeded before the fact is discovered.

### F. Conclusions

Attempts by Michigan voters to constitutionally limit the level of ad valorem taxation have generally proven less effective than expected. In the case of the fifteen mill amendment adopted in

1932s the lack of effectiveness was the direct result of state Supreme Court decisions which reduced the amendment “to the brink of sterile and forceless words.”

The present state Constitution provides for fifteen, eighteen and fifty mill limits. As with the original fifteen mill amendment, present constitutional limits afford less protection than the voters may have expected when approving them. The reason is the same: there is much millage to which the limits do not apply. However, exceptions to present constitutional limits are not the result of case law, but of the constitutional provision itself. The **Butcher** decision merely clarified the scope of protection afforded by present constitutional limits. The constitutional limits contained in the first paragraph of Section 6 of Article 9 apply only to

— operating millage levied by unchartered counties, unchartered townships, and to millage levied for current operating expenses by school districts, exclusive of operating millage levied by intermediate districts for special or vocational education.

The limitations contained in the first paragraph Section 6 do not apply 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 by general law.

— debt service millage levied by any local unit of government.

Present state constitutional provisions relative to property tax limits were strengthened in 1978 with adoption of a proposal which

— requires voter authorization before local units may levy new or increase existing taxes above previously authorized rates.

— requires voter authorization before local units may incur new full-faith and credit general obligation debt.

— requires local units to downwardly adjust -- “roll back” --maximum authorized rates if the state-equalized value of existing property, excluding new construction and improvements, grows by a larger percentage than inflation. However, since the rollback applies to the average increase in state-equalized value across all classes of property in a local unit, increases in residential assessments are often offset by decreases or modest increases in other classes, thus preventing or reducing the magnitude of a rollback.

This analysis has raised a number of concerns regarding the present state of affairs relative to property tax limitations in Michigan. Compliance with existing constitutional and statutory requirements has been hampered by numerous exceptions which have produced a system that is so complex it is not entirely understood either by taxpayers, nor by many local officials who play a role in its administration. This complexity renders unlikely the possibility that the system can be adequately policed by taxpayer lawsuits. The need for resolution of these concerns should commend this matter to thoughtful consideration by citizens and policymakers alike since constitutional and statutory requirements should not lightly be disregarded.

## Appendix A

### Charter Townships Incorporated by Resolution

#### During 1978:

Township	County	Township	County
Brownstown	Wayne	Harrison	Macomb
Commerce	Oakland	Monroe	Monroe
Flint	Genesee	Mt. Morris	Genesee
Frenchtown	Monroe	Mundy	Genesee
Grand Blanc	Genesee	Plainfield	Kent
		Vienna	Genesee

#### Since 1978:

Township	County	Year	Township	County	Year
Alpine	Kent	1979	Kalamazoo	Kalamazoo	1979
Ann Arbor	Washtenaw	1986	Lyon	Oakland	1980
Bangor	Bay	1979	Milford	Oakland	1982
Bedford	Calhoun	1982	Monitor	Bay	1979
Benton	Berrien	1985	Montrose	Genesee	1985
Blackman	Jackson	1984	Northville	Wayne	1985
Brandon	Oakland	1986	Orion	Oakland	1984
Calumet	Houghton	1985	Oronoko	Berrien	1988
Cascade	Kent	1979	Oshtemo	Kalamazoo	1979
Clayton	Genesee	1979	Oxford	Oakland	1987
Coloma	Berrien	1987	Plymouth	Wayne	1979
Comstock	Kalamazoo	1979	Polkton	Ottawa	1986
Elmwood	Leelanau	1987	Portage	Houghton	1985
Emmett	Calhoun	1984	Rutland	Barry	1985
Eureka	Montcalm	1985	St. Joseph	Berrien	1982
Fenton	Genesee	1980	Sheridan	Newaygo	1986
Fort Gratiot	St. Clair	1979	Superior	Washtenaw	1979
Grand Rapids	Kent	1979	Texas	Kalamazoo	1985
Hastings	Barry	1985	Van Buren	Wayne	1983
Highland	Oakland	1982	West Bloomfield	Oakland	1982
Huron	Wayne	1985	White Lake	Oakland	1985
Independence	Oakland	1985	Ypsilanti	Washtenaw	1979

Source: Michigan Townships Association, "Michigan Township Officials," 1989-1992 Directory; CRC calculation.

