

**BAY COUNTY ELECTION COMMISSION  
CLARITY HEARING FOR RECALL  
96<sup>TH</sup> STATE REP-CHARLES BRUNNER  
AUGUST 22, 2011**

THE BAY COUNTY ELECTION COMMISSION MET THE MORNING OF MONDAY, AUGUST 22, 2011 IN THE BAY COUNTY COURT FACILITY, COURTROOM #3, FOR CONSIDERATION OF THE CLARITY LANGUAGE SUBMITTED BY CITIZEN JOSEPH SYLVESTER, FOR THE RECALL OF 96<sup>TH</sup> STATE REPRESENTATIVE, CHARLES M. BRUNNER. THE SESSION WAS CALLED INTO ORDER PURSUANT TO MCL 168.952 AT 9:03 A.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT:

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

ALSO                    CHARLES BRUNNER, STATE REP.  
PRESENT:              MICHAEL J. HODGE, ATTORNEY  
                          KYLE BOSTWICK, AIDE TO STATE REP.

ABSENT:                PETITIONER JOSEPH SYLVESTER WAS NOT PRESENT.  
                          JUDGE TIGHE CALLED THE HALLWAY THREE TIMES.

PUBLIC COMMENT WOULD BE ACCEPTED AT THIS TIME BUT THERE WERE NO MEMBERS OF THE GENERAL PUBLIC IN ATTENDANCE.

JUDGE TIGHE EXPLAINED THAT THE RECALL STANDARDS IN THE LAW ARE QUITE LENIENT AND THAT WHETHER THE ALLEGATIONS WERE TRUE OR FALSE, WERE NOT FOR THIS PANEL TO DETERMINE. THE FUNCTION OF THIS PANEL WAS TO DECIDE IF THE LANGUAGE WAS CLEAR ENOUGH TO CIRCULATE THROUGHOUT THE ELECTORATE.

THE LANGUAGE OF THE PETITION WAS READ INTO THE RECORD AS.....

“Michigan House Bill 4362 eliminates the Michigan Business Tax, However, on May 12, 2011, State Representative Charles Brunner voted no on final passage of Michigan House Bill 4362.”

ATTORNEY MICHAEL HODGES FROM THE LAW FIRM OF MILLER, CANFIELD, PADDOCK AND STONE INDICATED HE HAD A CLEAR UNDERSTANDING OF THE CLARITY REQUIREMENTS. MR. HODGES WANTED THE ELECTION COMMISSION MEMBERS TO BE AWARE OF TWO ITEMS FOR THE RECORD. FIRST, THAT THE PETITION PRESENTED BEFORE THE BOARD MAY HAVE ELEMENTS OF SUFFICIENCY, HAD NOTHING TO DO WITH THE CLARITY

FOR THE STATEMENT TO BE UNTRUTHFUL OR A LIE. THE LIE, NEVERTHELESS, HAS TO BE OF SUFFICIENT CLARITY SO THAT PEOPLE CAN UNDERSTAND IT.

SECONDLY, THAT THE BOARD MUST BE ADVISED TO REVIEW THE PETITION LANGUAGE PRESENTED BEFORE THEM "LIBERALLY" PER A NUMBER OF COURT OF APPEAL DECISIONS.

FOR THE RECORD, HE INDICATED THAT ARTICLE II, SECTION 8 DOES NOT SAY ANYTHING ABOUT A LIBERAL INTERPRETATION OF THE PETITIONS AND THAT THE MICHIGAN CONSTITUTION, WHEN IT WANTS TO DIRECT A "LIBERAL" INTERPRETATION, WILL SPECIFICALLY SAY SO. THAT IS PARTICULARLY TRUE OF MUNICIPALITIES, COUNTIES, CITIES AND TOWNSHIPS ALONG WITH THOSE CONSTITUTIONAL PROVISIONS THAT DEAL WITH THOSE ENTITIES, IT CLEARLY STATES THE CONSTITUTION IS TO BE LIBERALLY CONSTRUED WITH RESPECT TO THE POWERS OF THOSE ENTITIES. NO LANGUAGE OF ANY SORT IS INCLUDED WITH RESPECT TO RECALL PETITIONS. AND THE SAME IS TRUE WITH THE LEGISLATION THAT IMPLEMENTS ARTICLE II, SECTION 8. NOTHING IN THERE INDICATES THAT THEY ARE TO BE LIBERALLY CONSTRUED.

MR. HODGES FURTHER EXPLAINED FOR THE RECORD, THAT IT WAS THE POSITION OF HE AND HIS CLIENT, CHARLES BRUNNER, THAT THE COURT CASES THAT ABUSE THAT TERM ARE USING SIMPLY "OBITER DICTA" TO DESCRIBE THEIR DECISION, INCLUDED WITH THEIR DECISION. (OBITER - A PERSON EMPOWERED TO DECIDE MATTERS AT ISSUE/JUDGE)

REFERENCE WAS MADE TO H.B. 4362 AS APPROVED BY THE GOVERNOR ON MAY 25, 2011 WITH IMMEDIATE EFFECT. PASSAGE OF A COMPANION BILL KNOWN AS 4361, IF PASSED INTO LAW, WOULD HAVE TIE BARRED THE LEGISLATION AND THEY MUST BE CONSIDERED TOGETHER. WHEN PUT TOGETHER, DO NOT ELIMINATE THE "TAX". THIS HAD ONLY PUT ONE TAX IN AND SUBSTITUTED THE OTHER WITH THE MICHIGAN CORPORATE TAX. HOUSE BILL 4362 ALLOWED FOR THE EXEMPTION OF \$3,700; AND ELIMINATED THE TAX PROVISION FOR KIDS AND COLLEGE TUITION. IN THE OPINION OF MR. HODGES, "IT WAS JUST NOT CLEAR TO SAY WITH THESE LAWS TOGETHER, THAT HE (BRUNNER) VOTED AGAINST A BUSINESS TAX". HE FELT A BETTER WAY TO IDENTIFY THE TAX THAT REPRESENTATIVE BRUNNER VOTED AGAINST WAS FOR RAISING TAXES FOR RETIREES AND SERVICE TAXES.

TREASURER BRZEZINSKI STATED THE PHRASE "OBITER DICTA" WAS ONE THAT HE WAS NOT FAMILIAR WITH. ALSO, FOR THE RECORD, THAT HE HAD SUPPORTED REPRESENTATIVE BRUNNER'S OPPONENT, BRIAN ELDER, IN THE RACE FOR 96<sup>TH</sup> DISTRICT STATE REPRESENTATIVE.

WITH THOSE COMMENTS MADE FOR THE RECORD, JUDGE TIGHE CALLED FOR A VOTE ON THE QUESTION. A "YES" VOTE WOULD APPROVE THE LANGUAGE AND ALLOW THE PETITIONER JOSEPH SYLVESTER TO THEN CIRCULATE PETITIONS. A "NO" VOTE WOULD SIGNIFY THE FAILURE OF THE PETITION FOR CIRCULATION IN THE ELECTORATE.

BRZEZINSKI	"NO" VOTE
LUCZAK	"NO" VOTE
TIGHE	"NO" VOTE

THE CLARITY OF THE LANGUAGE ON THE PETITION FAILED AND CLERK LUCZAK WAS ORDERED TO NOTIFY PETITIONER, JOSEPH SYLVESTER. THE MEETING ADJOURNED AT 9:20 A.M.

RESPECTFULLY SUBMITTED  
CYNTHIA A. LUCZAK  
BAY COUNTY CLERK  
ELECTION COMMISSION CLERK