

# Michigan Township Focus

MARCH 2017

OFFICIAL PUBLICATION OF THE MICHIGAN TOWNSHIPS ASSOCIATION

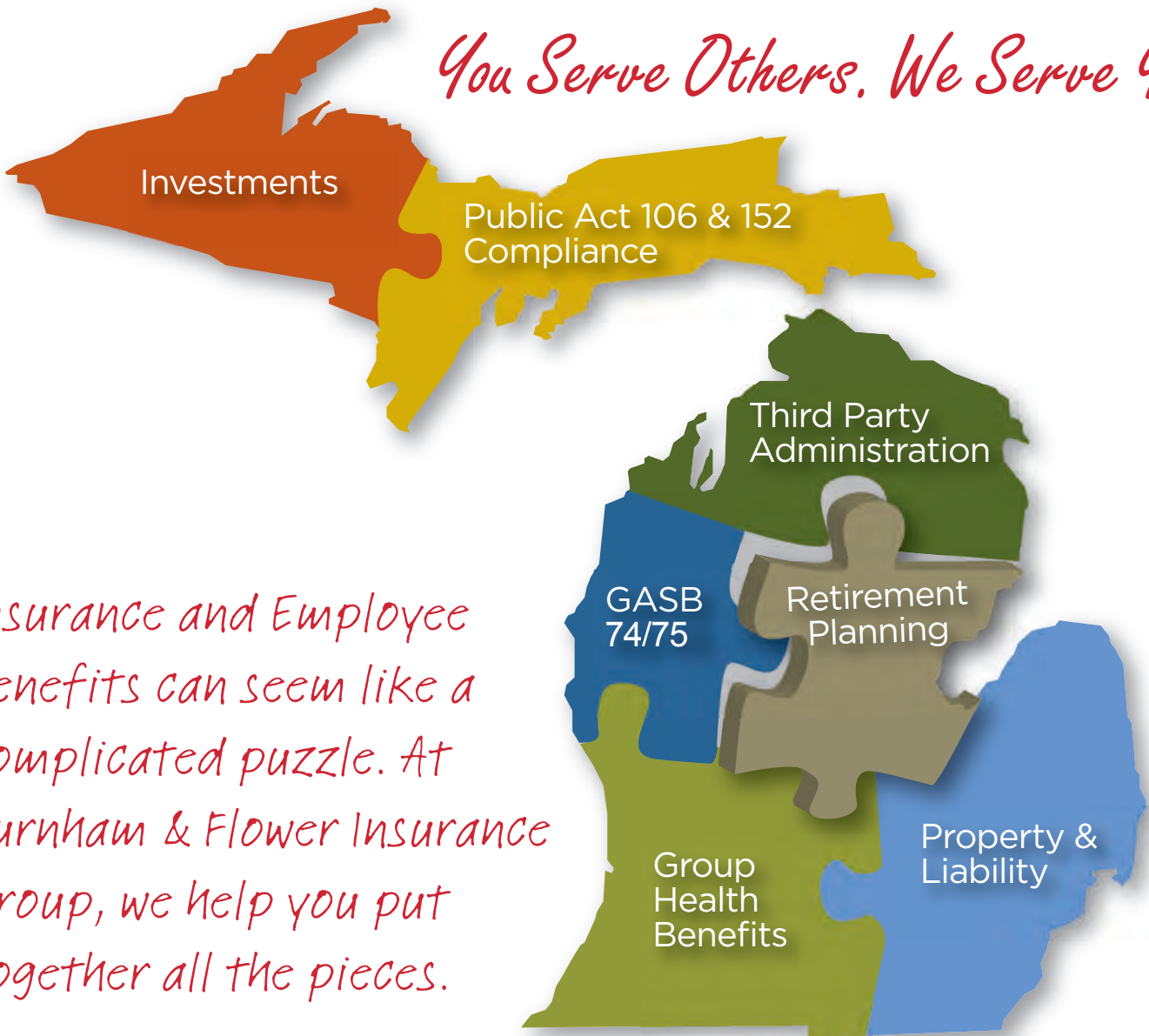
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#### MTA's 2017 Proposed Legislative Policy Platform

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#### Conference keynoter helps others celebrate differences

Preview the insights and expertise of Dr. Sally Karioth, MTA's 2017 Conference keynoter, who will help officials learn to celebrate the differences on their board and in their township, rather than be divided by them.

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#### What you need to know about the Open Meetings Act

The Open Meetings Act (OMA) is arguably the statute that most impacts a township board as a whole. Every board member is subject to the OMA every time the board meets—and before and after it meets. Learn more about the OMA's requirements for meeting notice, conduct, decision-making, minutes—and more.



**MTA** Official Publication of the Michigan Townships Association

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### mission statement

The Michigan Townships Association advances local democracy by fostering township leadership and public policy essential for a strong and vibrant Michigan.



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*Michigan Township Focus*, Issue 3 March 2017 (ISSN 2330-9652), is published monthly, except for a combined April/May issue. MTA membership provides a subscription to township board members, the manager/superintendent, planning commission chairperson and township attorney. Member counties also receive subscriptions for elected officials, the equalization director and road commission chairperson. Annual membership dues include \$30 for a one-year subscription to *Michigan Township Focus*. Additional member subscriptions are available for \$30 per year. Subscription rate for residents and firms in member townships is \$40 per year (schools and libraries may subscribe for \$30 a year).

*Michigan Township Focus* is a publication of the Michigan Townships Association, 512 Westshire Dr., Lansing, MI 48917-9757. Phone: (517) 321-6467; fax: (517) 321-8908; Web: [www.michigantownships.org](http://www.michigantownships.org). Periodicals postage paid at Lansing, MI. POSTMASTER: Send address changes to: *Michigan Township Focus*, P.O. Box 80078, Lansing, MI 48908-0078.

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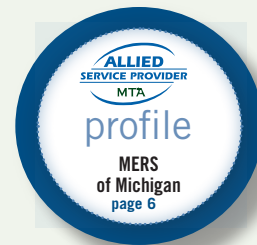
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# Township officials ‘Come Together’ to learn, work and grow

Months before a highly contentious presidential election confirmed the presence of deep political and ideological divisions within our country, the Michigan Townships Association Board of Directors



decided that MTA’s 2017 Annual Educational Conference, themed “*Come Together*,” should celebrate and promote the shared values and ideals of Michigan’s township officials.

No matter that Michigan townships run the gamut from small to large, they are all created for the sole purpose of serving the public. Township officials are Democrats, Republicans and

some who run as Independents; liberals, moderates and conservatives; farmers, lawyers, retailers, manufacturers and high-tech entrepreneurs; millennials and baby-boomers—but all are equally accountable to their electors to be knowledgeable and ethical community leaders.

When township officials *Come Together*, their shared values for public service, leadership and community engagement are far more powerful than their differences. Township officials who put their communities first agree that they owe it to their township electors to make decisions that are based in knowledge, to manage township programs and services that are efficient and effective, and to act in ways that ensure both personal and organizational accountability.

Township officials who have made the MTA Annual Educational Conference an essential component of their professional development know that they will leave the Conference far better public servants, but they also know that the Conference will surprise and delight. Everyone is talking about what a pleasant change an April Conference will be over the old traditional January depth-of-winter event.

What might be overlooked is the MTA Board’s long-term strategy in returning to Lansing after a 12-year hiatus. Yes, the hotels and restaurants in Lansing tend to be less costly to participants, so townships can enjoy more value for their money. Yes, more townships are located within a commutable distance to Lansing than any other viable Conference site. Both are more than enough answers to “Why Lansing?” for our 2017 Conference.

However, the key reason to “Why Lansing?” is the Board’s determination that MTA will deliver effective township government advocacy. To that end, township officials need to remind state policy leaders of their sheer numbers and the clout they carry in their communities. State leaders are always occupied with a number of critical issues, and with townships generally being on stable financial footing, it is easy for them to overlook that township governments nonetheless need additional financial means and statutory authority to build, rebuild and sustain their communities. Townships need statutes that clearly define roles and responsibilities, ensure fairness and equity among township taxpayers, recognize differences among communities, and encourage experimentation and diverse approaches to solve common problems.

If township governments are to have the kind of relationship with state leaders necessary to align what state government and townships need from each other, township officials must *Come Together*, in Lansing, in numbers too big to be ignored. If in doubt that numbers matter, one need look no further than extensive media coverage of disputes over the number of people attending recent Washington, DC events. There is tremendous symbolic importance for showing support by showing up. Even with some lawmakers likely on their spring break, throngs of Michigan township officials need to descend on Lansing as a testimony to the vital role of Michigan’s townships to protect, serve and grow the Michigan economy in areas both metropolitan and rural. Whether at our Conference or represented by their staff, lawmakers will nonetheless get the message.

Township officials who *Come Together* in Lansing will *learn together* how their communities can thrive in the 21st century. They will *work together* to advance a policy platform reflecting their dreams, goals and expectations, and they will *grow together* as servant-leaders—both individually and collectively with their fellow township board members.

## GO VOTE!

### Local clerks will play a role in statewide voting equipment upgrade

Earlier this year, contracts were approved for new next-generation, optical-scan voting systems that Michigan voters will use over at least the next decade. Each of Michigan's 83 county clerks will consult with township and city clerks in their county to select one of the three contracted vendors.

The new equipment, which includes ballot tabulators, devices for use by voters with disabilities, and election-management and reporting software, could be in use as early as the August 2017 local elections, depending on how quickly clerks are ready to implement them. All townships and cities across the state will have the new equipment by August 2018, the next scheduled statewide election.

The new systems use digital optical scan technology, which includes improvements and increased ease of use

for voters and election administrators. These improvements will save county and local clerks time and money in preparing for elections and providing election results. The options available for voters with disabilities are also greatly improved, and contractors will be required to continually assess and improve the systems, based on feedback.

A team of local election officials, along with Michigan Bureau of Elections staff and purchasing agents from the Secretary of State's Office and the Michigan Department of Technology, Management and Budget, reviewed the proposals and equipment before recommending approval of a contract with three vendors. Extensive feedback about the systems was sought from local election officials and advocates for Michigan voters with disabilities.

The new equipment will be paid for with \$30 million in federal Help America Vote Act money, and with \$10 million approved by the Legislature with the support of Gov. Snyder. This funding will cover most of the up-front cost for the new systems. Townships and cities will pay for the remaining cost, which will vary, depending on which vendor is selected, and for extended service and maintenance, which will begin in the sixth year of the contract period.

The equipment voters used in 2016 was rolled out in 2004 and 2005 when Michigan began using optical-scan voting systems statewide. Michigan is one of the only states with a substantial amount of federal funds still available to assist with the purchase of the next-generation voting systems.



## HEALTH CARE ASSISTANCE

### Townships can again offer health reimbursement arrangements to employees

Townships can once again establish health reimbursement arrangements (HRAs) to reimburse employees for out-of-pocket medical expenses and/or health insurance premiums. Effective Jan. 1, the Small Business Health Care Relief Act, included in the 21st Century Cures bill (H.R. 2911/S. 1697), rolled back federal guidance issued under the authority of the Affordable Care Act (ACA) prohibiting the use of HRAs.

This bipartisan bill, supported by the National Association of Towns and Townships:

- Ensures municipalities and small businesses with less than 50 employees can use pre-tax dollars to give employees a defined contribution for health care expenses.
- Allows employees to use HRA funds to purchase health coverage on the individual market, as well as for qualified out-of-pocket medical expenses, if the employee has qualified health coverage.
- Protects employers from being financially penalized for providing this cost-sharing option to employees.

While small employers are not subject to the ACA's requirement to provide coverage to employees, many would like to provide some level of financial assistance to employees for health care-related costs. The Small Business Health Care Relief Act allows smaller local governments and businesses to use pre-tax HRAs to financially assist employees with the purchase of health coverage and related costs.

Townships must provide employees with notice explaining permitted benefits under the HRA and employees' responsibility to maintain health care coverage. Such notice must be provided 90 days before the beginning of the plan year. For this year only, this has been extended to March 13, 2017.

## UP IN SMOKE

### AG: State law preempts local 'tobacco purchase' ordinance

*Attorney General Opinion No. 7294, issued Feb. 2, 2017, in response to an inquiry from Sen. Rick Jones (R-Grand Ledge)*

**Summation:** The Age of Majority Act, 1971 PA 79, MCL 722.51, *et seq.*, preempts a city ordinance that provides "a person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age." The ordinance directly conflicts with state law by barring the sale or furnishing of tobacco products to 18- to 20-year-olds because the Age of Majority Act prohibits treating these young adults differently from persons 21 years and older with respect to their legal capacity to purchase tobacco products.

