

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SCIO TOWNSHIP CLERK,

Plaintiff-Appellant,

vs.

SCIO TOWNSHIP BOARD,

Defendant-Appellee.

Case No. 363414

Washtenaw County Cir Ct No 22-  
000414-CZ (Hon Timothy P Connors)

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Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff-Appellant  
Scio Township Clerk  
201 Townsend St., Suite 900  
Lansing, MI 48933  
Telephone: (616) 776-7523  
mmagyar@dykema.com

---

Michael Homier (P60318)  
Laura J. Genovich (P72278)  
FOSTER SWIFT COLLINS & SMITH  
PC  
Attorneys for Defendant-Appellee  
Scio Township Board of Trustees  
1700 East Beltline, N.E., Suite 200  
Grand Rapids, MI 49525-7044  
Phone: 616.726.2238  
mhomier@fosterswift.com  
lgenovich@fosterswift.com

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**APPELLANT'S BRIEF ON APPEAL**

**ORAL ARGUMENT REQUESTED**

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### **STATEMENT OF BASIS OF JURISDICTION**

This Court has jurisdiction over this appeal under MCR 7.203(A)(1), MCR 7.204(A)(1)(a), and MCR 7.202(6)(a)(i). This is an appeal from the Washtenaw County Circuit Court’s final order disposing of all claims. On September 27, 2022, the Washtenaw County Circuit Court (Connors, J.) entered a final Order (included in Appellant’s Appendix (cited and paginated as “AA”) at AA001-002) denying the Motion for Summary Disposition (“MSD”) under MCR 2.116(C)(10) of Plaintiff-Appellant Scio Township Clerk (the “Clerk”) and granting the MSD under MCR 2.116(C)(8) and/or MCR 2.116(I)(2) of Defendant-Appellee the Scio Township Board of Trustees (the “Board”). The Clerk timely filed a Claim of Appeal on October 17, 2022.

## STATEMENT OF QUESTIONS INVOLVED

- I. **Did the Circuit Court err in denying the Clerk's MSD and granting the Board's MSD because the Board interfered with the Clerk's statutory duties under MCL 41.65 when the Board adopted resolutions 2021-31 and 2022-05 to delegate the access, custody, control and "ultimate authority" over the Township's accounting records to the Township Administrator, who then delegated rights to two other employees to make entries to the Township's journals and ledgers?**

The Clerk answers: Yes.

The Board answers: No.

The Circuit Court answered: No.

This Court should answer: Yes.

- II. **Should this Court award the Clerk her attorneys fees as an exception to the American Rule because the Clerk incurred "attorney fees in connection with asserting [and] defending the performance of his or her legal duties," see *McKim v Green Oak Township Bd*, 158 Mich App 200, 207-208 (1987), or, at minimum, remand to the Circuit Court to consider a fees award to the Clerk in the first instance?**

The Clerk answers: Yes.

The Board answers: No.

The Circuit Court did not reach this issue.

This Court should answer: Yes.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Circuit Court failed to properly apply MCL 41.65 to the undisputed facts. The Scio Township Board of Trustees (the “Board”) violated MCL 41.65 by passing two resolutions which interfered with and usurped duties that are statutorily vested exclusively with the Clerk. The statute provides that the Clerk “shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law.”<sup>1</sup> MCL 41.65 also provides that the Clerk “shall also open and keep and account with the treasurer...in a book kept by the township clerk,”

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<sup>1</sup> The full text of MCL 41.65 provides:

***The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law.*** The township clerk shall file and safely keep all certificates of oaths and other papers required by law to be filed in his or her office, and shall record those items required by law to be recorded. These records, books, and papers ***shall not be kept where they will be exposed to an unusual hazard*** of fire or theft. The township clerk shall deliver the records, books, and papers on demand to his or her successor in office. ***The township clerk shall also open and keep an account with the treasurer of the township, and shall charge*** the treasurer with all funds that come into the treasurer's hands by virtue of his or her office, ***and shall credit*** him or her with all money paid out by the treasurer on the order of the proper authorities of the township, and ***shall enter*** the date and amount of all vouchers ***in a book kept by the township clerk*** in the office. ***The township clerk shall also open and keep a separate account with each fund belonging to the township,*** and ***shall credit*** each fund with the amounts that properly belong to it, and ***shall charge*** each fund with warrants drawn on the township treasurer and payable from that fund. ***The township clerk shall be responsible for the detailed accounting records of the township*** utilizing the uniform chart of accounts prescribed by the state treasurer. ***The township clerk shall prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.*** [emphasis added].

and “shall also open and keep a separate account with each fund belonging to the township.” The Clerk “shall prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.” *Id.*

Construing this very statute, this Court held in 1987 that MCL 41.65 “bestows a township clerk with the responsibility to ***exercise control over all township papers***[.]” *McKim v Green Oak Township Bd*, 158 Mich App 200, 205; 404 NW2d 658 (1987) (emphasis added). Indeed, “no other statutory provision [ ] authorizes a person ***other than the clerk*** to have control of the township’s papers.” *Id.* (emphasis added). “[T]his result is consistent with MCL 41.69,” which “requires the clerk . . . to file a bond ‘especially for the safekeeping of the records, books, and papers of the township in the manner required by law . . . .’”<sup>2</sup> *Id.* “A clerk without

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<sup>2</sup> MCL 41.69 provides in full:

Each township clerk, within the time limited for filing the oath of office and before entering upon the duties of the office, ***shall give a bond*** to the township in the sum and with sureties that the township board requires and approves, ***conditioned for the faithful discharge of the duties of the office according to law, including the safekeeping of the records, books, and papers of the township in the manner required by law***, and for their delivery on demand to the township clerk’s successor in office. The bond shall be filed in the office of the supervisor. The township clerk shall appoint a deputy, who shall serve at the pleasure of the clerk. The deputy shall take an oath of office and file the oath with the clerk. In case of the absence, sickness, death, or other disability of the clerk, the deputy shall possess the powers and perform the duties of the clerk, except the deputy shall not have a vote on the township board. The deputy shall be paid by salary or otherwise as the township board determines. With the approval of the township clerk, the deputy may assist the township clerk in the performance of the township clerk’s duties at any additional times agreed upon between the board and the clerk,

custody or control of township papers can hardly fulfill her duty of safekeeping those records.” *Id.*

There is no dispute that the Board passed Resolution 2021-31 in August 2021 and Resolution 2022-05 in February 2022 giving the Township Administrator – an employee of the Township who reports to the Board – “ultimate authority” over the Township’s records, books, and papers, including most disturbingly over the Township’s journals and ledgers. There is also no dispute that the Board relied upon these resolutions in May 2022 and presented them to their outside I.T. vendor in order *to grant* “Enterprise Administrator” permissions to the Interim Township Administrator, James Merte, who used this access *to remove* the Clerk’s “Enterprise Administrator” permissions within the Township’s BS&A software suite to eight financial modules within the software, which is where the Township’s financial records and books are kept (because they are kept electronically), including the General Ledger and subsidiary ledgers.

It is also undisputed that, with his newfound authority, Mr. Merte, at the direction of the Supervisor, promptly granted Township employees Sandra Egeler and Nancy Colasanti expanded access and authority from “read only” of certain Township journals and ledgers, as had been the extent of their prior authority, to also “write” in these township books by making entries into the financial journals and ledgers. In fact, in her first weekend of access in May 2022, Sandra Egeler made 155 entries in the Township’s general journal and ledger, without the

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except the deputy shall not have a vote on the township board. [emphasis added].

knowledge, consent, or ability to verify, and over the steadfast and ongoing objections of, the Clerk. This was not only a blatant and appalling statutory violation, but it was also against the explicit advice and direction of both of the Township's attorneys (including the attorney representing the Board in this case) and the Township's outside auditors, Plante Moran, which concluded that this improper access by Township employees amounted to a material weakness in the Township's internal controls in its Audit Report for the Township's fiscal year 2022. All of these facts are documented; none of them are disputed, nor could they be.

Notwithstanding these undisputed facts and the clear-cut statutory violations by the Board, the Circuit Court refused to apply the law. The Clerk relied on *McKim v Green Oak Township Bd*, 158 Mich App 200 (1987), as controlling precedent regarding both the Clerk's statutory duty to have custody and control of the Township's papers and the Circuit Court's jurisdiction to vacate any Board resolution which interferes with the Clerk's ability to perform her statutory duties. But instead of considering *McKim* to be published precedent of this Court that the Circuit Court was bound to follow, the Circuit Court noted five separate times on the record that *McKim* is a "35 year" old case decided in "1987," (AA046, AA048, AA050, AA053; AA054), apparently concluding that *McKim* was not binding on *this Court* under MCR 7.215(J)(1). At the urging of the Board's counsel, the Circuit Court disregarded *McKim* due to it being decided before 1990 notwithstanding that MCR 7.215(J)(1) is an appellate rule and *McKim* binds trial courts. (AA049, AA050.)

Acknowledging the large public presence in the courtroom at the summary disposition hearing, which filled the seating areas on both sides of the court room (*all* of whom were supporters of the Clerk), the Circuit Court considered an appeal to this Court to be inevitable: “all I have to do is look at the courtroom and pick up that no matter what I decide, one side or the other would probably like to get relief from the Court of Appeals to weigh in and sounds like we’re going to give them another opportunity since *McKim* 35 years ago.” (AA053.) (The Circuit Court could have given this Court the same opportunity by correctly following *McKim* and leaving it to the Board appeal). The Circuit Court directed the Board’s counsel to prepare a final order “so that both sides can get appellate review,” and the Circuit Court stated that it remains “more than happy to reopen the case and do whatever the Court of Appeals tells [it] to do because that’s their province.” (AA054.)

Because the Circuit Court did not feel constrained to follow *McKim* until receiving further direction from this Court, the Circuit Court ignored *McKim*’s holding and erroneously concluded the opposite of the *McKim* holding. The Circuit Court held that the Clerk’s “custody” of the Township’s records, books, and papers under MCL 41.65 is **not** “exclusive.” (AA054.) The Circuit Court twice likened the Clerk’s position to that of any citizen making a request under the Freedom of Information Act, MCL 15.231, *et seq* (“FOIA”) for copies of the Township’s records, as argued by the Board’s attorney at the hearing. (AA052, AA053, AA054.) Of course, the ability of a citizen to receive copies of the Township’s records for informational purposes is not the same as being charged with the records, books,



and papers' safekeeping, for which the Clerk posted a personal bond under MCL 41.69.

Besides its incorrect interpretation of "custody" under MCL 41.65 (which was directly contrary to *McKim's* holding), the Circuit Court failed to even address the Board's violations of other provisions of MCL 41.65. The Board does not dispute that, in May 2022, it relied upon Resolutions 2021-31 and 2022-05 to delegate access and authority to Township employees to make unmitigated entries to the journals and ledgers—changing the reported assets, liabilities, fund equities, revenues, and expenditures. These entries altered the Township's reported Revenues and Expenditures, Fund Balances, and overall Balance Sheet. These were rank violations of the Clerk's duties under MCL 41.65 (over her steadfast objections) as a matter of law.<sup>3</sup>

Possibly the root cause of the Circuit Court's error was the Circuit Court's erroneous belief that it did not have jurisdiction to vacate the Board's invalid resolutions of August 17, 2021 and February 22, 2022 (which the Board used as the authority for unlawfully delegating the Clerk's statutory duties to others). The

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<sup>3</sup> At minimum, the Board's May 2022 delegation of the Clerk's duties to employees, which it accomplished pursuant to Resolutions 2021-31 and 2022-05, interfered with and usurped the Clerk's duties: "to keep an account with the treasurer of the township, and [to] charge the treasurer with all funds that come into the treasurer's hands by virtue of his or her office, and [to] credit him or her with all money paid out by the treasurer on the order of the proper authorities of the township, and [to] keep a separate account with each fund belonging to the township, and [to] credit each fund with the amounts that properly belong to it, and" to "be responsible for the detailed accounting records of the township," and to "prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township." MCL 41.65.

Circuit Court concluded its bench opinion by stating that the Board's Resolutions were "none of [its] business. It's the business of the elected officials and the public that has elected them to perform their duties." (AA054.) The Circuit Court also indicated that it had recently received a decision from this Court in the "Gelman Litigation" where this Court "pretty clearly indicated that [the Circuit Court] overstepped [its] bounds [by] including Scio Township as an intervenor," but now the Clerk was "asking [the Circuit Court] to take over jurisdiction and start micromanaging in [its] opinion difficulties between elected officials within Scio Township." (AA041.) The Circuit Court considered the Clerk to be "asking [it] to do something that [the Court of Appeals] pretty well clearly told [it to] keep [its] nose out of." (AA041.) The Circuit continued, "[s]o I'm cognizant of that. Anything you wanted to say in that regard as to why this case is even more important than the Gelman pollution case that's been taking decades?" (AA040-041.)

Counsel for the Clerk responded to the Circuit Court's inquiry at the hearing with the same authority that the Clerk had provided in her Verified First Amended Complaint and in her summary disposition briefing: that *McKim* establishes the Circuit Court's jurisdiction to vacate any Board resolutions that interfere with the Clerk's ability to perform her statutory duties. (AA041); *McKim*, 158 Mich App at 201 (affirming the "order granting summary disposition in favor of plaintiff [clerk] and vacating certain township resolutions which the court concluded illegally interfered with plaintiff's ability to perform her statutory duties"). Specifically,

counsel for the Clerk argued that the jurisdiction concern expressed by the Circuit Court:

doesn't apply here, and that's because here, we're trying to narrowly focus on what the clerk's duties are under the statute and if, in fact, those duties were interfered with or usurped or otherwise taken from her and given to someone else on the board, then that is a clear and direct jurisdiction and authority of this court to vacate any such action. And that is the main relief I would say of all the relief we're seeking in Count I when we're asking to vacate two resolutions for specific reasons that the board is interfering and displacing the clerk's statutory duties in favor of giving them to the supervisor or in some cases the township administrator who is an employee overseen by the board. So respectfully, Your Honor, I don't think that recent decision in any way impedes the court's authority to vacate when it finds that a statutory duty of the clerk has been taken to vacate any such action. And that's the *McKim* case.

(AA041.)

Thus, in this case, this Court is called upon to hold – by reaffirming its soundly reasoned decision in *McKim* (see MCR 7.215(B)(4)) – that the Board interfered with the Clerk's statutory duties set forth in MCL 41.65 under the undisputed facts. Based on such holding, this Court should reverse the Circuit Court and remand with instructions to (1) grant the Clerk's motion for summary disposition under MCR 2.116(C)(10); (2) deny the Board's motion for summary disposition under MCR 2.116(C)(8) and/or MCR 2.116(I)(2); (3) vacate the Board's invalid August 17, 2021 Resolution 2021-31 and February 22, 2022 Resolution 2022-05; and (4) reinstate the Clerk's necessary administrative permissions over the Township's accounting records and books, including the journals and ledgers that are within the Township's BS&A financial modules, including to limit the ability of

others to modify the records and books that are the Clerk's duty to keep or maintain.

Finally, because the Circuit Court did not find in favor of the Clerk, it did not reach the issue of an award of fees to the Clerk pursuant to its discretionary power to do so under *McKim*. "[T]he appellate courts of this state have recognized an exception to this general [American] rule when a public official incurs attorney fees in connection with asserting or defending the performance of his or her legal duties." *McKim*, 158 Mich App at 207 (citations omitted). The Clerk respectfully submits that, because reversal is warranted, this Court may and should direct the Circuit Court to award fees to the Clerk. Alternatively, this Court should remand to the Circuit Court to decide the fees issue in the first instance.

### **STATEMENT OF FACTS**

#### **I. The Township's BS&A Software Is For Its Financial Records.**

The Township's papers, records, and books are kept electronically using BS&A software.<sup>4</sup> (See AA008-010; AA031.) BS&A is an enterprise management system designed for local units of governments, particularly those in Michigan. (AA031.) The Township started using its first BS&A module in 2001, continually adding modules through 2021. (*Id.*) Today, the Township relies on twelve BS&A modules. (*Id.*) The Township's Tax Rolls are the responsibility of the Treasurer which are contained within the modules of Tax and Delinquent Personal Property. (*Id.*) The Township's Assessment Rolls are the responsibility of the Supervisor and

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<sup>4</sup> See <https://www.bsasoftware.com/>

are contained within modules of Assessing and Special Assessments. (*Id.*) The Clerk is responsible for the Township’s eight financial management modules, including the General Ledger module, Fixed Assets module, Payroll module, Accounts Payable module, Purchase Orders module, Utility Billing module, Miscellaneous Receivables module, and Cash Receipts module. (*Id.*)

Netsmart, LLC (“Netsmart”) is the Township’s outside vendor serving as its Information Technology Managed Services Provider to support the Township, including in its administrative support of the BS&A software. (AA031, AA033.) BS&A users are given various levels of access and authority. An “Enterprise Administrator” in the BS&A software has complete authority, including to access all modules, read all modules, edit or write over data within all modules, grant access to new users, and assign any level of access to any user. (*See id.*)

Until May 13, 2022, the Clerk was an Enterprise Administrator for the Township’s BS&A Software (AA112.) But on that day, the Interim Township Administrator, at the direction of the Supervisor, replaced the Clerk as the Enterprise Administrator in the BS&A Software. (*Id.*) The Interim Administrator accomplished this change by contacting Netsmart and relying on the authority granted under the Board’s February 22, 2022 Resolution 2022-05, which granted the Township Administrator “ultimate authority” over both (a) BS&A administration and accessibility; as well as (b) administration of all software including assignment of access. (AA079; AA080; AA112.)

## II. The Township Attorney's Opinion Regarding The Clerk's Authority Over Who May Enter or Remove Data From The Township's Ledgers.

On August 12, 2021, the Clerk received a written opinion from Township Attorney James Fink that the Clerk is the person responsible to prepare and maintain ledgers (and other financial records) and has the authority to grant/deny access to manipulate (use read/write functions) the records. (AA060.) Mr. Fink added that "as the responsible party, [the Clerk] must be able to limit the ability of others to ENTER or REMOVE financial data." (AA060, emphasis in original.)

## III. The Supervisor's Special Meeting of August 17, 2021 And Resulting Resolution 2021-31.

The Board's Supervisor called a Special Meeting for August 17, 2021. (AA007; AA061.) This Special Meeting regarded the Supervisor's proposed new job description for the Supervisor position and revisions to the still brand-new Township Administrator description, which had been first adopted just weeks before on July 27, 2021. (AA061-069.) The Supervisor proposed that the Township Administrator – an employee who reports to the Board – should "[a]ssist the Supervisor in preparing and administering the annual budget **and related financial reports** under policies formulated by the Board and state law" as a job responsibility under the heading, "Finance." (AA066 (emphasis in original).)

The preparation of the annual proposed budget report is arguably the province of the Supervisor under MCL 141.422b(3)(e) and MCL 141.424. But the Supervisor sought to bestow upon himself and the Township Administrator the duty to prepare and administer "related financial reports." (AA066.) This proposed

change garnered the Clerk's fervent objection and sparked a lively debate at the August 17, 2021 Special Meeting. (AA070-073.)

The Board sought their attorney's input on this issue during the August 17, 2021 Special Meeting. The Board's attorney explained: "So... who is responsible for Finance in a Township, and I will repeat what I have said before is that that is clearly and soundly to me the responsibility of the Clerk who is ***responsible for the general ledger and the books and records***, and in conjunction with the work that the Treasurer does, there's the checks and balances that are there." (AA070 (emphasis added).) The Board's attorney reiterated, "the Administrator ***cannot usurp*** the Clerk's authority." (AA073 (emphasis added).) The Board's attorney advised the Board it could have the Administrator prepare and administer any report it wants so long as "***it doesn't infringe upon the statutory authority*** of the Treasurer or the Clerk[.]" (AA073 (emphasis added).) The Board's attorney also opined that if someone interpreted the phrase, "and related financial reports," as proposed by the Supervisor, to mean that the Clerk no longer holds authority over the Township's general ledger, then such "interpretation would be incorrect." (AA071.)

Responding to the Township attorney's opinion, the Supervisor assured the Board that the new language regarding finance duties in the job descriptions he proposed was simply a matter of "interpretation," and that the Board could later clarify that its "intent" was not to "conflict with a, you know, statute." (AA073.) The Supervisor contended that if anyone interpreted the language contrary to the law or

to interfere with another officer's statutory duties, the Board could clarify: "Oh, no; that's not what it meant." (AA073.)

Following this discussion, the Board adopted Resolution 2021-31 "Adopting Job Descriptions for Supervisor, Township Administrator," over the Clerk's objections. (AA061-069.)

#### IV. The Township Hires Additional Counsel.

Attorney Fink remains the Township's counsel. (Verified First Amended Complaint ("VFAC") ¶ 8.) But, on December 28, 2021, the Supervisor proposed that the Township engage Foster Swift as additional counsel, with Foster Swift Attorney Michael Homier assigned to Scio Township, for additional general government legal services. (VFAC ¶¶ 16-17.) The Board approved, over the Clerk's objection. (*Id.*)

#### V. The February 22, 2022 Resolution 2022-05.

The Board *again* "updated" the Township Administrator's job description in February 2022. At the Board meeting of February 22, 2022, the Board passed Resolution 2022-05, "Updating the Township Administrator Job Description and Authority," over the Clerk's stated objection and the Clerk's withholding of consent under MCL 41.75a. (AA074-081; AA091-094.) This updated job description authorized the Township Administrator "**to oversee and prioritize allocation of Finance staff work time to accomplish tasks**" (up until that time the Finance staff had been supervised by the Clerk); and to hold "**ultimate authority over BS&A administration and accessibility**;" and to also hold "**ultimate authority**



**over administration of all software including assignment of access.”**  
(AA079; AA080, emphasis in original.)

The Clerk and Board Trustee Kathleen Knol asked questions of Board attorney Michael Homier regarding this “ultimate authority” language at the February 22, 2022 meeting. (AA093-094.) Mr. Homier stated that he did not believe such language presented an issue “unless somebody deprives anybody access that they need to carry out their statutory duties.” (AA093.) Trustee Knol presented her concern to attorney Homier that the proposed updated job description and the Administrator’s “ultimate authority” over BS&A software, including access, would infringe upon the Clerk’s statutory custody, control and safekeeping of the Township’s records, as the Clerk would no longer be able to guarantee chain of custody. (AA094.) Trustee Knol directed Mr. Homier to this Court’s decision in *McKim* and its discussion of the Clerk’s custody and control over the Township’s records. (*Id.*) Mr. Homier stated that he had not been asked to provide a legal opinion on that issue. (*Id.*)

At the summary disposition hearing, the Clerk’s counsel argued to the Circuit Court with respect to this “updated” job description providing “ultimate authority” to the Township Administrator:

The ultimate authority now over what the statute gives the clerk unequivocally is under this resolution given to the township administrator, an employee who reports to the board. That’s a violation of the law. And if that wasn’t clear enough to this board, we go further down on the next page under Information Technology and Data Management, they repeat, using the same phrase, that it’s the administrator who, quote, ‘holds ultimate authority over administration of all software, including assignment of access.’ That is

saying administrator, you get to control who has access to the papers of the township. Not you, clerk. That's a change or else we wouldn't have to do -- they wouldn't have had to do this resolution.

