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STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
(Rick, P.J., and Shapiro and Yates, JJ.)

ADELINE HAMBLEY,

Plaintiff/Appellee,

-vs-

OTTAWA COUNTY, a Michigan County; OTTAWA COUNTY BOARD OF COMMISSIONERS; and JOE MOSS, SYLVIA RHODEA, LUCY EBEL, GRETCHEN COSBY, REBEKAH CURRAN, ROGER BELKNAP, and ALLISON MIEDEMA, Ottawa County Commissioners in their individual and official capacities,

Defendants/Appellants.

_____/

DEFENDANTS/APPELLANTS' APPLICATION FOR LEAVE TO APPEAL AND PROOF OF SERVICE

SUPREME COURT NO.:

COA NO.: 365918

TRIAL CT. FILE NO.: 23-7180-CZ

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ORDER APPEALED

Defendants/Appellants appeal the Court of Appeals' Published October 12, 2023 Opinion affirming in part and reversing in part the Circuit Court's Opinion and Order granting interlocutory and declaratory relief. The Court of Appeals' order is attached as Exhibit A. The Circuit Court's Opinion and Order are attached as Exhibit B.

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JURISDICTIONAL STATEMENT

The Court of Appeals entered its Published Opinion on October 12, 2023. Defendants/Appellants file their Application for Leave to Appeal within 42 days of the entry of that order pursuant to MCR 7.305(C)(2). The Court has jurisdiction to consider this appeal pursuant to MCR 7.303(B)(1) and MCR 7.305.

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QUESTIONS PRESENTED

I. WHETHER THE COURT OF APPEALS ERRONEOUSLY AFFIRMED THE GRANTING OF DECLARATORY RELIEF?

COURT OF APPEALS' ANSWER:	**NO**
APPELLEE'S ANSWER:	**NO**
APPELLANT'S ANSWER:	**YES**

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INTRODUCTION

This case presents an issue of first impression: when the minutes and a resolution of a County Board of Commissioners are in conflict, what controls? The Trial Court erroneously held, and the Court of Appeals erroneously affirmed, that a County Board of Commissioners (BOC) can make a motion and vote publicly at a meeting, accurately record that motion and vote in the official BOC minutes, but then the Chairman of the Board can subsequently sign a resolution that contradicts the official BOC minutes. This plainly violates the Open Meetings Act (OMA, MCL 15.261 *et seq*) which requires that all decisions of a BOC be made in public. MCL 15.263(2). If the Court of Appeals' wrongful and published decision is upheld, it would permit all public bodies in Michigan to openly make one decision in front of the public, record that decision in their official minutes, and then subsequently effectuate a conflicting decision through a resolution afterwards.

The Court of Appeals dangerously held that resolutions always control, regardless of what the public body publicly actually decided to do, as accurately recorded in the official minutes.[1] According to the Court of Appeals, a public body can properly record a decision in its official minutes and can then subsequently execute a resolution that does the exact opposite. The Court of Appeals erroneously held that it is a "recipe for chaos" and "fosters uncertainty" to ensure that subsequent resolutions are always in accord with the official actions and minutes of a public body.[2] To the contrary, the Court of Appeals' Opinion creates "chaos" and "uncertainty" by permitting public bodies to vote one way in public according to the official minutes while executing a subsequent resolution after the meeting that does another, so long as the resolution is "certain" and

[1] Court of Appeals' Opinion, p 5.
[2] Court of Appeals' Opinion, p 5.

"unambiguous."[3] Under the perilous precedent set by the Court of Appeals, resolutions no longer have to comply with the OMA so long as they are "certain" and "unambiguous."[4]

Imagine the confusion and anger of an average citizen who attends a public meeting to observe a public body vote and record its vote in its official minutes, and then find out later that the public body actually effectuated a conflicting decision in its subsequently executed resolution. It is this type of procedure that the Court of Appeals just affirmed. It is this type of procedure that will sow "chaos" and "uncertainty" into the actions of Michigan's public bodies.

Contrary to the Court of Appeals' Opinion, it is an extremely common task for the judiciary to analyze two writings and ensure that they are in harmony and do not conflict. This is all that was required in this case, to analyze the official BOC minutes compared to the resolution. Yet, the Court of Appeals believed this was too much to ask and instead held that resolutions always control, regardless of what the public body recorded as its vote in its official meeting minutes.[5] Appellants are at a loss as to how the Court of Appeals could hold that the written resolution in this case is "certain" and "unambiguous," yet the actual written minutes are somehow not "certain" and "unambiguous."

The primary issue in this case pertains to the Ottawa County BOC motion and vote at its December 13, 2022 meeting, which began the process of hiring Plaintiff/Appellee (hereinafter "Plaintiff") as Ottawa County Administrative Health Officer. The official minutes[6] of the meeting

[3] Court of Appeals' Opinion, p 5.
[4] Court of Appeals' Opinion, p 5.
[5] Court of Appeals' Opinion, p 5, "To encourage challenges to unambiguous resolutions based on meeting minutes and recordings fosters uncertainty in local government."
[6] While Ottawa County has never alleged or argued that the video of the December 13, 2022 meeting is binding or controlling authority, the published Ottawa County video of the Motion and Vote from the December 13, 2022 meeting provides confirmation that the official minutes were recorded correctly and can be found at timestamp 33:30: https://www.youtube.com/watch?v=yCg_Z2_gqZI

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clearly state that Plaintiff shall only be Health Officer upon the completion of three contingencies, the first of which requires a final vote by the BOC to confirm her appointment. After the meeting, the Chairman of the BOC signed a Resolution that excluded the first contingency and only included the remaining two contingencies.[7]

Thus, there was an irreconcilable conflict between what the BOC publicly voted to do at the meeting and record in the official minutes, and the Resolution subsequently signed by the Chairman. The Court of Appeals erred by holding that the Resolution (dated December 13, 2022), signed by the Chairman after the meeting, overrides what the BOC publicly voted for at its meeting as recorded in the official BOC minutes.

Plaintiff's entire case crumbles with a single question: "Can Plaintiff show where the Ottawa County BOC ever decided at a public meeting to adopt the December 13, 2022 Resolution with only **two** contingencies?" Plaintiff cannot; the Court of Appeals could not; it is impossible. There is no public record of any such decision, because it did not happen.

Instead, the Court of Appeals sidestepped this issue and summarily found that the first contingency simply did not matter. The Court of Appeals could not point to any public meeting in which the prior BOC ever publicly decided to actually adopt the December 13, 2022 Resolution with only two contingencies, as required by the OMA. MCL 15.263(2). The official BOC minutes of the December 13, 2022 meeting are "certain" and "unambiguous," and make it clear that the BOC began the process to appoint Plaintiff as Health Officer by voting to adopt a Resolution explicitly containing three contingencies. This is what was publicly decided. The Court of Appeals erred by reading parts of the BOC minutes out of existence and finding that December 13, 2022

[7] The omission in the Resolution could have been an accidental or innocent oversight, yet, the conflict still exists.

