**BAY COUNTY ELECTION COMMISSION**
**ADOPTION OF 2007 EXPENDITURES**
**MARCH 29, 2007**

THE BAY COUNTY ELECTION COMMISSION MET ON MARCH 29, 2007 IN THE OFFICE OF THE BAY COUNTY CLERK, BAY COUNTY BUILDING. THE PURPOSE OF THE MEETING WAS TO DISCUSS THE COURSE OF ACTION TO BE FOLLOWED WHEN CONDUCTING THE 2007 ELECTION FUNCTIONS. THE MEETING WAS CALLED TO ORDER BY CHAIR TIGHE AT 8:40 A.M. MEMBERS PRESENT WERE BELOW:

ROLL CALL: RICHARD BRZEZINSKI, COUNTY TREASURER
CYNTHIA A. LUCZAK, BAY COUNTY CLERK
KAREN TIGHE, PROBATE JUDGE/CHAIRPERSON

TREASURER BRZEZINSKI DISTRIBUTED A COMMUNICATION FROM THE LAW FIRM OF COHL, STOKER, TOSKEY & MCGLINCHEY P.C. THAT LISTED THE TREASURER'S ROLE ON THE COUNTY ELECTION COMMISSION. THE TREASURER THEN NOTED THAT SOME COUNTY TREASURERS APPEAR TO BE MORE ACTIVE IN THE PROCESS THAN HE THOUGHT. HE QUESTIONED A PROCESS TO CERTIFY CANDIDATES, AS SOME HAD TOLD HIM OF. KAREN TIGHE STATED THE PROCESS WITH FORMER CLERKS, WOULD BE TO MEET PRIOR TO EVERY ELECTION AND REVIEW NAMES. JUDGE TIGHE AND TREASURER BRZEZINSKI THEN ASKED IF THE CLERK WOULD PROVIDE THEM WITH A LIST OF THE CANDIDATES NAMES, IT WAS AGREED BY THE CLERK.

TREASURER BRZEZINSKI NOTED THAT HE THOUGHT THE REVIEW OF THE CANDIDATES NAMES WOULD BE IN THE BEST INTERESTS OF THE BAY COUNTY ELECTION COMMISSION AS ANOTHER COUNTY HAD A PROBLEM WITH A MISSPELLED NAME ON A BALLOT THE COUNTY ELECTION COMMISSION WAS THEN RESPONSIBLE FOR THE ERROR. IT WAS AGREED THAT THE CLERK WOULD SEND A CERTIFICATION OF THE NAMES LISTED ON THE BALLOT AND MEMBERS WOULD SIGN A RECEIPT TO ACKNOWLEDGE THE INFORMATION WAS RECEIVED. IN THE EVENT OF A "CONFLICT", ELECTION COMMISSION MEMBERS MAY CONVENE TO DECIDE HOW TO PROCEED.

CLERK LUCZAK REMINDED MEMBERS THAT BANGOR TOWNSHIP WAS AN EXCEPTION TO THE RULE WHEN IT CAME TO A CERTIFIED LIST OF MEMBERS AS THE BANGOR TOWNSHIP CLERK WOULD CONDUCT THE PROCESS IN THE EVENT OF A SCHOOL ELECTION.

THE CLERK MENTIONED THAT PERSONS IN BOTH THE TOWNSHIPS OF GIBSON AND PORTSMOUTH HAD INQUIRED AS TO THE PROCEDURE TO BE FOLLOWED FOR A RECALL OF AN OFFER FROM A TOWNSHIP SEAT. THE MEMBERS WERE TO REVIEW THE LAWS AND BE PREPARED IN THE EVENT A PETITION CONTAINING RECALL LANGUAGE WAS SUBMITTED.

THERE HAD NOT BEEN A FEBRUARY ELECTION IN 2007. THE MAY DATE WAS TAKEN WITH SCHOOL ISSUES AND THE CLERK NOTED THAT THE OFFICE WILL BE WORKING HARD TO CONSOLIDATE PRECINCTS. ONE, AUGUST 2007 PINCONNING SCHOOL BOND QUESTION TO GO BEFORE THE VOTERS BUT NO CONFIRMATION YET. COUNTY OFFICIALS WERE DISCUSSING THE POSSIBILITY OF A COUNTYWIDE OPERATING MILLAGE FOR THE BAY COUNTY LIBRARY SYSTEM, FILING DEADLINE JUNE 2007.

