

Augusta Charter Township
8021 Talladay Road, Whittaker, MI 48190
Regular Board of Trustees Meeting
March 22, 2016 7:00 pm

1. Meeting called to order by Hafler at 7:00 p.m.
2. Pledge of Allegiance
3. Roll Call: Dew, Giszczak, Hafler, Howard, Keefe and Thornton. Absent: Todd.
4. Motion by Hafler, 2nd by Keefe to approve agenda as submitted and amended:

To remove:

9A Cleaning Bids as it is a duplicate of 8A

Aye: Motion passed.
5. Motion by Hafler, 2nd by Howard to approve Board of Trustees Meeting Minutes of 02/23/16 as submitted. Aye: Motion passed.
6. Public comment opened at 7:04 p.m. closed at 7:10 p.m.
7. Motion by Keefe, 2nd by Howard to appoint a committee to review the superintendent applications and resumes of Keefe, Thornton and Howard. Roll Call: Aye: Dew, Giszczak, Hafler, Howard, Keefe and Thornton. Nay: None. Absent: Todd. Motion passed.
8. At 7:19 p.m. Hafler left meeting and returned at 7:21 p.m.
9. Motion by Giszczak, 2nd by Dew to accept Fire Department report for February 2016 as submitted and given. Aye: Motion passed.
10. Motion by Giszczak, 2nd by Keefe to release Township attorney confidential correspondence dated 03/18/16, friendly amendment Howard that the previous emails related to same issues regarding the clerk and the conditions of her office also be released from attorney client privilege and inserted into the record. Roll Call: Aye: Dew, Giszczak, Hafler, Howard and Keefe. Nay: Thornton. Absent: Todd. Motion passed.

From: William Fahey

Sent: Friday, March 18, 2016 6:33 PM

To: 'Pete Hafler' <augustahafler@yahoo.com>

Cc: 'Lynda Dew' <ldew.augustatwp@gmail.com>; Kathy Giszczak

<kgiszczak@augustatownship.org>; Kathy Giszczak - Augusta Twp
<clerk@augustatownship.org>; Helen Mills <hmills@fsbrlaw.com>
Subject: FOIA and Related Issues

CONFIDENTIAL LEGAL OPINION
ATTORNEY-CLIENT PRIVILEGE

Pete,

Thank you for your email requesting guidance under the circumstances, since there is a very tight time limit (5 business days) imposed on answering FOIA requests, and there is currently no person who acknowledges responsibility or authority as the Township's FOIA Coordinator. To provide the Township additional time to address this situation, I will contact Ms. Mallonen and request a 10 business day extension. However, even with the extension, it will be necessary for the Township Board and at least one of the individual Board members to make some decisions and adjustments in the very near future, so we will address the issues and the guiding laws in this email.

Appointment of an FOIA Coordinator; Duties of the FOIA Coordinator

The Township Board is required to appoint an FOIA Coordinator. Although the FOIA does not require the Clerk to serve in that position, that is almost always the case because the Clerk is by statute designated as the custodian of Township records and has very specific duties regarding Township records, as we will discuss below. It is fairly rare for a Township to appoint someone other than the Clerk as its FOIA Coordinator.

As we have previously explained: "The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5)." MCL 15.236. Also: "A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year." MCL 15.233. The FOIA Coordinator is not required by statute to have custody of any records or search for any records. Under the FOIA, the duty to search for requested records resides with the Township as the "public body" and with the Township official or officials who are by law made the custodians of the Township's records.

Clerk's Specific Duties

The FOIA is not the only source of law with respect to Township records. As the Clerk has stated on many occasions, she is the legal custodian of the Township's records with the responsibility to maintain and provide access to those records. MCL 41.65. But the Clerk may not appreciate that by law she is also legally compelled to provide certain minimum public access to those records under MCL 750.492, which provides:

"Any officer having the custody of any county, city, or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his or her office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose is guilty of a

misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00. The custodian of said records and files may make such reasonable rules with reference to the inspection and examination of them as shall be necessary for the protection of said records and files and to prevent interference with the regular discharge of the duties of such officer. ...”