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Resolution with only two contingencies controls over the a public decision and corresponding official minutes.

Moreover, Plaintiff admitted[8] that a properly drafted resolution that exactly matches the language used in the December 13, 2022 meeting minutes does not operate to approve her appointment. In other words, Plaintiff has conceded that if the language of the December 13, 2022 resolution had exactly matched the language of the motion, vote, and minutes from the December 13, 2022 meeting, then Plaintiff has never been appointed as permanent Health Officer.[9] Because there has never been any public decision to adopt the December 13, 2022 Resolution with only two contingencies, it violated the OMA. Plaintiff's alleged appointment to the position of Health Officer was never completed.

If the Court of Appeals' Published Opinion is allowed to stand, it sets a dangerous precedent that any board can act on a motion and vote at a public meeting as accurately recorded in its official minutes, but then have the Chairperson subsequently execute a Resolution after the meeting that deviates from the decision the board made at that public meeting. This is the exact type of activity the OMA strictly prohibits. This Honorable Court must reject the Court of Appeals' dangerous interpretation of the OMA.

STATEMENT OF FACTS

Lisa Stefanovsky, the prior Ottawa County Health Officer, announced her retirement to be effective on or before March 31, 2023. The prior BOC recognized that it had the authority to appoint a Health Officer to replace Ms. Stefanovsky pursuant to MCL 333.2428 and the corresponding administrative rules.

[8] Plaintiff's Amended Complaint, paragraphs 41 and 45.
[9] Plaintiff's Amended Complaint, paragraphs 41 and 45.

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After adding, without notice, Adeline Hambley's proposed appointment as Health Officer to the agenda at a Board meeting, the Ottawa County BOC voted at its regular meeting on December 13, 2022, to adopt a Resolution naming Ms. Hambley as the proposed Ottawa County Administrative Health Officer, contingent upon three future actions:

> 1) approval by the Board of Commissioners;
> 2) confirmation by the Michigan Department of Health and Human Services that she has the required educational certifications and work background; and
> 3) successfully passing the County's background check process.[10]

The December 13, 2022 Resolution[11] signed by the BOC Chairman regarding Ms. Hambley's proposed appointment conflicted with the official BOC minutes that accurately reflected the actual public motion and vote that took place at the meeting. Compared to the official meeting minutes, the Resolution did not include the first contingency. Hence, the December 13, 2022 Resolution necessarily reflected a separate decision that was not actually made in public at the December 13, 2022 meeting and was in conflict with the BOC minutes for that meeting.

On February 28, 2023, the current BOC corrected the prior December 13, 2022 Resolution to accurately reflect the actual motion voted upon regarding Ms. Hambley.[12] The corrected Resolution included the first contingency from the official meeting minutes for "approval by the Board of Commissioners."[13] Neither the prior nor current BOC ever revised, amended, altered, or otherwise changed the motion or the minutes from the December 13, 2022 public meeting. This correction merely took the exact, word-for-word, language from the December 13, 2022 official meeting minutes and ensured the Resolution correctly matched that language.[14]

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[10] The minutes are a public record and can be found at: https://www.miottawa.org/CalendarDocs/2023/1673638887554-minutes.PDF; also attached as Exhibit C.
[11] Exhibit D.
[12] Exhibit E.
[13] Exhibit E.
[14] Exhibits C and E.

A request for approval of Ms. Hambley's credentials and work history were submitted to MDHHS on December 13, 2022, in order to determine if she was qualified to hold the position. MDHHS issued an initial letter, dated December 20, 2022, approving Ms. Hambley's credentials.[15] However, MDHHS then issued a second letter, dated December 21, 2022, which changed the effective date of Ms. Hambley's approval to April 1, 2023.[16] Neither the prior BOC, nor the current BOC, took any action to fulfill the first contingency, namely, to provide "approval by the Board of Commissioners" to fully appoint Plaintiff as the permanent Ottawa County Health Officer.

The current BOC declined to fulfill the first contingency and approve Plaintiff as the permanent Ottawa County Health Officer. Instead, the current BOC "moved to appoint Adeline Hambley as Interim Administrative Health Officer until a new Administrative Health Officer is hired" pursuant to the January 3, 2023 meeting minutes.[17]

Because the first contingency was never fulfilled, Plaintiff was never appointed to the permanent position of Ottawa County Health Officer or Administrative Health Officer after MDHHS approved her credentials on December 20, 2022. The BOC action on January 3, 2023, clearly stated that Ms. Hambley is acting as the "interim" Health Officer until a permanent person is selected by the BOC.[18]

Since Plaintiff was appointed Interim/Acting Ottawa County Administrative Health Officer, she has received all the pay, benefits, authority, duties, and powers associated with the Health Officer position (regardless of whether it is interim or permanent). Plaintiff has not suffered any financial loss. There are no damages. She has not been demoted or terminated from any position.

[15] Exhibit F.
[16] Exhibit F.
[17] Exhibit G.
[18] Exhibit G.

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In summary:

- It is undisputed that the prior BOC amended the December 13, 2022 meeting agenda without prior notice to the public to address the appointment of Plaintiff to the Ottawa County Health Officer position.[19]
- It is undisputed that the official meeting minutes of the December 13, 2022 meeting state:

> Dec. 13, 2022: Philip Kuyers moved to approve and authorize the Board Chairperson and Clerk/Register to sign a resolution to appoint Adeline Hambley as Ottawa County Administrative Health Officer contingent upon 1) approval by the Board of Commissioners; 2) confirmation by the Michigan Department of Health and Human Services that she has the required educational certifications and work background; and 3) successfully passing the County's background check process. The motion passed as shown by the following votes: Yeas: Kyle Terpstra, James Holtvluwer, Douglas Zylstra, Philip Kuyers, Gregory DeJong, Randall Meppelink, Joseph Baumann, Roger Bergman, Allen Dannenberg, Francisco Garcia, Matthew Fenske.[20]

- It is undisputed that the video record of the meeting confirms Commissioner Philip Kuyers' motion as accurately recorded in the official minutes:

> I'd like to make the motion to approve and authorize the board chairperson and clerk register to sign a resolution to appoint Adeline Hambley as the county administrative health officer, contingent upon approval by the Board of Commissioners, confirmation by the Michigan Department of Health and Human services that she has the required educational certificates and work background, and successfully passing the county's background check process.[21]

- It is undisputed that Plaintiff did not have MDHHS approval as of December 13, 2022.[22]

[19] Exhibit C.
[20] Exhibit C.
[21] The video of the Motion and Vote from the December 13, 2022 meeting, published by Ottawa County, can be found at timestamp 33:30: https://www.youtube.com/watch?v=yCg_Z2_gqZI
[22] Exhibit F.

