



Legal Expenditures for METRO Act Revenues

A letter from an MTA member township to MTA Legal Counsel inquired as to how townships may use money received under the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Public Act 48 of 2002), more commonly known as the METRO Act. Specifically, the inquiry questioned whether METRO Act revenue may be used for patching and general repair of the road and road rights-of-way; street lighting installation; utility expenses for street lighting; and trimming/cutting of trees and brush in the ditch line. In addition, it was asked whether METRO Act revenue may be put in the road work line item and disbursed as needed. The question of how METRO Act revenue may be used by the township will be addressed first, followed by proper accounting of the revenue.

The METRO Act has, as a component, annual fee-sharing payments to townships, cities and villages. These fee-sharing payments come from statewide rights-of-way fees collected annually from telecommunication providers by the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (METRO Authority).

The METRO Act specifically dictates

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how these fee-sharing payments may be used by the municipality receiving them. Section 10(4) of the METRO Act (MCL 484.3110(4)) provides that:

“The amount received under Sections 11 and 12 shall be used by the municipality solely for rights-of-way-related purposes. Rights-of-way purposes does not include constructing or utilizing telecommunication facilities to serve residential or commercial customers.”

A Broad Interpretation

Pursuant to Section 10(4) of the METRO Act, it is clear that revenue is limited in use to that which is “solely for rights-of-way-related purposes.” It is MTA Legal Counsel opinion that the lawful uses of this revenue should be broadly construed within such limits. Our opinion is based upon the following reasoning:

First, pursuant to Article VII, Section 34 of the Michigan Constitution of 1963, statutes concerning townships, cities and villages are to be liberally construed in their favor. This constitutional provision alone would provide for a liberal con-

struction as to what would constitute uses which are “solely for rights-of-way-related purposes.”

Second, a public right-of-way is defined broadly in the METRO Act. A public right-of-way is defined in Section 2(i) of the METRO Act (MCL 484.3102) as:

“The area on, below or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state or private right-of-way.”

Based upon this definition, a public right-of-way does not include just the public roadway, highway, street or alley, but also includes, more broadly, public easements and public waterways.

Third, if the Michigan Legislature intended the uses of METRO Act revenue to be narrow in scope, it could have used much more restrictive language. The Legislature could have easily indicated that the funds were for road maintenance purposes only. Instead, the Legislature clearly and intentionally did not limit the use of METRO Act revenue in such a way. The language used in Section 10(4) of the METRO Act does not even limit the use for rights-of-way only, but instead allows a broader use for “rights-of-way-related purposes.” (*Emphasis added.*) We would contend that “related purposes” plainly means only that the purpose has some connection to the rights-of-way.

Fourth, the second sentence in Section 10(4) of the METRO Act as quoted above also provides strong argument as to the broad uses of METRO Act revenue. This provision indicates that “[r]ights-of-way purposes” does not include constructing or utilizing telecommunication facilities to serve residential or commercial customers. Stating such a restriction would be unnecessary if “rights-of-way-related purposes” were intended to be interpreted narrowly. In fact, by applying statutory construction principles to the language, it would appear that METRO Act revenue could be used by a municipality to construct or utilize telecommunication facilities to serve governmental noncommercial interests (i.e., a governmental telecommunications network). This is certainly a very liberal rights-of-way-related use.



Fifth, the METRO Act legislation was created out of a cooperative effort between the telecommunication industry, state officials, the Michigan Townships Association, Michigan Municipal League and other municipalities. Certainly from a municipal perspective, we would have preferred that METRO Act revenue be completely unrestricted as to its use. Those municipalities that were collecting a franchise fee or rights-of-way fee from telecommunications providers prior to the METRO Act were generally unrestricted in their use of the fees. The parties involved in creating the METRO Act ultimately agreed to the restriction that the METRO Act revenues be used "solely for rights-of-way-related purposes," but in no way was it intended to be overly restrictive.

Examples of Lawful Expenditures

Based upon our proceeding analysis, it is our opinion that the following would be some examples of lawful expenditures of METRO Act revenues:

- Administrative expenses related to the administration of the METRO Act provisions.
- Administrative expenses related to the management of the rights-of-way.
- Public road maintenance and repair.
- Public road dust control.
- Public road snow removal.
- Public street lighting installation and expenses.
- Maintenance of the unimproved area of a public rights-of-way (i.e., trimming and cutting of trees and brush).
- Construction and maintenance of sidewalks and bike paths within the public rights-of-way.
- Construction or utilization of telecommunication facilities within the public rights-of-way to serve noncommercial governmental interests.

It must be noted that, while we have taken the preceding position regarding the lawful expenditure of METRO Act revenues, MTA staff and Legal Counsel recently met with METRO Authority Director Robert Tuttle, Jr., who indicated that he has not yet reached a final position on this issue. Hopefully, he will finalize his position and be in agreement with us.

At this point in time, Tuttle indicated that he would advise that money could be put in the township road fund and only used for road maintenance. Irrespective of how Tuttle finally determines the METRO Authority's position, we believe our position regarding use of the METRO Act revenue to be correct and supportable in litigation.

Accounting for METRO Act Payments

In regard to accounting for the METRO Act payments, Section 10(5) of the METRO Act (MCL 484.3110) provides that:

"A municipality receiving funds under Sections 11 and 12 with a population of less than 10,000 may file and a municipality receiving funds under Sections 11 and 12 with a population of 10,000 or more shall file an annual report with the Authority on the use and disposition of the funds. The Authority shall prescribe the form of the report to be filed under this subsection, which report shall be in a simplified format." (Emphasis added.)

Townships with a population of less than 10,000 do not have to file an annual report with the METRO Authority on the use and disposition of the funds. However, due to the fact that the funds are limited to use "solely for rights-of-way-related purposes," the funds must still be tracked. The Michigan Department of Treasury has not yet formulated an official position regarding METRO Act revenue; however, they have unofficially indicated that a township's general fund can be used to track the revenues and specific expenditures related to the revenues.

MTA Legal Counsel believes that townships should be able to place METRO Act revenue into the road work line item and disburse the payments as needed for rights-of-way-related purposes. It is still necessary to track the expenditure of the funds, and any unspent proceeds would represent a reserved fund balance. Discuss proper accounting of METRO Act revenue with your township accountant to determine how to best account for the funds under the system of accounts used by your township. ■

IMPORTANT REMINDER: All townships must adopt a resolution of compliance with PA 48 in order to ever receive their share of rights-of-way funding. This resolution must be adopted no later than **December 31, 2003**. Sample resolutions are available at www.michigantownships.org, or by calling MTA at (517) 321-6467.

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