**Appendix B**  
**Schools County, Township and Inter-mediate School Property Taxes,**  
**which in the Aggregate Exceed Forty-Five Mills\***

**1988 Tax Year**

School District (By County)	Millage Rate					
	School District	County	Township Name	Township	Intermediate School District	Total Millage
<b>WAYNE COUNTY</b>						
Grosse Ile	42.6523	0.0000	Grosse Ile	7.2005	0.0299	49.8827
<b>WASHTENAW COUNTY</b>						
Manchester	41.5000	5.3685	Manchester	2.2000	0.1171	49.1856
Lincoln	39.6200	5.3685	Augusta	2.1600	0.1171	47-2656
Willow Run	41.2200	5.3685		0.0000	0.1171	46.7056
Ypsilanti	40.4772	5.3685		0.0000	0.1171	46.9628
Whitmore Lake	36.1200	5.3685	Northfield	3.5705	0.1171	45.1761
<b>SHIAWASSEE COUNTY</b>						
Laingsburg	39.0300	6.6800	Sciota	1.0000	0.2450	46.9550
<b>ST. CLAIR COUNTY</b>						
Yale	36.0200	6.5700	Brockway	2.3000	0.2100	45.1000
<b>SAGINAW COUNTY</b>						
Buena Vista	38.4200	6.6600	Zilwaukee	3.9639	0.1500	49.1939
Saginaw	37.3000	6.6600	Zilwaukee	3.9639	0.1500	48.0739
<b>ONTONAGON COUNTY</b>						
White Pine	35.1600	12.0200	Carp Lake	1.0000	0.3200	48.5000
<b>OAKLAND COUNTY</b>						
Pontiac	39.00.00	4.8691	Bloomfield	6.4930	0.2303	50.5924
Ferndale	44.4900	4.8691		0.0000	0.2303	49.5894
Lake Orion	39.6281	4.8691	Addison	4.2075	0.2303	48.9350
Oxford	39.1000	4.8691	Addison	4.2075	0.2303	48.4069
Oak Park	43.3000	4.8691		0.0000	0.2303	48.3994
Madison Heights	41.9500	4.8691		0.0000	0.2303	47.0494
Clawson	41.0100	4.8691		0.0000	0.2303	46.1094
Royal Oak	40.1900	4.8691		0.0000	0.2303	45.2894
Berkley	40.0400	4.8691		0.0000	0.2303	45.1394
Brandon	35.4600	4.8691	Groveland	4.5000	0.2303	45.0594

**Millage Rate**

<b>School District (By County)</b>	<b>School District</b>	<b>County</b>	<b>Township Name</b>	<b>Township</b>	<b>Intermediate School District</b>	<b>Total Millage</b>
<b>MUSKEGON COUNTY</b>						
Muskegon Heights	43.5000	6.5250		0.0000	0.5000	50.5250
Muskegon	41.3088	6.5250		0.0000	0.5000	48.3338
Fruitport	37.4500	6.5250	Fruitport	3.7403	0.5000	48.2153
Whitehall	36.3500	6.5250	Blue Lake	4.8000	0.5000	48.1750
North Muskegon	40.2000	6.5250		0.0000	0.5000	47.2250
Reeths-Puffer	36.0000	6.5250	Dalton	3.2689	0.5000	46.2939
<b>MIDLAND COUNTY</b>						
Meridian	35.3000	7.3600	Jerome	2.5000	0.2000	45-3600
Bullock Creek	35.4000	7.3600	Greendale	2.3293	0.2000	45-2893
<b>MACOMB COUNTY</b>						
Mt. Clemens	43.9800	4.2000	Clinton	0.9443	0.2231	49-3474
Fraser	43.9378	4.2000	Clinton	0.9443	0.2231	49.3052
Romeo	38.6934	4.2000	Bruce	5.6322	0.2231	48.7487
Utica	40.9800	4.2000	Washington	7.1358	0.2231	48.0809
L Anse	41.0000	4.2000	Macomb	2.4304	0.2231	47.8535
Chippewa Valley	39.2800	4.2000	Macomb	2.4304	0.2231	46.1335
Centerline	41.6400	4.2000		0.0000	0.2231	46.0631
Richmond	36.6600	4.2000	Lennox	4.7460	0.2231	45.8291
Anchor Bay	36.5800	4.2000	Lennox	4.7460	0.2231	45.7491
<b>LIVINGSTON COUNTY</b>						
Hartland	39.6700	5.3555	Hartland	2.5226	0.0972	47.6453
Howell	38.1810	5.3555	Hamburg	3.9335	0.0972	47.5672
Brighton	37.5200	5.3555	Hamburg	3.9335	0.0972	46.9062
<b>LENAWEE COUNTY</b>						
Britton Macon	40.5000	5.7500	Ridgeway	4.0000	0.3000	50.5500
Sand Creek	36.2500	5.7500	Fairfield	4.0000	0.3000	46.3000
<b>LAPEER COUNTY</b>						
Dryden	35.9384	5.1730	Dryden	4.8230	0.2250	46.1594
<b>KENT COUNTY</b>						
East Grand Rapids	41.2796	4.7641		0.0000	0.0992	46.1429