(AA044.)

## VI. The Clerk's Lawsuit.

The Clerk filed her Verified Complaint initiating this case on April 11, 2022. (AA003.) Among other relief sought, the Clerk requested that the Circuit Court vacate those portions of the August 17, 2021 Board Resolution 2021-31 and the February 22, 2022 Board Resolution 2022-05, discussed above, which interfered with the Clerk's statutory duties by shifting control over the Township's accounting records, journals, and ledgers through operation of the BS&A software to the Township Administrator.<sup>5</sup> On April 29, 2022, the Clerk, by counsel via letter, advised Mr. Homier of Foster Swift that she regarded his representation of the Board in this case as presenting a conflict of interest due to his involvement in the facts and circumstances giving rise to this action. (VFAC ¶ 17.)

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<sup>5</sup> Some of the relief sought in the Clerk's original complaint of April 11, 2022 was mooted by the Board's action in adopting the April 12, 2022 resolution cancelling a contract with Rehmann Robson for payroll and accounts payable services. In addition, actions by the Board in May 2022 as detailed in this brief gave rise to the Clerk's Verified First Amended Complaint, which the Clerk filed on May 19, 2022 as a matter of course under MCR 2.118. Thus, the VFAC superseded and replaced the original complaint. MCR 2.118(A)(4). **Only Counts I and III of the Clerk's VFAC are at issue on this appeal.** Count II of the VFAC regarded the Township's deficient and understaffed finance team which impeded the Clerk's ability to perform her statutory duties. While the Clerk believes she should have prevailed on that issue, it was ancillary to Count I regarding the proper scope of the Clerk's duties under MCL 41.65. The issue of deficient finance staff could be raised in a new action if the Board continues after this case to deprive the Clerk of the necessary finance staff to perform her statutory duties after this Court first settles the issue of the scope of the Clerk's statutory duties under MCL 41.65.

**VII. The Appointment of Interim Supervisor James Merte and Deputy Supervisor Sandra Egeler.**

On May 10, 2022, the Clerk was not at the Township's regular meeting because she was recovering from COVID-19. (AA008; AA045.) Though not on the meeting agenda, the Board appointed James Merte as Interim Township Administrator, and the Supervisor appointed Sandra Egeler (former Finance Director already serving as the current full time Deputy Treasurer) as half time Deputy Supervisor, with which the Board concurred. (AA008; AA045.)

**VIII. Immediate Changes to Access to the Township's BS&A Software, Including Providing Board Employees With the Access to Manipulate the Township's Journals and Ledgers.**

On May 12, 2022, the Clerk held a meeting with newly appointed interim Administrator Merte. (AA008.) He confirmed that the Supervisor instructed him to immediately gain access to BS&A to provide Sandra Egeler (dually serving as Deputy Treasurer and Deputy Supervisor) the ability to manipulate the General Ledger. (*Id.*) The Clerk objected. (AA008; AA016.) The Clerk encouraged Mr. Merte to reach out to Attorney Fink for counsel. (AA008.) The Clerk followed up this verbal direction with written direction to Mr. Merte to seek legal direction. (AA118.)

The Township engaged Plante Moran to perform the annual audit for the Township's fiscal year end 2022, ending March 31, 2022. (AA036.) The Supervisor learned that the Clerk had a scheduled meeting with the Township's outside auditor, David Helisek of Plante Moran, set for 1pm on May 13, 2022 via zoom. (*Id.*) The day before the Clerk's meeting with the auditor, the Supervisor preemptively wrote an email to the auditor. (*Id.*) The Supervisor advised the auditor of the May

10, 2022 appointments of Mr. Merte as interim Administrator and Ms. Egeler as part time deputy Supervisor in addition to her role as deputy Treasurer. (*Id.*) The Supervisor provided the auditor with the “attached job description” of August 17, 2021, approved as Resolution 2021-31, and told the auditor that, per that Resolution, the Supervisor would be responsible for the annual financial report. (*Id.*) He told the auditor: “In addition to [the Supervisor], the Township’s designated contacts for work on the audit are Administrator Merte and Deputy Supervisor Egeler.” (*Id.*) Finally, the Supervisor directed that the interim administrator and the deputy supervisor should be on the auditor’s Zoom meeting with the Clerk scheduled for the following day, and indicated that both he and Township attorney Homier, who was copied on the email, would also join the meeting. (*Id.*)

On May 13, 2022, auditor David Helisek of Plante Moran confirmed that in an effort to maintain integrity of the Township’s journals and ledgers the Clerk *should not allow* the Deputy Treasurer & Deputy Supervisor, Sandra Egeler, permission to manipulate the General Ledger. (AA008; AA118.)

But, just after 5:00pm on Friday May 13, 2022, at the direction of Supervisor Hathaway to Netsmart (the Township’s I.T. Managed Services Provider), James Merte received his own permissions to, and extended permission to Sandra Egeler, to manipulate the General Ledger module within BS&A. (AA009; AA021; AA101; AA112; AA116.) Netsmart documented that it was “concerning” and unusual to receive contact from the Supervisor in this regard. (AA101.) This change was made pursuant to the authority granted under Resolution 2022-05. (AA079-080; AA112.)

Around 7:00pm on Friday May 13, 2022, the Clerk returned Sandra Egeler's regular access to view the General Ledger, restricted so that she could not edit it. (AA009; AA021.) But by Saturday morning, May 14, 2022, Mr. Merte had revoked the Clerk's necessary Enterprise Administrator access, removing any ability for her to control who enters what into the journals and ledgers of the Township. (AA009; AA112.) On Saturday May 14, Mr. Merte added Nancy Colasanti, a newly hired Township employee, and provided Ms. Colasanti with permissions to manipulate the Accounts Payable module. (AA009-010.) Mr. Merte provided Mr. Egeler with additional high-level permissions within the General Ledger module of BS&A on May 18, 2022. (AA010.) The Clerk could not see what changes Mr. Merte or others may have made to the journals and ledgers, or if other unauthorized people had access. (AA009.) The Clerk demanded regular access be restored. (AA009; AA118.)

The Clerk's counsel summarized these facts that occurred in May 2022, which the Board did not dispute, for the Circuit Court at the September 21, 2022 summary disposition hearing:

And the first thing that happens with [the Clerk] not being present is that the supervisor and Mr. Merte come up with a plan to contact Netsmart, which is the township's vendor for this BS&A software, and say, the administrator is now the enterprise administrator with authority and control over all of the software, not the clerk; and if you need authority to make that change, here's the job description that we passed in February as updated from [ ] August. They're using the resolutions that we want vacated as the authority to make these changes.

Now if we jump to page 12 of that same report, on Friday, May 13th, right before the close of business at 4:55 p.m., heading into a weekend, Netsmart says: Called Jim Merte and remoted into his computer. Logged into BS&A using admin for Scio credentials. Enabled James

Merte in BS&A and enabled enterprise administrator access. Removed Jessica Flintoft's enterprise administrator's access. Logged out of BS&A.

I mean, it couldn't be any more clear what happened and it's not in dispute. The clerk's out, she's got COVID. The board hires an interim employee who then immediately calls [ ] Netsmart and says, out with [the Clerk], in with the administrator and he's going to control the papers of the township.

We have also provided in the next document a screen shot of that happening. This is now, I think what we just looked at was 4:55 p.m. on Friday, so 18 minutes later -- no, it's 5:19 p.m., so 24 minutes later with this newfound authority after five p.m. on a Friday, Mr. Merte goes in, modifies Sandy Egeler's access from the old value being set access meaning read only, to new value administrator access. So now the supervisor's deputy has the ability to edit the journals and ledgers, including the general ledger of the township under this action. And that's without any input from the clerk or the treasurer or anyone else. [The deputy supervisor has] got that authority and access.

(AA045.)

#### **IX. Mr. Homier's May 18, 2022 Opinion.**

On May 18, 2022, Mr. Michael Homier, another of the Township's attorneys hired in December 2021 (in addition to the existing township attorney, Mr. Fink), ***agreed*** with the Clerk that any such access by Ms. Colasanti and Ms. Egeler should be "READ" access only. (AA117.) Attorney Homier advised that, with read access, these employees could "still document journal and ledger entries that should be added or corrected and ***pass those on to the Clerk*** who has ***the statutory obligation to 'prepare and maintain the journals and ledgers*** necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township. MCL 41.65." (AA117, emphasis added.) Mr. Homier, now representing the Board in this litigation, objected to his opinion being used in this

case, which the Circuit Court correctly overruled and which the Board did not appeal. (AA048, AA051, AA053.)

It was not until mid-day May 24<sup>th</sup> that the Clerk compelled Mr. Merte to end read/write access to Ms. Egeler for the General Ledger module. (AA010; AA020; AA024.) It was on May 26<sup>th</sup> that Mr. Merte disabled permissions for Ms. Egeler to unlock and re-adopt prior year budgets, records that are the Clerk's statutory responsibility to keep. (*Id.*) During those 11 days, Ms. Egeler entered 155 general journal entries all dated within the prior fiscal year ending March 31<sup>st</sup>, and Ms. Egeler posted 57 of these to the General Ledger. (AA010.)

Currently, the Clerk does not have the necessary administrative permissions to be able to fully verify the integrity or corruption of these Township records. (*Id.*) There may have been more unauthorized access to the eight financial management modules of BS&A by individuals unknown to the Clerk. (*Id.*) The Township Administrator continued to extend additional high-level permissions to Ms. Egeler and to an incoming Interim Township Administrator. It was just February 3, 2023 (the Friday before this brief was due on the next Monday), that the Township provided the Clerk with Administrator permissions for the eight BS&A modules of Fixed Assets, Payroll, Accounts Payable, Purchase Orders, Utility Billing, Miscellaneous Receivables, and Cash Receipts. But, as long the Township Administrator, or any employee working at the direction of a Board, has top administrative access or top authorization authority, as authorized under the Resolutions of August 17, 2021 and February 22, 2022, any of the Clerk's actions

may be overridden without her consent or knowledge by the Board through its staff person. (AA010-AA011.) In other words, the Clerk still does not have control over the Township's, papers, books and records.

**X. The Clerk's First Amended Complaint Filed May 19, 2022.**

One day after the Board's attorney, Mr. Homier, confirmed on May 18, 2022 that the deputy treasurer/deputy supervisor, Ms. Egeler, *should not have the authority* to make entries into the general ledger, and Township employee Ms. Colasanti *should not have the authority* to make entries into other journals and ledgers of the Township, the Clerk filed her Verified First Amended Complaint in this case on May 19, 2022, (AA003), including adding factual allegations regarding these May 2022 events to her verified amended pleading.

**XI. The Parties' Summary Disposition Briefing.**

On May 23, 2022, the Clerk filed her motion for summary disposition under MCR 2.116(C)(10) and MCR 2.116(I)(1), followed by her June 15, 2022 brief in support and her affidavit. (AA004; AA005.) On June 9, 2022, the Board filed its motion for summary disposition under MCR 2.116(C)(8). (AA004.)

The Clerk sought summary disposition under Count I of the VFAC based upon the facts set forth above. The Clerk requested that Board Resolutions 2021-31 and 2022-05 be vacated and that the Clerk be reinstated as Enterprise Administrator for the financial management modules for the Township's BS&A software. (*See also* AA056-058 (proposed order).) The Clerk also requested her attorneys fees under Count III of the VFAC. (*Id.*)



The Board argued in its motion that the Clerk presented only a “policy dispute” in which the Circuit Court should not involve itself, that the Clerk does not have “exclusive” custody of the Township’s papers under MCL 41.65, and that the Circuit Court should not follow *McKim* because *McKim* was decided prior to 1990, relying on MCR 7.215(J)(1) and *Charter Twp of Royal Oak v Brinkley*, unpublished per curiam opinion of the Court of Appeals decided May 18, 2017 (Docket No 331317). (See AA049-050.)

The parties filed their respective response briefs on August 18, 2022 and their respective reply briefs on August 22, 2022. (AA004.)

## **XII. The September 21, 2022 Hearing and the Circuit Court’s Opinion from the Bench.**

The Circuit Court heard in-person argument on the parties’ respective motions for summary disposition on September 21, 2022 for approximately 1.5 hours, from 1:30pm to 3:01pm.<sup>6</sup> (AA0037-055.)

At the outset of the hearing, the Clerk’s counsel handed the Circuit Court and the Board’s counsel highlighted copies of ten documents. (*Id.*) The first document was the Clerk’s proposed order. (AA056-058.) Counsel explained that the Clerk generally asked for her motion to be granted and the Board’s motion to be

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<sup>6</sup> The parties and the Circuit Court convened via Zoom for the originally scheduled summary disposition hearing on August 25, 2022, (AA004), but quickly determined during the hearing that, due to technical issues and a large presence of spectators from the public, an in-person hearing would aid the argument and decisional process. (See AA039.) Only the September 21, 2022 hearing transcript (AA037-055), which includes the Circuit Court’s bench opinion, is relevant for this appeal.

denied and, specifically, as to Counts I and III of the VFAC, the Clerk's counsel informed the Circuit Court at the hearing that the Clerk was requesting:

(1) that “two specific resolutions that the board passed [August 17, 2021 and February 22, 2022 resolutions] to be vacated . . . because the contents include provisions that directly violate by usurping duties that belong by statute exclusively to the clerk;”

(2) that the Clerk be ordered “to be the exclusive enterprise administrator for the BS&A modules of the township, minus two [modules] that go outside of her duties;” and

(3) that the Circuit Court award the Clerk her attorneys fees as permitted under *McKim* as “an exception to the American Rule for attorney's fees” when “a public official files a suit to enforce and defend its statutory duties, recognizing that that's an onerous burden for an individual, which is very much the case here.” (AA039-040.)

That is the same relief the Clerk seeks from this Court on this appeal via reversal and remand with directions.

The next document provided by the Clerk's counsel was a copy of MCL 41.65 with some of the provisions highlighted. (AA041; AA059.) The other eight documents (after the proposed order and copy of the statute) were documents that counsel selected from the exhibits previously submitted with the pleadings and briefing that established the chronology of the material facts. (AA039; AA060-119.) As the Clerk's counsel explained: “Every document I have provided, Your Honor,

has been submitted as an exhibit to the briefing today, and I can reference when necessary what exhibit it is, and I have highlighted the copies jut to streamline it, as well as the copy I brought for counsel so that we're all looking at the same thing here.” (AA039.)<sup>7</sup>

The Clerk’s counsel provided the Circuit Court with a highlighted copy of MCL 41.65, and explained that it “says in the first sentence, that the clerk shall have custody of all the records, books and papers of the township when no other provision for custody is made by law,” and, in the “last sentence, it’s the township clerk who shall prepare and maintain the journals and ledgers” of the Township. (AA041.) The Clerk’s counsel reiterated: “that’s really what we’re talking about here, is custody of the papers as stated in sentence one, and preparing and maintaining the journals and ledgers as stated in the last sentence.” (*Id.*) Counsel further argued, “we’ve briefed this, but it bears reminding that there are very few offices, there’s the treasurer and the clerk, maybe others I’m not as familiar with, that have to put up personal bonds for the safekeeping of these records. It is their duty and their duty alone, and the statutory law is clear that unless they affirmatively consent to change that, then it’s a violation to take that duty away.” (AA041); MCL 41.69 (bond requirement); MCL 41.75a (if duties are “delegated by

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<sup>7</sup> The documents supplied in Appellant’s Appendix at pages AA058 to AA119 are the proposed order, a highlighted copy of MCL 41.65, and the eight highlighted exhibit documents that the Clerk’s counsel provided to the Circuit Court and to the Board’s counsel at the September 21, 2022 hearing. To avoid duplication, these documents have been omitted from other items included in the Appendix, such as the Clerk’s Affidavit (AA005-024), for example.

law to another township official,” that official must provide consent for the board to be able to direct a township employee to perform such duties).

The Clerk’s counsel then discussed the eight documents that he provided to the Court vis-a-vis the undisputed material facts they demonstrate, including:

1. Township Attorney Fink’s August 12, 2021 opinion (AA060);
2. The August 17, 2021 Resolution 2021-31 that the Clerk requests be vacated (AA061-069);
3. Excerpts of the transcript of the special meeting held on August 17, 2021 (AA070-073);
4. The February 22, 2022 Resolution 2022-05 that the Clerk requests be vacated (AA074-081);
5. The Minutes of the February 22, 2022 meeting (AA082-100);
6. The Netsmart Company Service report for the period May 1, 2022 to May 17, 2022 (AA101-115);
7. A screenshot of the Township’s BS&A application showing when, on May 13, 2022, Interim Township Administrator James Merte modified Deputy Treasurer / Deputy Supervisor Sandra Egeler’s access to the Township’s general ledger from “Set Access,” which is read only access, to “Administrator Access” (AA116); and
8. Emails from May 15, 2022 to May 18, 2022, including Attorney Homier’s May 18, 2022 opinion. (AA117-119.)

After the Clerk’s counsel’s initial argument at the hearing, counsel for the Board argued for dismissal of the Clerk’s lawsuit under MCR 2.116(C)(8) for failure to state a claim. (AA048-051, AA052-053.) The Board’s counsel argued that the Clerk has not been deprived of custody, that custody can be shared as opposed to exclusive to the Clerk under MCL 41.65, that “nobody has interfered with” the Clerk’s duty to “prepare and maintain” the journals and ledgers, that this is really

just a “policy dispute” that the Circuit Court should refrain from ruling upon, and that the viability of *McKim* was purportedly questioned in this Court’s unpublished *Brinkley* case. (AA048-051.) Counsel for the Board also compared the Clerk’s custody under MCL 41.65 to any citizen’s right to obtain copies of public documents under FOIA in contending that FOIA shows that the Clerk does not have “exclusive” custody of the Township’s records under MCL 41.65. (AA052.)

As discussed above, the Circuit Court denied the Clerk’s motion for summary disposition, granted the Board’s motion for summary disposition, and dismissed the Clerk’s case. The Circuit Court declined to apply *McKim* absent direction from this Court to do so, (AA053) and concluded the opposite of *McKim*; that the Clerk does not control the papers of the Township. (AA054.) The Circuit Court also believed it did not have jurisdiction to stick its “nose” where it was none of its “business” with respect to the Board’s Resolutions at issue. (AA041, AA054.) The Circuit Court entered the final order on September 27, 2022. (AA001-002.) The Clerk timely filed this appeal on October 17, 2022.

### **XIII. Plante Moran’s Findings of Material Weaknesses In The Township’s Internal Controls.**

On January 24, 2023, the Board held a public meeting at which it discussed Plante Moran’s December 15, 2022 Audit Report.<sup>8</sup> The Board invited its auditor,

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<sup>8</sup> This Court may take judicial notice of the January 24, 2023 Board meeting and Plante Moran’s Auditor’s Report of December 15, 2022 discussed herein. The Auditor’s Report was released approximately two months after the Clerk filed her Claim of Appeal, but it was included as a public document with the agenda for the Board’s January 24, 2023 public meeting, and the Audit Report is publicly available on the Township’s website. “Under MRE 201(c), a court may take judicial notice

Mr. Helisek of Plante Moran, to speak at the meeting.<sup>9</sup> An excerpt of Plante Moran's Audit Report, including Plante Moran's findings of deficiencies and material weaknesses in the Township's internal controls, is included in the Appendix at pages AA120-125.<sup>10</sup>

Plante Moran explained in its Audit Report that "[a] deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis." (AA124.) "A

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whether or not requested to do so." *People v Burt*, 89 Mich App 293, 297; 279 NW2d 299 (1979). "MRE 201(c) allows judicial notice to be taken at any stage of the proceeding." *Id.* "[A]ppellate courts can . . . take judicial notice on their own initiative of facts not noticed below." *Id.*; see also, eg, *Ostergren v Governor*, unpublished per curiam opinion of the Court of Appeals decided March 18, 2021 (Docket No 353743), at n1 (taking judicial notice of an executive order that did not exist during the lower court proceedings but was attached to appellant's brief), citing *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 649; 873 NW2d 842 (2015) (taking judicial notice of the DNR's rescission of its declaratory ruling that occurred after the lower court entered its summary disposition order that was on appeal). "A judicially noticed fact must be one 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'" *Burt*, 89 Mich App at 297 (cite omitted). Here, regardless of whether the Board or anyone else agrees with it, the fact and existence of Plante Moran's Audit Report, which is a public document of the Township, as well as what the Audit Report includes, is not subject to reasonable dispute. Further, there is no prejudice to the Board in this Court considering the Audit Report and related materials, as the pending audit for the Township's FYE22 was a focal point of the lower court proceedings, (see, eg, AA036, AA118), and the Board can respond in its Appellee's Brief.

<sup>9</sup> The video of the Board's January 24, 2023 public meeting with agenda is available at: <https://sciotownship.granicus.com/player/clip/830?&redirect=true&h=8ade0175b0fd67f64b4c65b6bd480886>.