LOCAL UPDATES FROM ACROSS MICHIGAN

### Township happenings

Following the November general election, **Bohemia Township** (Ontonagon Co.) has sworn in two newly elected officials to create the township's first all-female township board. Said Supervisor **LuAnn Hayrynen**, "This may not be unusual—and I hope it is not—but we are feeling quite proud of it!"

The students in the third grade class at Mill Creek School in **Whitewater Township** (Grand Traverse Co.) spread milkweed seeds for Monarch butterflies in the township's Hi Pray Park. With the population of Monarch butterflies declining, propagation of milkweed is crucial to help restore the butterfly's habitat.



**Park Township** (Ottawa Co.) recently completed a streetscape improvement project (*pictured at left*) on the shores of Lake Macatawa and Lake Michigan. The township worked with the Ottawa County Road Commission to rebuild the streetscape, including stormwater improvements, adding pedestrian

walkways on both sides of the road and improved parking along the street with new street lighting. Residents no longer have to deal with mud puddles on the side of the uncurbed road, and it is much safer to walk or ride a bike to the beach.

Email YOUR Township Happenings to [jenn@michigantownships.org](mailto:jenn@michigantownships.org). Add MTA to your newsletter mailing list! Mail to MTA, Attn. Jenn Fiedler, PO Box 80078, Lansing, MI 48908-0078, or email to [jenn@michigantownships.org](mailto:jenn@michigantownships.org).

### Retirement

**Larry Fleming**, **Jonesfield Township** (Saginaw Co.) supervisor for 38 years. An assessor for Jonesfield, **Lakefield**, **Brant** and **Marion Townships** (Saginaw Co.), Fleming is the third generation in his family to serve Jonesfield Township, and was honored with a certificate of tribute by his board.




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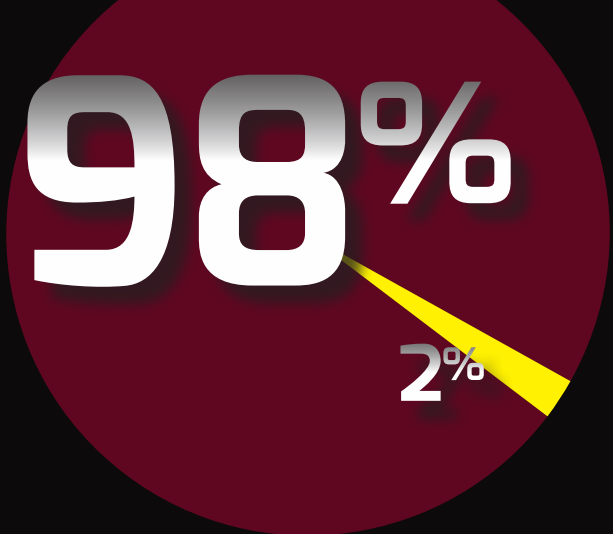
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Help ensure that today's youth become involved in local government tomorrow! Encourage students in your community to apply for MTA's Robert R. Robinson Memorial Scholarship by May 31, 2017.



The scholarship is a one-time award determined on a competitive basis by the applicant's academic achievement, community involvement and commitment to a career in local government administration.

Applicants must be a junior, senior or graduate student enrolled in a Michigan college or university and pursuing a career in local government administration. The following materials are required to apply: 1) a letter of recommendation from a professor or instructor, 2) a copy of a resolution of support

from a Michigan township board, and 3) a short essay on an important issue facing local government.

Students must submit application materials to: The Robert R. Robinson Memorial Scholarship Fund, c/o Michigan Townships Association, P.O. Box 80078, Lansing, MI 48908-0078.

Ensure students in your area know about the scholarship! Post a link on your township website to [www.michigantownships.org/scholarship.asp](http://www.michigantownships.org/scholarship.asp). Need more information? Call (517) 321-6467.

Contributions to the scholarship fund are also accepted throughout the year. Call the MTA office for details.

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Opinions expressed within do not represent the views of MTA, its Board or members. Participation in the Allied Service Provider program does not constitute or imply MTA's endorsement of the company or its products/ services. For more information, see MERS of Michigan's ad on page 13, stop by Booth 302 at the MTA Expo in April, turn to the Allied Service Provider Index on page 2 or visit [www.michigantownships.org/asp.asp](http://www.michigantownships.org/asp.asp).

## MTA Legal Defense Fund supports continued public utility case

When your township makes a voluntary contribution to MTA's Legal Defense Fund (LDF), you assist townships in legal battles that have significant statewide impact. The MTA Legal Defense Fund Committee recently approved continued support for the case, *Oshtemo Charter Township v. METC*, in which the electric transmission company had



proposed high-power transmission lines running through the township. After the township tried to apply regulations with regard to the power lines, including requiring them to go underground at certain rights-of-way

in the downtown area, the utility company used the Electric Line Certification Act to achieve a ruling from the Michigan Public Service Commission bypassing the township's regulations.

This case had received LDF support before the Michigan Court of Appeals, and the state Supreme Court has granted leave to appeal. During oral arguments this fall, Supreme Court Justice McCormack put forward an argument that the METC's electric transmission lines might not be a public utility, and therefore might not fall under the township's consent authority over public utilities. At the end of oral argument, Chief Justice Young ordered the parties to submit supplemental briefs on the public utility issue.

MTA LDF support was approved in the form of an *amicus curiae* brief.

## Interested in serving on the MTA Board? Caucus elections will be held at 2017 Annual Conference

Some 21 MTA Districts will hold caucus elections on Wednesday, April 12, during the 2017 MTA Annual Educational Conference, to elect new members to the MTA Board of Directors. Directors elected at the caucuses will begin their MTA Board terms at the MTA Annual Meeting on Thursday, April 13, 2017, and conclude following the Annual Meeting in 2021.



In accordance with MTA bylaws, a director will be elected from each of the MTA Districts, except for Districts represented by an incoming officer on the MTA Board, who shall serve simultaneously as representatives of their respective Districts. This does not apply to the office of president.

Based on the slate of candidates being put forth as officers by the MTA Nominating Committee on April 13, the following Districts will NOT convene a caucus to elect a District director: 3, 7, 18 and 19. All other Districts will convene a caucus to elect a director for their respective District.

Elected officials from MTA-member townships are eligible to run for the MTA Board. Officials who wish to run for District director can campaign for the position prior to the caucus, though there are no requirements for prior announcement of candidacy.

Only elected township officials may vote at the caucus meetings; appointed officials and township employees are not eligible to vote. All votes must be cast in person.

Find your MTA District on the members-only section of [www.michigantownships.org](http://www.michigantownships.org). After logging in, click on "Directories" under the "My MTA" tab, and click on the "MTA District Map" in the left-hand column.

Times and locations for each caucus will be published in the Conference program booklet received on-site.

MTA Executive Director Larry Merrill and 2016 MTA President **Doug Mansfield, Union Township** (Grand Traverse Co.) supervisor, will conduct a session, "Becoming a District Director and Serving on the MTA Board," on the roles and responsibilities of the MTA Board from 4:30 to 5:15 p.m. on Tuesday, April 11.

Learn more about how to *Learn Together, Work Together, Grow Together, Come Together* at the MTA Conference by visiting [www.michigantownships.org/conference.asp](http://www.michigantownships.org/conference.asp), or check out the Conference registration brochure included with your January issue of *Township Focus* magazine.

### mta events | March

- |    |   |
|----|---|
| 9  | Township Board Roles & Relations and Making Meetings Work More Effectively workshops, Mt. Pleasant  |
| 14 | Early-bird registration deadline for MTA's 2017 Annual Educational Conference & Expo, April 10-13, at the Lansing Center.   |
| 20 | Last day to obtain housing at discounted rates in the MTA room block for MTA's 2017 Annual Conference & Expo in Lansing. Contact Amy at (616) 785-6027, ext. 34 for details.  |
| 28 | Last day to register for MTA Conference to have a confirmation sent to you. All attendees must still check in at the MTA Registration Center.<br><br>Last day to obtain regular MTA Conference registration rate; on-site rate applies after this date. |

### MARCH

**1** The State Tax Commission (STC) shall publish the inflation rate multiplier before March 1. (MCL 211.34d(15))

County treasurer commences settlement with local unit treasurers. (MCL 211.55)

County property tax administration fee of 4 percent added to unpaid 2016 taxes and interest at 1 percent per month. (MCL 211.78a(3))

Local units turn over 2016 delinquent taxes to the county treasurer. (MCL 211.78a(2)) On March 1 in each year, taxes levied in the immediately preceding year that remain unpaid shall be returned as delinquent for collection. However, if the last day in a year that taxes are due and payable before being returned as delinquent is a Saturday, Sunday or legal holiday, the last day taxes are due and payable before being returned as delinquent is on the next business day and taxes levied in the immediately preceding year that remain unpaid shall be returned as delinquent on the immediately succeeding business day.

**6** On or before the first Monday in March. The 2017 assessment roll shall be completed and certified by the assessor. (MCL 211.24)

**7** Tuesday after the first Monday in March. The assessor/supervisor shall submit the 2017 certified assessment roll to the board of review. (MCL 211.29(1))

Organizational meeting of township board of review. (MCL 211.29)

**13** Second Monday in March. The board of review must meet on the second Monday in March. This meeting must start not earlier than 9 a.m. and not later than 3 p.m. The board of review must meet one additional day during this week and shall hold at least three hours of its required sessions during the week of the second Monday in March after 6 p.m. (MCL 211.30) Note: The township board may authorize an alternative starting date for the second meeting of the March board of review, which can be either the Tuesday or Wednesday following the second Monday in March. (MCL 211.30(2))

**14** Within 10 business days after the last day of February, at least 90 percent of the total tax collections on hand must be delivered by the local unit treasurer to the county and school district treasurers. (MCL 211.43(3)(b))

**By 18** Clerks shall electronically transmit or mail (as requested) an absent voter ballot for May 2 election to each absent uniformed services or overseas voter who applied for an absent voter ballot 45 days or more before the election. (MCL 168.759a)

Absent voter ballots must be available for issuance to voters. (MCL 168.714)

**23** through April 11. Precinct inspectors appointed by local election commission for May 2 election. (MCL 168.674)

**By 27** Notice of close of registration for May 2 election published. One notice required. (MCL 168.498)

**31** April 1 is a Saturday. School district or intermediate school district must reach agreement for summer tax collection with township or county, if there is a summer school levy. (MCL 380.1613(2))

Not later than April 1, treasurers make final adjustment and delivery of the total amount of tax collections on hand. (MCL 211.43(3)(c))

Last day to pay all forfeited 2014 taxes, interest, penalties and fees, unless an extension has been granted by the circuit court. If unpaid, title to properties foreclosed for 2014 real property taxes vests solely in the foreclosing governmental unit. (MCL 211.78k)

April 1 is a Saturday. Assessors are required to annually provide a copy of Form 5278 and Form 5277 (rescission affidavit) and other parcel information required by the Michigan Department of Treasury in a form and manner required by the Department of Treasury no later than April 1 of each year. (MCLs 211.9m and 9n)

### APRIL

**1** Separate tax limitations voted after April 1 of any year are not effective until the subsequent year. (MCL 211.205i)

**3** On or before the first Monday in April. The board of review must complete its review of protests of assessed value, taxable value, property classification or denial by assessor of continuation of qualified agricultural property exemption. (MCL 211.30a)

Last day to register for May 2 election. (MCL 168.497)

**5** The township supervisor or assessor shall deliver the completed assessment roll, with board of review certification, to the county equalization director not later than the 10th day after adjournment of the board of review or the Wednesday following the first Monday in April, whichever date occurs first. (MCL 211.30(7))

As assessor shall file STC Form L-4021 with the county equalization department, and STC Form L-4022 (signed by the assessor) with the county equalization department and the STC, immediately following adjournment of the board of review. (STC administrative rule: R 209.26(6a), (6b))

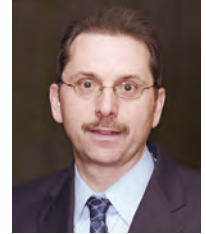
Form 4626, Assessing Officers Report of Taxable Values as of State Equalization, due to the county.