THE CLERK PRESENTED THE 2007 RESOLUTION OF THE ELECTION COMMISSION THAT AUTHORIZED THE CLERK TO PROCEED WITH THE NEEDED EXPENDITURES TO CONDUCT THE 2007 ELECTIONS. IT WAS AMENDED TO INCLUDE A PARAGRAPH SPECIFYING THE CLERK SHALL CERTIFY THE NAMES OF THE CANDIDATES AND MEMBERS WERE TO SIGN BY ACKNOWLEDGING WITH A RECEIPT.

CLERK LUCZAK STATED THAT SOME ADDITIONAL TRAINING (4/18/07) OF PRECINCT WORKERS WAS NECESSARY AND ASKED THE BOARD TO INCLUDE THE PAYMENT OF $25 FOR UP TO 100 PEOPLE. THE BOARD FELT THIS EXPENDITURE WOULD ALREADY BE COVERED BY THE MAIN 2007 RESOLUTION TO CONDUCT THE ELECTION AND WAS AGREED BY MOTION.

**MOTION 1:** JUDGE TIGHE MOVED TO ADOPT THE 2007 RESOLUTION THAT AUTHORIZED THE CLERK TO EXPEND THE NECESSARY FUNDS TO CONDUCT THE 2007 ELECTIONS, WITH ADDED COSTS FOR THE TRAINING OF PRECINCT WORKERS. THE TREASURER WAS WILLING TO SUPPORT THE MOTION, INCLUDING THE CERTIFICATION OF BALLOT NAMES AS RECOMMENDED. THE MOTION TO APPROVE THE RESOLUTION WAS PASSED-3 YEAS, 0 NAYS.

**MOTION 2:** JUDGE TIGHE MOVED TO ADJOURN THIS SESSION AT 9:55 A.M. TREASURER BRZEZINSKI SUPPORTED THE MOTION AS PASSED BY 3 YEAS, 0 NAYS.

RESPECTFULLY SUBMITTED
CYNTHIA A. LUCZAK, CLERK

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August 14, 2006

TO: MICHIGAN ASSOCIATION OF COUNTY TREASURERS SUMMER CONFERENCE PARTICIPANTS

FROM: BONNIE G. TOSKEY

RE: YOUR RIGHTS AS AN ELECTED OFFICIAL/CO-EMPLOYER

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## MICHIGAN ASSOCIATION OF COUNTY TREASURERS

### Treasurer's Role on the County Election Commission

### I. IN GENERAL

A. Composition of County Election Commission

The Board of County Election Commissioners in each county is comprised of the Chief Probate Judge, the County Clerk, and the County Treasurer, two of whom shall be a quorum for the transaction of business. MCL 168.23(1).

B. Disqualification of Treasurer as Member of County Election Commission

If the County Treasurer is involved in a recall, either by assisting in the preparation of the petition for recall, or by being the target of a recall, then the Treasurer shall be disqualified with respect to any determination as to clarity, and shall be replaced. MCL 168.23(2). If the County Treasurer is absent or disqualified to act, the members of the County Election Commission shall appoint some other County Officer to take the Treasurer's place on the Election Commission. MCL 168.23(1).

C. Powers and Duties – In General

The powers and duties of a County Election Commission are limited to those powers and duties which are set forth in the Michigan Election Law, and do not include the

authority to either conduct investigations or exercise remedial powers for alleged violations of the Election Law. OAG, 1981-1982, No. 5943, p 280 (August 4, 1981).

## II. PREPARATION AND PROVISION OF BALLOTS

- Sign certificate

### A. Names of Candidates

Names of candidates are to be certified to the County Election Commission. MCL 168.167 (State senator and representative); MCL 168.197(county officers); MCL 168.258(County road commissioners); MCL 168.435(1)(probate judge).