As records custodian, the Clerk must provide for access to the Township’s records “during the usual business hours, which ***shall not be less than four hours per day.***” MCL 750.492 (emphasis added). If the Clerk fails to provide for that required access to Township records in her office upon request, she could be guilty of a misdemeanor “punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.” *Id.*

We learned earlier this week (from an email we received from the Clerk) that the Clerk is working as an Accounting Assistant in Prisoner Accounting for the Michigan Department of Corrections at its Jackson Business Office located at 4000 Cooper Street, Jackson, MI 49201, which is approximately an hour drive from the Township Hall. Under those circumstances, the Township Board should inquire whether the Clerk is fulfilling or can fulfill her statutory duties under MCL 750.492 and other applicable statutes.

It also appears that the Clerk has not ***employed*** a deputy clerk for a substantial period of time, although she may have “appointed” a deputy who chooses not to be employed. It does not appear that the Clerk is satisfying her duties under MCL 750.492 through the employment of a deputy.

In our opinion, the Clerk’s failure to either be personally present in the Township Hall or to employ a deputy there at least four hours each day to allow citizens access to the Township records in her custody fails to “furnish proper and reasonable facilities for the inspection and examination of the records and files in ... her office.” MCL 750.492. Such “proper and reasonable facilities” must include the presence of the Clerk or her deputy, since without being present she cannot adequately provide access to and protect the security and integrity of the documents entrusted to her custody and care.

The Township Board may also want to inquire whether the Clerk has failed to perform her other legal duties. It has been suggested that, due in part to the Clerk’s failure to perform her financial duties to the Township, the Township has been required to pay very substantial fees for the services of Rehmann to perform duties that are routinely provided by the clerk in other townships. It has been suggested that, in lieu of the Clerk performing her election duties, she has been employing and paying others at Township expense to perform her election duties.

Recommendations

Under the above circumstances, we recommend that the Clerk and the Township Board consider one or more of the following courses of action:

1. The Clerk could resign her position with the State in order to perform all the duties she is required to perform as Township Clerk.
2. The Clerk could resign as Clerk so that the Township Board may appoint another person who will serve as Township Clerk.

3. The Clerk could (with the Township Board's approval) employ a deputy who will perform the Clerk's duties.

4. If the Clerk does not take one of the above actions, the Township Board could pursue proceedings to declare the Clerk's position vacant so that a suitable person could be appointed as Clerk by the Township Board. MCL 42.7(8) allows the Board to summon the Clerk to a Township Board meeting, and MCL 41.64b allows the Supervisor to place the Clerk under oath at that meeting for the purpose of conducting an inquiry. Failure to attend that meeting is considered "misconduct in office" pursuant to MCL 42.7(8). In addition, failure to attend that meeting would be a further basis for declaring the office vacant, which would allow the Board to appoint another person as Clerk.

5. If the Clerk does not take one of the first 3 actions, the Township Board could also pursue proceedings under MCL 41.58 to temporarily appoint a suitable person to discharge the duties of the Clerk until that position is permanently filled or until the Clerk is able to resume her legal duties as Clerk. This option could be pursued at the same time that the Board pursues option 4 above. Note that the person temporarily appointed under this option would not be appointed as Clerk, but would be appointed to take on the Clerk's duties temporarily until the Clerk or her deputy can fulfill those duties or until the Clerk's position is filled permanently.

Please let us know if you have any questions about our opinion and recommendations.