**17** Allocation board meets and receives budgets. (MCL 211.210)

**By 25** Notice of May 2 election published. One notice required. (MCL 168.653a)

**By 27** Public accuracy test must be conducted for May 2 election by local election commission. (R 168.778) Notice of test must be published at least 48 hours before test. (MCL 168.798)

**By 29** Electors who wish to receive an absent voter ballot for May 2 election by mail submit applications by 2 p.m. (MCL 168.759)



We are getting quite a few calls from residents and some small businesses to rent our township hall. What steps should we consider before going forward?

Many townships may face this dilemma when deciding whether or not to lease township-owned facilities to citizens and/or outside organizations. Municipalities exist to serve the public, but the potential risks of leasing facilities may seem to outweigh the benefits in this litigious day and age.

While the simplest solution might seem to be avoiding the risk all together—e.g., never leasing out township-owned facilities—there are some simple techniques to help manage these risks:

- Execution of a written lease agreement that includes hold harmless/indemnification clauses.
- When leasing to social groups and corporations, it is essential that the language include a request to name the township as an “Additional Insured.” In addition, it is important to request that the coverage provided to the township be primary, with any other insurance carried by the township to be considered secondary and/or excess. These provisions of the agreement with the lessor are necessary to ensure that the terms of the lessor’s policy will respond to the executed agreement.
- Acceptable limits for all potential renters or lessors should be established not only in all agreements but also in the township’s facility usage policy. It is essential that townships adhere to the requirements and remain consistent when leasing or renting out their facilities.
- When leasing to individuals, it is important to establish a minimum standard and/or acceptable limit of coverage that they typically already have in the form of a homeowner’s, condo or renter’s insurance policy.
- For social groups and corporations, the requirements should be a little more demanding. Establishing certain coverage and limits of coverage is essential in order to properly protect the township. Coverage required for these types of organizations should include both commercial general liability and automobile liability and have the township named as “Additional Insured” on both policies. Requiring proof of workers’ compensation is also important, although not all groups/companies are required to carry it.

Additionally, the township should contact its insurance carrier to get specific advice on best practices and advice on transferring risk for facility usage and other exposures. Your

insurance carrier can provide information, such as how to identify the level of risk, sample contract language, sample hold harmless agreements, waivers, endorsements and other valuable tools.

Management of these risks is not the only issue facing townships that decide to move forward with renting facilities. They should first adopt a comprehensive facilities rental policy(s) to ensure that they comply with the law in the uniform treatment of all groups seeking use of the facilities. The Michigan Townships Association has an excellent guide on the member’s portion of [www.michigantownships.org](http://www.michigantownships.org) (after logging in, click on “Answer Center,” then by “Index of Topics Q-Z” and select “Township Hall Rules”). This guide outlines specific issues to consider in adopting such a policy. For example, rental fees can be made part of the conditions for rental, but they must apply uniformly and cannot be discriminatory.

On a final note, the “transfer of risk” and the management of rental activities may put burdens on smaller townships, which may have limited resources or risk management experience. For example, the clerk would be required to maintain the rental agreements and ancillary documents for seven years after the event. Also, without a dedicated facilities manager that some larger townships have, the policies for smaller townships should likely be more restrictive, due to a possible lack of experience in managing risk transfers and additional burdens placed on elected officials and staff. For example, renting to commercial businesses is inherently more complex and should be done with due care, or as many townships have, simply state a prohibition in the policy.

*Editor’s Note: Special thanks to Michigan Municipal Risk Management Authority (MMRMA) Risk Manager Tim McClorey. MMRMA, an MTA Allied Service Provider, is a non-profit public entity risk pool providing liability and property coverage to Michigan municipal entities.*

Information provided in *Financial Forum* should not be considered legal advice, and readers are encouraged to contact their township auditor and/or attorney for advice specific to their situation.



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My township wants to allow for the use of credit cards by officials and employees. Are there any state laws that regulate such credit card use?

Yes. Michigan Public Act 266 of 1995 authorizes and regulates credit card use by officers and employees of local units of government. PA 266 requires that your township adopt by resolution a written policy regarding credit card transactions. Section 3 of PA 266 contains detailed requirements for the contents of this written policy, which can be summarized as follows:

- 1) A township officer or employee must be given responsibility for credit card issuance, accounting, monitoring and retrieval, and for overseeing compliance with the policy.
- 2) The credit card may only be used for the purchase of goods or services for the official business of the township.
- 3) A township officer or employee using a credit card must submit to the township proper documentation that provides in detail the goods or services purchased, the cost, the purchase date, and the official business.
- 4) A township officer or employee is responsible for the protection and custody of their credit card and must immediately notify the township if lost or stolen.
- 5) Upon termination of township employment, an officer or employee shall immediately return the credit card to the township.
- 6) The policy must contain a system of internal accounting controls to monitor the use of the credit cards.
- 7) Before payment, the credit card invoices must be approved.
- 8) The township must pay all credit cards in full within 60 days of the initial statement date.
- 9) Disciplinary procedures must be set out for a credit card's unauthorized use.

Your township may institute other policies in addition to the above referenced required policies.



Can a township official or employee use the credit card for a personal purchase and just reimburse the township?

No. Any personal use of the credit card is strictly prohibited by Public Act 266 of 1995. Public Act 266 requires the

township to have as one of its written policies that the credit card only be used for official business of the township. Additionally, personal use of a township credit card would constitute an unlawful lending of credit by the township for private purposes, in violation of the Michigan Constitution.



Must the board take any action if it does not want to allow licensed medical marijuana facilities in the township?

No. Public Act 281 of 2016, the Medical Marijuana Facilities Licensing Act, is opt-in legislation with regard to a township's allowance of licensed medical marijuana facilities within the township. This means that the township must affirmatively *opt in* by adopting an ordinance to allow for these licensed medical marijuana facilities. The State of Michigan will not begin to license marijuana facilities until Dec. 15, 2017.

Licensed medical marijuana facilities include licensed growers, processors, safety compliance facilities, provisioning centers and secure transporters. Even though the state will only license facilities located in municipalities that adopt ordinances allowing for such facilities, it is still recommended that your township review its current general ordinances and zoning ordinance to determine if there are any provisions therein which could be interpreted as specifically allowing for these types of facilities. Taking any such provisions out of your ordinances will prevent any potential arguments by those seeking licenses that their facilities are in fact allowed in your township. Also, while not required, your township could take the affirmative step to pass a resolution or ordinance stating that medical marijuana facilities are not allowed in your township.



If my township prohibits medical marijuana facilities, will this also prohibit the use of medical marijuana by qualified patients and the provision of medical marijuana by qualified caregivers?

No. The Michigan Medical Marijuana Act (MCL 333.26421, *et seq.*) is a voter-initiated law authorizing, within certain limitations, patients to grow and use medical marijuana, and caregivers to grow and provide medical marijuana to such patients. This law remains unchanged and separate from the recent PA 281. Authorized patients and caregivers may continue to grow and/or use medical

marijuana as authorized under the Michigan Medical Marihuana Act regardless of whether the township prohibits medical marijuana facilities.



If my township is considering allowing medical marijuana facilities, do we need to adopt a moratorium on such facilities until the township is done reviewing the matter?

No. A moratorium would not be required while your township considers whether or not to allow medical marijuana facilities. Licensed medical marijuana facilities are only allowed in your township if your township opts in by adopting an ordinance. At any time, even after the state starts granting licenses, the township can adopt an ordinance allowing licensed medical marijuana facilities. Pursuant to this opt-in ordinance, the township can determine what types of facilities it will allow and the number. Your township has all the time it wants to study the matter and determine whether or not it wishes to opt in at a later time.

*Hello, MTA ... ?* provides general information on typical questions asked by township officials. Readers are encouraged to contact an attorney when specific legal guidance is needed. Member township officials and personnel may contact MTA Member Information Services with questions or requests from 8 a.m. to 5 p.m., weekdays, at (517) 321-6467 or fax (517) 321-8908.

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# Governor releases budget proposal

Gov. Rick Snyder’s proposed budget for the coming year included proposals that will benefit townships.

Last month, the governor unveiled his recommendations for a \$56.27 billion budget for Fiscal Year 2017-18—a 2.5 percent increase over the current fiscal year. The budget includes a \$10.15 billion General Fund, up 1.7 percent from this year.

Under his budget, townships that currently receive City, Village and Township (CVT) Revenue Sharing dollars would continue to do so. In 2014, the CVT Revenue Sharing program replaced the former Economic Vitality Incentive Program (EVIP), allowing 100 townships that had not previously received EVIP funding to be added to the program. In the past two budgets, Gov. Snyder did not recommend funding for the additional 100 townships, but MTA worked with the Legislature to keep it intact. This year, however, the governor proposed that CVT funding hold steady. While this means townships would not see an increase

in their CVT Revenue Sharing, they also would not lose it if the Legislature approves the funding.

“MTA is encouraged that Gov. Snyder sees the value in continuing to provide these townships with CVT Revenue Sharing dollars,” MTA Government Relations Director Judy Allen said. “Revenue sharing is one of the two main revenue sources for municipalities, and this funding is critical for townships to offer vital services to residents. MTA continues to work with the Legislature to extend CVT Revenue Sharing to more townships in the future.”

The governor also proposed a 2.3 percent increase in constitutional revenue sharing—however, this ultimately depends on sales tax collections and would not materialize if the sales tax dollars are not there. Last year, Gov. Snyder proposed a 3.6 percent increase, but sales tax collections provided a less-than one percent increase.

New to this year’s budget is a proposed \$3.85 million for a new wetland mitigation bank. This program would allow entities with mitigation needs to buy credits, which would then be reinvested into purchasing more wetlands to be used as wetland “banks.” See the article on page 13 for more details on the program and MTA’s involvement.

Transportation and infrastructure would see funding increases as proposed in the budget. An additional \$130 million would go to the Michigan Transportation

Fund and an extra \$84.3 million for state roads. These funds come from the first full fiscal year of increased fuel taxes and registration fees. A \$20 million deposit is also proposed for a one-time payment to the special Michigan Infrastructure Fund, which would go toward water, transportation, energy and communications infrastructure.

The following areas are also of interest to townships:

- **Payments In Lieu of Taxes (PILT):** The PILT program would continue to receive full funding. The proposed amount for the coming fiscal year is \$27.6 million.
- **Fire training grants:** Fire training grants are recommended to continue at their current levels. This year, the state budgeted \$2 million for the grants.
- **Fire protection grants:** Grants paid in lieu of property taxes for fire protection services rendered by municipalities for state-owned facilities (offices, prisons, universities, etc.) are proposed at \$9.2 million.
- **Michigan State Police:** The department would receive a \$9.2 million budget increase to pay for a new trooper school for 100 new troopers.





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- **State parks:** Funding for state parks maintenance would nearly double under Snyder's recommendation, at \$19.5 million.

Gov. Snyder's proposal is a recommendation for the Legislature to pass. The Legislature now begins its work on the budget, with the goal of a final version being signed by June. MTA will continue to provide updates throughout the process.

## MTA appointed to multiple state groups

When Gov. Rick Snyder's administration addresses issues ranging from pensions to wetlands, MTA will be part of the solution. MTA was appointed to multiple state work groups created to address a variety of problems. The Association will join other local government associations, former and current lawmakers, and other entities to make recommendations and help steer new projects.

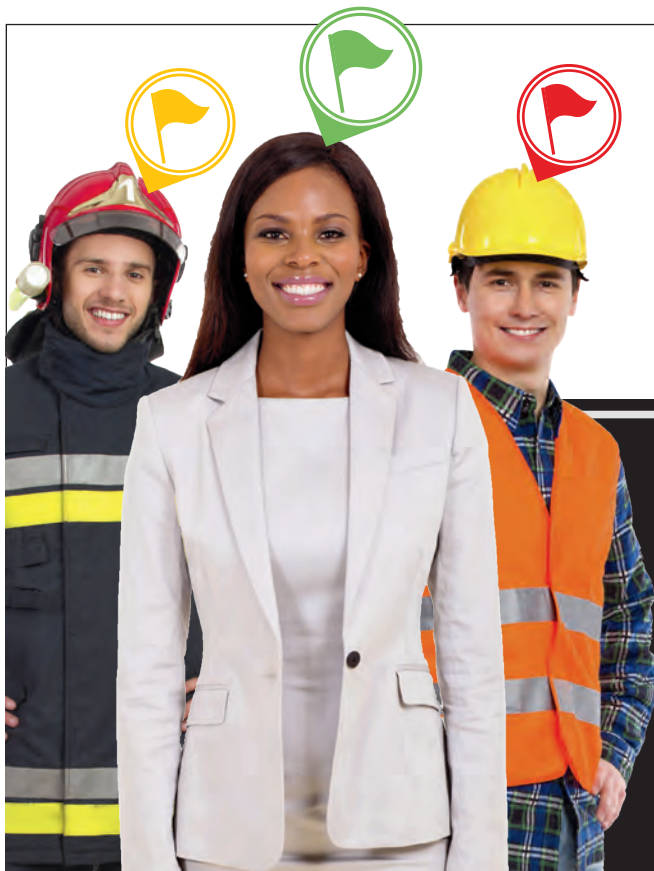
"When the state Legislature considers making significant changes to statutes addressing core township responsibilities, getting the details right from the start can mean the difference between laws that make government function better or create unintended burdensome consequences to township officials and to the public," MTA Executive Director Larry Merrill said. "Working with lawmakers and other stakeholders prior to legislation being introduced lessens the potential that we will have to subsequently seek 'trailer' legislation to fix problems."