<sup>10</sup> The Auditor's Report is publicly available at: [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1750527/2022\\_AuditFinancial\\_Report.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1750527/2022_AuditFinancial_Report.pdf)

material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis." (*Id.*) Plante Moran found five material weaknesses in internal controls at the Township. (AA124-125.) Two of those material weaknesses in internal controls were:

**Segregation of Duties** - During the audit, we identified that *individuals with access to post adjustments to the general ledger also had access to cash receipt and custody functions*. We recommend that the Township implement adequate mitigating controls or further segregate these functions in order to *avoid misappropriation of assets*.

and

**Audit Adjustments and Supporting Schedules** - As part the audit, Plante & Moran, PLLC identified and management recorded *multiple adjustments to accounting records in order for the financial statements to be in accordance with generally accepted accounting principles and GASB accounting guidance, which included adjustments to federal revenue, unearned revenue, accounts payable, expenses, receivables, and cash*. Additionally, *as part of the audit, there were multiple follow ups and updates needed to reconcile certain schedules that did not reconcile to the general ledger when turned over for audit*. Without adequate procedures and controls in place to ensure the accounting records are recorded in accordance with accounting standards and supporting schedules properly reconcile to the general ledger, there is a risk of material misstatement to the Township's financial statements.

(AA124-125 (emphasis added).)

These material weaknesses in the Township's internal controls were the direct result of the Board's invalid Resolutions of August 17, 2021 and February 22, 2022 resulting in the unmitigated access given to Ms. Egeler in May 2022 discussed above and Ms. Egeler's and Ms. Colasanti's many entries to the journals and ledgers of the Township. (*See supra* n9, video of January 24, 2023 Board meeting, at approximately

minute 57:48.) Pertinent discussions with the Board's auditor regarding the Township's material weaknesses in internal controls can be found beginning at approximately the 55:20 minute mark of the video of the January 24, 2023 meeting through approximately the 58:16 minute mark of the video, including that the "deputy treasurer," who has access to the Township's cash, also had access to make entries to the "general ledger," and that she made backdated entries to the general ledger after the close of the fiscal year which pertained to fiscal year 2022. (*See supra* n9, video of January 24, 2023 Board meeting, at approximately minutes 57:48 to 58:16).

The auditor recommended the same remedial measure that Mr. Homier had recommended in his May 18, 2022 opinion – that such employees of the Township have only "read" access to the Township's journals and ledgers and, for anything they propose as modifications to the journals and ledgers, they should "pass those on to the Clerk." (*Compare* AA117, with *supra* n9, video of January 24, 2023 Board meeting, at approximately minute 56:30.)

### **STANDARD OF REVIEW**

This Court reviews de novo rulings on motions for summary disposition. *Draprop Corp v City of Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001), citing *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999).

The Clerk's motion for summary disposition under MCR 2.116(C)(10) should have been granted if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the Clerk is entitled to judgment as a matter of law. *Draprop Corp*, 247 Mich App at 415, citing *Smith v*



*Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999); *see also Spiek v Mich Dep't of Transport*, 456 Mich 331, 338; 572 NW2d 201 (1998). The affidavits, pleadings, depositions, admissions, and other documentary evidence must be viewed in the light most favorable to the party opposing the motion. *Draprop Corp*, 247 Mich App at 415; MCR 2.116(G)(5).

The Board's motion under MCR 2.116(C)(8) "test[ed] the legal sufficiency of the complaint[.]" *Wade v Dep't of Corrs*, 439 Mich 158, 162; 483 NW2d 26 (1992). The Clerk's well-pleaded allegations are to be accepted as true and construed most favorably to the Clerk. *Id* at 162-63. "A court may only grant a motion pursuant to MCR 2.116(C)(8) where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*.

Under MCR 2.116(I)(1), "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." Under MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

"Issues concerning the interpretation and application of statutes are questions of law for this Court to decide de novo." *Lincoln v Gen Motors Corp*, 461 Mich 483, 489-490; 607 NW2d 73 (2000) (citations omitted); *see also Noll v Ritzer*, 317 Mich App 506, 509; 895 NW2d 192 (2016) ("We review de novo questions of statutory interpretation") (citation omitted).

## ARGUMENT

### **I. Reversal Is Warranted Because The Board Interfered With the Clerk's Statutory Duties of Custody Over The Township's Papers and to Prepare and Maintain the Township's Journals and Ledgers; Therefore Resolutions 2021-31 and 2022-05 Should Be Vacated and the Clerk's Enterprise Administrator Access Restored.**

There are no disputed material facts. The issues for this Court to resolve involve a straightforward de novo interpretation of the Clerk's statutory duties under MCL 41.65. *McKim* already correctly interpreted MCL 41.65 regarding the Clerk's statutory custody over the papers of the Township and the remedy of vacating any resolutions which interfere with the Clerk's ability to perform her statutory duties. This Court should reaffirm *McKim* and hold that, contrary to the Board's incorrect argument and the Circuit Court's erroneous holding, the "custody" of the Township's records, books, and papers that MCL 41.65 explicitly provides to the Clerk, for which the Clerk is charged with safekeeping and supplied a bond under MCL 41.69, is not coextensive with whomever else the Board may deem proper or any member of the public making a FOIA request.

This Court should also hold that, pursuant to the Board's attorney's admission and the Circuit Court's erroneous failure to even address the issue, the Board interfered with the Clerk's duty to prepare and maintain the journals and ledgers when Interim Township Administrator James Merte provided Ms. Egeler and Ms. Colasanti with access to modify the Township's journals and ledgers in BS&A in May 2022. (*See* AA112, AA116, AA117.)

Resolutions 2021-31 and 2022-05 must be vacated because, as long as they remain intact and not vacated, there is nothing stopping the Township

Administrator from committing the same violations at any time, since the Township Administrator continues to hold “ultimate authority” over “BS&A administration and accessibility” and “administration of all software including assignment of access[.]” (AA067-068.) Under MCL 41.65, it must be the Clerk, not any other officer or employee of the Board, who holds “ultimate authority” over the papers, books, and records, unless otherwise provided for by law.

**A. The Rules of Statutory Construction.**

The rules of statutory construction are well established. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). The foremost rule, and this Court’s primary task in construing a statute, is to discern and give effect to the intent of the Legislature. *Id.* (citation omitted); *see also Draprop Corp*, 247 Mich App at 414, citing *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997). This task begins by examining the language of the statute itself. *Ward*, 460 Mich at 236. “The words of a statute provide ‘the most reliable evidence of its intent . . . .’” *Id.*, quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524 (1981). If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. *Ward*, 460 Mich at 236. No further judicial construction is required or permitted. *Id.*, citing *Tryc v Michigan Veterans’ Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Ward*,

460 Mich at 236, citing *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984).

As far as possible, effect should be given to every phrase, clause, and word in the statute. *Ward*, 460 Mich at 237, citing *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994). “A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained,” and “[t]he statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme.” *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). “Statutes should be construed so as to prevent absurd results, injustice, or prejudice to the interests of the public.” *Draprop Corp*, 247 Mich App at 414, citing *Camden v Kaufman*, 240 Mich App 389, 395; 613 NW2d 335 (2000); *see also Elahham v Al-Jabban*, 319 Mich App 112, 127; 899 NW2d 768 (2017) (“Statutory language should be construed reasonably, keeping in mind the purpose of the act, and to avoid absurd results.”).

**B. *McKim* Was Correctly Decided And Should Be Reaffirmed.**

*McKim* correctly applied these rules in interpreting MCL 41.65 in conjunction with MCL 41.69 and MCL 41.75a. In *McKim*, the board adopted a resolution, titled “Incoming Mail Procedures,” which routed all incoming township mail through the General Township Secretary instead of the Clerk. *Id* at 202. The board also adopted a resolution, titled “Incoming Bill Procedures,” which similarly routed all incoming township bills through the General Township Secretary for handling, with only presentation to the clerk for signature. *Id*. Within two months thereafter, the board

approved a motion prohibiting the removal of township records from the township hall for a period longer than eighteen hours. *Id* at 203.

The clerk in *McKim* “vigorously opposed the resolutions and the eighteen-hour restriction as an unreasonable restraint on her ability to perform her statutory duties as township clerk under MCL 41.65.” *Id*. After independent legal opinions failed to persuade the board, the clerk filed suit in the circuit court alleging that the two resolutions and the eighteen-hour restriction impeded her ability to perform her statutory duties, and sought injunctive relief. *Id*. The clerk moved for summary disposition in the circuit court. *Id*. Following argument and taking the matter under advisement, the circuit court “entered a written opinion granting plaintiff injunctive relief by vacating the resolutions and the eighteen-hour restriction.” *Id* at 203-204. This Court affirmed.

The *McKim* court reasoned that, under MCL 41.65, the Clerk “shall” have custody over the Township’s papers, and the statute further contemplates that, *if anyone besides the Clerk* is to have custody over any Township papers, it would have to be under some other “provision for custody [ ] made by law.” MCL 41.65. Applying this statute, the *McKim* court noted that other statutes spell out what papers other offices exert custody and control over, including that “the township supervisor and treasurer are statutorily authorized to maintain the books or papers of those offices,” (*id* at 205, emphasis in original, citing MCL 41.62 and MCL 41.78), but the *McKim* court found no other statutory provision which authorizes a person *other than the clerk* to have control of the township’s papers. 158 Mich App at 205

(emphasis added). Likewise, this Court will find no other statutory provision which authorizes a person other than the Clerk to have control of the Township's detailed accounting records, journals, and ledgers.

In this regard, the Board's argument (unsupported by any authority) that the Clerk's custody of the Township's papers, records, and books under MCL 41.65 is *not* "exclusive," (AA048; AA052), with which the Circuit Court erroneously agreed, (AA054), is patently incorrect and runs afoul of both *McKim* and, more importantly, the plain language of MCL 41.65. The Circuit Court's interpretation produces the absurd result that even a FOIA requester has the same degree of custody over the Township's records as the Clerk, as argued by the Board and adopted by the Circuit Court. (AA052; AA054.)

The Board and the Circuit Court also failed to read MCL 41.65 *together with* MCL 41.69 and MCL 41.75a, despite *McKim*'s guidance. *See Bush*, 484 Mich at 167 (a "statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme"). As the *McKim* court noted, MCL 41.69 requires the Clerk "to file a bond 'especially for the safekeeping of the records, books, and papers of the township in the manner required by law . . . ." 158 Mich App at 205. The Clerk's position was created by the Constitution of Michigan, which provides that the clerk's and other township officers' "legislative and administrative powers and duties shall be provided by law." Const. 1963, Art 7, §18. "A clerk without custody or control of township papers can hardly fulfill her duty of safekeeping those records." *McKim*, 158 Mich App at 205.

And, under MCL 41.75a, the Board *may not* direct township employees to perform any “duties that are *delegated by law to another township official*, unless consent has been granted.” (emphasis added). The leading treatise on township governance, *Managing the Modern Michigan Township* (1990), by Kenneth VerBurg, addresses this issue under a section entitled, “**PROTECTION FOR CLERK AND TREASURERS.**” (Attached as Exhibit C (excerpt) to the Clerk’s June 15, 2022 MSD (emphasis in original).) Short of “gross improprieties” by the Clerk or Treasurer, “others in the township hall *may not interfere in the performance of their tasks.*” *Id* pp 42-43 (emphasis added). Township officers “have *constitutional* and *statutory* duties,” and, thus, a “clerk or treasurer may be fair game in the political arena, *but not to the point these officials cannot carry out their statutory responsibilities.*” *Id* at p 44 (emphasis added).

Custody over records, papers, and books of the township is just such a duty “delegated by law” (*see* MCL 41.75a) to the Clerk under MCL 41.65. Another such duty under MCL 41.65 is: “Keeping an account with the treasurer of the township, and [to] charge the treasurer with all funds that come into the treasurer’s hands by virtue of his or her office, and [to] credit him or her with all money paid out by the treasurer on the order of the proper authorities of the township[.]” And still another duty is: “To keep a separate account with each fund belonging to the township, and [to] credit each fund with the amounts that properly belong to it.” The Clerk is also “responsible for the detailed accounting records of the township” and has the duty to “prepare and maintain the journals and ledgers necessary to reflect the assets,

liabilities, fund equities, revenues, and expenditures for each fund of the township,” which the Board’s attorney in this case concedes. (AA117.) ***The Clerk has not granted consent*** to the Board under MCL 41.75a or otherwise to assign any Township employee or official the authority over these statutory duties of the Clerk.

Thus, it cannot be the case, as the Board argued and the Circuit Court held, that, while MCL 41.65 specifically states that the Clerk shall have custody over the papers, books, and records of the Township and there would have to be another provision for custody made by law to carve out any papers, books, or records, and MCL 41.69 imposes bond and safekeeping requirements on the Clerk, and MCL 41.75a requires the Clerk’s consent before her custody over the Township’s papers, books, or records can be delegated to anyone else, that the Clerk’s custody under MCL 41.65 is anything but “exclusive.” Thus, *McKim* correctly held that custody under MCL 41.65 means “***immediate charge and control*** exercised by a person or an authority,” and MCL 41.65 therefore “bestows a township clerk with the responsibility ***to exercise control over all township papers*** [ ] unless otherwise provided for by law.” 158 Mich App at 205 (emphasis added). While “papers” were at issue in *McKim*, the *McKim* reasoning and the explicit language of MCL 41.65 manifestly applies to all of the Township’s records and books not otherwise provided for by law.

If there was any ambiguity in MCL Chapter 41 Townships generally, MCL 41.65, MCL 41.69 or MCL 41.75a in particular, or this Court’s holding in *McKim*, which necessitated going beyond the words of the statute to ascertain legislative



intent, Plante Moran’s Audit Report is a strong indication that the Legislature did not intend for Townships to operate with deficient internal controls making townships vulnerable to conflict of interest and “misappropriation of assets.” (AA124-125.)

Applying these rules of statutory interpretation show that *McKim* should not be discarded, as argued by the Board and adopted by the Circuit Court; rather *McKim* should be reaffirmed for correctly interpreting the Clerk’s statutory duties under MCL 41.65. *See* MCR 7.215(B)(4) (“A court opinion must be published if it . . . reaffirms a principle of law or construction of a constitution, statute, regulation, ordinance, or court rule not applied in a reported decision since November 1, 1990”).

**C. The Unpublished *Brinkley* Case Did Not “Call Into Question” The *McKim* Holding.**

This Court’s unpublished decision in *Brinkley*, on which the Board relied, (*see* AA050), did not “call into question” *McKim*’s interpretation of MCL 41.65 in the slightest. In *Brinkley*, the township clerk prevailed at summary disposition in defending a suit brought against her by the township of Royal Oak. 2017 Mich App LEXIS 842, at \*1. The clerk then filed a motion contending that the township’s complaint was frivolous and that certain identified documents were signed in bad faith. *Id.* The circuit court denied the clerk’s motion for sanctions and she appealed. This Court “review[ed] the trial court’s factual findings on [the] motion for sanctions for clear error.” *Id.* at \*2 (cite omitted). This Court ultimately affirmed the circuit court’s denial of sanctions in concluding that the township’s pleadings, although unsuccessful in establishing a viable claim against the clerk, were not frivolous or in

bad faith in any of the myriad ways asserted by the clerk, going through each assertion individually. *Id* at \*4-18.

Thus, factually, *Brinkley* has nothing to do with the issues here or in *McKim*. *Brinkley*'s only reference to *McKim*, in unpublished dicta, occurred near the end of the lengthy opinion in addressing the second to last of many assertions of bad faith raised by the clerk. *Id* at \*15-17. Royal Oak Township had passed a resolution prohibiting the clerk from **opening** mail she received if it was addressed to someone else, and the clerk openly defied that resolution. *Id* at \*17. The *Brinkley* court correctly distinguished *McKim*, saying that custody of the mail under MCL 41.65, such as the duty to receive incoming mail at issue in *McKim*, is not the same as **opening** the mail addressed to someone else after it is received by the clerk. *Id*. ("neither *McKim* nor MCL 41.65 expressly gives a township clerk authority to open all mail that is delivered to the township. Rather, the authorities give a clerk 'custody' over the mail. It is not apparent that 'custody' means a clerk can open mail addressed to anyone, regardless of the subject of the mail."). Thus, as the *Brinkley* court noted, the *McKim* holding did not even apply to the issue. The *Brinkley* court then merely noted the truism that, under MCR 7.215(J)(1), *McKim* "could be considered nonbinding because it was issued before November 1, 1990." *Id*. The *Brinkley* court only noted this fact – not because it was "calling the authority of *McKim* into question," as the Board's attorney misleadingly argued to the Circuit Court (AA049) – but only to show that the denial of sanctions against Royal Oak Township was not clearly erroneous because, if *McKim* was technically nonbinding

due to its age, it would be another reason that the township’s “position regarding mail protocol was at least arguably warranted by existing law, and defendant fails to establish clear error.” *Id.*

It is unsurprising that *Brinkley* – a dispute between a clerk and a township – would reference *McKim* in some manner given the dearth of authority in this context. *Id.* at \*17 (“there is little caselaw interpreting MCL 41.65”). But *Brinkley* did not call into question *McKim*’s holding, particularly not with respect to its correct interpretation of the Clerk’s exclusive custody and control of the Township’s records, books, and papers under MCL 41.65. Due to the minimal authority on this issue, as noted by the Circuit Court, (*see* AA046) and the *Brinkley* court, *id.* at \*17, this Court should take the “opportunity” presented by the Circuit Court, (AA053), to reaffirm *McKim* in a published decision, *see* MCR 7.215(B)(4), and reverse the Circuit Court’s erroneous decision.

**D. The Board Does Not Dispute Its Interference With The Clerk’s Duty to Prepare And Maintain the Township’s Journals and Ledgers.**

The Board and the Circuit Court focused on “custody” of the Township’s papers, books, and records in the first sentence of MCL 41.65 and the *McKim* decision. Yet, the Board paid almost no mind, and the Circuit Court failed to even address, the Clerk’s statutory duties over the financial accounting of the township, set forth in the rest of MCL 41.65. As set forth above, the “charges” and “credits” for which the Clerk is responsible under MCL 41.65 are entries into the journals and ledgers of the Township. That is why the Clerk shall “prepare and maintain the

journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.” MCL 41.65. There is no dispute, and in fact the Board’s attorney (who is still representing the Board in this case) ***admitted*** in his May 18, 2022 email (AA117), that the Board violated the Clerk’s duty to prepare and maintain the Township’s journals and ledgers when it, by its Township Administrator, granted himself the ability to make entries into the Township’s books, including the journals and ledgers that are within the BS&A software, ***and delegated the authority to make entries into the Township’s journals and ledgers to other Township employees, Ms. Egeler and Ms. Colasanti, without the Clerk’s consent.*** That indisputably occurred from May 11, 2022 through May 26, 2022. The Board’s attorney (Mr. Homier) and the Township’s auditor at Plante Moran (Mr. Helisek) agree that these employees never should have had such access to the journals and ledgers. (AA117, AA124-125.) These violations underscore the illegality of Resolutions 2021-31 and 2022-05, which must therefore be vacated.

MCL 41.65 provides that these “records, books, and papers shall not be kept where they will be exposed to an unusual hazard of fire or theft.” Without the top administrative permissions necessary to prevent illegitimate entries from being made into the journals and ledgers contained within BS&A, the Clerk cannot keep the accounting records and books safe from the “unusual hazard” posed by the Board’s continued interference. Yet, the Board has illegally maintained the ability to commit the exact same violations whenever it may choose pursuant to the

excessive authority granted to the Township Administrator under Resolutions 2021-31 and 2022-05. As the Clerk's counsel argued at the hearing:

And the township now takes the position oh, don't worry about it, Your Honor, we messed up, she's got her authority back.

[But] [s]he doesn't have her authority back, because what remains true under these resolutions that we're asking be vacated, is that at any time as the enterprise administrator, Mr. Merte or anyone else they bestow with that power as the administrator, can change it right back to the way they had it or give anyone else access. And again, going back to the statute, that directly violates the notion and the law that the clerk has to have the sole custody of the papers and has to be at all times the custodian, the one able to vouch for at threat of personal liability of these records. And so even in this e-mail that we looked at, even though Mr. Homier did agree that she should have -- that some of those employees should only have read access, I still disagree and think that it's violative of the law. Well, let me be clear in the very first sentence [of AA117] [Mr. Homier] said, I am not concerned about who has enterprise access to the software. We're very concerned about that, for all the reasons we've said; the enterprise access has to be the, the control and custody has to be with the clerk by law.

(AA045-046.)

Thus, reversal and remand is warranted to enter judgment for the Clerk as to the Board's undisputed violation of her duty to make charges and credits to Township's accounting records and to prepare and maintain the journals and ledgers, and to vacate Resolutions 2021-31 and 2022-05, which were the vehicles that provided the improperly delegated authority to the Township Administrator to allow these violations to occur.

As set forth above, when the Supervisor initially proposed the first change to the Township Administrator's job description in August 2021, he promised that its "intent" was not to "conflict with a, you know, statute," and if anyone interpreted

the language contrary to the law, the Board could clarify: “Oh, no; that’s not what it meant.” (AA073.) The Township’s attorney reiterated at that meeting that, if anyone interpreted the Supervisor’s proposal to mean that the Clerk ***no longer holds authority over the Township’s general ledger***, then such “interpretation would be incorrect.” (AA071.) Yet, that is exactly what happened in May 2022 under the authority of these Resolutions 2021-31 and 2022-05.

As the Clerk’s counsel argued to the Circuit Court:

And [the Supervisor] says, that could happen, that’s possible, and if that happens, if that interpretation is, you know, there’s a conflict with, you know, statute, then we can clarify that, oh no, that’s not what it meant. That’s what the supervisor convinced everyone. Don’t worry about this sort of gray language, we’ll make sure that we’re clear that we didn’t intend to violate the law. And then Mr. Fink responds, he says, well, my answer to that is you can have your administrator prepare and administer any report you want, as long as it doesn’t infringe upon the statutory authority of the treasurer or the clerk. And the supervisor I assume would be delegating some responsibility and authority there.

