

AGENDA REPORT

TO: Mayor Pat Humphrey & the Clare City Commission
FROM: Ken Hibl, City Manager
DATE: January 14, 2016
RE: PA 269

For the Agenda of January 18, 2016

Background. The state recently passed legislation that precludes/prohibits local taxing entities (municipalities, townships, schools, libraries, counties, road commissions, etc.) from using any form or source of media (newsletters, television, infomercials, brochures) that is in any way, shape, or manner funded by tax dollars to inform voters regarding ballot or referendum issues. A detailed explanation regarding the background of the new law and its implications on local jurisdictions is outlined in the attached Issue Summary document.

The Michigan Municipal League (MML) has taken the lead in a coalition attempt to repeal or modify the law and have asked local governmental units to adopt a resolution (proposed sample att'd) urging their respective legislators to repeal or amend PA 269. The City Commission is asked to adopt the proposed resolution.

Issues & Questions Specified. Should the City Commission adopt a suggested resolution urging the repeal or amendment of PA 269?

Alternatives.

1. Adopt the suggested resolution.
2. Do not adopt the resolution.
3. Set aside decision regarding this matter to a later date.

Financial Impact. There is no direct fiscal impact related to adopting the resolution. But if the law is not repealed or amended, there is the potential to dramatically limit the actions local units of government can take to inform their electorate regarding ballot issues – which in turn has creates a greater probability that local referendum actions will not be supported by voters.

Recommendation. I recommend that the City Commission adopt the attached Resolution 2016-007.

Attachments.

1. Issue Summary Document.
2. Sample Resolution.
3. Resolution 2016-007.

Explanation and Talking Points on PA 269/SB 571:

History: SB 571 was initially a non-controversial 12-page bill that had bipartisan support. But on late Wednesday night (Dec. 17, 2015) the House brought the bill up for consideration and a substitute version was adopted that increased the 12-page bill to 53 pages in length. This included inserting new language into Section 57 of the existing act that deals with permissible and prohibited activities by public bodies on election-related issues. This language was inserted without any notice to the League or other local government organizations and moved without any public testimony, let alone public awareness of what was in the new version of the bill. The bill was passed around 10:30 pm Dec. 17 largely along party lines and sent to Governor Snyder for his signature.

The new language in Section 57 states:

(3) EXCEPT FOR AN ELECTION OFFICIAL IN THE PERFORMANCE OF HIS OR HER DUTIES UNDER THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.1 TO 168.992, A PUBLIC BODY, OR A PERSON ACTING FOR A PUBLIC BODY, SHALL NOT, DURING THE PERIOD 60 DAYS BEFORE AN ELECTION IN WHICH A LOCAL BALLOT QUESTION APPEARS ON A BALLOT, USE PUBLIC FUNDS OR RESOURCES FOR A COMMUNICATION BY MEANS OF RADIO, TELEVISION, MASS MAILING, OR PRERECORDED TELEPHONE MESSAGE IF THAT COMMUNICATION REFERENCES A LOCAL BALLOT QUESTION AND IS TARGETED TO THE RELEVANT ELECTORATE WHERE THE LOCAL BALLOT QUESTION APPEARS ON THE BALLOT.

In the days and weeks following approval of SB 571, many legislators—both Republicans and Democrats—said they did not fully read or know what was in the amended language. Some Republicans, after reading the bill and learning of its full negative implications and many unanswered questions, even said they encouraged the governor to veto the bill.

Despite the many concerns raised about the bill, Governor Snyder signed it into law Wednesday, Jan. 6, 2016. The governor, in a somewhat unusual move, [sent out a letter](#) explaining why he signed the legislation despite the many unknowns and questions about the bill.

In his letter, the governor also called on the Legislature to enact new legislation to address the many concerns raised by the Michigan Municipal League and other organizations. Here is an excerpt from that letter:

However, recognizing that many local governmental entities and schools have raised concerns regarding confusion with the new language in section 57, I am calling on the Legislature to enact new legislation to address those concerns, and clarify that the new language does not impact the expression of personal views by a public official, the use of resources or facilities in the ordinary course of business, and that it is intended only to prohibit the use of targeted, advertisement style mass communications that are reasonably interpreted as an attempt to influence the electorate using taxpayer dollars. Local governmental entities and schools should still be allowed to distribute basic information about an election including the proposed or final ballot language and the date of the election. This is keeping within the spirit of the existing restrictions in the Act. The Senate Majority Leader and the Speaker of the House have agreed to work together on follow-up legislation clarifying the provision in section 57 of the Act in time for the March 2016 election.

New legislation to “fix” PA 269/SB 571 could be dropped in the Legislature as early as next week (week of Jan 11, 2016).

The League and several other organizations, including the Michigan Association of Counties, Michigan Townships Association, Michigan Association of School Boards, Michigan Association of School Administrators, believe there are significant constitutional and legal questions regarding PA 269, including a potential ban on freedom of speech. Repealing the provision is the only way to guarantee officials will be able to continue to give voters the facts. Ironically, Section 57, prior to the new language in SB 571, already provided the controls lawmakers were seeking.