In February, Gov. Snyder appointed MTA to a 23-member task force charged with examining local government pension and health care costs. The governor proposed this task force last year, when proposed legislation reforming other post-employment benefits was put on hold, and again during his State of the State address in January.

The task force has already begun its work, as Snyder gave it an aggressive timeline in hopes that it would make recommendations by this spring. The goal is for lawmakers to begin work on the issue when they return from spring break.

Additionally, MTA is part of a work group to examine municipal finance sustainability. MTA was also asked to participate in the Michigan Municipal Wetland Alliance, which will act as the bank sponsor and land manager of a new wetland mitigation project. This new program is in response to the wetland mitigation needs of local governments across the state as well as of commercial agriculture. Under the program, entities with mitigation needs could buy credits, which would then be reinvested into purchasing more wetlands to be used as wetland "banks." See the previous article for more information on state funding for the wetland mitigation banks.

MTA will advocate for townships on each of these groups and ensure that the voice of townships is heard and our interests are considered.



## RETIREMENT READINESS

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# 2017 MTA proposed policy platform

As adopted by delegates at MTA's Annual Meeting, April 13, 2017, at the Lansing Center, these proposed policies will become the platform from which legislation is sought in the coming year.

## Purpose

The Michigan Townships Association Policy Platform is a member-adopted plan that identifies the Association's primary legislative policy objectives. It provides broad policy guidance to the MTA Board of Directors and staff in responding to legislation in a manner that reflects the values and preferences of the MTA membership. It offers instruction as to the issues that the membership desires the Association to bring to the attention of policymakers and for which the Association is to effectively advocate. The Policy Platform also identifies positions on issues that the Association's membership pledges its active support, including engaging in grassroots advocacy consistent with the Policy Platform objectives.

The legislative process requires compromise and accommodations to alternative perspectives. As such, the Association will pursue legislative outcomes that most closely achieve the spirit and intent of the Policy Platform, but cannot be bound to premise its position on the precise wordage of its Policy Platform.

The Policy Platform delineates issues into six broad issue areas:

- Assessment and Taxation
- Elections
- Environment and Land Use
- Intergovernmental Relations
- Township Operations
- Transportation and Infrastructure

The issues addressed in a particular subject area may have implications for issues addressed in other subject areas and should be interpreted such that the broad policy objectives of all affected areas are accomplished.

## MTA Annual Meeting Deliberation and Adoption Process

Member officials are strongly encouraged to review the Policy Platform prior to the MTA Annual Meeting and, if they have questions regarding the purpose or intent of any of the specific policy objectives, to attend the *MTA Policy Review* session on Wednesday, April 12 from 10:15 to 11:30 a.m. in Banquet Room 4 (Level 1).

The MTA president will present the Policy Platform, focusing discussion and deliberation on the policy objectives in each of the six policy areas. Following discussion, debate and potential amendments, a vote will be taken to adopt the Policy Platform with any amendments previously approved. Amendments may include striking (removing) a policy objective. If a policy objective is removed from the Policy Platform at the Annual Meeting, it will be construed by the Board of Directors that it is the membership's intent that MTA refrain from engaging in any advocacy regarding that particular objective.

**Amendments.** Members who desire to amend a policy will be required to do so in a manner consistent with *Robert's Rules of Order (RONR (11th ed.)* section 12, pages 130-162). Amendments are permitted to any policy submitted at the Annual Meeting provided the purpose of the original policy remains unaltered. (MTA Bylaws, Article IV. C.3.)

Amendments can take one of three forms:

- **Add content.** This is accomplished by the following: "*I move to amend the proposed policy by adding the words ' \_\_\_\_\_ ' to policy objective number \_\_\_\_ in the section under current consideration.*" The president will ask for a second, which is required for the amendment to be discussed, and will restate the policy objective with the new wording. After restating the amendment, the president will ask for debate on the amendment. One secondary amendment, on the new language under consideration only, is in order. Once debate has finished, the president will ask for a vote. If a majority of the membership votes in favor of the amendment, the wording of the original policy objective is changed accordingly.
- **Substitute content.** This is accomplished by the following: "*I move to amend the proposed policy by substituting the words ' \_\_\_\_\_ ' for the words ' \_\_\_\_\_ ' to policy objective number \_\_\_\_ in the section under current consideration.*" The same procedures that apply to adding content apply to substituting content.
- **Strike content, including eliminating an entire policy objective.** This is accomplished by the following: "*I move to amend the proposed policy by striking the words ' \_\_\_\_\_ ' to policy objective number \_\_\_\_ in the section under current consideration.*" If the intent is to strike the policy objective entirely, the proper amendment would be, "*I move to amend the proposed policy by striking policy objective number \_\_\_\_ in the section under current consideration.*" The same procedures that apply to adding and substituting content apply to striking content. If an entire policy objective is struck (removed), the Association will not advocate for that objective.

Added and substitute content must be in compliance with the MTA Bylaws, Article IV. C.1 and 2, such that it is germane to the purpose of the original policy and does not constitute a new purpose to the policy.

### **Robert's Rules of Order Regarding 'Tabling' a Motion** (properly referred to as 'Lay on the Table')

The motion to "lay on the table" enables the Annual Meeting to lay the pending question aside temporarily, when something else of immediate urgency has arisen. It is in order if the intention is to resume deliberations after the urgent issue has been resolved, but "... is out of order if the evident intent is to kill or avoid dealing with a measure." (*Ibid*, section 17, pages 206-207) It can be applied to a main motion, such as the adoption of the entire Policy Platform, but cannot be applied to a specific policy objective of the Policy Platform. (*Ibid*, page 208) A motion to table must be seconded and is not debatable. If adopted, a motion to take from the table would be in order at any time. (*Ibid*, section 17, pages 209-210)

**Policies from the Floor.** Pursuant to the MTA Bylaws, Article IV. C.2.a-c, policies from the floor shall be submitted to the MTA Headquarters Room not later than 12:00 noon the day prior to the Annual Meeting. The Legislative Policy Platform Committee shall review the wording and legality of such policies. No policy shall be accepted from the floor unless a petition signed by at least one hundred (100) registered delegates to the Conference accompanies the policy. The policy sponsor shall furnish sufficient copies of the policy to be distributed to all delegates at the beginning of the Annual Meeting.

**Special Rules.** The Board of Directors submits to the Annual Meeting the following special rules, pursuant to *Robert's Rules of Order (RONR (11th ed.))*, section 2, pages 15-17:

- There is a time limit of three minutes per delegate on debatable issues the first time that a delegate addresses the Annual Meeting membership on an issue, and one-and-a-half minutes the second time that a delegate addresses the Annual Meeting on the same issue.
- The chair shall have discretion in further limiting the time of debate considering the overall limitation of time.

## **Policy Platform**

The Board of Directors submits to the MTA Annual Meeting the following Legislative Vision, Statements of Principles and Policy Objectives for adoption:

### **Legislative Vision**

The Legislative Vision expresses long-term aspirational goals of the Association. The Michigan Townships Association envisions a 21st-century Michigan where:

- Townships have statutory authority and state financial support sufficient to provide high-quality services and infrastructure consistent with community needs and expectations, and to enable full compliance with ever-expanding state-imposed mandates without cutting local spending priorities.

- Elections enjoy a high level of voter participation.
- Townships and other governmental entities enjoy a level of trust and mutual respect essential for collaboration to solve Michigan's challenges.
- Natural resources are developed from townships in a manner consistent with township regulations that protect public safety and property values.
- There is clarity of roles and responsibilities among township officials essential for efficient and effective services to the public.
- Townships have the authority and resources to ensure good roads and bridges now and for future generations.

The membership of the Michigan Townships Association supports the Association's efforts to achieve the following Legislative Policy Objectives:

### **Assessment and Taxation**

As the primary means to finance township government, the Michigan Townships Association supports the principles of property tax fairness, equity, and efficient assessment and collection by township officials to ensure accountability, public trust, and locally accessible information and assistance. Judicial decisions regarding valuation should be based on sound assessing principles. Affected local governments should be reimbursed by the state for property tax revenues lost due to statutory exemptions and state government should provide local governments with education and technical support to develop and defend their assessment rolls.

As lawmakers and regulators enact changes to current tax laws and local government requirements, the Michigan Townships Association supports the following objectives:

1. Preventing "dark store theory" assessment appeal decisions by amending state law to require property values be based on highest and best use, and recognition that such highest and best use may result in a value based upon the continuation of an existing use of the property, and prohibit the consideration of private deed restrictions or covenants imposed to reduce the value of the property or exclude competitors of the grantor from the market
2. Codify the 2006 Michigan Supreme Court *Wexford Medical Group v. City of Cadillac* decision for the purpose of narrowing eligibility for nonprofit charitable institutions property tax exemptions
3. Allow charter townships, with voter approval, to increase their millage rate to offset taxable value losses due to constitutional rollbacks
4. Recodify Michigan township statutes to include clarification that assessors are accountable to the township board when the supervisor is not certified to perform assessing functions

# 2017 MTA proposed policy platform

5. Increase the specific tax on mobile homes located in licensed parks
6. Exempting minimal personal property tax obligations resulting from minor property improvements on mobile home lots, such as small decks, stairs and porches

## Elections

The Michigan Townships Association supports democratic principles of fair, transparent and efficient elections administered by township officials that encourage high voter participation and procedures appropriate to varying community resources and population densities.

As lawmakers and regulators enact changes to current election laws, the Michigan Townships Association supports the following objectives:

1. Preserve authority of townships to convey information on ballot proposals to their residents
2. State funding for replacement of election equipment
3. Allow candidates seeking township office to pay a filing fee in lieu of filing petition signatures

## Environment and Land Use

The Michigan Townships Association supports in principle state laws supporting the role of township governments to efficiently and effectively plan for land uses and adopt zoning ordinances to protect the public health, safety and general welfare. State and federal regulations should not impede local government growth and development policies and objectives. Further, preemption of local land use authority should be limited to issues of great statewide impact and any resulting adverse local impacts should be mitigated by the state or federal government.

As lawmakers and regulatory agencies enact changes to laws addressing township land use and environment, the Michigan Townships Association supports the following objectives:

1. Require local approval for any DNR purchase of land in townships where a significant amount of land is commercial forestland or is owned by the State of Michigan
2. Require DNR to notify townships and provide opportunity to discuss a proposed state land acquisition
3. Statewide septic system maintenance standards to reduce septic system failures that create serious public health threats and expose townships to being required to build expensive public sewer systems

## Intergovernmental Relations

The Michigan Townships Association supports in principle intergovernmental collaboration to restore economic prosperity, efficiently and effectively deliver programs and services, and solve other challenges. State laws should allow creativity, flexibility and incentivize fair and equitable cost-sharing, benefits and governance in inter-local agreements. State laws authorizing economic development tools and other powers should be based on community characteristics relative to policy objectives, rather than city or township legal status. State taxation and spending policies should mitigate adverse revenue sharing impacts on townships.