So, I mean, you can probably guess where I’m going with that, is that what we saw in practice, and we’re going to give exact examples, that it was not later interpreted to be compliant with the law; it was an exact 180 of what the supervisor said right here. It was interpreted so that it could be used as a sword to take away financial authorities that are the clerk’s statutory authorities.

(AA043.) This is why Resolutions 2021-31 and 2022-05 must be vacated. The Board could not deny this violation, and the Circuit Court failed to address it. Reversal is warranted.

**II. This Court Should Award The Clerk Her Attorneys Fees And Costs Or, Alternatively, This Court Should Remand To The Circuit Court To Consider The Fees Issue In The First Instance.**

“As a general rule, attorney fees may be awarded only when authorized by statute or court rule.” *McKim*, 158 Mich App at 207, citing *State Farm Mutual Automobile Ins Co v Allen*, 50 Mich App 71; 212 NW2d 821 (1973). But, as *McKim* noted, “[u]nder certain circumstances, however, the appellate courts of this state have recognized an exception to this general rule ***when a public official incurs attorney fees in connection with asserting or defending the performance of his or her legal duties.***” 158 Mich App at 207 (emphasis added), citing *Smedley v City of Grand Haven*, 125 Mich 424; 84 NW 626 (1900), *Exeter Twp Clerk v Exeter Twp Bd*, 108 Mich App 262; 310 NW2d 357 (1981), and *City of Warren v Dannis*, 136 Mich App 651; 357 NW2d 731 (1984), *leave denied*, 422 Mich 932 (1985). The decision to award attorney fees is discretionary in the trial court. *McKim*, 158 Mich App at 207.

The *McKim* court affirmed the trial court’s award of fees to the prevailing clerk. The same result is warranted here, as the Clerk has endured much in order to safeguard the checks and balances of Scio Township and to assert and defend the statutory duties of the clerk’s office.

It must be noted that the *McKim* court registered its “dismay that as a result of what can best be characterized as a squabble between township officers, the parties have expended” taxpayer funds and “have no doubt burdened the resources of the trial court.” 158 Mich App at 208. The *McKim* court considered it “an affront

to the legal system and the township's taxpayers and an embarrassment to the parties." *Id.* The Circuit Court was of the same mindset, (AA040, AA054), but ultimately did not reach the issue of a fee award to the Clerk because it granted summary disposition for the Board.

The Clerk likewise deeply regrets the state of affairs on the Board, but she should not have to shoulder alone the burden of defending the Office of Township Clerk and her protecting the fundamental checks and balances over the public funds of Scio Township. Unlike her adversaries on the Board, the Clerk is a career civil servant. (AA006.) She earned her Master's degree in Public Policy from the U.C. Berkeley Goldman School of Public Policy in 2004 and has worked for and with local governments since 2000. (*Id.*) In responding to the Circuit Court's inquiry about taxpayers being responsible for a fee award, counsel for the Clerk argued:

Unfortunately, Your Honor, I think that is the case, and I think one of the considerations that really weighed heavily on the clerk in this case was taxpayer money versus the eroding of the checks and balances that she's concerned that's happening here and the eroding of the clerk's office and what is really for the ultimate greater good of the citizens of the township, and if it's to spend money now to safeguard those things, that was a calculated decision.

(AA040.) Counsel further argued:

Certainly, we don't like to sit here asking for taxpayer money My client didn't like putting a target on her back and filing this suit. My client didn't like getting the ire of the entire board and in some cases negative media attention. But I think we've established that the violation here was real, substantial and egregious. And when that happens, a public servant like the clerk, who has been her entire life, took the hard gulp and says, whatever the consequences may be, we need to right this wrong. And the board is being insured. And so they don't feel this litigation as much as the clerk does, but she did what she thought was right to correct this, and we're asking that she not



shoulder that burden alone, that she did a service to the township to make sure that the powers were adequately set where they're supposed to be by constitution and statute, and therefore, that the court exercise its discretion and we would submit our bill of costs if fees were awarded at whatever date the court determines.

(AA047-048.) Plante Moran's Audit Report further demonstrates that the wrongs the Clerk set out to right made the Township vulnerable, including presenting material weaknesses in the Township's internal controls that could permit the misappropriation of assets. (AA124-125.) The Clerk has also participated in a mediation with the Supervisor in the past and made many pleas to the Board to reconsider and change their conduct, to no avail.

It would not be exaggeration or hyperbole to say the Clerk has been bullied by the Supervisor. Not every instance (not even close) is at issue on this appeal. But suffice it to say, the Clerk's courage to stand up for her office should be recognized and she should be made whole for the extreme burden she has undertaken for the good of Scio Township residents and to uphold the Michigan Constitution and Michigan law. The Clerk respectfully submits that, because this Court has all of the facts and law before it, that it make the decision now and remand to the Circuit Court with directions to award the Clerk her attorneys fees and costs. Only in the alternative, the Clerk requests that this Court remand to the Circuit Court to decide the fees issue in the first instance.

### **CONCLUSION AND RELIEF REQUESTED**

This Court should reaffirm *McKim* in a published decision and reverse the decision of the Washtenaw County Circuit. The Clerk requests that this case be remanded to the Circuit Court with directions to (1) grant the Clerk's motion for

summary disposition under MCR 2.116(C)(10); (2) deny the Board's motion for summary disposition under MCR 2.116(C)(8) and/or MCR 2.116(D)(2); (3) vacate the Board's invalid August 17, 2021 Resolution 2021-31 and February 22, 2022 Resolution 2022-05; (4) reinstate the Clerk with top administrative authority over the Township's papers, records, and books including the journals and ledgers within the Township's BS&A software; and (5) award fees to the Clerk. The Clerk requests that this Court give its decision immediate effect under MCR 7.215(F)(2).

Dated: February 6, 2023

DYKEMA GOSSETT PLLC

By: /s/ Mark J. Magyar  
Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff-Appellant  
Scio Township Clerk  
201 Townsend St., Suite 900  
Lansing, MI 48933  
Telephone: (616) 776-7523  
mmagyar@dykema.com

WORD COUNT: This Appellant's  
Brief contains 13,680 countable words.

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SCIO TOWNSHIP CLERK,

Plaintiff-Appellant,

vs.

SCIO TOWNSHIP BOARD,

Defendant-Appellee.

Case No. 363414

Wayne County Cir. Ct.  
No. 22-000414-CZ

Hon. Timothy P. Connors

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Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff-Appellant  
Scio Township Clerk  
201 Townsend St., Suite 900  
Lansing, MI 48933  
Telephone: (616) 776-7500  
mmagyar@dykema.com

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Michael Homier (P60318)  
Laura J. Genovich (P72278)  
Foster Swift Collins & Smith PC  
Attorneys for Defendant-Appellee Scio  
Township Board  
1700 East Beltline, N.E., Suite 200  
Grand Rapids, MI 49525-7044  
Phone: 616.726.2238  
mhomier@fosterswift.com  
lgenovich@fosterswift.com

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**APPENDIX TO APPELLANT'S BRIEF ON APPEAL**

1	Circuit Court's September 27, 2022 Order on appeal	AA001-002
2	Circuit Court Register of Actions	AA003-004
3	Affidavit of the Clerk executed on June 14, 2022 and filed in support of the Clerk's Motion for Summary Disposition under MCR 2.116(C)(10), with Exhibits 14 and 17 thereto (all other exhibits omitted)	AA005-024
4	Affidavit of the Clerk executed on August 22, 2022 and filed with the Clerk's Reply in Support of Motion for Summary Disposition under MCR 2.116(C)(10), with Exhibit B (all other exhibits omitted)	AA025-036
5	Transcript of September 21, 2022 Hearing on the parties' motions for summary disposition	AA037-055
6	Proposed Order submitted to the Circuit Court	AA056-058
7	MCL 41.65	AA059
8	Township Attorney Fink's August 12, 2021 opinion	AA060

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9	August 17, 2021 Board Resolution 2021-31	AA061-069
10	Excerpts of the transcript of the special meeting held on August 17, 2021	AA070-073
11	February 22, 2022 Board Resolution 2022-05	AA074-081
12	Minutes of the February 22, 2022 Board meeting	AA082-100
13	Netsmart Company Service report for the period May 1, 2022 to May 17, 2022	AA101-115
14	Screenshot of the Township's BS&A application from May 13, 2022	AA116
15	Emails from May 15, 2022 to May 18, 2022, including Township Attorney Homier's May 18, 2022 opinion	AA117-119
16	Excerpts of Plante Moran's December 15, 2022 Audit Report	AA120-125

Dated: February 6, 2023

DYKEMA GOSSETT PLLC

By: /s/ Mark J. Magyar  
Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff-Appellant

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

---

JESSICA FLINTOFT, as Clerk  
of Scio Township,

Case No. 22-000414-CZ

Plaintiff,

Hon. Timothy P. Connors

v.

SCIO TOWNSHIP BOARD,

Defendant.

---

Mark J. Magyar (P75090)  
DYKEMA GOSSETT, PLLC  
*Attorneys for Plaintiff*  
201 Townsend St., #900  
Lansing, MI 48933  
(616) 776-7523  
[mmagyar@dykema.com](mailto:mmagyar@dykema.com)

Michael D. Homier (P60318)  
Laura J. Genovich (P72278)  
FOSTER SWIFT COLLINS & SMITH, PC  
*Attorneys for Defendant*  
1700 E. Beltline Ave. NE, Ste. 200  
Grand Rapids, MI 49525  
(616) 726-2200  
[mhomier@fosterswift.com](mailto:mhomier@fosterswift.com)  
[lgenovich@fosterswift.com](mailto:lgenovich@fosterswift.com)

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**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

This matter, having come before the Court on Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(I)(1) and Defendant's Motion for Summary Disposition under MCR 2.116(C)(8) Re: Plaintiff's First Amended Complaint and pursuant to MCR 2.116(I)(2); this Court having received the parties' briefs; this Court having held a hearing on September 21, 2022 at which counsel for both parties appeared; and this Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED as follows for the reasons stated on the record:

AA001

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1. Plaintiff's Motion for Summary Disposition is DENIED.
2. Defendant's Motion for Summary Disposition is GRANTED.

This is a final order that closes the case.



/s/ Timothy Connors  
September 27, 2022  
\_\_\_\_\_  
Hon. Timothy P. Connors,  
Circuit Court Judge

Approved as to form:

FOSTER SWIFT COLLINS & SMITH PC

Dated: September 23, 2022

By: Michael D. Homier  
Michael D. Homier (P60318)  
Laura J. Genovich (72278)  
*Attorneys for Defendant*  
1700 East Beltline, N.E., Suite 200  
Grand Rapids, MI 49525  
(616) 726-2230

DYKEMA GOSSETT, PLLC

Dated: September 23, 2022

By: Michael D. Homier w/ permission for  
Mark J. Magyar (P75090)  
DYKEMA GOSSETT, PLLC  
*Attorneys for Plaintiff*  
201 Townsend St., #900  
Lansing, MI 48933  
(616) 776-7523  
mmagyar@dykema.com

**REGISTER OF ACTIONS****CASE No. 22-000414-CZ****Flintoft, Jessica vs Scio Township Board**§  
§  
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§  
§Case Type: **General Civil (Other) (CZ)**  
Date Filed: **04/11/2022**  
Location: **Civil**  
Judicial Officer: **Connors, Timothy P.****PARTY INFORMATION****Defendant Scio Township Board****Attorneys**  
**Michael D. Homier**  
*Retained*  
(616) 726-2200(W)Laura J. Genovich  
*Retained*  
(616) 726-2200(W)Thomas R. Meagher  
*Retained*  
(517) 371-8100(W)**Plaintiff Flintoft, Jessica****Robert A. Boonin**  
*Retained*  
(734) 214-7650(W)Mark J. Magyar  
*Retained*  
(616) 776-7523(W)**EVENTS & ORDERS OF THE COURT****OTHER EVENTS AND HEARINGS**

04/11/2022 **Summons Issued (Summons and Complaint)**

04/11/2022 **Summons**  
Scio Township Board Unserved

04/11/2022 **Ex Parte Motion**  
*For entry of a temporary restraining order, order to show cause and preliminary injunction*

04/11/2022 **Complaint**  
*(verified) for declaratory judgment and injunctive relief*

04/12/2022 **Zoom Notice of Motion Hearing**  
*Scheduled*

04/14/2022 **Proof of Service**

04/15/2022 **Document**  
*Amendment to motion for entry of a tro and revised proposed order*

04/15/2022 **Proof of Service**

04/15/2022 **Appearance**  
*& proof of service*

04/15/2022 **Proof of Service**

04/18/2022 **Proof of Service**

04/18/2022 **Brief**  
*In opposition to plaintiff's ex-parte motion for a tro and to amendment to motion for entry of a tro*

04/21/2022 **Motion Hearing** (11:30 AM) (Judicial Officer Connors, Timothy P.)  
*Plntf/TRO*  
Result: Held

04/21/2022 **Proof of Service**

04/21/2022 **Brief**  
*In support of her ex-parte emergency motion for entry of a temporary restraining order, order to show cause and preliminary injunction*

04/21/2022 **Proof of Service**

04/21/2022 **Appearance**

04/22/2022 **Proof of Service**

04/25/2022 **Order**  
*Denying plaintiff's emergency ex parte motion for entry of a temporary restraining , to show cause and preliminary injunction ( sgd 4/25/22)*

05/05/2022 **Motion for Summary Disposition**  
*Under mcr 2.116(c)(4) and (c)(8)*

05/05/2022 **Zoom Notice of Motion Hearing**  
*Scheduled*

05/05/2022 **Proof of Service**

05/19/2022 **Proof of Service**

05/19/2022 **Amended Complaint**

RECEIVED by MCOA 2/6/2023 2:19:47 PM

For declaratory judgment and injunctive relief

05/20/2022 **Proof of Service**

05/20/2022 **Notice**

Of withdrawal of defendant's motion for summary disposition under mcr 2.116(c)(4) and (c)(8)

05/23/2022 **Motion for Summary Disposition**

Under mcr 2.116(c)(10) and mcr 2.116(i)(1)

05/23/2022 **Proof of Service**

05/23/2022 **Zoom Notice of Motion Hearing**

Scheduled

06/09/2022 **CANCELED Motion for Summary Disposition** (11:00 AM) (Judicial Officer Connors, Timothy P.)

Cancel

ZOOM- Deft/ Motion for Summary Disposition Under MCR 2.116(C)(4) and (C)(8)

06/09/2022 **Brief**

In support of motion for summary disposition

06/09/2022 **Motion for Summary Disposition**

Under mcr 2.116(c)(8) re: plaintiff's first amended complaint

06/09/2022 **Zoom Notice of Motion Hearing**

Scheduled

06/09/2022 **Proof of Service**

06/15/2022 **Brief**

In support of plaintiff's motion for summary disposition under mcr 2.116(c)(10) and mcr 2.116(i)(1)

06/15/2022 **Proof of Service**

06/15/2022 **Exhibit**

List and support for motion for summary disposition

08/18/2022 **Response**

In opposition to defendant's motion for summary disposition under mcr 2.116(c)(8) and to strike exhibits 1 and 7 to the verified first amended complaint

08/18/2022 **Proof of Service**

08/18/2022 **Document**

Index to exhibits to plaintiff's response

08/18/2022 **Proof of Service**

08/18/2022 **Brief**

In opposition to plaintiff's motion for summary disposition under mcr 2.116(c)(10) and (i)(1)

08/22/2022 **Proof of Service**

08/22/2022 **Brief**

(reply) in support of motion for summary disposition under mcr 2.116(c)(4) and (c)(8)

08/22/2022 **Brief**

(reply) in support of plaintiff's motion for summary disposition under mcr 2.116(c)(10) and mcr 2.116(i)(1)

08/22/2022 **Proof of Service**

08/22/2022 **Document**

Index to exhibits to plaintiff's reply brief in support of summary disposition

08/25/2022 **Motion for Summary Disposition** (10:30 AM) (Judicial Officer Connors, Timothy P.)

ZOOM- Pltff/ Motion Summary Disposition Under 2.116(C)(10) and MCR 2.116(1)(i); Deft/ MSD

07/07/2022 Reset by Court to 08/25/2022

Result: Held

09/21/2022 **Motion for Summary Disposition** (1:30 PM) (Judicial Officer Connors, Timothy P.)

09/21/2022 Reset by Court to 09/21/2022

09/21/2022 Reset by Court to 09/21/2022

Result: Held

09/23/2022 **Proof of Service**

09/27/2022 **Order**

Denying plaintiff's motion for summary disposition and granting defendant's motion for summary disposition (sgd 9/27/22)

10/24/2022 **Claim of Appeal (not new filing)**

Order appealed from statement RE: transcript lower court docket entries jurisdictional checklist of proof of service

11/09/2022 **Reporter-Recorder Certificate of Ordering of Transcript on A**

11/09/2022 **Proof of Service**

11/14/2022 **Reporter-Recorder Certificate of Ordering of Transcript on A**

11/14/2022 **Transcript**

Held on 09/21/22

11/14/2022 **Transcript**

Held on 08/25/22

## FINANCIAL INFORMATION

	<b>Plaintiff</b> Flintoft, Jessica		
	Total Financial Assessment		235.00
	Total Payments and Credits		235.00
	<b>Balance Due as of 02/01/2023</b>		<b>0.00</b>
04/11/2022	Transaction Assessment		175.00
04/11/2022	E-File	Receipt # EFILE-2022-02017	(175.00)
05/06/2022	Transaction Assessment		20.00
05/06/2022	E-File	Receipt # EFILE-2022-02577	(20.00)
05/24/2022	Transaction Assessment		20.00
05/24/2022	E-File	Receipt # EFILE-2022-02943	(20.00)
06/10/2022	Transaction Assessment		20.00
06/10/2022	E-File	Receipt # EFILE-2022-03300	(20.00)

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of Scio  
Township,

Plaintiff,

Civil Action No. 22-000414-CZ

vs.

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,

Defendant.

Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff  
201 Townsend St., #900  
Lansing, Michigan 48933  
(616) 776-7523  
mmagyar@dykema.com

Michael Homier (P60318)  
Laura J. Genovich (P72278)  
Foster Swift Collins & Smith PC  
Attorneys for Defendant  
1700 East Beltline, N.E., Suite 200  
Grand Rapids, MI 49525-7044  
Phone: 616.726.2238  
mhomier@fosterswift.com  
lgenovich@fosterswift.com

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AFFIDAVIT OF JESSICA FLINTOFT

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I, Jessica Flintoft, being first duly sworn, depose and state as follows:

1. I am the duly elected Clerk of Scio Township and the Plaintiff in this action.
2. This Affidavit is based upon my personal knowledge. I can competently testify to the facts contained herein if called upon to do so.
3. I fully adopt, attest to, and incorporate as though fully reproduced and set forth herein all allegations of my Verified First Amended Complaint, filed May 19, 2022. I verified my pleading with the intention that it be a sworn document with the same effect as an affidavit, but I incorporate herein out of an abundance of caution and to the extent required to consider such evidence with my motion for summary disposition under MCR 2.116.

AA005

## BACKGROUND

4. In 2017, then-Clerk of Scio Township, Nancy J.C. Hedberg, appointed me as Deputy Clerk. When Hedberg retired as Clerk, I pursued the appointment to Clerk by the Board.

5. The Board unanimously appointed me as Clerk on May 28, 2019, effective June 1, 2019. I ran unopposed for Clerk in 2020, and chose not to run as part of either local political slate. I earned 8,842 votes from Scio voters, the most votes that any Scio Township official has ever earned.

6. I graduated with honors from Cornell University in 1999, and earned my Master's degree in Public Policy from the U.C. Berkeley Goldman School of Public Policy in 2004. I have worked for and with local governments since 2000, earning accolades for my public service.

## EXHIBITS

7. The following attached exhibits, of which I have personal knowledge through my personal involvement and/or through my position as Clerk, as custodian of Scio Township's books, records, and papers, are true and correct copies of:

**Exhibit 1.** August 12, 2021 Opinion of Township Attorney James A. Fink, which I personally solicited as Clerk.

**Exhibit 2.** Excerpts of Transcript of August 17, 2021 Board Meeting

**Exhibit 3.** August 17, 2021 Board Resolution 2021-31

**Exhibit 4.** Minutes of August 17, 2021 Board Meeting

**Exhibit 5.** February 22, 2022 Board Resolution 2022-05

**Exhibit 6.** Minutes of February 22, 2022 Board Meeting

**Exhibit 7.** May 15 – May 18, 2022 Correspondence re access to financial information

**Exhibit 8.** May 12, 2022 Recommendation by the WoodHill Group re Finance

Staffing

- Exhibit 9.** May 15, 2022 Finance Staffing Recommendations of David Rowley
- Exhibit 10.** April 12, 2022 Finance Staffing Analysis By Administrator David Rowley
- Exhibit 11.** Administrator David Rowley's April 12, 2022 Resignation Letter
- Exhibit 12.** April 26, 2022 Treasurer Report to Board
- Exhibit 13.** Balance Sheet and Account Balances for Fire Fund from FYE09 through FYE23
- Exhibit 14.** Text Messages May 12, 2022 between Clerk, David Rowley, and James Merte
- Exhibit 15.** NetSmart Company Service Report p. 1 and p. 11-12
- Exhibit 16.** Screenshot by Clerk on May 13, 2022 of James Merte's provision of access to financial records to Sandra Egeler.
- Exhibit 17.** BS&A Audit Summary Reports as of June 9, 2022: James Merte's Changes to Sandra Egeler's Access to General Ledger module; James Merte's Changes to Sandra Egeler's Access to Accounts Payable module; James Merte's Changes to Nancy Colasanti's Access to Accounts Payable module.
- Exhibit 18.** Item G2. Cottontail Court. May 24, 2022 meeting.
- Exhibit 19.** Minutes of May 24, 2022 Board of Trustees Meeting

#### **AUGUST 17, 2021 SPECIAL MEETING**

8. Immediately before the start of the August 17, 2021 Special Meeting of the Board called by Supervisor Will Hathaway, Attorney Fink met alone with the Supervisor and me in the Meeting Hall. Attorney Fink advised both the Supervisor and me that the Township Board could not reduce staffing to a point where I could no longer carry out my statutory duties related to finance.