Approve Ballot

### B. Preparation of Ballots

Among the duties of the County Election Commission is to prepare and provide official ballots for primary, special and general elections. MCL 168.559, MCL 168.561, and MCL 168.568 (primary election); MCL 168.689, MCL 168.690, MCL 168.691, MCL 168.693, MCL 168.696(federal, state, county, district, and township elections); MCL 168.707(ballot propositions). See also MCL 74.18a(5)(disincorporation of village); MCL 123.1143(1)(recreational authority tax); MCL 124.677(2)(metropolitan council tax); MCL 397.186 (district library tax); MCL 436.2111(4) and MCL 436.2113(4)(Sunday liquor sales).

### C. Clarifying Names on the Ballot

Where two or more candidates have the same or similar surname, a candidate may file a written request with the County Election Commission for a clarifying designation. Not later than 3 days after the filing of the request, the board of county election commissioners shall determine whether a similarity exists and whether a clarifying designation should be granted. MCL 168.561(2); MCL 168.696(2).

### D. Furnish Election Supplies

The County Election Commission is required to furnish, at County expense, all election supplies, including forms for making returns, tally sheets, envelopes, wrappers, and pencils. MCL 168.665; MCL 168.667. The County Election Commission provides the metal seals for ballot boxes. MCL 168.14.

### E. Provide Party Vignettes

The County Election Commission is required to furnish, at County expense, sufficient copies of vignettes (party column headings submitted by the parties) for each political party for use in preparation of the ballots. MCL 168.684.

### F. Establish School District Precincts and Polling Places

If the County Clerk is the election coordinator for a school district in the County, the

County Election Commission shall establish that school district's election precincts and polling place locations. MCL 168.301(5).

## III. APPOINTMENTS OF LOCAL OFFICIALS TO AVOID LACK OF QUORUM

### A. Appointment of City Legislators

In the absence of an applicable City Charter provision, the County Election Commission appoints members of the legislative body of a home rule city in the County if the number of members of the city's legislative body falls below a quorum. The appointment is temporary, until the vacancies are filled by election or appointment. MCL 168.321(3).

### B. Appointment of Township Board Members

The County Election Commission appoints members of a Township Board in the County if the number of members of the Township Board falls below a quorum. The appointment is temporary, until the vacancies are filled by election. MCL 168.370(2).

### C. Appointment of Village Trustees

The County Election Commission appoints members of a Village Board of Trustees in the County if the number of members of the Village Board falls below a quorum. The appointment is temporary, until the vacancies are filled by election. MCL 168.381(2).

## IV. RECALL PETITIONS AND CLARITY HEARING

### A. Review of Recall Petitions for Clarity

Before a petition for the recall of an officer may be circulated, the County Election Commission must review the petition to determine whether it is of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. MCL 168.952(2), (3).

### B. Notice to Recall Target

Within 24 hours after receipt of a petition for the recall of an officer, the County Election Commission shall notify the officer whose recall is sought of each reason stated in the petition, and of the date of the meeting of the County Election Commission to consider the clarity of each reason. MCL 168.952(4).

### C. Time Requirements for Clarity Hearing

The clarity hearing must be held not less than 10 days nor more than 20 days after submission of the petition. Failure of the County Election Commission to do so shall

constitute a determination that each reason for the recall stated in the petition is of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall. MCL 168.952(3).

D. Attendance at Clarity Hearing

The officer whose recall is sought and the sponsors of the petition may appear at the meeting, and present arguments on the clarity of each reason. MCL 168.952(5).

E. Appeal of Clarity Determination

The determination by the County Election Commission may be appealed by the officer whose recall is sought, or by the sponsors of the petition drive to the circuit court in the county. The appeal shall be filed not more than 10 days after the County Election Commission's determination. MCL 168.952(6).

F. Validity of Recall Petition

A recall petition that is determined to be of sufficient clarity by the Election Commission, or by the Circuit Court on an appeal, is valid for 180 days following the last determination of sufficient clarity. A recall petition that is filed after this 180-day period is not valid and shall not be accepted. However, a person may resubmit a recall petition for a determination of sufficient clarity. MCL 168.952(7).

G. Legal Standards for Determining Clarity

1. The County Election Commission must determine whether each reason for the recall stated in the petition is of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. MCL 168.952(3).

2. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office. MCL 168.952(1)(c). There is a presumption that the reasons stated in a recall petition refer to the current term of office. *Molitor v Miller*, 102 Mich App 348 (1980).