As lawmakers and regulatory agencies consider altering the fiscal relationship of the state to local governments as well as powers and authorities of local governments, the Michigan Townships Association supports the following objectives:

1. Full funding to townships for payments-in-lieu-of-taxes, commercial forest program and the swamp tax program
2. Expand the number of townships eligible for statutory revenue sharing and grants
3. Allow a municipality to create or continue the use of a tax increment financing (TIF) authority to capture tax revenue attributable to increases in property value within an area or district and allow the use of that money for identified TIF purposes
4. A local government consolidation process that continues to require voter approval of any consolidation

## Township Operations

The Michigan Townships Association supports the principle of state and federal governments granting to Michigan townships broad discretion and autonomy to govern the funding and delivery of programs and services. MTA also supports state reimbursement to townships for increased costs resulting from new mandated services and state regulations. The Michigan Townships Association supports the following objectives:

1. Modernizing state laws to clarify the governance role of township boards to establish broad policy direction for townships
2. Exempt from state-imposed retiree health care mandates, all townships demonstrating the ability to fund their OPEB (Other Post-Employment Benefit) obligations, while adequately funding their public services, and allowing townships with high OPEB liabilities to develop appropriate strategies to achieve fiscal solvency
3. Appropriate, cost-effective training requirements for township planning commissioners, zoning board of

appeal members and board of review members to reduce costly lawsuits and improve township decision-making by key appointed boards

4. State funding to townships providing public safety protection to state-owned, tax-exempt properties

### Transportation and Infrastructure

The Michigan Townships Association concludes that Michigan’s road system will continue to require more funding than is currently anticipated in law to ensure that county primary and local roads are safe and convenient for travel. As townships are major financial contributors to road maintenance and construction costs, the Michigan Townships Association supports the principle that township officials should be included in transportation policy discussions at all government levels. Michigan has also under-invested in other infrastructure necessary to remain economically competitive and protect the health, safety and general welfare of residents. The Michigan Townships Association supports the principle that the State of Michigan must play a major role in planning, funding and delivering infrastructure needed by every community to be economically viable and free of environmental threats and risks.

As lawmakers and regulators address pressures to better address Michigan’s infrastructure, the Michigan Townships Association supports the following objectives:

1. Supports adequate and continuous funding for infrastructure replacement and improvement, as identified in the Governor’s 21st Century Commission Report including transportation, water, sewer and communications
2. Allow townships with voter approval to create special assessment districts for communications infrastructure including broadband and high-speed Internet
3. Require road agencies to comply with a township’s Complete Streets Policy resolution



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# 2017 Conference reminders

## Conference volunteers needed

MTA is seeking township officials to serve as sergeants-at-arms (SAA), ambassadors or Ticket Xchange volunteers during the MTA Annual Educational Conference & Expo in Lansing.

SAA duties include distributing session handouts and evaluation forms, monitoring classrooms, and collecting evaluation forms. Ambassadors assist with welcoming and directing attendees to registration upon arrival. Volunteers at the Ticket Xchange assist in exchanging tickets for specific seats at the MTA Banquet.

Call (517) 321-6467 or email [kristin@michigantownships.org](mailto:kristin@michigantownships.org) to be sent a link to our volunteer sign-up website, where you can select from available roles, dates, times and sessions.

## Limited number of suites still available

Looking to host a hospitality event or county chapter suite at the 2017 MTA Conference? For more information or to request a suite form, call Kristin at (517) 321-6467, or email [kristin@michigantownships.org](mailto:kristin@michigantownships.org).

**NOTE:** All suite reservations must be made through MTA. Do not contact the hotels directly.

## Hop on the bus to Conference!

The MTA Marquette County Chapter is arranging a charter bus to bring township officials and their guests to the Conference from the Upper Peninsula, as well as other stops along the bus route. For more information, contact **Wells Township** (Marquette Co.) Clerk **Patti Manninen** at (906) 238-4312 or [plm@alphacomm.net](mailto:plm@alphacomm.net), or MTA District 2 Director **James Nankervis** at (906) 485-5417 or [supervisor@ishpemingtownship.com](mailto:supervisor@ishpemingtownship.com).

Is your area organizing a bus? MTA can help you spread the word! Contact [kristin@michigantownships.org](mailto:kristin@michigantownships.org) or call (517) 321-6467 to let us know!

## Upcoming dates and deadlines

**March 14** Early-bird registration deadline.

**March 20** Last day to obtain housing at special rates in MTA room block.

**March 28** Last day to obtain the regular registration rate; on-site rate applies after this date.

Last day to register for Conference to have a confirmation sent to you.



**LEARN** together

**WORK** together

**GROW** together

**COME TOGETHER**

at MTA's 2017  
Annual Educational  
Conference & Expo



The best things happen when individual talents come together to create community success. Your board—and your township—is never better than when everyone is working together for a common goal.

Let MTA's Annual Educational Conference & Expo—coming April 10-13, 2017, to our state's Capital City—help you set the stage for the upcoming term of office.

A stage where greatness can happen—for yourself, your board and your township. You don't want to miss:

- **70-plus breakout sessions**, designed to provide knowledge, enhance your skills and inspire you to become a truly effective leader. Topics are designed for elected officials at every level and, in addition to statutory duties, address a variety of concepts, trends and current issues in township government—including special **Come Together, Work Together, Grow Together** sessions, as well as targeted **Advocacy** and **New Officials** educational tracks.
- **Monday pre-Conference sessions**, including Part 2 of our *New Officials Training: Becoming an Effective Board Member and Administrator*, along with *Managing Your Township Team*, MTA's Legal Institute for Township Attorneys and Assessors Renewal Course (see pages 31 and 32 for registration forms).
- **Evening networking events**, including our Annual Banquet, preceded by a VIP Networking Reception. Don't miss the "3-D" Welcoming Reception (sponsored by *Bendzinski & Co.*), Fun Night: Public Officials Got Talent! (sponsored by *Michigan Township Participating Plan*), and Afterglow Reception (sponsored by *Burnham & Flower Insurance Group*).

**REGISTER TODAY!**

Download a registration brochure or register online at [www.michigantownships.org/conference.asp](http://www.michigantownships.org/conference.asp).  
Early-bird rates end March 14. Reserve your hotel room at [www.grandconnection.com/mta2017](http://www.grandconnection.com/mta2017).

# Come Together

Conference keynoter helps officials learn to celebrate differences

**C**ome Together—that’s a tall order anytime you put a variety of personalities in the same room, Dr. Sally Karioth says.

The more than 1,000 township officials converging at the 2017 MTA Annual Educational Conference & Expo in Lansing represent a robust, complex group of people. As Dr. Karioth delivers her Conference keynote address in April, she’ll be surrounded by township officials representing rural, urban, agricultural, recreational, liberal and conservative Michigan.

It’s not easy for folks with so many viewpoints to understand one another’s problems. “But what all of them share is they want what’s best for the people of Michigan,” Dr. Karioth said. “I think there will be no one at the Conference who would disagree with the fact that we want to enhance the human experience.”

Dr. Karioth will bring to the Conference her experience as a grief counselor, nursing professor and motivational speaker. While much of her work is with people who have experienced trauma, it all boils down to helping people and finding an “exquisite moment” in every day. Her goal is to help her audiences learn to celebrate their differences, rather than be divided by them.

## Working together for the common good

Township boards are made up of elected officials chosen by the voters. It’s up to the board—each

individual supervisor, treasurer, clerk and trustee—to find a way to come together and work together for the common good of the community.

“You’ve got to find something that everybody agrees on,” Karioth said. “And you have to recognize that different doesn’t mean wrong. It comes down to, how do we come at this goal, from very different places, without displacing each other along the way?”

Karioth believes a major cause of division is a resistance to change. You’ll often see two groups of people—those embracing the future and those who want to keep doing things the way they’ve always done it. If you’re not sure which side you’re on, ask yourself, “Am I fighting change?”

## Moving forward—together

The simple fact is the rules have changed, Karioth said. With emerging technology and a more diverse population, we’re playing a new game. You can’t use the old rules to play a new game. The only way to move forward is to accept the new rules and let go of the old game.

As we move into the future and learn the new rules, being civil to one another doesn’t always come naturally. This is all too common when groups of people let their differences divide them. Instead of finding common ground, people on opposite sides of the spectrum decide that the other half is just plain wrong, or even scary, and they’re nasty to one another. Sound familiar? We’re seeing this all too often around the country, Karioth said.

“On a macro level, what’s going on in the country is probably what’s going on in some board rooms,” she said.

*Our 2017 Conference Keynoter, Dr. Sally Karioth, is best known for her work in helping folks shed behaviors that can get in the way of celebrating their unique gifts. Township Focus spoke with Karioth and asked her to share a bit of her expertise about helping people learn to celebrate their differences, rather than be divided by them.*

*Learn more from Karioth at MTA’s 2017 Annual Conference this April in Lansing.*



“The question is, how do you keep from being divisive and move your board forward?”

Every township board is a hodge-podge of personality types and abilities. Karioth likes to think of them as “Snow White and the Seven Dwarfs.” As she rattles off the cast of characters—Dopey, Bashful, Grumpy, Sneezzy, Sleepy, Happy and Doc—chances are some of your fellow board members may come to mind. There’s the guy who’s resistant to trying anything new. The one who’s constantly smiling. The one who always seems to be in a bad mood. The people-pleaser. The list goes on.

While Karioth isn’t saying you need to figure out which dwarfs represent your fellow board members, she does suggest you think about defining the people on your board. Each personality type has some weaknesses, but each also brings unique strengths to the table. And conversely, the board member who seemingly has it all in terms of knowledge also has areas where he or she is lacking. Some board members might be shy, but they may also be highly intelligent and just need a little encouragement. Others might be loud and confident, but they can also disrupt the workflow of your board.

Getting these characters to come together doesn’t happen by accident. So what’s a board to do? The answer is simple, but it isn’t easy.

“You need to start with the fact that it’s very unusual to get everybody on board with an idea,” she said. “Then, you

take away attention from those who refuse to play by the rules.”

While it’s popular to think of your board as a team, Karioth has moved away from that, especially when assigning group projects. On a team, someone has to be a leader, which may give others the impression that their full participation isn’t important or valuable. But in a group, everyone has a vested interest. Plus, there’s something about “group think” that gets things done, she said. Look around at the major movements that have succeeded in our country’s history. Group think was a driving factor in many of them, and that continues to be the case even today.

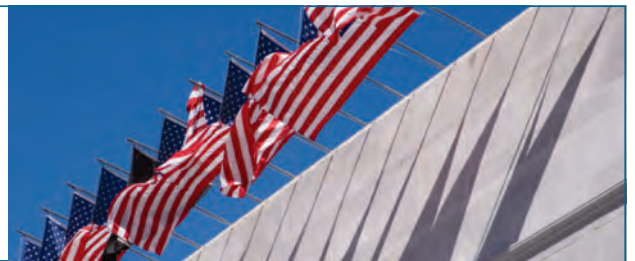
Coming together can be a huge challenge. It won’t happen overnight, or over the course of one board meeting. Even in the midst of that struggle, Karioth pushes board members to find a way to keep on and do their jobs.

“Every one of us has to step up to the plate,” she said. “We have a responsibility to make this a world of joy and grace and compassion and wisdom.”

*Learn more from Dr. Sally Karioth at the General Session of MTA’s 2017 Annual Educational Conference & Expo on Wednesday, April 12. Karioth will share additional insights in her breakout session, Secrets for Coming Together—and Staying That Way, being held later that day, from 10:15 to 11:30 a.m. For more about the Conference, turn to pages 18-19, or visit [www.michigantownships.org/conference.asp](http://www.michigantownships.org/conference.asp).*



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# What you need to know about the Open Meetings Act

**T**he Open Meetings Act (OMA) is arguably the statute that most impacts a township board as a whole. Every board member is subject to the OMA every time the board meets—and before and after it meets. All other statutory township boards and commissions are subject to the OMA, as well as most, if not all, committees established by the board.

The OMA is the law that requires notice to be given before a meeting is held and requires minutes to be prepared as a record of actions taken at a meeting. It's the law that requires each meeting to include a public comment period and that mandates when minutes of a meeting must be available to the public.

Perhaps most importantly, the OMA is the source of the requirement that all votes of a public body must be made in public.

As comprehensive as it is, the Open Meetings Act, Public Act 267 of 1976, MCL 15.261, *et seq.*, is surprisingly short and clear. It is available for free on the Michigan Legislature's website: [www.legislature.mi.gov](http://www.legislature.mi.gov). So there's no excuse—every board member should be familiar with the OMA and comfortable with how it works in practice.

This article will discuss the OMA's requirements for meeting notice, meeting conduct, decision-making and minutes. But first, a little background may be useful.

## **Why are township meetings 'open'?**

It's a good question. Undeniably, the requirements for notifying and including the public in meetings of a public body may, at times, make it more difficult for a public body to make decisions or accomplish its business. But in the wrong hands, efficiency can become expediency—and that's what prompted the Michigan Legislature to adopt the OMA in 1976 in the wake of the Watergate scandal. Today, all 50 states, the District of Columbia and the federal government each have some form of "open meetings" or "sunshine" law.