**MAY 10-26, 2022**



9. I was not at the May 10, 2022 Board meeting due to illness. The Board knew that I was ill and that my illness was the reason I was not in attendance. At this meeting, the Board appointed James Merte as interim administrator; and the Supervisor appointed Sandra Egeler (the current Deputy Treasurer) as additionally a Deputy Supervisor, an action with which the Board concurred.

10. On May 12, I held a meeting with newly appointed interim Administrator Merte. Mr. Merte told me that he and Supervisor Hathaway had agreed to his temporary appointment about two weeks earlier, and that Hathaway had instructed Merte not to discuss it with other members of the Board of Trustees, a condition to which Merte agreed. Merte told me that the Supervisor had expressly instructed him to immediately gain required access to BS&A to provide Sandra Egeler the ability to manipulate the General Ledger. I condemned the plan, and directed Merte not to proceed, citing my office of Clerk and MCL 41.65. I encouraged Mr. Merte to reach out to Township Attorney James A. Fink, for counsel, and that he speak with the then still current Administrator David Rowley with whom Merte had as of yet not conferred about any aspect of the Administrator position. I followed up this conversation in writing via text message to both Rowley and Merte. (See Exhibit 14.)

11. On the afternoon of May 13, I held a direct call with auditor David Helisek of Plante Moran and confirmed his concurrence with my determination that in an effort to maintain integrity of the Township's journals and ledgers I would not allow the Deputy Treasurer & Deputy Supervisor, Sandra Egeler, permission to manipulate the General Ledger module of BS&A. Auditor Helisek said that if in fact Egeler or other person working under the direction of the Treasurer or Supervisor were instructed to propose any journal entries, that those should be done on paper only, to maintain a most basic internal control for the Township.

12. Instead of going through typical Township procedures to onboard new employees, the Supervisor himself contacted NetSmart, the Township's I.T. Managed Services Provider, directly on Wednesday May 11, 2022 with a request regarding "Urgent Steps for Township Administrator Transition." Sean Goldman, the Chief Information Officer assigned by NetSmart for the Township, noted his concern about the unusual contact from the Supervisor. At 4:55pm on Friday May 13, 2022, after being directed twice by Supervisor Hathaway, Mr. Goldman remoted into James Merte's computer, and provided him with "Enterprise Administrator" access to all BS&A modules. (Exhibit 16, NetSmart Company Service Report p. 1 and p. 11-12.)

13. At some point between 4:55pm and around 7:00pm on Friday May 13, Mr. Merte granted Ms. Egeler privileges over the General Ledger module allowing her to manipulate the general journal and ledger which are a portion of the current journals and ledgers of the Township, in contravention of MCL 41.65. (Ex. 16.)

14. Upon discovering around 7:00pm on Friday May 13, 2022, I restored Sandra Egeler's long standing level of access to view the General Ledger, restricted so that she could not manipulate it. At that time, I saw that Mr. Merte had been granted "Enterprise Administrator" access, and I chose not to disable that access, instead trusting that we would discuss and resolve the issue on Monday. Instead, on Saturday morning, Mr. Merte chose to revoke my "Enterprise Administrator" access, removing any ability for me to control who enters what into the journals and ledgers of the Township. Further, I could not even see what changes Mr. Merte or others may have made to any of the journals and ledgers, or if other unauthorized people had been granted access. I demanded my full access be restored, and for legal authority under which these actions were taken.

15. In fact, Mr. Merte had—against my express direction—extended permissions to Egeler to manipulate both the General Ledger and Accounts Payable module. On Saturday May



14, he added Nancy Colasanti—someone Mr. Merte claims he had the authority to hire on behalf of the Township—and provided Ms. Colasanti with permissions to manipulate the Accounts Payable module. Instead of answering my demands that he return control of these public records to me, Mr. Merte provided Mr. Egeler with additional high-level permissions within the General Ledger on May 18<sup>th</sup>. That same day, Attorney Homier advised me and Mr. Merte that per MCL41.65, Ms. Egeler and Ms. Colasanti should have only read access. It wasn't until May 24<sup>th</sup> mid-day that I compelled Mr. Merte to end read/write access to Ms. Egeler for the General Ledger module. It was on May 26<sup>th</sup> that Mr. Merte disabled permissions for Ms. Egeler to unlock and re-adopt prior year budgets, records that are my statutory responsibility to keep.

16. During those 11 days, Egeler entered 155 general journal entries all dated within the prior fiscal year ending March 31<sup>st</sup>, Egeler posted 57 of these to the general ledger. I instructed Merte to ask Egeler to reverse all general journal and general ledger entries. Instead, Ms. Egeler reversed only the 57 general ledger entries. Last fiscal year ending March 31<sup>st</sup> is not yet closed, because the Township has lacked qualified finance staff to prepare closing adjustments and financial statements.

17. There may be more ongoing and unauthorized access to the 8 financial management modules of BS&A, as well as to the Assessing or Tax Rolls that are within other BS&A modules. Currently, I do not have the necessary permissions to be able to fully verify the integrity or corruption of these Township records. I do now have Administrator permission for the BS&A General Ledger module, but I still have not had restored the Administrator permissions for the BS&A modules of Fixed Assets, Payroll, Accounts Payable, Purchase Orders, Utility Billing, Miscellaneous Receivables, and Cash Receipts. And, as long as Mr. Merte, a staff person working at the direction of a Board of Trustees has "Enterprise

Administrator” access, any of my actions may be overridden without consent or knowledge, ongoing, by the Board of Trustees through its staff person.

#### **Township Finance Staff**

18. The Board voted on December 28, 2020 to open an early retirement window for Sandra Egeler, opening negotiations for a voluntary separation agreement so that the Township could hire a replacement Finance Director who could meet the current needs of the Township. The window closed on February 28, 2021 without Ms. Egeler opting in, and she remained in her position as Finance Director continuing to report to me.

19. On March 27, 2021, Supervisor Hathaway and I, after consultation with the Township’s employment attorney, agreed that we would recommend to the Board that the Finance Director should be terminated and a new Finance Director hired. On May 14, 2021, Supervisor Hathaway told me that “circumstances have changed” with respect to his previous agreement that the Finance Director should be replaced. The Supervisor never disclosed to me what had changed, but he suggested that the Finance Director should become the Deputy Treasurer, providing full-time support to the Treasurer, instead of terminating her. Based on my discussions with the Supervisor, I agreed based on the expectation that a replacement Finance Director would be promptly hired, and continue to report to me so that the Township could build out the long needed professional financial capacity required for responsible accounting of public funds. I expected to have a new Finance Director by August 1, 2021.

20. It wasn’t until November 9, 2021 that the Treasurer announced appointment of Ms. Egeler as Deputy Treasurer, thereby vacating the position of Finance Director. As Deputy Treasurer, Ms. Egeler is responsible for handling the cash of the Township, and to maintain appropriate segregation of duties per State Treasury guidelines. I restricted her access to view, but not modify, the General Ledger. The Board of Trustees has gone to extraordinary lengths to



block efforts by former Administrator Rowley and myself to fill the Finance Director position, which remains vacant, or otherwise bring in qualified outside professional financial assistance.

21. In August 2021, Mr. Merte retired as Assessor of Scio Township. Mr. Merte did not have any Township-issued credentials to access BS&A or any other information systems from his retirement in August 2021 until his re-employment on May 10, 2022. In October or November of 2021, Mr. Merte volunteered to assist Treasurer Palmer and newly appointed Deputy Treasurer Egeler to prepare the 2021 Winter Tax Bill, collected within Fiscal Year ending March 31, 2022. This 2021 Winter Tax Bill contained major errors, one of which has been publicly reported by Treasurer Palmer. (See Exhibit 12.)

22. When I have separately asked Mr. Merte and Treasurer Palmer to describe how this error happened, each have said that Treasurer Palmer, Deputy Treasurer Egeler, volunteer Mr. Merte, and Assessor Kulkarni were present at Township Hall. Mr. Merte told me he sat at a computer terminal entering data into BS&A Tax module in order to generate the 2021 Winter Tax Bill. Mr. Merte told me that Treasurer Palmer and Deputy Treasurer Egeler provided the data that he entered.

23. The 2021 Winter Tax Bill omitted some millages due to the County, an error within a fiduciary fund which would likely not be evaluated as part of the Township's annual audit of Financial Statements. The week of May 30<sup>th</sup> I learned of a second error in the 2021 Winter Tax Bill—a missing assessment of one or more Township Special Assessments for neighborhood road improvements. Because these activities are accounted for as governmental funds, any fund in deficit position would certainly be evaluated by the Township Auditor.

24. The week prior, on the May 24, 2022 Agenda of the Board of Trustees, the Supervisor placed four action items each of which would loan General Fund monies to four Special Assessment Districts assessed by the Township under Act 188. It was unusual for the

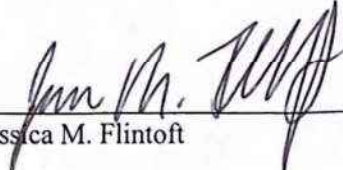


Supervisor to place financing issues on a Board agenda, and the language of his proposed motions raised several questions for me. The Board discussed them at length, with Supervisor Hathaway relying heavily on Deputy Treasurer & Deputy Supervisor Egeler to explain to the Board the basis and rationale for Item G10 regarding financing the Cottontail Court SAD. (See **Exhibit 18**.) In the course of the Board discussion, Deputy Treasurer & Deputy Supervisor Egeler told the Board that passing the proposed motion for Item G10 would authorize the Township staff to backdate a loan from the General Fund to March 31<sup>st</sup> in the General Ledger, resolving what would otherwise be a fiscal year-end deficit position in that particular Road SAD Fund 410. Deputy Treasurer & Deputy Supervisor Egeler explained that the need for the loan arose from unexpected expenses within the fiscal year. *Never did anyone present who would have had knowledge, state that the position of the fund was in fact due to there being \$0 in revenue. The lack of revenue is due to a second error made in the 2021 Winter Tax Bill—failing to bill this Special Assessment.* The Board voted to table these four items 4 to 1, with only the Supervisor opposing, until there could be further consultation with the Auditor. (See **Exhibit 19**.) I followed up with Auditor Helisek the following week, discovering the lack of Special Assessment collection. When I asked interim administrator Merte if he knew of any special assessments that had been missed on the 2021 Winter Tax Bill, he said he had been notified some time ago of ‘a few’ that had been missed.

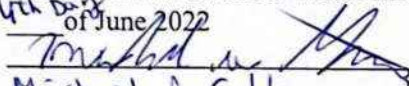
25. The Board has usurped certain of my statutory duties as Clerk, not the least of which is that I currently do not have sole control over manipulation of the township’s financial journals and ledgers. Further, the Board refuses to support my office of Clerk with the qualified personnel necessary for me to perform my statutory duties for no reasonable or rational basis that I can discern.

26. I declare under the penalties of perjury that this Affidavit has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Jessica M. Flintoft

Subscribed and sworn to before me this  
14th day of June 2022

  
\_\_\_\_\_  
Michael A. Gable, Notary Public  
Washtenaw County, Michigan  
Acting in Washtenaw County, MI.  
My commission expires: Feb. 4th, 2028



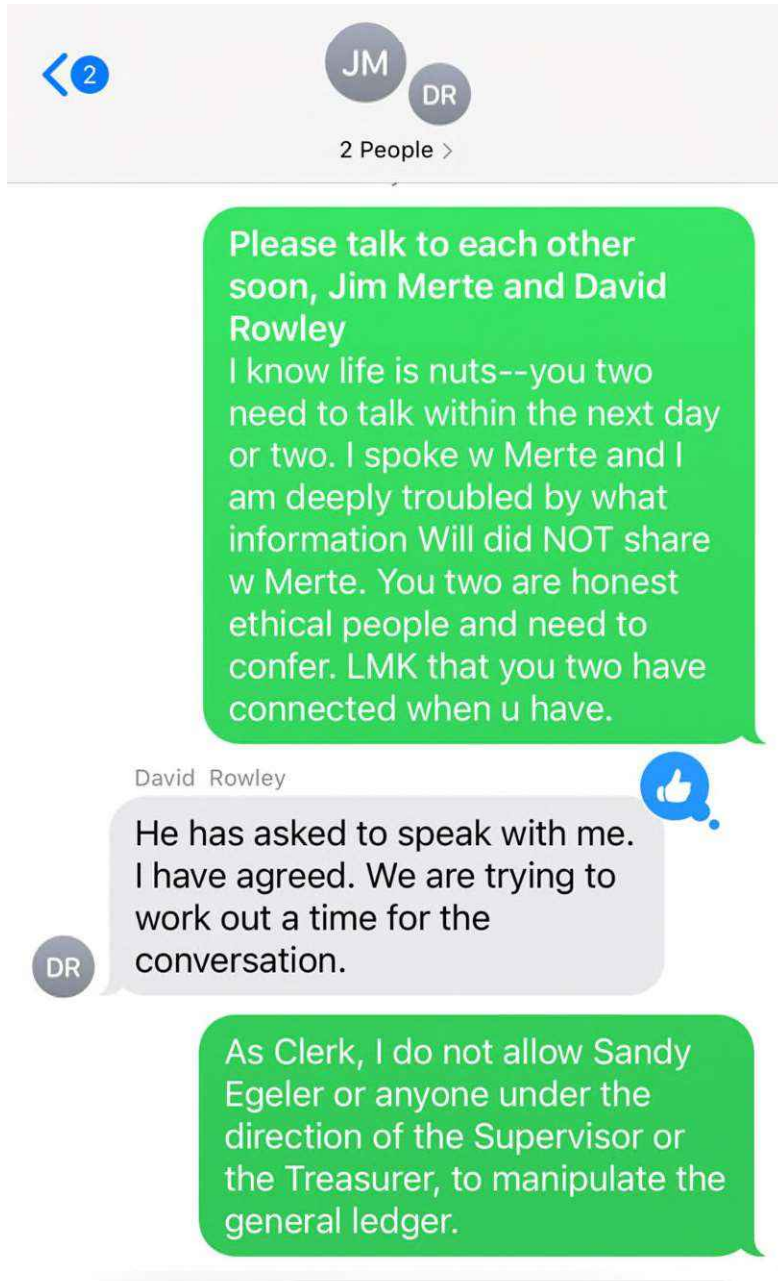
# EXHIBIT A.14

AA015

Screenshots of Text Messages

Between Clerk Jessica Flintoft, Administrator David Rowley, and Interim Administrator  
James Merte

From Thursday, May 12, 2022 | 4:17PM – 5:43PM



AA016



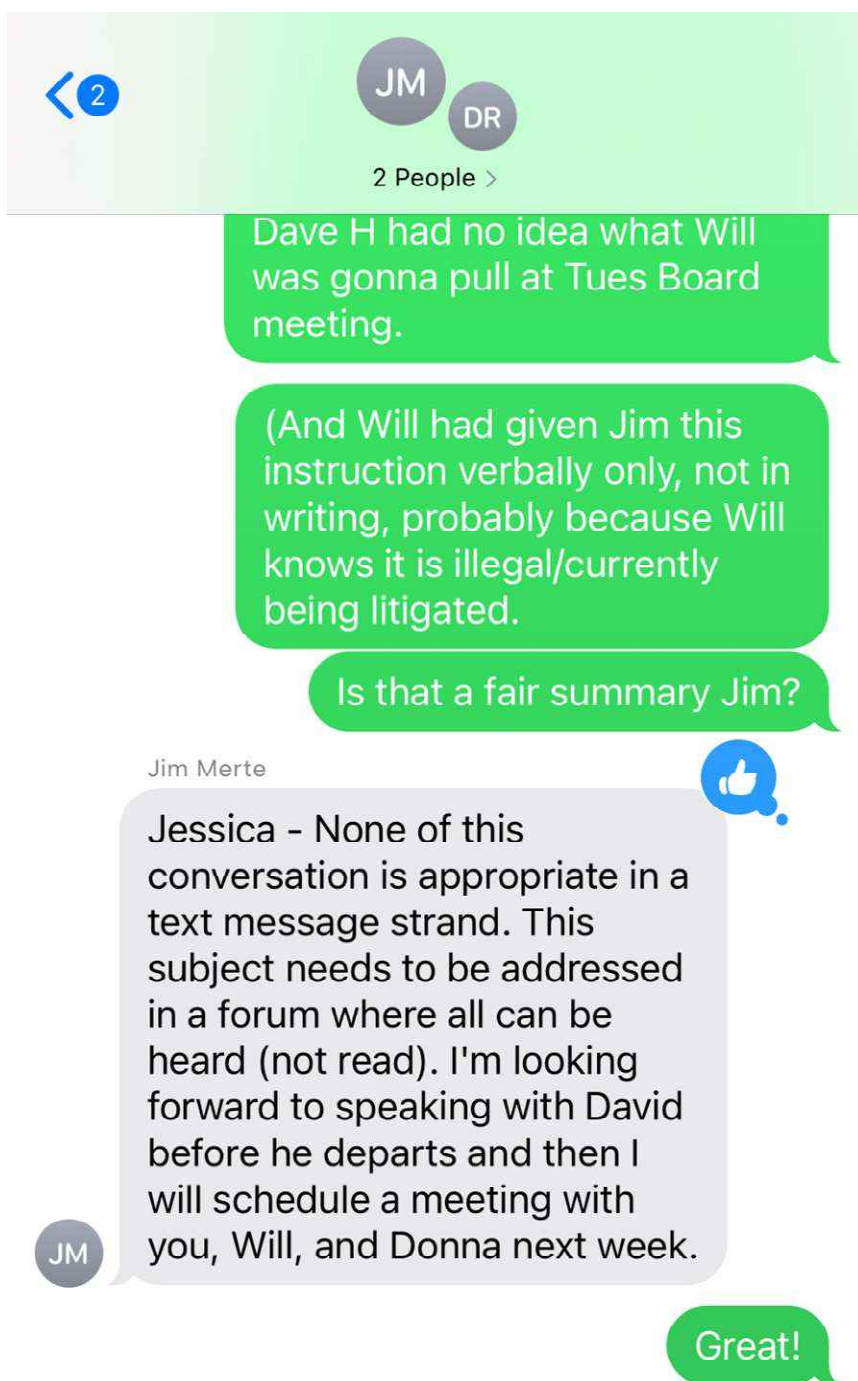
David Rowley

DR I have a 4:30 pm meeting but but type of information was not shared?

Any of your recommendations around finance, oversight, good governance, avoiding impropriety. Jim is not up to date on recent Board meetings or issues contained in my lawsuit. Will had instructed Jim to immediately take over BS&A administration alone and to give Sandy read/write access to GL immediately.

I shared w Jim fact that auditors may not even audit us this year and invited him to my 1pm tomorrow w Plante Moran. Dave H had no idea what Will was gonna pull at Tues Board meeting.





# EXHIBIT A.17

AA019

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/26/2022

User Name Sandy

Field(s) modified	Old Value	New Value
(GL) Budget Setup Options - Adopt Approved B	YES	NO
(GL) Budget Setup Options - Edit Previous Ye	YES	NO
(GL) Budget Setup Options - Lock/Unlock Budg	YES	NO
(GL) GL Setup Options - View GL Number Attac	NO	YES
(GL) Journal Entry Options - Enter Journal E	YES	NO

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Journal Entry Options - Post Journal En	YES	NO

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Database - Backup a Database	NO	YES
(GL) Database - Connect to BS&A FTP Site	NO	YES

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Journal Entry Options - Post Journal En	NO	YES

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/18/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Journal Entry Options - Enter Journal E	NO	YES

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/18/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Budget Setup Options - Adopt Approved B	NO	YES
(GL) Budget Setup Options - Edit Monthly Bud	NO	YES
(GL) Budget Setup Options - Edit Previous Ye	NO	YES
(GL) Budget Setup Options - Enter Budget	NO	YES
(GL) Budget Setup Options - Enter Negative B	NO	YES

AA020



(GL) Budget Setup Options - Lock/Unlock Budg	NO	YES
(GL) Budget Setup Options - Save Budget Temp	NO	YES
(GL) Budget Setup Options - Select Columns F	NO	YES
(GL) Budget Setup Options - Setup Budget Ent	NO	YES
(GL) Budget Setup Options - Setup Budget Opt	NO	YES
(GL) Budget Setup Options - Setup Cash Flow	NO	YES
(GL) Budget Setup Options - Setup Long-Term	NO	YES
(GL) Program Access Level	Administrator Access	Set Access

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/14/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Program Access Level	Set Access	Administrator Access

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: Jessica  
Date Time: 05/13/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Program Access Level	Administrator Access	Set Access

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/13/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Program Access Level	Set Access	Administrator Access

AA021

Document received by the Washington County Fiscal Court 06/15/2022.

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/26/2022

User Name Sandy

Field(s) modified	Old Value	New Value
(GL) Budget Setup Options - Adopt Approved B	YES	NO
(GL) Budget Setup Options - Edit Previous Ye	YES	NO
(GL) Budget Setup Options - Lock/Unlock Budg	YES	NO
(GL) GL Setup Options - View GL Number Attac	NO	YES
(GL) Journal Entry Options - Enter Journal E	YES	NO

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Journal Entry Options - Post Journal En	YES	NO

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Database - Backup a Database	NO	YES
(GL) Database - Connect to BS&A FTP Site	NO	YES

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Journal Entry Options - Post Journal En	NO	YES

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/18/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Journal Entry Options - Enter Journal E	NO	YES

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/18/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Budget Setup Options - Adopt Approved B	NO	YES
(GL) Budget Setup Options - Edit Monthly Bud	NO	YES
(GL) Budget Setup Options - Edit Previous Ye	NO	YES
(GL) Budget Setup Options - Enter Budget	NO	YES
(GL) Budget Setup Options - Enter Negative B	NO	YES

AA022

(GL) Budget Setup Options - Lock/Unlock Budg	NO	YES
(GL) Budget Setup Options - Save Budget Temp	NO	YES
(GL) Budget Setup Options - Select Columns F	NO	YES
(GL) Budget Setup Options - Setup Budget Ent	NO	YES
(GL) Budget Setup Options - Setup Budget Opt	NO	YES
(GL) Budget Setup Options - Setup Cash Flow	NO	YES
(GL) Budget Setup Options - Setup Long-Term	NO	YES
(GL) Program Access Level	Administrator Access	Set Access

Reference Table: Users  
 Change Type: Record Updated  
 Description: User Modified

Changed By: James  
 Date Time: 05/14/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Program Access Level	Set Access	Administrator Access

Reference Table: Users  
 Change Type: Record Updated  
 Description: User Modified

Changed By: Jessica  
 Date Time: 05/13/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Program Access Level	Administrator Access	Set Access

Reference Table: Users  
 Change Type: Record Updated  
 Description: User Modified

Changed By: James  
 Date Time: 05/13/2022

User Name: Sandy

Field(s) modified	Old Value	New Value
(GL) Program Access Level	Set Access	Administrator Access

AA023

Document received by the Washington County Fiscal Court 06/15/2022.