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- It is undisputed that Plaintiff obtained MDHHS approval of her credentials on December 20, 2022 and passed the background check, thus complying with the second and third contingencies.[23]
- It is undisputed that the language of the original December 13, 2022 Resolution does not match the public decision that occurred at the December 13, 2022 meeting as reflected in the BOC minutes, because the Resolution did not contain the first contingency.[24]
- It is undisputed that the December 13, 2022 Resolution was not in the meeting packet provided to the public prior to the December 13, 2022.[25]
- It is undisputed that the December 13, 2022 Resolution with only two contingencies was never referenced at the December 13, 2022 meeting and was not attached to the meeting minutes.[26]
- It is undisputed that the prior BOC cancelled its December 27, 2022 meeting and did not hold another public meeting after December 13, 2022.[27]
- It is undisputed that neither the prior BOC, nor the current BOC, ever took any action to fulfill the first contingency by voting to "approve" the appointment of Plaintiff to the permanent position of Health Officer after the BOC motion and vote on December 13, 2022.

Plaintiff filed suit on February 10, 2023. The Honorable Jenny McNeill is a Muskegon County Circuit Court Judge and presided over this Ottawa County matter pursuant to SCAO

[23] Exhibit F.
[24] Exhibits C and D.
[25] The packet is a public record and can be found at: https://www.miottawa.org/CalendarDocs/2022/1670614257625-packet.PDF
[26] Exhibit C.
[27] See Public Notice: https://www.miottawa.org/Departments/CountyClerk/PlatBoard/pdf/platbrd/2022/1227.pdf.

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assignment. Approximately three weeks later, on March 2, 2023, Plaintiff filed an *ex-parte* Motion for a Temporary Restraining Order, and the Trial Court granted it without a hearing or allowing Defendants to respond. Defendants filed a Motion for Summary Disposition on March 10, 2023, seeking dismissal of the entire lawsuit, and Plaintiff filed a Motion for Preliminary Injunction that same day. Plaintiff then filed an Amended Complaint on March 24, 2023. The Trial Court held a hearing on March 31, 2023 regarding all of the motions. No witnesses were called at the hearing and only oral arguments on the motions were held. On April 19, 2023, the Trial Court issued its Order denying Defendants' Motion for Summary Disposition, granting Plaintiff's Motion for Preliminary Injunction, and granting an Order in favor of Plaintiff as to her declaratory relief claims pursuant to MCR 2.116(I)(2).[28]

Defendants filed an interlocutory Application for Leave to Appeal to the Court of Appeals on May 1, 2023, along with a Motion for Immediate Consideration, a Motion to Expedite, and a Motion for Stay. On June 6, 2023, the Court of Appeals granted Defendants' Motion for Immediate Consideration and granted Defendants' Application for Leave to Appeal.[29] The Court of Appeals also granted Defendants' Motion for Stay in part and granted Defendants' Motion to Expedite.[30] Finally, the Court of Appeals immediately vacated part of the Circuit Court's Preliminary Injunction Order that unlawfully restricted Defendants' ability to exercise their statutory authority pursuant to MCL 46.11(n).[31] The Court of Appeals held oral argument on October 11, 2023 and issued its Published Opinion on October 12, 2023.[32] Defendants now appeal.

[28] Exhibit B.
[29] Exhibit H.
[30] Exhibit H.
[31] Exhibit H.
[32] Exhibit A.

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GROUNDS FOR APPEAL

This Honorable Court should grant Ottawa County's Application for Leave to Appeal the Court of Appeals' decision in this case of first impression pursuant to MCR 7.305(B)(1), (2), (3), (5)(a), and (5)(b). The Court of Appeals issued a Published Opinion in this case which must be overturned. For all of the reasons stated below, Appellants respectfully request that their Application for Leave to Appeal be granted.

I. OTTAWA COUNTY'S APPEAL MUST BE GRANTED BECAUSE IT IS OF SIGNIFICANT PUBLIC INTEREST AND THE LEGAL PRINCIPLE IS OF MAJOR SIGNIFICANCE TO MICHIGAN JURISPRUDENCE. MCR 7.305(B)(2) AND (3).

This Honorable Court must decide what controls when a subsequently signed resolution conflicts with official BOC minutes that properly recorded a public decision of the BOC. Put another way, what controls when the language of a resolution conflicts with the motion and vote as recorded in the official meeting minutes which authorized the signing of that resolution? This question has never been definitively decided in Michigan. The answer to this question will have a significant impact on the application of the OMA to all public bodies. Moreover, the interpretation of the OMA on this issue is a legal principle of major significance because it not only affects countless public bodies throughout Michigan, but it also affects the public's interaction with, trust in, and desired transparency for, those public bodies.

The Court of Appeals improperly brushed aside Ottawa County's concerns over such a conflict between official meeting minutes and a resolution by holding that this particular contradiction did not matter. However, such a decision sets dangerous and binding precedent in Michigan that will not only lead to serious problems with the application of the OMA, but it will bind all future lower courts unless it is overturned.

Public bodies must be on notice that the resolutions they subsequently execute (often after the public meeting has concluded) must accurately effectuate and comply with the votes and

decisions they have publicly made and recorded in their official minutes. The Court of Appeals' Published Opinion will lead to the absurd result that official meeting minutes can state one thing, while the corresponding resolution can state something else. According to the Court of Appeals' erroneous decision, the resolution will control in this scenario so long as its language is "certain" and "unambiguous."[33] For these reasons, this Honorable Court should accept Ottawa County's appeal and reverse the Court of Appeals.

II. OTTAWA COUNTY'S APPEAL MUST BE GRANTED BECAUSE THE COURT OF APPEALS' DECISION IS CLEARLY ERRONEOUS. MCR 7.305(B)(5)(a).

As outlined herein, the Court of Appeals' decision is clearly erroneous because it held that conflicts between official meeting minutes and a subsequent resolution are irrelevant. Such a holding would cause material injustice to Ottawa County and the citizens of Michigan who deserve to have all components of a public body's decision made publicly pursuant to the OMA. It is easy to see all of the possible negative consequences if a public body is permitted to make a decision publicly and record that decision in its official minutes, but then subsequently execute a resolution that conflicts with its public decision and official minutes. This also warrants granting Ottawa County's appeal.

III. OTTAWA COUNTY'S APPEAL MUST BE GRANTED BECAUSE THE COURT OF APPEALS' DECISION INVOLVES A SUBSTANTIAL QUESTION ABOUT THE VALIDITY OF A LEGISLATIVE ACT. MCR 7.305(B)(1).

Ottawa County has proper grounds to appeal pursuant to MCR 7.305(B)(1) because the Court of Appeals' decision involves a substantial question about the validity of a legislative act, specifically, the conflict between the official BOC minutes and its subsequent resolution. Official minutes and the execution of a resolution are legislative acts. See, *Bengston v Delta County*, 266 Mich App 612, 622; 703 NW2d 122 (2005); *Rathbun v Bd of Supervisors of Lenawee Cnty*, 275

[33] Court of Appeals' Opinion, p 5.