Specific concerns with the new language:

- The previous language in Section 57 (prior to the amendments) appropriately provided an allowance of elected and appointed officials to express their views without fear of violating the act. This new subsection does not appear to account for that allowance and could be read as a ban on freedom of speech.
- The prohibition on any communication by television that references a local ballot question would seem to put every public access broadcast of a city council meeting at risk for violating this new provision. There is also no allowance for a public broadcast of a debate or voter forum, even if that forum is hosted by a third party.
- Community newsletters, and potentially even election-day reminders, that are mailed to residents could be banned under this language.
- Because this language specifically bans communication on only local ballot questions, the provision creates inconsistent treatment between communicating with residents on statewide ballot questions versus local questions.
- Any violation of this section puts a community at risk for a state fine of up to \$20,000 and for an individual a fine of up to \$1,000 and/or a year in jail.
- Because the law took immediate effect, it places an immediate gag order on local government entities with issues on the March 8, 2016 ballot and all subsequent

elections. This impacts more than 100 cities, villages, townships, school districts, counties, and other entities that have ballot questions before the voters in the March 8 election.

In summary, this language puts an undue burden on communities and their residents, blocking access to unbiased, objective communication on the local issues that matter most to the residents in every community in Michigan. Please contact your lawmakers and tell them to repeal the new language in Section 57 of PA 269.

[View a joint statement](#) from the League and other organizations calling for a repeal of this new language.

RESOLUTION No. _____
Opposition to Public Act 269

CERTIFICATION

I, _____, City Clerk for the ___Community___, _____ County, **WHEREAS**, Governor Snyder signed into law, with immediate, effect Public Act 269 (Senate Bill 571) despite wide spread calls for a veto of this bill, including from members of his own party; and

WHEREAS, both the Michigan Senate and the Michigan House of Representatives passed Senate Bill 571 late into the night of December 16, 2015, just prior to recessing for the year; and

WHEREAS, one of the last minute amendments made to Senate Bill 571, without the knowledge of the Michigan Municipal League or other local government organization, and approved without any public testimony or awareness, was the new language inserted into Section 57, subsection (3); and

WHEREAS, this new law prohibits a public body, or a person acting for a public body, from using public funds or resources for the purpose of communicating any information to the electorate regarding a local ballot question that is to appear on the ballot, within 60 days of an election, and

WHEREAS, this law places an immediate gag order on entities with ballot questions on the March 8 ballot and every election thereafter; and

WHEREAS, municipal elected and appointed officials have a civic and legal duty to the residents of their communities to fully inform them regarding the issues placed before them, upon which they may exercise their constitutional right to vote; and

WHEREAS, existing laws, including the former language in Section 57, and decades of guidance from the Michigan Secretary of State, already prohibit the use of public funds to advocate for or against ballot issues; and

WHEREAS, existing laws already provided for an allowance for elected and appointed officials to express their views without fear of violating the act; and

WHEREAS, because the new law bans only communication on *local* ballot issues, it creates inconsistent treatment of statewide ballot questions versus local initiatives; and

WHEREAS, there are substantial questions regarding the constitutionality and legality of the new law, including a possible ban on freedom of speech;

NOW, THEREFORE, BE IT RESOLVED, that the City/Village Council/Commission of the City/Village of _____ calls for an immediate repeal of the new language in Section 57, subsection (3) of PA 269 of 2016; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that a copy of this Resolution be forwarded to the city's/village's state representatives in the Michigan House of Representatives and the Michigan Senate.

Michigan do hereby certify that the foregoing Resolution No. _____ was offered by Councilperson _____ and supported by Councilperson _____ and same was duly passed at a regular meeting of the City Council in the City Hall, held on _____ January _____, 2016, and that the vote was as follows:

Yeas:

Nays:

Absent:

RESOLUTION 2016-007

A RESOLUTION OF THE CLARE CITY COMMISSION DECLARING ITS OPPOSITION TO PUBLIC ACT 269.

WHEREAS, both the Michigan Senate and the Michigan House of Representatives passed Senate Bill 571 late on the night of December 16, 2015, just prior to recessing for the year; and

WHEREAS, one of the last minute amendments made to Senate Bill 571, without the knowledge of the Michigan Municipal League or other local government organization, and approved without any public testimony or awareness, was the new language inserted into Section 57, subsection (3); and

WHEREAS, this new law prohibits a public body, or a person acting for a public body, from using public funds or resources for the purpose of communicating any information to the electorate regarding a local ballot question that is to appear on the ballot, within 60 days of an election, and

WHEREAS, this law places an immediate gag order on entities with ballot questions on the March 8 ballot and every election thereafter; and

WHEREAS, municipal elected and appointed officials have a civic and legal duty to the residents of their communities to fully inform them regarding the issues placed before them, upon which they may exercise their constitutional right to vote; and

WHEREAS, existing laws, including the former language in Section 57, and decades of guidance from the Michigan Secretary of State, already prohibit the use of public funds to advocate for or against ballot issues; and

WHEREAS, existing laws already provided for an allowance for elected and appointed officials to express their views without fear of violating the act; and

WHEREAS, because the new law bans only communication on *local* ballot issues, it creates inconsistent treatment of statewide ballot questions versus local initiatives; and

WHEREAS, there are substantial questions regarding the constitutionality and legality of the new law, including a possible ban on freedom of speech;

NOW THEREFORE, BE IT RESOLVED, that the City Commission of the City of Clare hereby calls for an immediate repeal of the new language in Section 57, subsection (3) of PA 269 of 2016.

NOW THEREFORE BE IT FINALLY RESOLVED that the City Commission of the City of Clare directs its City Clerk to forward a certified copy of this Resolution to Representative Joel Johnson in the Michigan House of Representatives and to forward a second certified copy of this Resolution to Senator Judy Emmons in the Michigan Senate.

ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INSOFAR AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.

The Resolution was introduced by Commissioner _____ and supported by Commissioner _____. The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 18th day of January 2016.

Diane M. Lyon, City Clerk