Audit Summary Report  
For 'Accounts Payable'

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/24/2022

User Name NancyC

Field(s) modified	Old Value	New Value
(GL) Program Access Level	No Access	Disallow Login

Reference Table: Users  
Change Type: Record Updated  
Description: User Modified

Changed By: James  
Date Time: 05/14/2022

User Name: NancyC

Field(s) modified	Old Value	New Value
Inactive User ( disable user login )	Yes	No

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of Scio  
Township,

Plaintiff,

Civil Action No. 22-000414-CZ

vs.

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,

Defendant.

Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff  
201 Townsend St., #900  
Lansing, Michigan 48933  
(616) 776-7523  
mmagyar@dykema.com

Michael Homier (P60318)  
Laura J. Genovich (P72278)  
Foster Swift Collins & Smith PC  
Attorneys for Defendant  
1700 East Beltline, N.E., Suite 200  
Grand Rapids, MI 49525-7044  
Phone: 616.726.2238  
mhomier@fosterswift.com  
lgenovich@fosterswift.com

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**AFFIDAVIT OF JESSICA FLINTOFT**

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I, Jessica Flintoft, being first duly sworn, depose and state as follows:

1. I am the duly elected Clerk of Scio Township and the Plaintiff in this action.
2. This Affidavit is based upon my personal knowledge. I can competently testify to the facts contained herein if called upon to do so.
3. I fully incorporate the Affidavit I executed on June 14, 2022, which is Exhibit A in support of my motion for summary disposition under MCR 2.116(C)(10) and (I)(1) ("MSD"). I submit this Affidavit in response to the affidavit signed by James Merte on June 29, 2022, and filed by Defendant on August 18, 2022, in response to my MSD.

AA025

4. The following attached exhibits, of which I have personal knowledge through my personal involvement and/or through my position as Clerk, as custodian of Scio Township's books, records, and papers, are true and correct copies of:

**Exhibit 1.** Corrective Action Plan for FYE21 submitted to State Treasury.

**Exhibit 2.** May 12, 2022 Email from Supervisor Hathaway to Auditor Helisek.

**Exhibit 3.** Executed Scope of Work with Nick Armelagos, CPA.

5. The past, irregular accounting practices of the Township have continued, despite my efforts to correct them. These irregularities can be summarized as failures to make and record transactions on a timeline or contemporaneously by date, and retrospectively entering revenue or expense items to accounts for the purpose of rebalancing accounts, prior to examination by the auditors. Actions of the Board of Trustees adopted at the lead of the Township Supervisor, subsequent to filing my Complaint and as detailed below, have not only impeded my ability to perform my duties, but also continues these unsound practices.

6. Contrary to Mr. Merte's Affidavit Paragraph 7, prior Clerk Nancy J.C. Hedberg did not perform the Township's audits. In accordance with MCL141.426, the Township has for decades retained an independent certified public account to perform the Township's audits. Nor during 2017-2019 when I served Clerk Hedberg as her Deputy Clerk, did Clerk Hedberg perform any significant activities to prepare for the annual audit.

7. In April 2021, the Finance Manager had been instructed by the Treasurer and Finance Director to prepare for my signature Township checks that were backdated. The Finance Manager brought the concern to me, which I addressed with the Treasurer who asserted that the practice was both typical and proper. I refused because signing these back dated checks would be a misrepresentation. These checks were for tax distributions to local units that, if backdated, would have been recorded in the General Ledger as having been distributed prior to a deadline



when in fact they were late. These late distributions were one of several findings in our most recently complete audit for Fiscal Year End 2021, in response to which Treasurer Palmer and I submitted a Corrective Action Plan outlining steps we planned to take to correct deficiencies. [See Exhibit 1] Due to the Board's refusal to provide sufficient qualified finance staff, we have been unable to implement most planned corrective actions.

8. Contrary to Mr. Merte's Affidavit Paragraph 7, my qualifications and training provide me with the knowledge to understand the critical gaps in qualifications and expertise of its finance staff from which the Township suffers.

9. After exhausting all other options, I filed this suit on April 11<sup>th</sup> because I am profoundly concerned about the harm that this Board of Trustees is inflicting on Scio Township residents by violating the statute, and dismissing democratic norms of checks and balances that the separation of duties set forth by Township statute establishes, and because the interference renders me unable to perform my statutory duties.

10. Mr. Merte did not have any Township-issued credentials to access BS&A or any other information systems after his retirement as Assessor in August 2021 until his sudden re-employment on May 10, 2022 as interim administrator (while I was absent due to illness) when he was granted "Enterprise Administrator" access over all 12 BS&A modules, including the financial journals and ledgers, the Tax Rolls, and Assessing Rolls.

11. In fall 2021, Mr. Merte volunteered to assist Treasurer Palmer and newly appointed Deputy Treasurer Egeler to prepare the 2021 Winter Tax Bill, collected within Fiscal Year ending March 31, 2022. This 2021 Winter Tax Bill contained multiple major errors, the first of which was a failure to collect \$750,000 in two millages due to Washtenaw County.

12. When I separately asked Mr. Merte and Treasurer Palmer to describe how this \$750,000 error happened, each have said that Treasurer Palmer, Deputy Treasurer Egeler,

volunteer Mr. Merte, and then-Assessor Kulkarni were present at Township Hall. Mr. Merte told me he sat at a computer terminal entering data into BS&A Tax module in order to generate the 2021 Winter Tax Bill. Mr. Merte told me that Treasurer Palmer and Deputy Treasurer Egeler provided the data that he entered. During this time, Mr. Merte had no BS&A credentials; yet, both he and Treasurer Palmer have said he was the one entering data into BS&A.

13. Treasurer Palmer first publicly reported this \$750,000 error at the April 26, 2022 Board of Trustees meeting. Though I was not present at the May 10, 2022 Board meeting due to illness, I watched the meeting from home via Zoom. This came just two weeks after the Board had learned about the \$750,000 error for which Mr. Merte and Deputy Treasurer Egeler were responsible, yet they were elevated to positions where the Supervisor was able to direct them, and permitted to manipulate the general ledger over my objection.

14. Contrary to Mr. Merte's Affidavit Paragraph 10, I do not have the ability to view the history of access to the BS&A modules that contain the Tax Rolls and Assessing Rolls. I strongly suspect that such a history of access would show that the Assessing Rolls and/or Tax Rolls have been manipulated by interim administrator Merte to correct the errors that he, the Supervisor, Treasurer, and their Deputy have made.

15. Contrary to Mr. Merte's Affidavit, beginning Paragraph 6, Sandra Egeler has been the Deputy Treasurer & Deputy Supervisor since May 2022; and only the Deputy Treasurer between November 2021 and April 2022.

16. On May 13, 2022, Supervisor Hathaway emailed Township's Auditors citing the provision of "Financial Reporting and Audit Function" in the August 17, 2021 of Resolution 2021-31 at issue, asserting that his appointment of Sandra Egeler as Deputy Supervisor provided her with the authority to "work with the Supervisor on the audit." [see Exhibit 2]. By "work" the Supervisor meant manipulation of the general ledger prior to submitting last year's accounting



records for audit. Internally, when she was Finance Director, Ms. Egeler referred to this process as “audit prep,” an atypically long and atypically manual process that the interim administrator, Supervisor, and Treasurer still assert that only Ms. Egeler is qualified to do. In fact, Ms. Egeler is wholly conflicted and thereby unqualified by virtue of her position as Deputy Treasurer & Deputy Supervisor with their responsibilities for tax collection and assessing respectively.

17. Mr. Merte’s Affidavit Paragraph 6 states the purpose of his providing access to Ms. Egeler was “so she could reconcile journal entries in preparation for the audit.” “Reconciling journal entries” is not a normal or legitimate activity for anyone to undertake on the books of a local unit of government prior to being audited. Entering adjusting journal entries or closing entries is a necessary part of year-end or other period-end closing procedures.

18. Contrary to Mr. Merte’s Affidavit Paragraphs 7 and 12, the Board of Trustees has refused to hire qualified finance staff. The Finance Director position remains vacant.

19. Contrary to Mr. Merte’s Affidavit Paragraph 9 the general ledger was never returned to me, and the general journal was not in the same condition it was in before Mr. Merte’s improper grant of permission to manipulate it was given to Ms. Egeler. Only after Mr. Merte received Mr. Homier’s written legal opinion of May 18 answering the questions I posed and making clear that Sandra Egeler and Nancy Colasanti should have only read access to the general ledger did Mr. Merte begin to restrict the write access for both individuals in the General Ledger module. Within those 5 days of overly broad granted authority, Ms. Egeler had made 155 general journal entries, 57 of these to the general ledger, all for the prior fiscal year. I demanded that Mr. Merte instruct Ms. Egeler to reverse all 155 entries to restore the journals and ledgers to the same condition it was before Mr. Merte’s illegal grant of permission to manipulate the journals and ledgers to Ms. Egeler. Mr. Merte refused to reverse or delete the 98 general journal entries.

20. Contrary to Mr. Merte's Affidavit Paragraphs 6 and 9, aside from the Supervisor Hathaway's illegal direction to Mr. Merte, there was no direction by the Board of Trustees to assign the work of audit preparation to the Deputy Treasurer & Deputy Supervisor Egeler. In fact, at the Clerk's insistence, on May 24<sup>th</sup> the Board of Trustees authorized up to \$10,000 for the Administrator to select an outside financial professional to assist with year-end closing activities in preparation for the audit. The Administrator selected consulting CPA Nick Armelagos. The Township is currently under contract with CPA Armelagos to assist in preparing the FYE22 financial statements and closing adjustments. [see Exhibit 3]

21. Contrary to Mr. Merte's Affidavit Paragraph 5, Mr. Merte's job as Administrator is not to "oversee the Township's software, including the BS&A software." BS&A itself provides excellent support to its customers, as does the Township's Managed IT Services Company Applied Imaging (formerly known as NetSmart), both of which have "Enterprise Administrator" access in BS&A on behalf of the Township as a whole. Mr. Merte relied on the provisions in the Resolution 2022-05 to "hold ultimate authority over BS&A administration and accessibility" and "hold ultimate authority over administration of software including assignment of access" in order to, at Supervisor Hathaway's direction, take custody and control of the financial journals and ledgers, the Tax rolls, and the Assessing rolls—none of which are records of the Board of Trustees, for whom he works.

22. Contrary to Mr. Merte's Affidavit Paragraphs 5, 8, 10, and 11, Mr. Merte did in fact revoke my necessary "access" to the journals and ledgers by taking them from my custody and control, refusing to return them after multiple proper demands, and by manipulating these journals and ledgers. Mr. Merte characterizes this taking of the journals and ledgers as "concurrent access" by himself and other unauthorized individuals. MCL41.65 speaks not once of a Clerk being required to have mere access to the accounts, journals, ledgers; but that she



“shall have custody of all the records, books, and papers,” that she shall “open and keep accounts,” that she “shall prepare and maintain the journals and ledgers.” In accounting, journals are a series of books of original entry, and ledgers are a series of books for recording financial transactions. Today, these Township journals and ledgers are kept within BS&A.

23. BS&A is an enterprise management system designed for local units of governments, particularly those in Michigan. Scio Township started using its first BS&A module in 2001, continually adding modules through 2021. Today, Scio Township’s relies on 12 BS&A modules. The Township’s Tax Rolls are the responsibility of the Treasurer which are contained within the modules of *Tax* and *Delinquent Personal Property*. The Township’s Assessment Rolls are the responsibility of the Supervisor and are contained within modules of *Assessing* and *Special Assessments*.

24. At issue in this case are the records of MCL41.65 which are to remain in my custody, and which are contained within the 8 financial management suite modules of BS&A: *Accounts Payable, Cash Receipts, Fixed Assets, General Ledger, Miscellaneous Receivables, Payroll, Purchase Orders, and Utility Billing*. Under MCL41.65, it is the Clerk who must have custody, meaning the care and control of these accounts and journals and ledgers, for inspection, preservation, or security. Aside from the accounts for which the Treasurer is responsible under MCL41.78(1) discussed below, there is no other provision of custody made by law. Without such custody and control, I cannot perform my statutory obligations.

25. The Treasurer keeps an accurate account of the receipts and expenditures of township money, per MCL41.78(1). The Treasurer keeps these accounts by entering information within receipting and disbursement journals contained in *Accounts Payable, Cash Receipts, Miscellaneous Receivables, Payroll, and Utility Billing*. With properly granulated administration of the BS&A modules—something the Clerk and former Administrator Rowley both have

recommended be developed for the Township —both the Treasurer and the Clerk can meet all statutory obligations responsibly. Similarly, if the Supervisor or other person were to want to begin using BS&A to prepare or administer the budget, that person would be granted appropriate permissions to the few budgeting functions of the *General Ledger* module. Of course, it is the Clerk who has custody of current and prior year Township budgets.

26. Under MCL41.65, the township clerk **shall also open and keep an account** with the treasurer of the township, and **shall charge the treasurer** with all funds that come into the treasurer's hands by virtue of his or her office, and **shall credit him or her** with all money paid out by the treasurer on the order of the proper authorities of the township, and **shall enter the date and amount of all vouchers** in a book kept by the township clerk in the office. This is the core reckoning of the fiduciary relationship between the Clerk as Accountant and the Treasurer as Tax Collector and Custodian of Monies. I cannot fulfill this duty without sufficient qualified finance staff that is independent from the Treasurer, Supervisor, and Board of Trustees.

27. MCL41.65 provides that the Clerk shall also open and keep a separate account with each fund belonging to the township, and shall credit each fund with the amounts that properly belong to it, and shall charge each fund with warrants drawn on the township treasurer and payable from that fund. **The purpose of this 'separate account' is so that I can independently as Clerk and separate from the Treasurer (or her Deputy Treasurer or the Supervisor or the Board of Trustees), account for the funds that belong to the township** in order to properly reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township. The Township remains out of compliance with current standards and regulations because of our understaffing. I need sufficient qualified finance staff under my direction to carry out these statutory core duties, as well as ultimate authority to determine who can manipulate the accounts, journals, and ledgers contained within the *Accounts Payable, Cash Receipts, Fixed*



*Assets, General Ledger, Miscellaneous Receivables, Payroll, Purchase Orders, and Utility Billing* modules.

28. By statute, I shall be responsible for the detailed accounting records of the township utilizing the uniform chart of accounts prescribed by the state treasurer, and I shall prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township. **The Township's journals are within Accounts Payable, Cash Receipts, Fixed Assets, General Ledger, Miscellaneous Receivables, Payroll, and Utility Billing modules of BS&A. The Township's general and subsidiary ledgers are within Accounts Payable, Cash Receipts, Fixed Assets, General Ledger, Miscellaneous Receivables, Payroll, and Utility Billing modules of BS&A.**

29. Therefore, I need sufficient qualified finance staff under my direction to carry out these statutory core duties, as well as ultimate authority to determine who can manipulate the accounts, journals, and ledgers contained within the *Accounts Payable, Cash Receipts, Fixed Assets, General Ledger, Miscellaneous Receivables, Payroll, Purchase Orders, and Utility Billing* modules. Since May 13<sup>th</sup> when Mr. Merte removed my BS&A "Enterprise Administrator" authority, and began to use his own newly granted BS&A "Enterprise Administrator" access to override my actions, I have not had the ultimate authority required to safely keep these records and books where they are not exposed to alteration or mutilation.

30. Contrary to Mr. Merte's Affidavit Paragraph 11, he has in fact overridden my actions without my knowledge or consent. One example is when he on Friday May 13 at 5:19pm granted Sandra Egeler "Administrator" permission to the General Ledger module, against the verbal and written direction I had given him on May 12. As Deputy Treasurer, Ms. Egeler is responsible for handling the cash of the Township, and to maintain appropriate segregation of duties per State Treasury guidelines. I granted her access to view, but not modify, the General Ledger. A second

example is when, shortly after midnight of May 14, Mr. Merte eliminated my "Enterprise Administrator" permissions across all 8 financial management modules, and again granted Ms. Egeler's "Administrator" permission over the General Ledger module.

31. I currently do not have sole control over manipulation of the township's financial journals and ledgers. Further, the Board refuses to support my office of Clerk with the qualified personnel necessary for me to perform my statutory duties for no reasonable or rational basis that I can discern.


32. I declare under the penalties of perjury that this Affidavit has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Jessica M. Flintoft

Subscribed and sworn to before me this

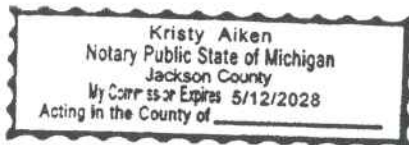
29 of August 2022

  
\_\_\_\_\_, Notary Public

Washtenaw County, Michigan

Acting in Washtenaw County, MI.

My commission expires: 5-12-2028



# EXHIBIT 1.B

AA035

## Points of contact for Scio Township's upcoming audit

Will Hathaway <WHathaway@ScioTownship.org>

Thu 5/12/2022 8:29 PM

To: David Helisek <david.helisek@plantemoran.com>

Cc: James Merte <jmerte@ScioTownship.org>; MHomier@fosterswift.com  
<MHomier@fosterswift.com>; Sandy Egeler <SEgeler@ScioTownship.org>; Jessica Flintoft  
<Jflintoft@ScioTownship.org>

1 attachments (25 KB)

Supervisor Job Description 081221.docx;

David,

I am looking forward to working with you and the team at Plante Moran for Scio Township's FYE 2022 audit. As we proceed I want to make you aware of some relevant Board of Trustees' decisions.

Last Tuesday (5/10/22) the Board approved hiring James Merte as interim township administrator. Jim replaces David Rowley who announced his resignation on April 12. Jim knows Scio Township very well after having served as Scio's chief assessor for 40 years prior to his retirement last August. We are lucky to have Jim available to help the Township through this transition. I have copied Jim on this email.

Also at the May 10 meeting I announced Sandy Egeler's appointment as deputy supervisor. The Board voted to confirm Sandy in her joint role as deputy treasurer/deputy supervisor. This new appointment gives Sandy authority to work with me on the budget *and the audit*.

The supervisor's authority over the audit was established by a vote of the Board of Trustees in August 2021 when they approved the attached job description and delegated the authority to carry it out. The supervisor's authority includes:

**"Financial Reporting and Audit Function:** As Chief Administrative Officer per the Uniform Budget and Accounting Act, the supervisor is responsible for preparation of the Township's annual financial report to the state which, by statute, must be audited. Supervisor will oversee the audit and selection of the auditor and make recommendations for hiring the same for BOT approval."

In addition to me, the Township's designated contacts for work on the audit are Township Administrator Merte and Deputy Supervisor Egeler.

I understand that the clerk has scheduled a 1:00pm Zoom meeting on Friday 5/13/22 to discuss the audit with you. To avoid confusion and make the best use of everyone's time, the meeting should also include township administrator Merte, Deputy Supervisor Egeler, and me. We'll work to make sure that everyone is included in tomorrow's meeting.

In case there are legal questions, I have copied Township Attorney Mike Homier.

Will Hathaway  
Supervisor, Scio Township



STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of  
Scio Township,

Plaintiff,

vs.

Case No. 22-000414-CZ

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,  
Defendant.