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Mich 479, 481; 267 NW 543 (1936). This entire case revolves around the resolution of a conflict between the BOC's official minutes and the subsequent resolution. The Court of Appeals' decision has now created substantial questions regarding the application of the OMA and conflicts between official minutes and resolutions. For all of these reasons, Ottawa County's appeal should be granted.

IV. OTTAWA COUNTY'S APPEAL MUST BE GRANTED BECAUSE THE COURT OF APPEALS' DECISION CONFLICTS WITH PRIOR BINDING PRECEDENT. MCR 7.305(B)(5)(b).

A County BOC "speaks only **through its minutes** and resolutions." *Tavener v Elk Rapids Rural Agricultural School Dist*, 341 Mich 244, 251; 67 NW2d 136 (1954) (emphasis added). Contrary to *Tavener*, the Court of Appeals effectively held that a BOC speaks only through its resolutions.[34] The effect of the Court of Appeals' decision is that it is irrelevant whether a subsequently executed resolution comports to the official meeting minutes so long as the resolution is "certain" and "unambiguous."[35] The Court of Appeals' conclusion is founded upon the notion that a Board does not truly speak through its minutes which is in direct conflict with the holding in *Tavener*. Further, the Court of Appeals erroneously held that courts should not review meeting minutes because such a review "fosters uncertainty in local government" and is a "recipe for chaos."[36] This directly conflicts with *Tavener*, and such a holding must be reversed.

STANDARD OF REVIEW

"Appellate review of a motion for summary disposition is *de novo*." *Spiek v Department of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). "We review *de novo* a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A trial court may award "summary disposition to the opposing party under

[34] Court of Appeals' Opinion, p 5.
[35] Court of Appeals' Opinion, p 5.
[36] Court of Appeals' Opinion, p 5.

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MCR 2.116(I)(2) if it determines that the opposing party, rather than the moving party, is entitled to judgment." *Jaguar Trading Ltd Partnership v Presler*, 289 Mich App 319, 322; 808 NW2d 495 (2010).

For a motion under MCR 2.116(C)(8), this Honorable Court should review the pleadings to test the legal sufficiency of Plaintiff's claim. *Id.* The motion should be granted if the claim is so clearly unenforceable that no factual development could justify Plaintiff's claim for relief. *Id.*

A motion brought under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). "The purpose of MCR 2.116(C)(10) is to 'avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law.'" *Kern v Kern-Koskela*, 320 Mich App 212, 223; 905 NW2d 453 (2017); *Maiden v Rozwood*, 461 Mich 109, 120-121; 596 NW2d 817 (1999). "Opinions, conclusory denials, unsworn averments and inadmissible hearsay do not satisfy the court rule; disputed fact (or lack of it) must be established by admissible evidence." *SSC Associates Limited Partnership v General Retirement System of City of Detroit*, 192 Mich App 360; 180 NW2d 275, 277 (1991).

Questions of constitutional law, such as the Separation of Powers Doctrine, are reviewed *de novo*. *People v Garza*, 469 Mich 431, 433; 670 NW2d 662 (2003).

The interpretation of acts by a county Board of Commissioners, as with the interpretation of a statute, is a question of law which is reviewed *de novo*. *46th Circuit v Crawford County*, 476 Mich 131, 140; 719 NW2d 553 (2006).

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ARGUMENT

THE COURT OF APPEALS ERRONEOUSLY AFFIRMED THE GRANTING OF DECLARATORY RELIEF.

This case is predicated on Plaintiff's incorrect assertion that she was appointed permanent Ottawa County Health Officer in December of 2022. She is not and never has been the permanent Health Officer. Plaintiff's Amended Complaint is devoid of allegations, evidence, and legal foundation. The Trial Court erred by holding that Plaintiff is the permanent Ottawa County Health Officer.

Neither the prior BOC whose term ended in 2022, nor the current BOC, ever appointed Plaintiff as permanent Health Officer. Instead, the current BOC appointed Plaintiff as Interim/Acting Ottawa County Health Officer on a temporary basis while the BOC started the process to appoint a permanent Health Officer.[37] Because Plaintiff has never been appointed as permanent Health Officer, all of her claims collapse, the Trial Court must be reversed, and this case must be dismissed.

Plaintiff has suffered no damages. She makes no specific allegations that has she lost any pay, benefits, or any other pecuniary interest. Plaintiff's claims fail and the Court of Appeals erred by declaring that Plaintiff is the permanent Ottawa County Health Officer.

I. PLAINTIFF WAS NEVER APPOINTED AS PERMANENT OTTAWA COUNTY HEALTH OFFICER.

A. The Omitted Contingency.

According to the official BOC minutes of the December 13, 2022 meeting, the following motion and vote was held:[38]

> B/C 22-279 Philip Kuyers moved to approve and authorize the Board Chairperson and Clerk/Register to sign a resolution to appoint Adeline Hambley as Ottawa

[37] Exhibit G.
[38] Exhibit C.

> County Administrative Health Officer contingent upon 1) approval by the Board of Commissioners; 2) confirmation by the Michigan Department of Health and Human Services that she has the required educational certifications and work background; and 3) successfully passing the County's background check process.

No Resolution was attached to the December 13, 2022 minutes regarding Plaintiff, nor was any attached to the agenda packet of documents published before every board meeting. Instead, the motion and vote were to "authorize the Board Chairperson" "**to sign** a resolution" regarding Plaintiff (emphasis added). This meant that the Chairperson was only authorized to sign a Resolution that was in harmony with the BOC's motion and vote. However, the Chairperson signed a Resolution that did not accurately reflect the BOC's motion, vote, and minutes.[39] The Resolution omitted the first contingency which required a subsequent approval by the BOC for Plaintiff's permanent appointment.

It is critically important to note that the prior Board prepared the minutes from the December 13, 2022 meeting and those minutes have never been altered, changed, or amended in any way. Nor has the accuracy of the language contained in the December 13, 2022 official meeting minutes ever been challenged or disputed.

The December 13, 2022 Resolution was not signed by all the board members and conflicted with the official BOC minutes. Needless to say, a single board member does not have the authority to execute a binding resolution on his or her own. "The few powers the Board does have are to be exercised as a board and not individually." *Crain v Gibson*, 73 Mich App 192, 200; 250 NW2d 792 (1977) (citing *Saginaw County v Kent*, 209 Mich 160, 176 NW 601 (1920)). Thus, the Chairman had no authority to sign a Resolution that conflicted with the official BOC minutes from its public meeting. If the Chairman signs a resolution that conflicts with the decision made by the BOC at its public meeting, then that resolution necessarily implicates the OMA because it now

[39] Exhibits C and D.