It's important to note that there is no constitutional or First Amendment right to open meetings. The public's right to attend and participate in meetings of a public body is statutory, as defined by Michigan's Legislature. It is not an absolute right; it is limited to the OMA's provisions that allow a person: 1) to attend and record or telecast a meeting, and 2) to speak during a public comment period under rules established by the public body.

The public does not have a statutorily protected right to speak outside of a public comment period or to participate in the public body's decision-making process. That is because a public meeting is the only place a public body like a township board may lawfully make decisions and do its business. The public has many other opportunities to interact or do business with a township, outside of a board meeting. But the board is restricted to acting only in an open meeting. With that in mind, the OMA also allows a public body to adopt rules to minimize disruption of its ability to do business.

Nothing, however, prevents a public body from allowing a greater degree of openness. An individual township board can choose to give more notice and allow for more public involvement in its meetings. The spirit of the OMA emphasizes transparency in government.

There are times when the public interest in effective administration and decision-making outweighs the public interest in open meetings. The OMA includes very limited options for addressing certain types of issues in "closed session." But all decisions of a public body must still be made in public.

## Start with the OMA's definitions

To determine if the OMA applies in a particular situation, you have to know whether 1) a public body 2) is meeting to 3) deliberate toward or make a decision—as each of those elements is defined by the OMA:

**Public body:** MCL 15.262(a) defines a "public body" as "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, that is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function ... ." Any committee, subcommittee or other body that meets the definition of "public body" will be subject to the OMA.

**Meeting:** MCL 15.262(b) defines a "meeting" as "the convening of a public body at which a quorum is present for the purpose of *deliberating toward* or *rendering a decision* on a public policy ..."

**Decision:** MCL 15.262(d) defines a "decision" as "a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."

## What is a township public body?

**Statutory bodies**—All township bodies created or authorized by state law are subject to the OMA, including the township board, annual meeting of the electors, planning commission,

zoning board of appeals, board of review, construction board of appeals, election commission, elected park commission, elected library board, police or fire administrative board (single or joint), building authority, civil service commission, police or fire civil service commission, downtown development authority board, economic development corporation board, emergency services authority, historic commission, housing commission, and officials compensation commission. That list is not exhaustive; to be prudent, assume that any body authorized or required by state law must comply with the OMA.

In most cases, the enabling statute will state that the body is subject to the OMA.

**Advisory committees**—Any committee established by the township board or other public body is potentially subject to the OMA, unless it is "purely advisory," meaning it makes no final decisions. A township board may appoint advisory committees to collect information, make recommendations and participate in township programs. Purely advisory committees that do not include a quorum of the township board or other public body are not subject to the OMA.

Many court cases and attorney general opinions have addressed the intricacies of what constitutes a public body, and it is beyond the scope of this article to give a definitive description. Suffice to say, the fact that a public body calls a committee "advisory" does not automatically release the committee from OMA compliance. A township "advisory committee" may be subject to the OMA if it falls under the OMA's definition of a quorum of a public body deliberating toward or rendering a decision at a meeting in practice.

**Subcommittees of less than a quorum**—Although the OMA defines a meeting as "the convening of a public body at which a quorum is present," if a public body delegates a governmental function or proprietary authority to a subcommittee that is less than a quorum of the body, that subcommittee is still conducting a governmental function, and the process must be conducted at an open meeting. Avoid using subcommittees to circumvent the OMA.

Not all requests for recommendations from a subcommittee are a delegation of a governmental function or proprietary authority, but when in doubt, consult the township's attorney.

**Individuals**—Similarly, if a township board (or other body) delegates the final decisions for a township governmental function or proprietary authority to an individual, that individual is still conducting a governmental function, and the process must be conducted at an open meeting. The only township exception is when the individual's office/position is charged with that governmental function or proprietary authority by statute, not board delegation. By law, an individual official is not a public body.

A prudent approach is for any township body or committee to fully comply with the OMA. The township board may charge a subcommittee or advisory committee with OMA compliance.

In the long run, this approach may be good for public relations and may help the township avoid even the appearance of attempting to circumvent the OMA.



Photo courtesy of Southwest Washtenaw Council of Governments

An individual township board can choose to give more notice and allow for more public involvement in its meetings. The spirit of the OMA emphasizes transparency in government.

## What types of meetings are lawful?

There are only two types of meetings of a public body: Regular and special meetings.

**Regular meetings**—Under the OMA, a regular meeting of a public body is a meeting that is on the schedule of meetings adopted by the body and posted within 10 days after the first meeting of the public body’s year (fiscal or calendar year).

**Special meetings**—A special meeting is simply a meeting that is not in the schedule of regular meetings. Special meetings are just that—special. Frequent use of special meetings, with their short notice periods, can be perceived by the public as an attempt to circumvent their attendance at meetings. Major or potentially sensitive business items are probably best discussed at a regularly scheduled meeting if there is no emergency or other pressing deadline.

## Is it a meeting?

**“Work sessions”**—Some public bodies designate certain meetings as “work sessions,” meaning that the body does not intend to vote on any business at that meeting. But there is no such designation in the OMA or township law, and calling a meeting a “work session” does not remove the meeting from OMA requirements. Remember, the OMA definition of meeting includes “deliberating toward” a decision. A “work session” must be either a regular or special meeting.

And any stated restriction on voting is only self-imposed. If a quorum is present at a work session, nothing will prevent the body from voting, so the OMA should be followed.

**Public hearings**—A public hearing is always an agenda item at a regular or special open meeting; it never “stands alone.” Even if the meeting is held only to conduct the public

hearing, it is still a meeting of the public body conducting the hearing, and the OMA applies.

**“Closed meetings”**—Occasionally, someone will refer to a “closed meeting.” There is no such thing, although a public body may hold a “closed session” during an open meeting, if one of the OMA’s permissible reasons applies. All meetings of a public body must be open meetings. (See page 29 for more on holding a closed session.)

## What notice does the OMA require?

A public meeting notice must include the name of the public body to which the notice applies, its telephone number if one exists, and its address, and must list the dates, times and locations of the regular meetings. The notice must be posted at the public body’s principal office and any other locations it considers appropriate. The Internet, social media, or public access television may be used for posting public notice, in addition to, but not instead of, the notice posted at the principal office. (MCL 15.264)

If a township does not have a hall or “principal office,” the required public notice for a township public body must be posted in the office of the county clerk. (MCL 15.264)

**Regular meeting notice**—The schedule of a public body’s regular meetings must be posted at the township’s principal office within 10 days after the first meeting of the public body in each calendar or fiscal year. (MCL 15.265) A public body is not required to establish a regular schedule; some bodies, such as the zoning board of appeals, meet only as needed. (Attorney General Opinion 5183 of 1977)

If a public body changes its schedule of regular meetings, it must post the new schedule within three days after the meeting at which the change is made (and at least 18 hours prior to any rescheduled meeting). A public body may change its schedule to move one meeting date or to reschedule its remaining meetings for the year to a new day each month. (MCL 15.265)

**Special meeting notice**—The OMA requires that the public be notified of any special meeting of a township public body by notice posted at the township’s principal office at least 18 hours prior to the meeting time. The notice must state the date, time and place of the meeting. The notice must be accessible by the public for the full length of time, so it cannot be posted in a hallway or other area of a building where the notice is not visible to the public even when the building is closed. (MCL 15.265)

If the township “directly or indirectly maintains an official Internet presence [website] that includes monthly or more frequent updates of public meeting agendas or minutes,” then special meeting notices must also be posted on a portion of the website that is fully accessible to the public. “The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled public meetings and accessible via a prominent and conspicuous link on the

website's homepage that clearly describes its purpose for public notification of those nonregularly scheduled public meetings." (MCL 15.265)

**Subscriptions to public notices**—The OMA requires a public body to send public notice of meetings to: 1) a newspaper published in Michigan, or a radio or television station in Michigan at the same time the notice is posted, at no charge, upon written request; and 2) by first-class mail to anyone other than the media who submits a written request and pays a yearly fee of no more than the reasonable estimated cost for printing and postage of those notices. (MCL 15.266)

## Additional notice requirements

Other statutes mandate additional notice requirements. The following is not an exhaustive list, and township officials should routinely consult the statutes that authorize a particular action by a public body to determine if any additional notice is required.

**Americans with Disabilities Act**—The federal Americans with Disabilities Act (ADA) requires that a public meeting notice must state that if a person with disabilities notifies the clerk within a designated number of days prior to the meeting, accommodations will be furnished to enable meaningful attendance. The township board may establish the number of days it will require for ADA notification. MTA recommends using the following language on all public meeting notices:

*"This notice is posted in compliance with Public Act 267 of 1976, as amended, the Open Meetings Act, MCL 41.72a, and the Americans with Disabilities Act. The \_\_\_\_\_ Township Board will provide necessary reasonable aids and services, such as signers for the hearing-impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon \_\_\_\_\_ days' notice to the \_\_\_\_\_ Township Board by writing or calling: (list the name, title, address and telephone number of the contact person)."*

**Public hearings**—Public hearings are an element of an open meeting; they never stand alone. A public hearing is a legally required comment period on a specific action being considered by the public body. Additional notice is usually required to encourage public awareness and input. Notice of the public hearing may be required by law to be published in a newspaper or mailed to specific persons, businesses or organizations. In many cases, the statute that requires the public hearing will state when the notice must be printed or sent.

For example, the Michigan Zoning Enabling Act (MCL 125.3101, *et seq.*) requires all **zoning application/hearing notices** to be published once in a newspaper of general circulation at least 15 days before the date of the meeting. If the application involves 10 or fewer adjacent properties, or the request is for a zoning board of appeals interpretation of the zoning ordinance or an appeal of an administrative decision regarding a specific parcel, the notice must also be sent by mail or personal delivery to the applicant or property owner, and the occupants and assessed owners of property within 300 feet. (MCL 125.3103)

Another example is the requirement to publish the notice of a township board **budget public hearing** in a newspaper of general circulation. Under the Budget Hearings of Local Governments Act, the notice must include the time and place of the hearing, and state the place where a copy of the budget is available for public inspection. The notice must also include the following statement printed in 11-point boldfaced type: **"The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing."** (MCL 141.412) A general law township must publish the notice at least six days prior to the day of the meeting at which the budget public hearing will be held. The Charter Township Act adds the stricter requirement for a charter township to publish the notice at least seven days prior to the date of the meeting. (MCL 42.26)

Township public bodies should consult the statutes for the particular requirements for the type of public hearing to be held or, when in doubt, call MTA Member Information Services at (517) 321-6467 for the correct time frame.

**Planning commissioner notice**—The Michigan Planning Enabling Act requires the planning commission secretary to send written notice of a special meeting of the planning commission to the members not less than 48 hours in advance of the meeting. (MCL 125.3821)

## How may the public participate in a meeting?

**Attending**—Any person may attend the open sessions of a public meeting. A public body cannot put conditions on attendance, such as requiring a person to identify him or herself. A person may be excluded from a specific open meeting only for a breach of the peace actually committed at that meeting. (MCL 15.263 and Attorney General Opinion 5183 of 1977)

**Recording**—MCL 15.263 states, "The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting."

"Reasonable rules and regulations" may include directing that recording equipment be located in a particular part of the meeting room, to minimize risks of tripping over cords and blocking the view of the audience. But nowadays, smartphones and other devices mean that you may not know that people are recording. A person recording the open session of a public meeting does not have to tell anyone that he or she is recording the meeting or get permission to do so.

A public meeting is a public forum, with little or no expectation of privacy (except for closed sessions), so public bodies should just assume that everyone in the room during open session is recording. Those recordings may be posted on the Internet or social media—even "live" as the meeting is happening—or otherwise distributed or broadcast by private individuals.

**Public comment**—The public has a right “to address a meeting of a public body under rules established and recorded by the public body.” (MCL 15.263) The public must have at least one opportunity to speak publicly at an open meeting, and this has come to be known as the “public comment period.”

There are numerous court decisions and attorney general opinions on public comment, but, as people who’ve heard the author speak on the subject know, a simple rule of thumb is to assume that if little green men from Mars appear speaking Martian, and they want to speak during the public comment period, they get the same time to speak as anyone else would!