---

Proceedings taken before the  
Honorable Timothy P. Connors  
Taken at 101 E. Huron Street  
Ann Arbor, Michigan  
Commencing at 1:30 p.m.  
Wednesday, September 21, 2022  
Transcribed by Carolyn Grittini, CSR-3381

Fortz Legal Support

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844.730.4066

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AA037

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**FORTZ**  
Legal

1 STATE OF MICHIGAN  
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW  
3  
4 JESSICA FLINTOFT, as Clerk of  
5 Scio Township,  
6 Plaintiff,  
7 vs. Case No. 22-000414-CZ  
8 Hon. Timothy P. Connors  
9 SCIO TOWNSHIP BOARD OF TRUSTEES,  
10 Defendant.  
11  
12

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13 Proceedings taken before the  
14 Honorable Timothy P. Connors  
15 Taken at 101 E. Huron Street  
16 Ann Arbor, Michigan  
17 Commencing at 1:30 p.m.  
18 Wednesday, September 21, 2022  
19 Transcribed by Carolyn Grittini, CSR-3381  
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AA038

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MARK J. MAGYAR</p> <p>4 Dykema Gossett</p> <p>5 201 Townsend Street</p> <p>6 Suite 900</p> <p>7 Lansing, Michigan 48933</p> <p>8 66.776.7523</p> <p>9 Appearing on behalf of the Plaintiff.</p> <p>10</p> <p>11 MICHAEL HOMIER</p> <p>12 Foster Swift Collins &amp; Smith</p> <p>13 1700 East Beltline, N.E.</p> <p>14 Suite 200</p> <p>15 Grand Rapids, Michigan 49525</p> <p>16 616.726.2238</p> <p>17 Appearing on behalf of the Defendant.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 And the first is, what is it specifically you want me</p> <p>2 to do, I don't need the history of the case, but what</p> <p>3 you want me to do today, how I can do it legally, and</p> <p>4 obviously, I'm very familiar with the court rules on</p> <p>5 MSDs, but there is some case law that you cited and I</p> <p>6 think it's helpful if you are very specific about the</p> <p>7 case and the language and why you think it's supported</p> <p>8 and tell me why. With that, counsel go right ahead.</p> <p>9 MR. MAGYAR: Thank you, Your Honor. And in</p> <p>10 an effort to try to construct a presentation in</p> <p>11 exactly the manner that you've described, I have, and</p> <p>12 if Your Honor will let me approach, I have both a</p> <p>13 proposed order and the eight documents that if we have</p> <p>14 time, I hope to go through it chronological order.</p> <p>15 THE COURT: I'm going to give you all the</p> <p>16 time you want, sir.</p> <p>17 MR. MAGYAR: Every document I have</p> <p>18 provided, Your Honor has, been submitted as an exhibit</p> <p>19 to the briefing today, and I can reference when</p> <p>20 necessary what exhibit it is, and I have highlighted</p> <p>21 the copies jut to streamline it, as well as the copy I</p> <p>22 brought for counsel so that we're all looking at the</p> <p>23 same thing here.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. MAGYAR: Those are the eight documents</p>
<p style="text-align: right;">Page 3</p> <p>1 Ann Arbor, Michigan</p> <p>2 Wednesday, September 21, 2022</p> <p>3</p> <p>4 COURT CLERK: We are on the record in the</p> <p>5 matter of Flintoft versus Scio Township Board for a</p> <p>6 Motion for Summary Disposition.</p> <p>7 THE COURT: Again, good afternoon. Could</p> <p>8 we have appearances on the record, please?</p> <p>9 MR. MAGYAR: Good afternoon, Your Honor.</p> <p>10 Mark Magyar for the plaintiff.</p> <p>11 MR. HOMIER: Good afternoon, Your Honor.</p> <p>12 Mike Homier on behalf of Scio Township Board.</p> <p>13 THE COURT: We were having difficulty with</p> <p>14 Zoom, and go ahead, that's why I asked that you come</p> <p>15 in live, and thank you for being patient and flexible</p> <p>16 on the scheduling. As you probably both know, we're</p> <p>17 pretty backed up with the courts opening up and</p> <p>18 getting backed up on jury trials and Judge Brown left</p> <p>19 early and we don't have a replacement until January</p> <p>20 1st. So in addition to this docket, I'm also carrying</p> <p>21 the entire business docket. So we just have to fit</p> <p>22 people in where we can. So I appreciate your</p> <p>23 flexibility.</p> <p>24 With that, I have read the briefs, I always</p> <p>25 appreciate if you focus on three rhetorical questions.</p>	<p style="text-align: right;">Page 5</p> <p>1 and this is the proposed order.</p> <p>2 THE COURT: All right.</p> <p>3 MR. MAGYAR: So Your Honor, as mentioned I</p> <p>4 think the chronological order of going through these</p> <p>5 things will be helpful, but first I want to in summary</p> <p>6 fashion go through the proposed order, because I do</p> <p>7 think -- I agree, it's important to get right to what</p> <p>8 we're asking for.</p> <p>9 Of course, in paragraphs 1 and 2 of our</p> <p>10 order, we would like our motion granted and</p> <p>11 Defendant's motion denied. Paragraphs 3 and 4, we are</p> <p>12 asking for two specific resolutions that the board</p> <p>13 passed to be vacated. And we're asking for that</p> <p>14 because the contents include provisions that directly</p> <p>15 violate by usurping duties that belong by statute</p> <p>16 exclusively to the clerk.</p> <p>17 Besides those two resolutions being</p> <p>18 vacated, and what those resolutions were specifically</p> <p>19 used for, that was an extreme violation, was that the</p> <p>20 clerk needs to be the exclusive enterprise</p> <p>21 administrator for the BS&amp;A modules of the township,</p> <p>22 minus two that go outside of her duties that we'll get</p> <p>23 to.</p> <p>24 And the reason I say that is, the BS&amp;A</p> <p>25 modules are the books and records of the township.</p>

<p style="text-align: right;">Page 6</p> <p>1 Everything is electronic now. It's not hard copies. 2 And so when we talk about being the exclusive 3 enterprise administrator, we are talking about the 4 statutory requirement that the clerk be the one who 5 shall have, shall have custody of all the records, 6 books and papers of the township. That's the first 7 sentence of MCL 41.65. 8 And now we are through the first five 9 paragraphs of my proposed order, and I would 10 respectfully submit, Your Honor, that those five 11 paragraphs, other than paragraphs 1 and 2 just dealing 12 with the grant and denial of motions, are what refer 13 to Count I of the Complaint. 14 Count II of the Complaint begins at 15 paragraph 6. In the resolution that we're asking be 16 vacated, the township board changed what was the 17 existing process and gave to the supervisor the, 18 quote, ability to oversee the hiring of the finance 19 director and to recommend such hiring for approval by 20 the Scio Township Board. That's not my language, 21 that's the language that the board passed on August 22 17th. It moved that responsibility historically given 23 to the clerk and it moved it by resolution, because to 24 accomplish what the board was trying to accomplish, 25 they had to change what was the existing process and</p>	<p style="text-align: right;">Page 7</p> <p>1 they shifted that to the supervisor. 2 And Your Honor, under the Wayne County case 3 that we're going to talk about, as well as some 4 secondary, the secondary source that we've relied 5 upon, which of course is not binding on the court but 6 we think is very persuasive written by Mr. Verburg; 7 when a board makes decisions that traditionally I'll 8 be the first to admit are policy decisions that 9 wouldn't require them to do anything one way or the 10 other, but when you start to make decisions in such a 11 way that you prevent an elected official from being 12 able to perform statutory duties, that's where under 13 the Wayne County case and the Verburg interpretation 14 of it, that the court can order the township to at 15 least put back in the right sphere of authority who 16 gets to make decisions regarding the hiring of finance 17 staff. 18 So again, instead of it being the 19 supervisor, who the board changed it to being the one 20 to oversee the hiring of the finance director, we want 21 it to be the clerk to oversee that. And instead of it 22 being the supervisor who recommends the hire of the 23 finance director and other finance staff to the extent 24 that it's approved to be larger than just a finance 25 director, that that recommendation for hire go from</p>	<p style="text-align: right;">Page 8</p> <p>1 the clerk to the board, not from the supervisor to the 2 board. 3 Paragraph 7 in our proposed order is a 4 remedy that comes directly from the McKim versus Green 5 Oak Township Board case, which is that this court may, 6 if it grants relief in our favor, retain continuing 7 jurisdiction to see to it that the things that it 8 orders are complied with, that the clerk is not 9 prevented from doing her statutory duties and that we 10 don't have continual finance staffing problems going 11 forward. 12 You can question is continuing jurisdiction 13 necessary versus filing another suit if something 14 happens. We are asking for it as a streamlined way to 15 keep the parties in order here but, of course, there 16 are avenues if that were not awarded. 17 And then finally, paragraph 8 also comes 18 directly from McKim versus Green Oak Township Board, 19 and what the court noted, it wasn't a new holding, but 20 what it noted in that case is that an exception to the 21 American Rule for attorney's fees, when it's not 22 authorized by contract or statute, is that if a public 23 official files a suit to enforce and defend its 24 statutory duties, recognizing that that's an onerous 25 burden for an individual, which is very much the case</p>	<p style="text-align: right;">Page 9</p> <p>1 here, the court may in its discretion grant fees for 2 the prevailing official who brought that. So that is 3 what we're seeking under the complaint and on our 4 motion. 5 THE COURT: And since they also, the other 6 side represent and is seeking attorney fees, 7 presumably then it's actually the taxpayers that would 8 be paying the attorney fees. 9 MR. MAGYAR: Unfortunately, Your Honor, I 10 think that is the case, and I think one of the 11 considerations that really weighed heavily on the 12 clerk in this case was taxpayer money versus the 13 eroding of the checks and balances that she's 14 concerned that's happening here and the eroding of the 15 clerk's office and what is really for the ultimate 16 greater good of the citizens of the township, and if 17 it's to spend money now to safeguard those things, 18 that was a calculated decision. 19 THE COURT: I take it that you're all -- 20 I'm cognizant of it because the opinion came down last 21 week, but I know the individuals in Scio Township, 22 both elected officials and people in Scio Township are 23 very interested in the Gelman litigation, which has 24 been going on for decades. And the Court of Appeals 25 pretty clearly indicated, and we'll see what the</p>
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<p style="text-align: right;">Page 10</p> <p>1 Supreme Court if they take it, but pretty clearly 2 indicated that I've overstepped my bounds, including 3 Scio Township as an intervenor. I make these comments 4 because you're asking me to take over jurisdiction and 5 start micromanaging in my opinion difficulties between 6 elected officials within Scio Township. So are you 7 familiar with that? I mean, it's pretty well clear 8 from the Court of Appeals what authority at all, and 9 really, they're saying you don't have any unless 10 asked. So I'm cognizant of that. Anything you wanted 11 to say in that regard as to why this case is even more 12 important that the Gelman pollution case that's been 13 taking decades? 14 MR. MAGYAR: Yes, Your Honor, and thank you 15 for giving me that opportunity. I am aware of that 16 litigation, I've spoken with my client about it, and I 17 think everything involving public officials and 18 politics, there is that fine line, and I'm not making 19 comment on the Court of Appeals' order or the 20 relative -- 21 THE COURT: Except I have to follow it. So 22 you're asking me to do something that they pretty well 23 clearly told me, keep your nose out of it. Go ahead. 24 MR. MAGYAR: And I think, although that's a 25 fair sort of general takeaway from the opinion, that</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. MAGYAR: Your Honor, respectfully, if 2 it pleases the court, because they've brought a 3 pleadings-based motion, I would just as soon go 4 through in a little bit more detail through my nine 5 documents of exactly how we have established the 6 violation because ours is a C(10). 7 THE COURT: Go right ahead. 8 MR. MAGYAR: Thank you, Your Honor. And 9 the first thing I would point Your Honor to in the 10 packet, I think we can pretty quickly go through 11 these, it's not as thick as it looks because I'm 12 really only concerned I think with the highlighted 13 portions but I wanted to give complete documents. 14 The first page is just a copy of the 15 statute that we're dealing with that says in the first 16 sentence, that the clerk shall have custody of all the 17 records, books and papers of the township when no 18 other provision for custody is made by law. And I 19 certainly don't mean to imply that the rest of her 20 duties are not important, but if we jump to the very 21 last sentence, it's the township clerk who shall 22 prepare and maintain the journals and ledgers 23 necessary to reflect the assets, liabilities fund -- 24 and Your Honor, I don't have to read every word -- 25 that's really what we're talking about here, is</p>
<p style="text-align: right;">Page 11</p> <p>1 it doesn't apply here, and that's because here, we're 2 trying to narrowly focus on what the clerk's duties 3 are under the statute and if, in fact, those duties 4 were interfered with or usurped or otherwise taken 5 from her and given to someone else on the board, then 6 that is a clear and direct jurisdiction and authority 7 of this court to vacate any such action. And that is 8 the main relief I would say of all the relief we're 9 seeking in Count I when we're asking to vacate two 10 resolutions for specific reasons that the board is 11 interfering and displacing the clerk's statutory 12 duties in favor of giving them to the supervisor or in 13 some cases the township administrator who is an 14 employee overseen by the board. 15 So respectfully, Your Honor, I don't think 16 that recent decision in any way impedes the court's 17 authority to vacate when it finds that a statutory 18 duty of the clerk has been taken to vacate any such 19 action. And that's the McKim case. 20 THE COURT: I do admit, you can take as 21 much time as you want, they have a response, but 22 they're also asking under I(2) that I grant a motion 23 for Summary Disposition in the township's favor. How 24 would you like to proceed? Do you want to wait and 25 have them argue and then you rebut?</p>	<p style="text-align: right;">Page 13</p> <p>1 custody of the papers as stated in sentence one, and 2 preparing and maintaining the journals and ledgers as 3 stated in the last sentence. And notably, and I know 4 we've briefed this, but it bears reminding that there 5 are very few offices, there's the treasurer and the 6 clerk, maybe others I'm not as familiar with, that 7 have to put up personal bonds for the safekeeping of 8 these records. It is their duty and their duty alone, 9 and the statutory law is clear that unless they 10 affirmatively consent to change that, then it's a 11 violation to take that duty away. 12 Moving to the second document, unless 13 there's any questions about how those duties relate to 14 our case, it's an August 12, 2021 e-mail from -- and 15 this is five days before the first resolution that 16 we're talking about was passed, from Attorney James 17 Fink, who is the township attorney, directly to my 18 client, the clerk, answering questions of the clerk 19 and finding that from his legal opinion, that it is 20 the clerk, as we just saw in the statute, that is the 21 person to maintain the ledgers and other financial 22 records, and that it's the clerk who must have the 23 authority to grant or deny access to manipulate -- and 24 now we're talking about electronic records, so when we 25 talk about using a read/write function, that means you</p>



<p style="text-align: right;">Page 14</p> <p>1 have certain limitations of your authority in the 2 document; you can either just read it or you can be 3 someone who can actually go in and change the numbers 4 or you can edit the document.</p> <p>5 THE COURT: If I may, he also says on that 6 specific question, does the clerk have the authority 7 to grant, deny access to manipulate, use, read/write 8 functions, the records. He does say, I find no 9 specific case law. And it's an attorney's opinion 10 that it's yes. So have you found the specific case 11 law that he could not find?</p> <p>12 MR. MAGYAR: Well, I think the reason 13 perhaps, and I'm speculating because I haven't had 14 this exact conversation with him, is because from the 15 most literal sense, he may be saying that there's 16 never been a case to say read/write functions in an 17 electronic database. But the authority that we're 18 relying on in McKim dealt with incoming mail. And my 19 adversaries have argued that that case should be 20 limited to its facts. And respectfully, Your Honor, I 21 think there's more than clear language in the McKim 22 portion, it starts at page 204 where McKim recited the 23 language having custody of the papers, and then after 24 the McKim court cited the language of the statute, 25 they went on to define custody as immediate charge and</p>	<p style="text-align: right;">Page 16</p> <p>1 called, it wasn't a regular meeting. And that's the 2 next document we have, and this is one of the 3 resolutions that we're asking be vacated. It's August 4 17th 2021, it's resolution 2021-31.</p> <p>5 And what it did is it passed a new job 6 description for the township supervisor as well as the 7 township administrator. So there's two job 8 descriptions that are attached and that were approved 9 by this resolution. And it's really those, other than 10 the resolution resolving that those things are being 11 adopted, it's really the job descriptions that we're 12 interested in.</p> <p>13 So on the first one, on the supervisor, we 14 see right on the top bullet point in the highlighted, 15 that one of the supervision items that the supervisor 16 gave to himself and the board gave to him is that he 17 would be overseeing the finance director. So that is 18 the first really big alarm bell change that we're 19 seeing with this, is that it's no longer the clerk 20 supervising the finance director, even though all of 21 the finance directors's duties are to support what the 22 clerk's statutory duties are under the statute that we 23 just looked at, the journals and ledgers and the 24 papers and the accounts of the township. 25 On the same page in the highlight again, we</p>
<p style="text-align: right;">Page 15</p> <p>1 control and that paper is defined as any writing or 2 printed document.</p> <p>3 And then after going through the statute 4 and after going through the definition of paper, McKim 5 said, so it is clear that this law bestows upon the 6 clerk, quote, "the responsibility to exercise control 7 overall township papers including mail and bills." 8 And so the court didn't limit its analysis to mail and 9 bills. It did a very fulsome analysis of the law and 10 said, the clerk has responsibility and exclusive 11 control over all papers, which in that case included 12 mail, and here we would say the clerk has exclusive 13 control over all township papers, including these 14 read/write functions over the journals and ledgers.</p> <p>15 So I respectfully disagree on that portion 16 of Mr. Fink's opinion, in that I do think this is 17 specific and controlling case law that was not related 18 to mail in McKim.</p> <p>19 THE COURT: Thank you. Go ahead, sir.</p> <p>20 MR. MAGYAR: Thank you, Your Honor. So 21 that was the opinion Mr. Fink gave, and my 22 understanding is there was a similar conversation held 23 between the clerk and the supervisor and Mr. Fink, but 24 then we go to the day of the meeting, five days later, 25 and it was a special meeting that the supervisor</p>	<p style="text-align: right;">Page 17</p> <p>1 see this is a marked change from existing process, 2 that the supervisor now has the oversight of the 3 finance director and oversees the hiring of the 4 finance director and makes that recommendation.</p> <p>5 And how we've seen that play out briefly, 6 and I don't want to get in the weeds, because I think 7 just the change is important enough, but how we've 8 seen that play out is that neither the clerk nor the 9 former township administrator, David Rowley, have been 10 able to have any of their recommendations for 11 supremely qualified candidates be hired; and instead, 12 it's been a patchwork of part-time, no relevant 13 finance degree employees, that the clerk believes is 14 not supportive of her role and not frankly competent 15 to support her in the various or complex financial 16 needs of the township.</p> <p>17 And on the next page of that same job 18 description for the supervisor, we see now it's going 19 to be the supervisor who is the lead of the finance 20 committee. Turning to the same resolution but now 21 instead of the supervisor, we're on the township 22 administrator's job description, and there's only one 23 point I want to draw to the attention right now to the 24 court on the second page, and it was put in bold even 25 to show the change, is that now it's going to be the</p>



<p style="text-align: right;">Page 18</p> <p>1 township administrator, who is an employee, not an 2 officer of the board, who is going to have control 3 over related financial reports. That's that bold 4 language highlighted. And it's not just me making a 5 big deal of this, because there was a lot of debate at 6 that meeting, and that's the next document we're going 7 to look at, about what this phrase really means, what 8 having control over related financial reports, what 9 does that really mean.</p> <p>10 And so in the next document that I 11 highlighted, it's just a couple of pages of the 12 transcript of the meeting that day, that night. And 13 again, it's Attorney Fink who's helping opine for the 14 board, and he says, who's responsible for finance in a 15 township? He says, I will repeat what I said before, 16 it's clearly and soundly to me the responsibility of 17 the clerk who is responsible for the general ledger 18 and the books and records in conjunction with the work 19 that the treasurer does, so that there's checks and 20 balances. He says, that does not mean that the 21 supervisor can't prepare a budget or have the 22 administrator assist the supervisor in preparing these 23 things, but then he says, the question comes up, what 24 do we mean by related financial reports? That was the 25 question.</p>	<p style="text-align: right;">Page 20</p> <p>1 interpretation would be incorrect, he said. But if 2 you interpret it as I do, said Mr. Fink, is that the 3 supervisor will be preparing the budget with the 4 administrator and the related financial reports that 5 go with the budget, not just any financial report, but 6 related financial reports to the budget. We're not 7 quibbling with that. Such as, he says, getting 8 information from the clerk and treasurer. Then Mr. 9 Fink says, I don't see how it is a conflict between 10 the two roles or that it would be illegal.</p> <p>11 So he's saying, if we look back at that 12 language of the actual job description, is budget and 13 related financial report -- or those financial reports 14 have to be related to the budget, and if they need 15 financial information for purposes of that, they go 16 and get it from the clerk or the treasurer; they don't 17 assume authority over it themselves.</p> <p>18 And then so on the next page of the same 19 document, Mr. Hathaway, the supervisor, gets involved, 20 and he says, okay, I think -- I'm paraphrasing, but he 21 says, all right, we've had the question answered. And 22 what it comes down to is, people can disagree on their 23 interpretations of a document, they can read it 24 different ways. And then we can tell everyone what we 25 mean is the intent of the language. That's the top of</p>
<p style="text-align: right;">Page 19</p> <p>1 THE COURT: Before you jump to that, you 2 have highlighted for my review the statement from Mr. 3 Fink at that meeting that says -- I know Mr. Davis is 4 listening, and he will correct me on anything later. 5 And there he is. So I'm sure he'll correct me as well 6 if he thinks there's something different. I just find 7 it humorous that you highlighted that and he's staring 8 at me in the front row. Go ahead now to your legal 9 point.</p> <p>10 MR. MAGYAR: Okay, thank you. You're 11 right, that is the very next thing I highlighted. It 12 says, there is a way to interpret this language as not 13 being a problem. But there's -- and why we're here 14 is, there's apparently multiple ways to interpret this 15 language. And I want to go through this, but when the 16 board starts interpreting it in the way it said it 17 wasn't going to, that's where we get the problem. And 18 if you have a resolution that gives more than one 19 interpretation and one can violate the law, I think it 20 needs to be vacated and go back to the drawing board 21 to it can't be interpreted that way.</p> <p>22 So Mr. Fink said if someone interprets and 23 related financial reports to mean that the board is 24 saying the clerk is not responsible for the general 25 ledger and would have authority over it, then that</p>	<p style="text-align: right;">Page 21</p> <p>1 page 59. And he says, that could happen, that's 2 possible, and if that happens, if that interpretation 3 is, you know, there's a conflict with, you know, 4 statute, then we can clarify that, oh no, that's not 5 what it meant. That's what the supervisor convinced 6 everyone. Don't worry about this sort of gray 7 language, we'll make sure that we're clear that we 8 didn't intend to violate the law.</p> <p>9 And then Mr. Fink responds, he says, well, 10 my answer to that is you can have your administrator 11 prepare and administer any report you want, as long as 12 it doesn't infringe upon the statutory authority of 13 the treasurer or the clerk. And the supervisor I 14 assume would be delegating some responsibility and 15 authority there.</p> <p>16 So, I mean, you can probably guess where 17 I'm going with that, is that what we saw in practice, 18 and we're going to give exact examples, that it was 19 not later interpreted to be compliant with the law; it 20 was an exact 180 of what the supervisor said right 21 here. It was interpreted so that it could be used as 22 a sword to take away financial authorities that are 23 the clerk's statutory authorities.</p> <p>24 And a few months go by and there's another 25 resolution and now this is the resolution that we're</p>