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represents a different decision than what was publicly decided. The Chairman's only option was to sign a Resolution that did not conflict with the official BOC minutes from the December 13, 2022 public meeting.

Further, if there is a conflict between the official minutes and the Resolution, the minutes must control. This is because the motion and vote, as recorded in the official minutes, were a unanimous action by the entire board. An incongruous resolution signed by a single board member cannot override the actions of the entire board as reflected in the official meeting minutes. Therefore, the official minutes of the entire board must control over a conflicting Resolution signed by a single board member because the powers of the board cannot be exercised "individually." *Id.* This legal requirement alone resolves this case because the official minutes must control, and there is no evidence that the first contingency was ever fulfilled. Thus, Plaintiff was never properly appointed as the permanent Health Officer, and her entire lawsuit collapses.

Put simply, the December 13, 2022 Resolution as originally written was never voted on by the BOC, and it was never made public at any BOC meeting. Thus, the original December 13, 2022 Resolution violated the OMA (MCL 15.261 et. seq.). The OMA requires that "[a]ll decisions[40] of a public body must be made at a meeting open to the public." MCL 15.263(2). The decision of the BOC, as clearly recorded in the official minutes, was to authorize the signing of a resolution appointing Plaintiff as Health Officer only upon the fulfilment of three contingencies, including a final BOC approval of her appointment. The Chairperson does not have any authority to sign a resolution that does not comply with the official minutes and decisions of the BOC. It is also axiomatic that a single Board member does not have any authority to execute a Resolution on his own authority. *Crain, supra*.

[40] The OMA defines "decision" to include resolutions. MCL 15.262(d).

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The purpose of the OMA is to promote governmental accountability. Michigan Courts have held that the OMA should be liberally construed to achieve its purposes. See, e g, *Wexford Co Prosecutor v Pranger*, 83 Mich App 197, 201; 268 NW2d 344 (1978); *Esperance v Chesterfield Twp*, 89 Mich App 456, 463; 280 NW2d 559 (1979). Requiring subsequently signed resolutions be in harmony with public decisions under the OMA (as recorded in the official minutes) furthers the purpose of the OMA.

The BOC made no public decision to eliminate the first contingency, specifically "approval by the Board of Commissioners," after it made the public motion and conducted a public vote requiring that all three contingencies be in the resolution. Whether it was done intentionally or unintentionally is irrelevant; the December 13, 2022 Resolution did not conform with the BOC's public decision and conflicted with the official BOC minutes.

As an example, if a board publicly motions and votes to authorize its Chairperson to sign a Resolution adopting policies "X, Y, and Z," and the official minutes reflected the board's motion and vote authorizing the Chairperson to sign a Resolution adopting policies "X, Y, and Z," it is axiomatic that the Chairperson does not have the authority to sign a Resolution adopting only policies "Y and Z," while excluding policy "X." The Chairperson only has the authority specifically conveyed to him by the Board as recorded in the official BOC minutes.

As another example, imagine a scenario using the exact same contingency language regarding the first contingency as used in this case: A county BOC votes at a public meeting and records in its official minutes that "the County Sheriff has authority to immediately hire 15 more deputies contingent upon 1) approval by the Board of Commissioners, 2) background checks being passed by all 15 new deputies, and 3) a public health emergency is declared by MDHHS." Following the public meeting, the Chairman signs a resolution omitting the first contingency, thereby executing a resolution that says, "the County Sheriff has authority to immediately hire 15

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more deputies contingent upon 1) background checks being passed by all 15 new deputies, and 2) a public health emergency is declared by MDHHS." According to the holding of the Court of Appeals, there is no conflict between the BOC's public decision/vote and the subsequently signed resolution since the Court's rationale renders the first contingency meaningless. According to the Court of Appeals, the Sheriff has the authority to hire those 15 deputies the moment the background checks are completed and a public health emergency is declared by MDHHS, without any further approval or consideration from the BOC. Under the Court of Appeals' rationale, the first contingency will have been automatically fulfilled the moment the BOC voted. This illustrates the absurdity of the Court of Appeals' Opinion. Words have meaning and entire contingencies cannot be ignored or written out of existence.

Further, if a Board did want to adopt a resolution regarding a future act which was to be contingent upon future board approval, how could it do so under the now Published Opinion of the Court of Appeals? The Court of Appeals believes that any contingency requiring future Board approval is automatically fulfilled the moment it votes to adopt such a resolution. The Court of Appeals has now created the "chaos" and "uncertainty" it accused Ottawa County of "inviting."[41]

The Court of Appeals only response was to wrongfully hold that the first contingency was somehow fulfilled before it was even adopted. The Court of Appeals incorrectly held that its "review of the video recording of that meeting leads us to the conclusion that the Commission appointed Hambley at that meeting subject to **two contingencies**."[42] The Court of Appeals immediately contradicted itself by listing the three contingencies in the very next sentence of its Opinion:

> The motion the Commission passed "authorize[d] the board chairperson and clerk/register to sign a resolution to appoint Adeline Hambley as the county

[41] Court of Appeals' Opinion, p 5.
[42] Court of Appeals' Opinion, p 5, emphasis added.

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> administrative health officer **contingent upon** **[1]** approval by the board of commissioners, **[2]** confirmation by the Michigan Department of Health and Human Services that she has [the] required educational certificates and work background and **[3]** successfully passing the county's background-check process."[43]

The Court of Appeals' decision fails for numerous reasons. First, the plain language of the minutes makes the Court of Appeals' interpretation impossible. The official minutes of the December 13, 2022 meeting show that the BOC never voted to authorize a final "approval" of Plaintiff's appointment. Instead, the BOC only voted to authorize the Chairman "to sign a Resolution" to approve the process for Plaintiff's appointment, which would then require the fulfilment of three future contingencies. Moreover, there is no evidence that the BOC intended to simultaneously create a contingency and immediately fulfill that contingency with the same act. The official minutes simply do not comport with the Court of Appeals' ruling.

In order for the Court of Appeals to be correct, the BOC must have held two votes at the meeting. The first vote would have been would be to authorize the Chairman "to sign a Resolution" regarding Plaintiff, and the second vote would have been to "approve" Plaintiff's appointment in order to fulfill the first contingency. In this case, only the first vote occurred, not the second. The BOC only voted to authorize the signing of the Resolution for the appointment process. It did not hold a subsequent vote to fulfill the first contingency to "approve" Plaintiff's appointment. It is impossible to fulfill a contingency in a Resolution that has not yet been adopted.

Second, the Court of Appeals' decision defies common sense and interpretation of plain language. It is commonly understood that when a board states that something is "contingent" on some act, it is an act that has not yet occurred. Black's Law Dictionary defines "contingent" as:

1. Possible, uncertain; unpredictable.

[43] Court of Appeals' Opinion, p 5, emphasis added.