A public body may adopt rules for the public comment period. According to Attorney General Opinion 5183 of 1977, “the rules regulating the right of public address may include such controls as the length of time any one person may be permitted to address the body, the portion of the agenda set aside for public address, and a requirement that persons wishing to address the public body identify themselves and make it known ahead of time that they wish to address the body in order to facilitate the planning of time allotments to various portions of the agenda.”

Attorney General Opinion 5183 stresses, however, that “these rules must be reasonable, flexible and designed to encourage public expression and not discourage or prohibit it.”

A public body may limit the amount of time it will allow each individual speaker to address the meeting. Note that this is not the length of the public comment period itself; it is the length of time an individual speaker gets to speak. If 100 people want to speak, they each must be given the opportunity to speak. For that reason, consider choosing a limit such as two or three minutes. Few people need more time than that to make their point. Any time limit rules should be imposed consistently.

Consider allowing a group of individuals who wish to present a specific point of view to designate a spokesperson who may have additional time to adequately represent the group’s views. This is only an option, however; a public body cannot require a group to use a spokesperson.

A person’s right to speak during a public comment period implicates the First Amendment right to free speech, particularly on matters of public concern. Restrictions on the public comment period should be limited to content-neutral “time, place and manner” restrictions that serve a significant government interest and allow ample alternative channels of communication. Avoid attempting to regulate what a person is saying (the content of the speech).

For example, Attorney General Opinion 5332 of 1978 states that a public body may adopt a rule that “prohibits a person from using the board’s and the public’s time to make a personal attack upon an individual” if the content of the speaker’s attack “refers to conduct of the person being attacked that is totally unrelated to the manner in which he or she performs his or her duties” (is not a matter of public



**There are numerous court decisions and attorney general opinions on public comment, but a simple rule of thumb is, if little green men from Mars appear speaking Martian, and they want to speak during the public comment period, they get the same time to speak as anyone else would!**

concern). The opinion goes on to state that, if the speaker’s attack “is intended to refer to the manner in which an employee of the board or board member carries out his or her duties, the rule would be invalid ... .” Commenting on how officials perform their duties is political free speech.

## How must decisions of a public body be made?

The OMA states, “All decisions of a public body shall be made at a meeting open to the public.” (MCL 15.263) A public body may never vote or make a final decision in closed session.

Attorney General Opinion 5262 states that the Legislature clearly intended a vote to be open to the public: “The Open Meetings Act prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of a public body have voted.”

This means that any vote must be made by an “all in favor” voice-vote, a roll call vote, a show of hands or other method that allows the public to know how the official is voting. (*Esperance v. Chesterfield Township of Macomb County*, 89 Mich. App. 456, 1979) Township public bodies cannot vote by paper ballot or other secret ballot.

Public bodies should never vote or decide an issue outside of an open meeting. Several court decisions and attorney general opinions have addressed whether a public body can “poll” its members outside of a public meeting. According to MTA Legal Counsel, it is possible for one board member to lawfully “poll” other individual board members by phone or email to ask how they stand on a particular issue—as long as the contacts do not include any discussion of the issue, and do not eliminate full public discussion and deliberation of the issue prior to the body taking action on it. The polling cannot rise to the level of reaching a consensus or an agreement about an issue. But because there is a fine line between

about an issue. But because there is a fine line between “polling” and unlawful “round-the-horn” or “round-robin” voting outside of an open meeting, especially when several board members engage in “polling,” MTA recommends that township public bodies avoid attempting to “poll” their members.

### **What should be included in meeting minutes?**

Minutes are a record of actions taken by a public body. They are not meant to be a word-for-word recital of the meeting or a medium for expressing individual positions.

For many reasons, the official responsible for drafting a public body’s minutes and the public body should work together to adopt a policy or consensus on what will or will not be included in the minutes, such as avoiding personal statements or verbatim deliberations or comments (except as appropriate for public hearings).

One of the most important reasons is that, when a public body makes corrections to its minutes, text that is “removed” never actually goes away. (See “*Approving/amending minutes*” below.)

A public body must keep minutes of each of its meetings showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose(s) for which a closed session is held. The minutes must include the roll call for any roll call votes taken at the meeting. (MCL 15.269)

According to MTA Legal Counsel, “[Meeting] minutes must, at a minimum, indicate the body which is meeting (e.g. township board, zoning board of appeals, planning commission, etc.); the date, time and location of the meeting; motions and resolutions made, supported and results of the motion; and any action taken by the body which is not specifically indicated in motions or resolutions.”

“Although the minutes do not have to include a verbatim recitation of all statements made at the meeting, a record of the topics or issues addressed during a meeting and any motions made (whether carried or not) provides a complete description of the proceedings of the meeting. We also note that if the township board has adopted a policy of following the provisions of *Robert’s Rules of Order*, it requires the recordation of all motions (whether passed or not) in the meeting minutes.

“Finally, we note that an accurate record of all motions offered, and their disposition, can avoid future disagreements or questions concerning those motions.”

Those are the basic requirements. Information over and above the requirements of the OMA and other statutes may be added at the discretion of the clerk/secretary and the public body when it approves the minutes at the next meeting. Note that the township clerk is responsible for the township board meeting minutes. (MCL 41.66)

Public bodies may want to consider adopting a policy of writing motions down before voting on them. This ensures that the members all know what the motion says when they are voting, and it gives the clerk/secretary an accurate record of the motion for the minutes. The extra time taken to clarify the motion can save hours of discussion on confusing votes later.

The meeting moderator (supervisor for township board meetings) should make a habit of reading the motion out loud prior to taking the vote and declaring the outcome. This will assist the members of the body in voting and the clerk/secretary in maintaining an accurate record.

### **Recording a public hearing in the meeting minutes**

According to MTA Legal Counsel, “When a public body conducts a public hearing (always an agenda item within a public meeting), the minutes should include the comments and arguments of those promoting or opposing a particular matter which is the subject of the public hearing and the fact that an opportunity to be heard was given to those present.”

One example of this is a hearing held to confirm a special assessment roll. MCL 41.726 requires a person objecting to the roll to file his or her objection in writing with the township clerk, but it is also important for the township to record in the minutes who appeared to protest so the township can demonstrate at any State Tax Commission proceedings that it provided the person an opportunity to be heard. Another example is noting in the March board of review meeting minutes when a taxpayer has appeared to appeal his or her assessment.

### **When must minutes be available to the public?**

There are actually two sets of minutes for any public meetings, and they should be identified as the draft (or “proposed” or “tentative”) minutes and the approved minutes.

**Draft minutes**—Draft minutes must be available for public inspection within eight business days after the meeting. They can be available sooner, just no later than eight business days. (MCL 15.269)

A public body may want to establish a policy that members of the body receive the draft minutes as soon as they are available. This gives them time to review the minutes so they are prepared to approve them at the next meeting.

**Approving/amending minutes**—A public body may only make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. After that, the minutes cannot be changed. (MCL 15.269) Changes should be limited to correcting typos or clarifying ambiguities; they should not “change history.” If a board thinks better of a motion approved at the last meeting, the minutes are not the way to fix the problem. The minutes will show that motion. The board may be able to reconsider or repeal that motion at a subsequent meeting, but should consult with its attorney for specific guidance on whether and how to do so.

If corrections are made, the corrected minutes must show both the original text of the draft minutes submitted for approval and the final, corrected text. (MCL 15.269)

This can be accomplished by drawing a line through text to be omitted and hand-writing the corrected or new text above the text, or by using a computer’s “strikethrough” option for omitted text and ALL CAPS option for corrected or new text.

**Approved minutes**—Approved minutes must be available for public inspection within five business days after the meeting at which the minutes were approved. (MCL 15.269)

**Minutes inspection and retention**—Minutes are public records open to public inspection, and a public body must make the minutes available at the address designated on its public meeting notices. (MCL 15.269)

The approved minutes of a public meeting must be retained permanently. Draft minutes are kept until the minutes are approved. Handwritten notes or recordings of a meeting made for the purpose of creating the minutes must be retained until the day after the meeting at which the minutes are approved, when the notes or recordings may be destroyed (unless they are subject to a Freedom of Information Act request, a discovery request or a court order). (General Record Retention Schedule 25—Township Clerks)

## What happens if a public body violates the OMA?

There are three distinct types of legal relief available for violations of the OMA (*Leemreis v. Sherman Township*, 273 Mich. App. 691, 2007). Each one has different requirements:

**1) Invalidation of decision**—A decision made by a public body may be invalidated if the public body has not complied with the OMA. The attorney general, county prosecuting attorney or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body. (MCL 15.270)

Specifically, a decision may be invalidated if:

- The public body has not complied with MCL 15.263(1), (2) or (3), or has failed to give proper notice, which has interfered with substantial compliance with MCL 15.263(1), (2) or (3), and
- The circuit court finds that that noncompliance or failure has impaired the right of the public under the OMA. (MCL 15.270)

In plain English, if a public body deliberates toward or makes a decision outside of an open meeting, or gives improper notice, or interferes with a person's right to attend or record a meeting at which the public body deliberates toward or makes a decision, a circuit court judge has discretion to invalidate that decision.

An action to invalidate a public body's decision must be commenced within 60 days after the approved minutes are made available to the public or within 30 days after the approved minutes are available to the public if the decision involves approving a contract, receiving or accepting bids, making assessments, issuing bonds or other indebtedness, or submitting a borrowing proposal to the electors. (MCL 15.270)

In the statutory equivalent of a "do-over," the OMA allows a public body to reenact the disputed decision—when an action to invalidate the decision has been initiated in court. A reenacted decision is effective from the date of reenactment. (MCL 15.270)

When in doubt whether a decision was made in compliance with the OMA, or when an action has been initiated to invalidate a decision, a public body should consult its legal counsel to determine if reenactment is appropriate.

**2) Civil action for injunctive relief**—If a public body is or has been violating any aspect of the OMA, the attorney general, county prosecuting attorney or a person may commence a civil action in circuit court to compel the public body to comply or to enjoin further noncompliance. (MCL 15.271)

For example, if a public body is not giving proper meeting notice or making minutes available in time, the court can compel (require with a writ of mandamus) the public body to start sending proper notice or make minutes available. Or, for example, if a public body is meeting outside of a public meeting, the court can enjoin (prevent) the public body from continuing to do so by issuing a preliminary injunction or a temporary restraining order.

In addition, a person who commences such a civil action may be awarded court costs and actual attorney fees for the action, if they succeed in specifically obtaining injunctive relief. (MCL 15.271, and *Speicher v. Columbia Township*, 197 Mich. App. 125, 2014)

## 3) Penalties for intentional violations

**Criminal liability**—A public official who is a member of a public body, who intentionally violates the OMA, is guilty of a misdemeanor punishable by a fine of not more than \$1,000. A second offense will result in a fine of not more than \$2,000, or imprisonment for not more than one year, or both. (MCL 15.272)

**Personal civil liability**—A public official who is a member of a public body, who intentionally violates the OMA, is personally liable in a civil action for actual and exemplary damages of not more than \$500, plus court costs and actual attorney fees for a person or group of persons bringing the action. (MCL 15.273)

**"Court of public opinion"**—Even the appearance of attempts to circumvent the OMA can sour the public's perception of a public body. Even if no action is ever taken in court, ultimately the voters may still have their say.

## Putting the OMA into practice

Townships are the government most accountable and responsive to the public. The ability of the public to observe and participate in meetings of township bodies is the essence of township government and one of the strongest arguments for retaining this truly grassroots form of representation. The Open Meetings Act is a statutory expression of what townships stand for, and township officials can—and do—put it into practice every day.



**Catherine Mullhaupt,**  
MTA Staff Attorney

*Next month's issue of Township Focus will include additional information about township board meeting requirements.*



## Closed sessions

A closed session may be called during an open meeting, but only if all the criteria of one of the following “permissible purposes” are met. (MCL 15.268) Note that there are no lawful “closed meetings” for a public body subject to the OMA. A closed session is always an agenda item at an open meeting.

A public body may only receive information or deliberate during a closed session; decisions cannot be made in closed session.

### Permissible reasons to meet in closed session

A simple majority vote of a township public body’s members present and voting is required to call a closed session for the following reasons:

- To consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.
- For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

A two-thirds roll call vote of the members elected or appointed and serving on a township public body is required to call a closed session for the following reasons:

- To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
- To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
- To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for

employment or appointment to a public office shall be held in an open meeting pursuant to the OMA.

- To consider material exempt from discussion or disclosure by state or federal statute.