Thank you,

Bill Fahey

11. 7:54 p.m. Todd arrived, Board took a break.
12. Hafler called meeting back to order at 8:20 p.m.
13. Motion by Giszczak, 2nd by Keefe to accept Utility report for February 2016 as submitted. Aye: Motion passed.
14. Motion by Hafler, 2nd by Thornton to pass resolution prohibiting the use of fragrances in the township offices. Roll Call: Aye: Dew, Giszczak, Hafler, Howard, Keefe, Thornton and Todd. Nay: None. Absent: None. Motion passed.
15. Motion by Keefe, 2nd by Todd to hire Evans Cleaning at \$54.23 weekly for once per week effective April 1, 2016 and authorize building security access, proof of insurance, bond and to include window cleaning. Roll Call: Aye: Dew, Giszczak, Howard, Keefe, Thornton and Todd. Nay: Hafler. Absent: None. Motion passed.

16. Motion by Keefe, 2nd by Giszczak to accept OHM bid for Right of Way staking. Roll Call: Aye: Dew, Giszczak, Hafler, Howard, Keefe, Thornton and Todd. Nay: None. Absent: None. Motion passed.
17. Motion by Keefe, 2nd by Todd to accept UMS bid for Tuttle Hill water main replacement, friendly amendment Giszczak, accepted by Keefe contingent upon final audit results related to cash flow. Roll Call: Aye: Dew, Giszczak, Hafler, Howard, Keefe, Thornton and Todd. Nay: None. Absent: None. Motion passed.
18. Motion by Hafler, 2nd by Todd to accept Kaas bid dated 02/26/16 for foundation vents and deck and hand rail repair for \$3,125.00. Roll Call: Aye: Dew, Giszczak, Hafler, Howard, Keefe, Thornton and Todd. Nay: None. Absent: None. Motion passed.
19. Motion by Giszczak, 2nd by Thornton to forward Decker Insurance and authorize Attorney Fahey to respond to Department of Licensing and regulatory Affairs claim # 187526, to maintain the Board of Trustee's position date 9/22/15 to eliminate the Deputy Supervisor budget to zero. Roll Call: Aye: Dew, Giszczak, Howard, Keefe and Todd. Nay: Hafler and Thornton. Absent: None. Motion passed.
20. Motion by Giszczak, 2nd by Howard to approve warrants # 17074 – 17179 (note 17170 – 17179) Roll Call: Aye: Dew, Giszczak, Howard, Keefe and Thornton. Nay: Hafler and Todd. Absent: None. Motion passed.
21. Motion by Giszczak, 2nd by Howard to one time only prepay invoice # 710632498 \$95.50 and invoice # 710451396 \$492.50. Roll Call: Aye: Dew, Giszczak, Hafler, Howard and Keefe. Nay: Thornton and Todd. Absent: None. Motion passed.
22. Motion by Giszczak, 2nd by Dew to accept Treasurers Dew bank reports as submitted. Roll Call: Aye: Dew, Giszczak, Howard, Keefe, Thornton and Todd. Nay: Hafler. Absent: None. Motion passed.
23. Motion by Giszczak, 2nd by Dew to accept Treasurers computer bid from Melron Electronics for \$849.99. Roll Call: Aye: Dew, Giszczak, Hafler, Howard, Keefe, Thornton and Todd. Nay: None. Absent: None. Motion passed.
24. Clerk left at 9:43 p.m.
25. Pursuant to MCL 42:5 which states that, "In the absence of the clerk, the board shall appoint one of its members as a temporary clerk for that meeting." Motion by Hafler, 2nd by Dew to appoint board member Howard as temporary clerk for the remainder of the 03/22/2016 meeting. Roll Call:

Aye: Dew, Hafler, Howard, Keefe, Todd and Thornton. Nay: None. Absent: Giszczak. Motion passed.

- 26. Motion by Keefe, 2nd by Todd to accept the Assessors report as submitted. Aye: Motion passed.
- 27. Public comment opened at 9:43 p.m. closed at 9:46 p.m.
- 28. Board Response
- 29. Adjourn at 9:50 p.m.

Respectfully submitted:

Pete Hafler, Supervisor

Date

Kathy Giszczak, Clerk

Date