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2. Dependent on something that might or might not happen **in the future**; conditional."[44]

The prior BOC explicitly voted to make Plaintiff's appointment "**contingent** upon 1) approval by the Board of Commissioners[.]" Common sense, logic, and a plain reading of such language mandate that the BOC approval must be "in the future," not something automatically or previously satisfied. Indeed, it is not a contingency if it has already occurred. If something is already satisfied, then it is not a contingency. Moreover, it is impossible for the first contingency to be "possible, uncertain, or unpredictable" if it has already been fulfilled. In other words, the first contingency must not have yet occurred at the time the minutes or the Resolution were approved. Yet, the Court of Appeals erroneously held that the first contingency had somehow already been fulfilled in order to attempt to avoid the clear conflict between the official minutes and the resolution.

Third, the Court of Appeals' improper reading violates cardinal rules of legislative interpretation. "It is axiomatic that 'every word [in the statute] should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.'" *Duffy v Michigan Dept of Natural Resources*, 490 Mich 198, 215; 805 NW2d 399 (2011) (internal citations omitted). "As far as possible, effect should be given to every phrase, clause, and word in the statute." *Adanalic v Harco Nat'l Ins Co*, 309 Mich App 173, 179-180; 870 NW2d 731 (2015). Courts must interpret actions of local legislative bodies according to the same rules that govern statutory interpretation. See, *46th Circuit Trial Court*, 476 Mich at 140. The Court of Appeals violated this cardinal rule and read the first contingency out of existence.

According to the Court of Appeals, the first contingency can be removed, and it would make no difference whatsoever as to how the minutes or Resolution are interpreted. Under the

[44] Black's Law Dictionary, Eleventh Edition, 2019 (emphasis added).

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Court of Appeals' erroneous holding, the Resolution and official minutes, which state different things, must be read to do the exact same thing. This is nonsensical. Words have meaning. The Court of Appeals improperly held that there is no difference between what the BOC voted to do in the official minutes by specifically requiring three contingencies, and what the December 13, 2022 Resolution did by specifically requiring only two contingencies. The Court of Appeals' improper holding renders the explicit language of the first contingency, language which was used in the public motion, unanimously voted to be adopted, and then recorded in the official minutes, entirely surplusage and nugatory. In other words, the first contingency is of no effect, and it makes no difference whether the BOC included it or not. Such a holding must be reversed because "effect should be given to every phrase, clause, and word." *Adanalic, supra.*

For all of these reasons, the Court of Appeals' decision must be reversed.

B. *Lockwood* Controls In This Case.

Lockwood v Twp of Ellington, 323 Mich App 392, 917 NW2d 413 (2018) is controlling in this matter. In *Lockwood*, a township board held a meeting in violation of the OMA on November 1, 2016, seven days before an election. *Id*. at 395. There were two vacant positions on the planning commission. The board appointed the Plaintiffs in that case to those positions on November 1, 2016. *Id*. Many members of the old board lost their election on November 8, 2016, and the new board took office on November 22, 2016. *Id*. The new board discovered that the prior board had violated the OMA, and, as a result, Plaintiffs' appointments in that case were deemed invalid. *Id*. The new board ultimately appointed two different people to those positions. *Id*. The Court of Appeals held:

> Although the board was permitted by OMA to correct the deficiency in the procedure by reenacting the decisions made during the November 1, 2016 meeting, there is nothing in OMA to suggest that it was required to reenact the decisions made during that meeting. MCL 15.270(5). **Therefore, if an action taken at a meeting held in violation of OMA is not reenacted, it is not valid, and it has no**

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> **force or effect. Further, there is nothing in OMA that suggests a board must be sued before correcting any procedural violations on its own**. To conclude otherwise ignores the ratification provision included in OMA by the Legislature, and further, it would result in a waste of city resources and taxpayer dollars.

Id. at 405 (emphasis added).

In this case, the December 13, 2022 Resolution conflicted with the official BOC minutes and improperly eliminated the first contingency. The Resolution was never reenacted or corrected by the prior BOC. Thus, *Lockwood* makes clear that the December 13, 2022 Resolution was "not valid, and it has no force or effect." *Id.* The December 13, 2022 Resolution violates the OMA, because it conflicts with the public official BOC minutes and reflects a decision (the elimination of the first contingency) that the prior BOC never made at its public meeting. The OMA requires that "[a]ll decisions of a public body must be made at a meeting open to the public." MCL 15.263(2). The only decision that was publicly made by the BOC on December 13, 2022 is reflected in the official meeting minutes, and that public decision was to authorize the signing of a resolution that included all three contingencies. Clearly a Resolution with only two contingencies was not authorized by the BOC according to the official BOC minutes and would require a separate public decision by the BOC in order to be effective.

If this Honorable Court were to rule otherwise, it would violate the explicit requirements of the OMA. The *Lockwood* Court concluded "that because the appointments made at the November 1, 2016 board meeting were violative of OMA and never reenacted, they had no force or effect." *Id*. at 405. The same analysis applies here. Because the December 13, 2022 Resolution with only two contingencies conflicted with the official minutes, did not comply with the OMA, and was never reenacted, it "had no force or effect."

Again, the OMA requires that all decisions by the BOC be conducted openly in public view as recorded in the official BOC minutes. MCL 15.263(2). If the Board desired to make a decision

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that required only two contingencies, then that decision must have been made at a public meeting and recorded in the official BOC minutes. However, there is no record of the prior BOC ever making a public decision to adopt a resolution with only two contingencies. Therefore, the BOC Resolution only requiring two contingencies was an improper decision that cannot be enforced.

The Court of Appeals attempted to sidestep *Lockwood* and misinterpreted its holding. The Court of Appeals focused on the issue in *Lockwood* where proper notice was not given before the public meeting was held.[45] The Court of Appeals then summarily concluded that *Lockwood* did not apply because the December 13, 2022 meeting in this case was properly noticed.[46] This ignores the fact that the OMA has numerous requirements and can be violated in numerous ways. The Court of Appeals effectively held that so long as a board provides proper notice of a meeting, any action taken at that meeting legally cannot violate the OMA. Such a holding seriously undermines the OMA.

Analogous to *Lockwood,* if "an action taken" at a meeting violates the OMA, then it is "not valid, and it has no force or effect." *Lockwood*, 323 Mich App at 405. No one has ever disputed in this case that the BOC meeting on December 13, 2022 was properly noticed. Instead, the primary issue is whether "an action taken" as a result of that properly noticed meeting violated the OMA. In addition to *Lockwood*, it is axiomatic that actions by a public body done in violation of the OMA are not valid or enforceable.

It appears that the Court of Appeals believes that all of the other requirements of the OMA regarding how the meeting itself is conducted, such as minutes requirements,[47] closed session

[45] Court of Appeals' Opinion, p 6.
[46] Court of Appeals' Opinion, p 6.
[47] MCL 15.269.