### Minutes of a closed session

A separate set of minutes must be kept for a closed session. The minutes must record the purpose(s) for the closed session and the vote taken to enter into closed session, including the roll call of a two-thirds roll call vote when required to enter closed session. (MCL 15.267) The purpose given in the minutes for entering closed session should identify the specific OMA permissible purpose and address each element of the permissible purpose.

The minutes would also include the usual information required for minutes, such as the time the closed session is entered, who is present, and the time the closed session ended and the body returned to open session, except that no decisions may be made, and there is no public comment period in closed session.

Note that the minutes of the open meeting at which the closed session is held must also indicate the time a closed session is entered, who is present, the purpose(s) for the closed session, the vote taken to enter into closed session and the time the closed session ended.

The minutes of a closed session are not available to the public, and may only be disclosed under court order. (MCL 15.267)

The public body must still approve the closed session minutes at its next regular meeting. A member of the public body who was not present at the closed session may see the minutes for the purpose of approving them, but a public official who disseminates closed session minutes to the public risks criminal prosecution and civil penalties. (Attorney General Opinion 7061 of 2000)

Once the minutes of a closed session are approved, they are sealed and retained for one year and one day after the meeting at which the minutes were approved, at which point they may be destroyed. (MCL 15.267) If a recording is kept of a closed session, that recording is sealed, retained and destroyed along with the closed session minutes. (*Kitchen v. Ferndale City Council*, 253 Mich. App. 115, 2002)

## March workshops examine board roles, effective meetings

Join MTA in Mt. Pleasant at the Comfort Inn Conference Center on March 9 and gain insights into how your role as a board member relates to the board as a whole. We'll also demonstrate how to structure your board meetings to achieve more in less time. Register for one (or both!) of the sessions described below:

### Township Board Roles & Relations

9 a.m. to 12:30 p.m. *(Includes continental breakfast)*



Examine your role as a board member and how you fit into the board as a whole. Discuss the roles of watchdog, supporter, planner, communicator and manager, as well as the relationships among board members, appointed and elected officials, and the board with the community. Identify the fundamentals of leadership and the

ethical standards specific to public servants.

*Presented by Larry Merrill, MTA Executive Director*

### Making Meetings Work More Effectively

1:30 to 5 p.m. *(Includes lunch served at 12:30 p.m.)*

Structure your meetings to achieve more in less time, with fewer headaches! Uncover strategies to deal with differences around the board table while staying focused on results. Identify ways your board can define its "rules of engagement"



so that meetings will be orderly and productive.

*Presented by Susan Radwan, CAE, Leading Edge Mentoring*

A registration form appeared in your February *Township Focus* and was mailed to all townships in January.

Download registration materials or register online at [www.michigantownships.org](http://www.michigantownships.org).

These courses are part of MTA's Township Governance Academy (TGA). They are designed to enhance your leadership skills and motivate you to take on the challenges and opportunities unique to those serving as an elected official. Regardless of your position on the board or amount of experience, TGA will move you to a higher level of performance and make your service more rewarding. Uncertain whether TGA is for you? Try it! You do NOT have to be enrolled in TGA to attend the courses. Credit will be assigned retroactively if you enroll within six months of attending the class.



## MTA Professional Development Retreats: Back by popular demand

Save the dates for MTA Professional Development Retreats, being held at the Bavarian Inn Lodge in Frankenmuth:

<b>June 27-28</b>	Managers & Supervisors	<b>July 25-26</b>	Treasurers
<b>July 19-20</b>	Clerks	<b>July 27-28</b>	Supervisors
		<b>Aug. 5-6</b>	Trustees

New this year is a retreat for townships with a manager or superintendent, geared toward the supervisor and manager/superintendent team.

Marketing materials, including session descriptions and registration forms, will be available soon.

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# upcoming MTA workshop

## REGISTRATION INFORMATION

### MTA's Legal Institute offers education for today's municipal attorneys

Connect with fellow attorneys from throughout the state at **MTA's 2017 Legal Institute for Township Attorneys**. This premier event is held Monday, April 10 from 9:30 a.m. to 4:30 p.m. at the Lansing Center, in conjunction with MTA's Annual Educational Conference & Expo. Your attendance keeps you on the cutting edge of legal news and changes that impact local government.

Topics and presenters are:

#### Medical Marijuana Facilities Regulation

*Catherine Kaufman, MTA Legal Counsel  
Bauckham, Sparks, Thall, Seeber & Kaufman, PC*

#### Time to Amend Your Sign Ordinance

*Gerald Fisher, Professor, WMU Cooley Law School*

#### New Legislation

*Judy Allen, MTA Director of Government Relations*

#### Right-of-Way Utility Regulation and Current Issues with DAS

*Michael Watza, Attorney,  
Kitch Drutchas Wagner Valitutti & Sherbrook*

#### FOIA and OMA Update

*Anne Seuryneck, Attorney, Foster Swift Collins & Smith PC*

#### Employment Law Update and Personnel Policy Tips

*Kurt McCamman, Attorney,  
Miller, Canfield, Paddock & Stone, PLC*



**Lodging:** Hotel rooms are available at the nearby Radisson Hotel and other area hotels. To take advantage of MTA's discounted rates on lodging, make your reservations online at [www.grandconnection.com/mta2017](http://www.grandconnection.com/mta2017).

You must be registered for the Institute to receive your personalized housing code, which is required to book a hotel room. Your code will be included with the event confirmation sent via email to the address MTA has on file once your registration has been processed.

Direct lodging questions to Kristin at MTA by calling (517) 321-6467 or email [kristin@michigantownships.org](mailto:kristin@michigantownships.org). Make lodging reservations by March 20, as requests received after this date will be based on availability and discounted rates are not guaranteed.

**Cancellations & Substitutions:** Written requests received by March 14 will be refunded the registration fee less a \$25 processing fee; requests made between March 15-28 will be refunded half of the registration fee. No refunds will be issued thereafter. Substitutions may be made for a \$10 processing fee.

## Legal Institute Registration Form -----

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Township Represented (include county)

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Daytime Telephone

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Email Address

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Name

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Title

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Name

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Title

# of Attendees	Registration Rate	Total
_____	<b>EARLY-BIRD</b> rate: \$199/attendee For paid registrations received by March 14.	_____
_____	<b>REGULAR</b> rate: \$224/attendee For paid registrations received between March 15-28.	_____
_____	<b>ON-SITE</b> rate: \$274/attendee For paid registrations received after March 28.	_____

<b>NOTE: Payment must accompany form in order to be processed.</b>	
<input type="checkbox"/> Check enclosed (payable to MTA)	
<input type="checkbox"/> Charge to: (circle one) MasterCard    VISA	
-       -       -	_____/____
Card #	Expires
Print Card Holder's Name	Signature



Send your completed registration form with payment to MTA, P.O. Box 80078, Lansing, MI 48908-0078; fax: (517) 321-8908. Or register online at [www.michigantownships.org](http://www.michigantownships.org). Questions? Call (517) 321-6467.

# Assessors Renewal Course

## REGISTRATION INFORMATION

### April class approved for assessor credit

Join us Monday, April 10 for this six-hour course held in conjunction with MTA's Annual Educational Conference at the Lansing Center.

### 21st-Century Technology

These are unprecedented times for assessors in terms of becoming more efficient and automated. Doing more with less is not new idea, but it is increasingly difficult to achieve. Many assessing jurisdictions are reevaluating their operations, creating an opportunity for innovation and increasing efficiency. This six-hour course, approved by the State Tax Commission for assessor continuing education credit, will provide an overview of technology options for improving your assessing practices.

Many units are going through Audits of Minimum Assessing Requirements (AMAR) reviews. Statistics show high failure rates, which often require complete reappraisals. A complete reappraisal is expensive and can even cost the assessor their job. In addition to managing available resources of manpower, money, materials and time, every assessor must be able to apply single property appraisal skills to hundreds or thousands of properties annually. This requires building valuation models, standardizing practices and procedures of problem solving, and developing a system of quality control. Don't miss this opportunity to learn strategies for exploring new opportunities for cost savings and database improvements for maximum efficiency and successful AMAR reviews. Hear examples of real-life reappraisals, including one that utilized mobile technology with an ordered reappraisal, significantly reducing appeals from many to almost none. Discover how using technology and techniques can assist your units in successful completion of the AMAR review.

*Presented by: Laurie Spencer, MMAO (4), Leelanau County Equalization Director, Certified Personal Property Examiner*

Upon arrival, go directly Room 204-205 located on Level 2. Registration check-in will begin at 9:30 a.m. The class is held from 10 a.m. to 5 p.m., and includes lunch served at noon.

**Cancellations & Substitutions** Written cancellation requests received at the MTA office by March 28 will receive a 50 percent refund of registration fees. No refunds will be issued thereafter. You may substitute another individual from your township or organization for your registration at any time without incurring a charge; please notify MTA of the change.



## Assessors Renewal Registration Form

### 21st-Century Technology

April 10, 2017

*Conference registrants receive an additional discount!*

**DISCOUNTED RATE for Conference attendees\*:**

\$125/attendee if registered by March 28.  
\$150/attendee after March 28.

**REGISTRATION RATE for non-Conference attendees\*:**

\$150/attendee if registered by March 28.  
\$175/attendee after March 28.

\_\_\_\_\_  
Township County

\_\_\_\_\_  
Daytime Telephone Email Address

\_\_\_\_\_  
Name & Title

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Name & Title

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Name & Title

\_\_\_\_\_  
Name & Title

# of Persons                      Registration Fee                      Total  
\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

\*Rates apply to MTA members. Non-members, call for rates.

**NOTE: Payment must accompany form in order to be processed.**

- Check enclosed (payable to MTA)
- Charge to: (circle one) MasterCard    VISA

-   -   -	/
Card #	Expires
Print Card Holder's Name	Signature



Send your completed registration form with payment to MTA, P.O. Box 80078, Lansing, MI 48908-0078; fax: (517) 321-8908. Or register online at [www.michigantownships.org](http://www.michigantownships.org). Questions? (517) 321-6467

# Grand Reopening

**You're invited!** The Michigan Townships Association is as proud of our new webcast platform as we are of the opportunity to educate Michigan's township officials. To celebrate our new technology upgrade AND your dedication to professional development, we are offering half-off all webcasts this March!

Eliminate travel costs and schedule conflicts with this convenient, affordable option that delivers targeted township training online directly to you.

It's easy to get the education you need with MTA's all-new eLearning Library!

1. Visit <https://mta.elevate.commpartners.com> and click "Create Account."
2. Enter the same email address you have on file with MTA, as well as a password of your choosing. (If you do not currently have an email on file with MTA, or wish to confirm your email address, please contact MTA at (517) 321-6467.)
3. Shop for webcasts, then proceed to your cart to check out.
4. Be sure to enter the discount code "**new**" to get a 50% off discount during the month of March!

Once you create your account, log in anytime to check out new webcasts, see a record of past purchases, get recommendations for other webcasts that may interest you, download handouts, take quizzes for TGA courses and more!

**Get 50% off ALL  
MTA webcasts in March!**

Promo code: new

## Popular webcasts include:

### Assessment & Taxation

- Assessing Oversight: The Process
- Board of Review Training—*coming soon!*
- Delinquent Personal Property Tax
- Fundamentals of Assessment & Taxation
- Tax Collecting
- Taxation Trouble Spots
- Tips for Treasurers

### Board Essentials

- Anatomy of a Township
- Building a Better Budget—*coming soon!*
- Cemetery Management
- Effectively Exercising Board Authority
- Legal Pitfalls in Human Resources
- Meeting Misconceptions
- Secrets Behind Great Board Meetings

### Financial

- Accounting & Payroll
- Exploring Revenue Sources
- Introduction to Millage Questions
- Special Assessment Procedures
- Spending Public Money
- Who Gets Paid What ... and How?

### Planning & Zoning

- Introduction to Planning & Zoning
- Roles & Functions of the ZBA
- Writing, Adopting & Enforcing Ordinances

### New Officials Training

- Getting Started Right
- Sessions for each office

### Township Governance Academy

- At Your Service: Meeting Township Needs
- How Boards Make Decisions
- Land Use: Defining Your Township's Future
- Making Meetings Work More Effectively
- Managing Human Resources & Volunteers
- Strategic Planning
- Township Finances—*coming soon!*

Detailed descriptions of each webcast are available online; visit MTA's eLearning Library at [www.michigantownships.org](http://www.michigantownships.org) (under the "MTA Products & Training" drop-down menu).



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