3. The standard for review of clarity is lenient. *Dimas v Macomb Election Commission*, 248 Mich App 624 (2001).

4. A meticulous and detailed statement of the charges against an officeholder is not required. *Dimas, supra.*

5. A recall petition is sufficiently clear if an officeholder is apprised of the course of conduct in office that is the basis of the recall drive, so that a defense can be mounted regarding that conduct. *Dimas, supra.*

6. In reviewing the reasons stated for the recall listed on the petition, the County Election Commission must read the statement as a whole, and not focus attention on the individual phrases, i.e., insufficient clarity in spots will not doom the petition where, read as a whole, a sufficiently clear statement is presented. *Dimas, supra; Schmidt v Genesee Co Clerk*, 127 Mich App 694 (1983); *Mastin v Oakland County Election Commission*, 128 Mich App 789 (1983).

7. Where clarity of the reasons stated is a close question, doubt should be resolved in favor of the individual formulating the petition. *Dimas, supra; Molitor, supra.*

8. The County Election Commission may not inquire into the veracity or validity of the statements supporting recall, but rather simply rule on clarity, i.e., even if the petition bears outright lies, the lies must be clearly stated. *Dimas, supra; Mastin, supra; Molitor, supra.*

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# BAY COUNTY ELECTION COMMISSION
# 2007 RESOLUTION

WHEREAS, THE STATE OF MICHIGAN HAS ESTABLISHED FOUR (4) STANDARD ELECTION DATES PER YEAR UNDER THE ELECTION CONSOLIDATION ACT PUBLIC ACT 298-306 OF 2003.

WHEREAS, THE COUNTY CLERK AS "COORDINATOR" OF THE BAY COUNTY ELECTION PROCESS SHALL TAKE ANY AND ALL NECESSARY STEPS TO COMPLETE THE RENEWAL OF THE SCHOOL ELECTION CONSOLIDATION PLANS FOR A TWO (2) YEAR PERIOD COVERING 2007, 2008 AND 2009, RESPECTIVELY.

WHEREAS, THE COUNTY CLERK HAS A STATUTORY DUTY TO PERFORM ALL ELECTION RELATED FUNCTIONS UNDER THE CONSTITUTION OF THE STATE OF MICHIGAN, BE IT RESOLVED THAT THE BAY COUNTY CLERK, CYNTHIA A. LUCZAK, SHALL BE GRANTED THE AUTHORITY BY THIS COMMISSION TO PREPARE AND PROVIDE THE OFFICIAL BALLOTS FOR ALL PRIMARY, SPECIAL AND GENERAL ELECTIONS AND TO PAY ALL EXPENSES RELATED TO CONDUCTING ELECTIONS FOR CALENDAR YEAR 2007.

FURTHER, THESE COSTS SHALL INCLUDE BUT NOT BE LIMITED TO, THE ORDERING OF BALLOTS; SUPPLIES, PUBLISHING OF NOTICES; PROGRAMMING FUNCTIONS; PRECINCT WORKER EXPENSES; BOARD OF CANVASSER FEES; ADDITIONAL ELECTION STAFF; AUTOMARK RELATED FEES; OR ANY OTHER COSTS AFFILIATED WITH CONDUCTING PERFORMING STATUTORY FUNCTIONS UNDER THE MICHIGAN ELECTION LAW.

ALL EXPENDITURES SHALL BE TAKEN FROM THE GENERAL FUND FROM THE COUNTY OF BAY AS TO BE ALLOCATED IN THE GENERAL APPROPRIATIONS BUDGET ACT RESOLUTION IN ACCORDANCE WITH STATE LAW.

FURTHER, BEFORE EACH ELECTION, THE CLERK SHALL CERTIFY THE NAMES OF CANDIDATES TO THE ELECTION COMMISSION WHICH SHALL BE ACKNOWLEDGED BY A SIGNED RECEIPT BY COUNTY TREASURER, RICHARD BRZEZINSKI AND PROBATE JUDGE, HON. KAREN TIGHE.

THEREFORE, THE 2007 ELECTION COMMISSION RESOLUTION WAS SIGNED AND EXECUTED FOLLOWING A SESSION HELD IN ACCORDANCE WITH THE OPEN MEETING ACT, MARCH 29, 2007.

Cynthia A. Luczak, County Clerk

Richard F. Brzezinski, Treasurer

Karen A. Tighe, Probate Judge