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requirements,[48] or the requirement that all decisions be made in public,[49] are meaningless and unenforceable so long as a proper notice was given for the meeting. Defendants cited *Lockwood* for its clear holding that any act done by a BOC in violation of the OMA is "not valid, and it has no force or effect," and there is no evidence that a decision to adopt the December 13, 2022 Resolution with only two contingencies was ever done in public. *Id.* at 405. The Court of Appeals merely held that because the meeting was properly noticed, the OMA was satisfied. If the Court of Appeals' holding is not overturned, it creates a dangerous precedent that any board can do whatever it wants during or after a meeting in violation of the OMA so long as they gave proper notice of the meeting. Such a holding must be reversed.

The Court of Appeals' holding will now authorize boards to record in their official minutes a decision to authorize a colloquial "blank check." This "blank check" can then be filled in with all sorts of actions, decisions, policies, or procedures in the subsequently executed resolution. Consider the following: a BOC makes a motion and vote at a public meeting to authorize the Chairman "to sign a Resolution to protect public safety." After the meeting, the Chairman signs a Resolution that was never presented to the public that sets a county-wide curfew for 9:00 p.m., authorizes the hiring of 50 new police officers at a cost of $3,000,000.00, and restricts the gathering of more than 10 people without written permission of the Ottawa County Health Officer. According to the Court of Appeals, this would be completely appropriate because reviewing the minutes is a "recipe for chaos," and all that matters is whether the resolution is "certain," "unambiguous," and was signed following a properly noticed meeting.[50] In reality, the Court of

[48] MCL 15.267-15.268.
[49] MCL 15.263(2).
[50] Court of Appeals' Opinion, p 5.

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Appeals' decision is a recipe for disaster and creates a gaping hole in the OMA. This interpretation must be rejected.

It is easy to imagine the extent to which such a process could be abused to illegally circumvent the OMA and the authority of a board. Boards could publicly vote to do one thing, and then execute a resolution after the meeting to do another. This is why this case presents a critical issue of first impression. Public bodies must be required to make their resolutions conform and comply with what was done publicly as recorded in the official minutes. There must be required consistency between official minutes and corresponding resolutions.

According to the Court of Appeals' faulty analysis, a resolution conflicting with official meeting minutes would not violate the OMA so long as the meeting was properly noticed[51] and the resolution was "certain" and "unambiguous."[52] According to the Court of Appeals, "unambiguous" resolutions are the "gold standard" in Michigan and trump everything that actually occurs at a public meeting, regardless of whether a resolution completely conflicts with official BOC minutes.[53] However, this case is not about whether unambiguous resolutions should control. Instead, this case is about what controls in a conflict between the language contained in the official meeting minutes voted upon by all members of the Board versus the language contained in a subsequently executed resolution that is signed by one commissioner. The Court of Appeals' decision cannot stand.

C. Further Problems with the December 13, 2022 Resolution.

The prior BOC had ample time to correct any perceived issues with their proposed appointment of Plaintiff or the Resolution itself before leaving office at the end of 2022. Indeed,

[51] Court of Appeals' Opinion, p 6.
[52] Court of Appeals' Opinion, p 5.
[53] Court of Appeals' Opinion, p 5.

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if the prior Board truly believed that the official minutes of the December 13, 2022 meeting were erroneous, they could have corrected those minutes in public at their next scheduled meeting on December 27, 2022, pursuant to MCL 15.269(1). It is also important to note that the prior BOC would have been able to fully appoint Plaintiff as Health Officer on December 27, 2022, because she had met the last two contingencies of obtaining MDHHS approval[54] and passing a background check.

Instead, the prior BOC did nothing. They did not correct their Resolution, and they did not act to fulfill the first contingency by voting to approve Plaintiff as Health Officer after December 13, 2022. They cancelled their December 27, 2022 meeting and left all of these issues unresolved.

The current BOC, upon recognizing the defects that occurred on December 13, 2022, approved a Resolution on February 28, 2023 to correct the December 13, 2022 Resolution.[55] The current BOC had a legal duty to ensure that the Resolution was in harmony with the public decision that was made and documented in the official meeting minutes. The current BOC only corrected the December 13, 2022 Resolution to accurately reflect the exact language of the official minutes of the former BOC. Again, the official minutes of the December 13, 2022 meeting have never been altered, changed, or corrected, nor has their veracity and accuracy ever been challenged or disputed.

Significantly, Plaintiff admits in her Amended Complaint[56] that the language of the February 28, 2023 Resolution makes Plaintiff's appointment invalid because the BOC did not take a second vote to fulfill the first contingency to approve her appointment. Therefore, since Plaintiff admits that the February 28, 2023 Resolution makes Plaintiff's appointment invalid, she

[54] Exhibit F.
[55] Exhibit F.
[56] Plaintiff's Amended Complaint, paragraphs 41 and 45.

necessarily admits that the exact same language in the December 13, 2022 official meeting minutes and the official act of the prior BOC never fully appointed Plaintiff as Health Officer either.

The current BOC effectively promoted Plaintiff to Interim/Acting Administrative Health Officer until a permanent person could be appointed. This is a common occurrence across Michigan.[57] The current BOC passed its motion and vote on January 3, 2023:

> B/C 23-037 Allison Miedema moved to appoint Adeline Hambley as Interim Administrative Health Officer until a new Administrative Health Officer is hired and to approve and authorize the Board Chairperson and Clerk/Register to sign a Resolution to appoint Nathaniel Kelly as Administrative Health Officer of Ottawa County contingent upon (1) the approval of the Board of Commissioners and (2) confirmation by the Michigan Department of Health and Human Services.

This motion and vote did two things. First, it appointed Plaintiff as Interim/Acting Administrative Health Officer "until a new Administrative Health Officer is hired." Second, it named Nathaniel Kelly as a potential appointee to the position "contingent upon (1) the approval of the Board of Commissioners and (2) confirmation by the Michigan Department of Health and Human Services."

This is the same language requiring further Board approval that the prior BOC used on December 13, 2022. Yet, no one, including the parties, believes or even argues that Nathaniel Kelly is the current Ottawa County Health Officer. Instead, everyone understands the plain English of the contingencies in the motion and vote. Before Mr. Kelly could ever be fully appointed to the permanent position, he would need to receive approval of his credentials from MDHHS and obtain

[57] 2022- Livingston County hires an Interim Health Officer.
https://www.whmi.com/news/article/livingston-health-department-director-search
2021 – Berrien County hires interim health officer.
https://www.leaderpub.com/2021/11/04/berrien-county-hires-interim-health-officer/
Health Department of Northwest Michigan hires an Interim Health Officer.
https://www.leelanaunews.com/news/interim-health-officer-named
2021 – Western Upper Peninsula Health Department hires an Interim Health Officer.
https://www.mininggazette.com/news/local-news/2021/03/dr-robert-van-howe-returns-to-western-upper-peninsula-as-provisional-medical-director/

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a final approval from the BOC. Just as Mr. Kelly was not appointed to Health Officer position on January 3, 2023 because all the contingencies were not fulfilled, Plaintiff was not appointed to that position on December 13, 2022 either.

