

DEPARTMENT OF

ATTORNEY GENERAL

MEMORANDUM

August 15, 2011

TO: Kevin O'Brien  
Professional Surveyor  
Bureau of Construction Codes  
Department of Licensing and Regulatory Affairs

FROM: Stephen M. Rideout   
Assistant Attorney General  
Finance Division

RE: SBC Act 425 Agreement

You have requested my advice whether an incorporation petition under the State Boundary Commission Act is a transfer prohibited under MCL 124.29 of the Intergovernmental Conditional Transfer of Property by Contract Act (the "425 Act"), in regards to whether areas currently under the provisions of a 425 agreement can be included for the purposes of incorporating a village as a Home Rule City.

To fully understand the issue, a general review of the 425 Act is provided. As stated in The Conditional Land Transfer Act: Research, Reflections and Policy Recommendations,<sup>1</sup>

As the name implies, the "Conditional Land Transfer Act" permits two or more local units of government to enter into a written agreement to "conditionally transfer" property from one local unit to another. Local units are defined as cities, townships and villages.

What does it mean to "conditionally transfer" land under a PA 425 agreement? When land is conditionally transferred to another unit, for example from a township to a city, it is assumed that "for all purposes" the transferred property comes under the jurisdiction of the local unit to which the property is transferred. (PA 1984, No. 425, § 8). This means that the property becomes subject to the property tax levy of the receiving unit; the residents living in the transferred area, and non-residents working in the transferred area are subject to income tax if the receiving unit levies an income tax (Op. Atty. Gen. 1994, No. 6826); the property is afforded access to the full scope of services provided by the receiving unit; the property assessment records and voting records of residents will be transferred to the receiving unit; and the transferred land becomes subject to the planning and zoning controls of the receiving unit. In short, the transferred area comes under

<sup>1</sup> The Conditional Land Transfer Act: Research, Reflections and Policy Recommendations, Taylor, Harvey, and Shields (2005)

the complete control and jurisdiction of the unit to which the land has been transferred.

At issue is MCL 124.29, which states, in pertinent part:

While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract.

In this matter, there are three 425 agreements in place involving land contiguous to the Village of Dexter (the "Village") conditionally transferring these specific parcels from Webster Township (the "Township") to the Village. An incorporation petition has been submitted to the State Boundary Commission. The petition seeks the establishment of a new city which includes the area where the Village is situated, and the area covered by these 425 agreements. The issue presented is the effect of these 425 agreements in relation to this city incorporation petition.

In the event that the area becomes incorporated as a city under the Home Rule City Act, MCL 117.1 *et seq.*, at the time of the incorporation, the Village would no longer exist. Thus, it is axiomatic that the 425 agreements would be extinguished as one of the parties to the agreements (the Village) has ceased to exist, as there can't be a contract with only one party.<sup>2</sup>

Based on the above, it is my conclusion that at the time of the incorporation of a city there would not be any current 425 agreements in place, and thus there could not be a transfer that would be contrary to the requirements of MCL 124.29.

I am mindful that MCL 117.14 provides:

**117.14 Incorporation or annexation.**

Sec. 14. Whenever an incorporated village is incorporated as a city, without change of boundaries, such city shall succeed to the ownership of all the property of such village and shall assume all of its debts and liabilities.

However, nothing in Act 425 provides for a city to continue an Act 425 agreement in the place of a village which is no longer in existence (due to the incorporation of a new city in place of the village). In addition, the standard language found in city charters that the new city intends to acquire the contractual rights of the village and assume its contractual liabilities would appear to

---

<sup>2</sup> It is noted that in the 425 Agreement recorded in Liber 03451, Page 0344 of the Washtenaw County Register of Deeds that the Village and Township discussed the possibility that the Village might seek incorporation as a city in the future and provided some language to that effect in the Agreement. However, once the Village is dissolved at the time of the incorporation of the property as a city, the Agreement would become void as only one party to the Agreement would still exist.

Kevin O'Brien  
Page 3  
August 15, 2011

have no application in this situation in the absence of authorization by Act 425 for substitution of contacting parties in an Act 425 agreement.

This memorandum constitutes advice at the Division level and is not the formal opinion of the Attorney General.

SMR/sh

c: Molly Jason  
George Elworth

2011-0014821-ASBC Act 425 Agreement/O'Brien Memo