**Millage Rate**

<b>School District (By County)</b>	<b>School District</b>	<b>County</b>	<b>Township Name</b>	<b>Township</b>	<b>Intermediate School District</b>	<b>Total Millage</b>
<b>KALAMAZOO COUNTY</b>						
Kalamazoo	42.7000	6.0600	0.0000	0.1500	48.9100	
Gull Lake	37.8300	6.0600	Richland	1.5000	0.1500	45.5400
<b>JACKSON COUNTY</b>						
Jackson	37.4229	7.3726	Liberty	1.0000	0.3960	46.1915
Grass Lake	35.9000	7.3726	Leoni	2.4603	0.3960	46.1289
<b>ISABELLA COUNTY</b>						
Mt. Pleasant	38-1600	7.1008	Union	3.0000	0.2800	48.5408
<b>INGHAM COUNTY</b>						
Haslett	41.2000	7.5700	Williamston	0.9984	0.2000	49.9684
Okemos	41.1000	7.5700	Alaiedon	0.9882	0.2000	49.8582
Dansville	40.7000	7.5700	Ingham	1.0000	0.2000	49.4700
Holt	41.1000	7.5700		0.0000	0.2000	48.8700
Williamston	39.4000	7.5700	Leroy	1.0000	0.2000	48.1700
Webberville	39.0000	7.5700	Leroy	1.0000	0.2000	47.7700
East Lansing	39.6000	7.5700		0.0000	0.2000	47.3,700
Lansing	37.7800	7.5700		0.0000	0.2000	45.5500
Mason	36.5000	7.5700	Aurelius	1.0000	0.2000	45.2700
<b>HURON COUNTY</b>						
Owendale Gagetown	41.0000	5.2200	Sebewaing	4.8500	0.1300	51.2000
<b>GENESEE COUNTY</b>						
Flint	41.3000	6.6800		0.0000	0.1700	48.1500
Linden	37.6300	6.6800	Gaines	1.0025	0.1700	45.4825
Kearsley	35.9000	6.6800	Davison	2.5400	0.1700	45.2900
Flushing	35.2858	6.6800	Flushing	2.8700	0.1700	45.0058
<b>EATON COUNTY</b>						
Grand Ledge	40.5000	5.5000	Roxand	2.2500	0.2000	48.4500
<b>CLINTON COUNTY</b>						
Fowler	39.5000	5.7999	Bengal	2.0000	0.2000	47.4999
St. Johns	38.9200	5.7999	Bengal	2.0000	0.2000	46.9199

School District (By County)	Millage Rate					
	School District	County	Township Name	Township	Intermediate School District	Total Millage
<b>CALHOUN COUNTY</b>						
Battle Creek	37.4200	5.8100	Pennfield	3.6992	0.2600	47.1892
Tekonsha	37.8200	5.8100	Fredonia	1.6000	0.2600	45.4900

Source: State Tax Commission, 1988 County Apportionment Reports and 1988 Special Assessment Reports; CRC calculation.

\* Debt millage is excluded, as is millage imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law. Special assessments are also excluded -- where reported as such and when levied on real property only. School districts county and township tax rates include both allocated and extra-voted millage, while intermediate school district tax rates include only allocated millage so as to exclude operating millage levied in support of special or vocational education. In instances where a local unit levied less than the millage authorized, the rate included is that actually levied, and where a school district traverses more than one unchartered townships the highest of the township rates is included. School district tax rates do not reflect the results of millage elections held subsequent to June 11, 1989.