For all of these reasons, Plaintiff was never fully appointed as the Ottawa County Health Officer because the December 13, 2022 Resolution conflicted with the official meeting minutes and violated the OMA. As a result, all of Plaintiff's claims necessarily fail, and her entire case must be dismissed.

II. THE COURT OF APPEALS ACTED BEYOND ITS AUTHORITY.

"The wisdom of the provision in question in the form in which it was enacted is a matter of legislative responsibility with which the courts may not interfere.... It is the function of the court to fairly interpret a statute as it then exists; it is not the function of the court to legislate." *McKiney v Clayman*, 237 Mich App 198, 208; 602 NW2d 612 (1999). "[I]f constitutionally empowered to act, 'the propriety, wisdom, necessity, utility, and expediency of legislation are exclusively matters for legislative determination.'" *Charles Reinhart Co v Winiemko*, 444 Mich 579, 600 n. 38; 513 NW2d 773 (1994) (opinion by RILEY, J.), quoting *Black v Liquor Control Comm*, 323 Mich 290, 296; 35 NW2d 269 (1948). The Court of Appeals held:

> The statute is clear and unambiguous. For that reason, this Court must enforce it as written. And we will do so without regard to whether we believe the Legislature's policy choice is unjust, inconvenient, or unnecessary.

Younkin v Zimmer, 304 Mich App 719, 848 NW2d 488, 494 (2014) (reversed on other grounds) (citing *In re Bradley Estate*, 494 Mich 367, 835 NW2d 545 (2013).

The judiciary cannot nullify legislative acts by local legislative bodies merely because the Court of Appeals opines that what the BOC did was "unjust, inconvenient, or unnecessary." *Id*. The Court of Appeals has no such authority. The Court of Appeals may believe that it is completely unnecessary and inconvenient for the BOC to vote a second time to finalize Plaintiff's

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appointment, but that is not, under any circumstances, proper grounds to invalidate or ignore what the BOC voted to do. Again, issues such as the "propriety, wisdom, necessity, utility, and expediency" of BOC actions are "exclusively matters for legislative determination." *Charles Reinhart Co*, 444 Mich at 600, n 38.

Moreover, despite there being many possible logical reasons for the BOC to require a second vote, the Court of Appeals ignored them. For example, the BOC could have required a second vote because it did not yet have MDHHS approval as required by law, because it did not have the background check completed, because it wanted more time to make a final determination, because it had not yet held any public comment on the appointment, or because they wanted to keep the door open for other potential candidates. There are a plethora of logical reasons why the BOC required a second vote. However, regardless of the reason, the Court of Appeals has no authority to nullify it simply because it disagrees.

Frankly, the BOC's rationale for requiring a second vote is irrelevant. As far as the judiciary is concerned, the BOC could have required five additional votes, and it would still have been a lawful and proper action within the discretion of the BOC. Instead, all that matters is that the BOC voted to adopt a resolution requiring a "contingency," and therefore, by definition, a future and subsequent vote for "approval by the Board of Commissioners." The Court of Appeals was duty-bound to enforce what the BOC publicly voted to do regardless of whether the Court of Appeals believed it to be "inconvenient or unnecessary." *Younkin, supra.*

Finally, it is also important to note that the Court of Appeals made no finding that the first contingency violated any law, statute, case law, or the Constitution. Instead, the Court of Appeals' sole basis for ignoring the first contingency was because it read it out of existence and held that it was somehow satisfied before the December 13, 2022 Resolution was even signed. This is reversible error.

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CONCLUSION AND RELIEF SOUGHT

Plaintiff's entire case rests upon one simple but extraordinary demand: for this Honorable Court to declare the language of the public motion which was voted upon and recorded in the official minutes of the BOC to be read out of existence and rendered meaningless. And for what reason? It is not because Plaintiff or the Court of Appeals believed that the language was unlawful or unconstitutional, or that it violated any rule or procedure. Rather, it is merely because the Court of Appeals believed the first contingency was unnecessary, inconvenient, or automatically satisfied. Further, Plaintiff admits that to uphold the original language from the official minutes (the decision of the entire Board) would mean that the first contingency was never fulfilled, thus, Plaintiff's appointment was never completed.

Undisputedly, the prior BOC explicitly included all three contingencies in its official minutes. It was wholly inappropriate for the Court of Appeals to rely upon a Resolution that conflicted with the official BOC minutes and violated the OMA.

For all the reasons stated above, the Court of Appeals erred by affirming the Circuit Court's granting of declaratory relief that Plaintiff is the permanent Administrative Health Officer of Ottawa County. Since the December 13, 2022 Resolution conflicted with the official BOC minutes and violated the OMA, Plaintiff was never fully appointed as Health Officer and all of her claims necessarily fail.

Plaintiff was never appointed as permanent Health Officer because the first contingency of the December 13, 2022 BOC motion and vote was never fulfilled. It would be improper for this Honorable Court to "declare" that she holds a position that she has never held or usurp the power of the BOC to make its own determination as to who should be appointed. For these reasons, this Honorable Court should:

A. reverse the Court of Appeals' decision;

B. hold that the official minutes of the public body control when there is a conflict between the official minutes and a subsequent resolution;

C. hold that the first contingency was improperly omitted from the December 13, 2022 Resolution;

D. hold that Plaintiff was never appointed the permanent Ottawa County Health Officer; and

E. dismiss Plaintiff's claims.

Finally, Ottawa County respectfully requests that this Honorable Court grant its Application for Leave to Appeal and grant such other and further relief as is just and appropriate.

Respectfully submitted,

DATED: November 22, 2023.

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Defendants/Appellants

DATED: November 22, 2023.

/s/ Stephen P. Kallman
Stephen P. Kallman (P75622)
Attorney for Defendants/Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this Application for Leave to Appeal contains 9,450 countable words in 12-point Times New Roman, a proportionally spaced font with serifs, according to the wordcount function of the system used to prepare it, Microsoft Word 365. MCR 7.212(B)(1) and (3); MCR 7.305(A)(1). It also complies with the additional requirements of MCR 7.212(B)(5).

DATED: November 22, 2023.

/s/ Stephen P. Kallman
Stephen P. Kallman (P75622)
Attorney for Defendants/Appellants

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PROOF OF SERVICE

David A. Kallman hereby states and affirms that on the 22nd day of November, 2023, he did serve a copy of the foregoing Defendants/Appellants' Application for Leave to Appeal with attached exhibits, upon opposing counsel listed above via the MiFile system. I declare that the statement herein is true to the best of my information, knowledge and belief.

DATED: November 22, 2023.

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Defendants/Appellants

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