<p style="text-align: right;">Page 22</p> <p>1 asking be the second out of two resolutions that be 2 vacated. It's the February 22, 2022 resolution, and 3 it's resolution 2022-05. And apparently the board 4 didn't think that it went as far as it needed to go 5 with the earlier resolution because it adopted yet 6 another definition of the -- or a new job description 7 for the township administrator just some five months 8 after the last one they did. And they did say in the 9 resolution that this new one updates, that's the words 10 on page 2 of the resolution, updates the township 11 administrator's job description and authority from 12 that earlier one that we looked at. 13 And boy, did it ever. Because in addition, 14 under the heading finance, in addition to now using 15 that related financial reports language that we just 16 went over, they added that now it's going to be the 17 administrator, and this is bold, this is again bold to 18 show the changes on page 2 of the job description, 19 that now it's going to be the administrator that 20 oversees and prioritizes the allocation of finance 21 staff work to accomplish tasks. 22 So the clerk, who has the statutory 23 obligation to put up a personal bond to oversee the 24 finances of the township is not the one having to 25 prioritize the allocation of the finance staff's work</p>	<p style="text-align: right;">Page 24</p> <p>1 we're going to look at, there was a lot of debate 2 about these very provisions, and the minutes of that 3 meeting, they're lengthy, they're 19 pages, I only 4 want to look at pages 12 and 13, and there are 5 highlights there. 6 The clerk asked the township's attorney, 7 Mr. Homier, who is here today on behalf of the board, 8 could you please comment on the words "ultimate 9 authority", that's twice in the job description, whose 10 words were those. And Mr. Homier said he didn't write 11 it and he didn't think it would be an issue unless 12 somebody deprives anybody access what they need to 13 carry out their statutory duties. We're going to see 14 that that's exactly what happened. 15 And where I guess I depart from Mr. 16 Homier's opinion and that we're going to see here and 17 later, is that there really wasn't a problem giving 18 the administrator enterprise authority and access as 19 long as the clerk could still do her functions within 20 the software. And the reason that's a problem is 21 because the clerk then no longer has the control over 22 who is going into the program. And once the 23 administrator has that right as the enterprise 24 administrator, he can give that authority to anyone 25 and that's exactly what happened. And they've tried</p>
<p style="text-align: right;">Page 23</p> <p>1 and to accomplish their tasks. And in addition, and 2 also in bold, the township administrator is newly 3 given the power to hold, quote, "ultimate authority 4 over BS&amp;A administration and accessibility." That's 5 the journals and ledgers, that's the papers of the 6 township, the BS&amp;A administration and accessibility, 7 the ultimate authority -- I'm sorry. 8 THE COURT: You're all right. 9 MR. MAGYAR: The ultimate authority now 10 over what the statute gives the clerk unequivocally is 11 under this resolution given to the township 12 administrator, an employee who reports to the board. 13 That's a violation of the law. 14 And if that wasn't clear enough to this 15 board, we go further down on the next page under 16 Information Technology and Data Management, they 17 repeat, using the same phrase, that it's the 18 administrator who, quote, "holds ultimate authority 19 over administration of all software, including 20 assignment of access." That is saying administrator, 21 you get to control who has access to the papers of the 22 township. Not you, clerk. That's a change or else we 23 wouldn't have to do -- they wouldn't have had to do 24 this resolution. 25 And as you might expect, the next document</p>	<p style="text-align: right;">Page 25</p> <p>1 since we filed the amended complaint to reverse some 2 of those actions, but it doesn't change the problem of 3 the structure that's currently in place that allows 4 that to happen. 5 On the next page of those minutes, there 6 were questions including by one of the trustees, 7 trustee Knoll, saying that she had read the McKim 8 decision and she interpreted that the clerk must have 9 custody or control over township papers and that it 10 seemed to trustee Knoll, who is legally trained, that 11 the clerk cannot fulfill her duty of safekeeping of 12 these records unless she has that control. 13 And I'll spare going through all of the 14 highlighted language, but Mr. Homier candidly told 15 them, I was not asked to opine on that question and I 16 haven't. 17 So there were issues here and there. The 18 clerk tried to not run to court every time she was 19 having an issue. Real quickly, I won't spend a lot of 20 time on, there were issues of trying to get a finance 21 director appointed once that position went vacant. 22 It's still vacant since November. They've been 23 operating without a finance director. And we resisted 24 coming to court every single time we believed there 25 were violations of her duties, but everything came to</p>

<p style="text-align: right;">Page 26</p> <p>1 a head on May 10th, and we amended our complaint days 2 later.</p> <p>3 When on May 10th, the clerk was out with 4 COVID, and while the clerk was out with COVID, the 5 board appointed James Merte, who I understand is in 6 the court today at counsel table as the interim 7 township administrator, and they appointed Sandra 8 Egeler as the deputy supervisor, who is already 9 serving as the deputy treasurer. And I'm not 10 contending this wouldn't have passed if the clerk had 11 been present, maybe she was in a minority of the vote, 12 but she wasn't there.</p> <p>13 And the first thing that happens with her 14 not being present is that the supervisor and Mr. Merte 15 come up with a plan to contact Netsmart, which is the 16 township's vendor for this BS&amp;A software, and say, the 17 administrator is now the enterprise administrator with 18 authority and control over all of the software, not 19 the clerk; and if you need authority to make that 20 change, here's the job description that we passed in 21 February as updated from the August. They're using 22 the resolutions that we want vacated as the authority 23 to make these changes.</p> <p>24 And the next document I provided is a 25 printout of a Netsmart report covering those first two</p>	<p style="text-align: right;">Page 28</p> <p>1 We have also provided in the next document 2 a screen shot of that happening. This is now, I think 3 what we just looked at was 4:55 p.m. on Friday, so 18 4 minutes later -- no, it's 5:19 p.m., so 24 minutes 5 later with this newfound authority after five p.m. on 6 a Friday, Mr. Merte goes in, modifies Sandy Egeler's 7 access from the old value being set access meaning 8 read only, to new value administrator access. So now 9 the supervisor's deputy has the ability to edit the 10 journals and ledgers, including the general ledger of 11 the township under this action. And that's without 12 any input from the clerk or the treasurer or anyone 13 else. She's got that authority and access.</p> <p>14 You might guess that that didn't sit well 15 with my client, and she rose all heck about it. And 16 within -- that's the last e-mail that I've presented 17 to Your Honor as an e-mail chain, and the e-mail chain 18 includes -- I'm not going to go through every 19 e-mail -- but it includes the opinion of the attorney 20 immediately to my left, who's now asking for the 21 clerk's whole lawsuit to be thrown out, where he is 22 agreeing that this action that was done, that we just 23 looked at, was not proper, was not valid. The exact 24 language is that, I agree with the clerk that they -- 25 meaning these other employees of the township --</p>
<p style="text-align: right;">Page 27</p> <p>1 weeks of May, and we see that on May 11th, and this is 2 Netsmart talking now, they're making notes in their 3 own journals the way that companies do when clients 4 contact them, saying, I spoke with Jim Merte and 5 confirmed with Christie Aiken that Jim has returned to 6 Scio Township. Will's e-mail -- this is supervisor 7 Will Hathaway -- was concerning since we have not yet 8 had very much interaction. I have enabled Jim's 9 access on the servers and in exchange 365.</p> <p>10 Now if we jump to page 12 of that same 11 report, on Friday, May 13th, right before the close of 12 business at 4:55 p.m., heading into a weekend, 13 Netsmart says: Called Jim Merte and remoted into his 14 commuter. Logged into BS&amp;A using admin for Scio 15 credentials. Enabled James Merte in BS&amp;A and enabled 16 enterprise administrator access. Removed Jessica 17 Flintoft's enterprise administrator's access. Logged 18 out of BS&amp;A. Disabled David Rowley's access -- he's 19 the now retired -- I mean, it couldn't be any more 20 clear what happened and it's not in dispute. The 21 clerk's out, she's got COVID. The board hires an 22 interim employee who then immediately calls the 23 Netsmart and says, out with Jessica, in with the 24 administrator and he's going to control the papers of 25 the township.</p>	<p style="text-align: right;">Page 29</p> <p>1 should have read access. Because what Mr. Merte had 2 provided was administrator access. And it was only 3 after we amended our complaint and brought all of this 4 into this court in a pleading, that my client was 5 given back her, not administrator access, but at least 6 her ability to, what we've been using manipulate, 7 that's not meant to be a derogatory term, manipulate, 8 just meaning being able to edit the documents in BS&amp;A.</p> <p>9 And the township now takes the position oh, 10 don't worry about it, Your Honor, we messed up, she's 11 got her authority back. She doesn't have her 12 authority back, because what remains true under these 13 resolutions that we're asking be vacated, is that at 14 any time as the enterprise administrator, Mr. Merte or 15 anyone else they bestow with that power as the 16 administrator, can change it right back to the way 17 they had it or give anyone else access.</p> <p>18 And again, going back to the statute, that 19 directly violates the notion and the law that the 20 clerk has to have the sole custody of the papers and 21 has to be at all times the custodian, the one able to 22 vouch for at threat of personal liability of these 23 records. And so even in this e-mail that we looked 24 at, even though Mr. Homier did agree that she should 25 have -- that some of those employees should only have</p>

<p style="text-align: right;">Page 30</p> <p>1 read access, I still disagree and think that it's 2 violative of the law. 3 Well, let me be clear in the very first 4 sentence he said, I am not concerned about who has 5 enterprise access to the software. We're very 6 concerned about that, for all the reasons we've said; 7 the enterprise access has to be the, the control and 8 custody has to be with the clerk by law. 9 And so a couple of points to make before 10 moving to Count II. All of that was Count I, and the 11 primary authority we rely on for that, Your Honor, is 12 the McKim decision as well as the statute that we've 13 been talking about. 14 Before we move on to Count II, I just want 15 to make two observations. One is, we've been saying 16 all along that because of the board's action, the 17 township is in financial risk. And I understand the 18 reasoning, and I'm not quibbling or disputing even 19 when we were here earlier on a TRO that the court 20 denied, but the issue that we raised was that the 21 clerk was trying to get some emergency services from 22 Raymond Robson and other groups to perform financial 23 services and the board was saying no, we don't want 24 that contract. 25 Again, I'm not quibbling with the decision</p>	<p style="text-align: right;">Page 32</p> <p>1 THE COURT: Let me -- I know I'm 2 interrupting you, but on that point, I looked at that. 3 McKim came down May 6, 1987. That's 35 years ago. 4 There's nothing -- you have found nothing else since 5 then? This is the decision that you think is on 6 point? This is the decision you think is the best 7 case for you? 8 MR. MAGYAR: I do believe it's controlling, 9 Your Honor. 10 THE COURT: How do you think all these 11 other townships kept out of the Court of Appeals for 12 35 years? 13 MR. MAGYAR: Well, hopefully there has been 14 a little bit more of an ability to come to a gathering 15 table and resolve some of the things. And I do think 16 a lot of times it is a policy or a ballot question 17 that doesn't belong in the court. And when it comes 18 to specific duties, I think hopefully it's well known 19 enough that you cannot be doing this, that this is a 20 pretty rare case indeed that we're having to enforce 21 what is clear by statute. 22 And one other point to answer your 23 question, because Your Honor rightfully pointed out 24 the year of the decision, there is a court rule that 25 the board cited saying that because in some un-</p>
<p style="text-align: right;">Page 31</p> <p>1 that that wasn't for the court to decide, but for the 2 board to now take the position in its papers that 3 there's a recent S&amp;P downgrade and that the clerk is 4 incompetent, is really just an alternative fact, 5 alternative universe where we've been pounding our 6 fists all along saying, this is exactly what's going 7 to happen. You've got the clerk and you've got 8 township administrator Rowley advising the board, we 9 should have a robust finance staff with the kind of 10 revenue we're dealing with, and we should have someone 11 with a Master's degree or that is in the finance 12 director, and we submitted, I'm not going to go 13 through it all, all kinds of papers of what David 14 Rowley submitted as his support for his 15 recommendation, and every time it's been no, no, we're 16 not doing that. Brick wall. There's still no finance 17 director from November. The staff that has been 18 patchworked together are not qualified. And then they 19 say in their papers, look at this S&amp;P downgrade, oh, 20 for shame, clerk. This is what we have been concerned 21 about because of these measures. So yes, there has 22 been a downgrade; the fears are happening. 23 And McKim is obviously a really important 24 case to us because this issue just hasn't been before 25 the Court of Appeals very many times, and --</p>	<p style="text-align: right;">Page 33</p> <p>1 published Court of Appeals recent case, where the 2 township -- the board lost in that case as well but 3 for different facts. The Court of Appeals invicta 4 mentioned that under a court rule saying that the 5 Court of Appeals is not bound by opinions before 1990, 6 that McKim falls under that rule. 7 My understanding, I don't think that 8 applies to Your Honor. That's a Court of Appeals rule 9 in terms of what's binding precedent. I think McKim 10 on all fours here squarely applies and governs. 11 THE COURT: Thank you. 12 MR. MAGYAR: I already talked about, so I 13 won't repeat that McKim is broader than just the mail. 14 Count II I'm going to spend really little time on, 15 except to say that the Wayne County case we've cited 16 is a county case, it's not township case. And in that 17 court, the court says, where the legislature has 18 statutorily imposed on public officials various duties 19 and obligations, budgeted sums must be sufficient to 20 allow such officers to carry out their duties and 21 obligations. 22 So to be clear, we're not asking for 23 minimum staffing, we're not asking to invade the sort 24 of general province of the board from a policy 25 standpoint, but what we are saying is, don't</p>



<p style="text-align: right;">Page 34</p> <p>1 intentionally and arbitrarily and capriciously strip 2 the finance staff including leaving vacant the finance 3 director position, leaving the whole finance team so 4 barren that the clerk can't perform her statutory 5 required duties, and then when she doesn't perform 6 them, say, look at how bad the clerk is. Which is 7 what's happening here. 8 And what we cited, and again, as I 9 mentioned before, it's not controlling authority, but 10 it is what's kind of considered the Bible of township 11 management called the Managing the Modern Michigan 12 Township by Kenneth Verburg, there is a section on 13 this very issue citing that Wayne County case. And 14 the author said that because the law holds these 15 officers, meaning the clerk and the treasurer, 16 responsible for their duties, that short of their own 17 gross improprieties, others in the township may not 18 interfere with their performance. And this author 19 concluded that this Wayne County case may very well in 20 these circumstances apply and should apply to township 21 officials, not just county officials, for the same 22 legal reasoning that was in the Wayne County cases; 23 that these township officials, like county officials, 24 also have statutorily prescribed duties that when not 25 provided with sufficient resources, impede their</p>	<p style="text-align: right;">Page 36</p> <p>1 statutorily mandated functions." And because township 2 officers like county officers have statutory and 3 constitutional duties, the author says, the principles 4 of this decision may apply to township boards. We're 5 suggesting that they should under Count II. 6 And then finally, the last sentence of I 7 think this author's opinion is I think particular apt 8 here. A clerk or treasurer may be fair game in the 9 political arena but not to the point that these 10 officials cannot carry out their statutory 11 responsibilities. 12 Obviously, we really agree and we hope the 13 court does with that author's conclusion and its 14 application of the Wayne County case from the county 15 context to the township context. 16 And just to reiterate going back to the 17 proposed order that I handed to you first, when it 18 comes to Count II and under that authority that I just 19 discussed, we would be asking that it be -- that the 20 finance director and the finance staff, anyone 21 reporting under the finance director, that they report 22 to the clerk, not as set up in this newly concocted 23 job description that they now report to the 24 supervisor, and that it be the clerk who oversee the 25 hiring of the finance team for approval to submit for</p>
<p style="text-align: right;">Page 35</p> <p>1 ability to perform those functions. 2 And just a couple provisions that I 3 highlighted here. It says, in view of these rulings, 4 including the Wayne County case, can the township 5 board set minimum qualifications and establish working 6 conditions for employees in the offices of elected 7 officials. Certainly it can if the officer concurs. 8 But boards that do so in the face of opposition by the 9 clerk may be treading on thin ice. 10 And actually, what I meant to then get into 11 the next section is, similarly, in the matter of 12 budget appropriations, the township board must 13 exercise some care. In a Wayne County case, which is 14 the one I've been talking about, a circuit court ruled 15 that the county board could not make an across the 16 board funding cut of 15 percent for all county 17 departments, and elected officers were mandated to 18 provide certain services and the board of county 19 commissioners was obligated to appropriate funds 20 sufficient to carry out those duties. The judge in 21 that case, this author notes, did not say you just 22 have to give an elected official whatever they ask 23 for, and that's not what we're asking for, but the 24 cuts cannot be quote, "so severe as to render the 25 office unable to perform the constitutionally and</p>	<p style="text-align: right;">Page 37</p> <p>1 approval to the board, just as how they now have it 2 the set up that the supervisor submits it for approval 3 to the board under that resolution. We think under 4 the law it should be flip-flopped which is how it was 5 before and we want that right back. 6 And finally, Your Honor, the fees. 7 Certainly, we don't like to sit here asking for 8 taxpayer money. My client didn't like putting a 9 target on her back and filing this suit. My client 10 didn't like getting the ire of the entire board and in 11 some cases negative media attention. But I think 12 we've established that the violation here was real, 13 substantial and egregious. And when that happens, a 14 public servant like the clerk, who has been her entire 15 life, took the hard gulp and says, whatever the 16 consequences may be, we need to right this wrong. And 17 the board is being insured. And so they don't feel 18 this litigation as much as the clerk does, but she did 19 what she thought was right to correct this, and we're 20 asking that she not shoulder that burden alone, that 21 she did a service to the township to make sure that 22 the powers were adequately set where they're supposed 23 to be by constitution and statute, and therefore, that 24 the court exercise its discretion and we would submit 25 our bill of costs if fees were awarded at whatever</p>

<p style="text-align: right;">Page 38</p> <p>1 date the court determines.</p> <p>2 THE COURT: Thank you. I do have a</p> <p>3 question about your proposed order.</p> <p>4 MR. MAGYAR: Yes, Your Honor.</p> <p>5 THE COURT: How do you reconcile your</p> <p>6 request in paragraph 7 that quote, the court retains</p> <p>7 continuing jurisdiction to ensure that the clerk is</p> <p>8 not prevented from performing her statutory duties or</p> <p>9 interfered with in the performance of her statutory</p> <p>10 duties with your proposed last sentence of the order,</p> <p>11 this is a final order deciding all issues between all</p> <p>12 parties and providing complete relief as between all</p> <p>13 parties and closes this case.</p> <p>14 MR. MAGYAR: Your Honor, I think</p> <p>15 procedurally, you're correct and I'm incorrect. I</p> <p>16 understand that that language is required to have a</p> <p>17 final order, but if retaining continued jurisdiction</p> <p>18 means that it's not final, then I think that would be</p> <p>19 incorrect. So I think one of the two would have to</p> <p>20 give.</p> <p>21 THE COURT: My point is, it's highly</p> <p>22 possible, I think you would agree, that whatever I do</p> <p>23 decide, you'll probably ask a panel from the Court of</p> <p>24 Appeals (inaudible) and we'll have a new decision 35</p> <p>25 years later one way or the other.</p>	<p style="text-align: right;">Page 40</p> <p>1 employees. That is textbook statutory letter. That's</p> <p>2 what it says. The clerk wants to expand that to say</p> <p>3 somehow, because I'm responsible for preparation of</p> <p>4 the journals and ledgers, that somehow now I get to</p> <p>5 decide who we hire as a township board, as an entity.</p> <p>6 And I want to come back because the</p> <p>7 exhibits that were mentioned. First, we've filed a</p> <p>8 motion to strike Exhibits 1 and 7. They're attorney-</p> <p>9 client privilege, they belong to the township, the</p> <p>10 township board has not waived privileged. They were</p> <p>11 used knowingly that they are attorney-client</p> <p>12 privileged communications. So the court cannot</p> <p>13 consider those in its ruling because they were</p> <p>14 improperly disclosed.</p> <p>15 As I understand it, the clerk is looking</p> <p>16 for three things, really. Vacate the resolutions,</p> <p>17 restore enterprise authority over BS&amp;A and that the</p> <p>18 clerk have sole province, as counsel used at the last</p> <p>19 hearing, sole province to recommend hiring and that</p> <p>20 the board must hire from those recommended.</p> <p>21 So let's break this down into actual</p> <p>22 authority, okay? So we've got vacate the resolutions,</p> <p>23 we'll talk about that in a minute. But as it pertains</p> <p>24 to restore enterprise authority over BS&amp;A, my</p> <p>25 understanding is that the clerk is arguing that</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. MAGYAR: Your Honor, I think you are</p> <p>2 very much potentially on to something there, and I</p> <p>3 don't think it's our position that we want to prevent,</p> <p>4 if that be one of the parties' desires, letting that</p> <p>5 court review this. So in terms of, if continuing</p> <p>6 jurisdiction impedes that, I think we could remove</p> <p>7 paragraph 7 from this proposed order. Because as I</p> <p>8 alluded to at the beginning, I think there are other</p> <p>9 ways to get back to the court even if we didn't have</p> <p>10 that provision.</p> <p>11 THE COURT: Thank you. Response?</p> <p>12 MR. HOMIER: Good afternoon, Your Honor.</p> <p>13 Mike Homier on behalf of the Scio Township Board.</p> <p>14 Obviously, the judiciary is not the place to settle</p> <p>15 political scores or grievances, and that's exactly</p> <p>16 what this is. There's a disagreement between the</p> <p>17 clerk and majority of the board about how resources in</p> <p>18 the township should be allocated. I think really, the</p> <p>19 avoidance of naming or discussing statutory authority</p> <p>20 is important here. For instance, 41.75(A), 41.75(A)</p> <p>21 says, the township board may employ a township manager</p> <p>22 and other employees as are necessary. Not the clerk.</p> <p>23 There's no authority for the clerk to employ anybody</p> <p>24 except for the deputy clerk under 41.69. Otherwise,</p> <p>25 it's the board that has the authority to employ</p>	<p style="text-align: right;">Page 41</p> <p>1 41.56(A), which deals with custody of records, books</p> <p>2 and papers, somehow now means exclusive. And yet,</p> <p>3 that's not how public records are ever treated. So,</p> <p>4 for example, there are public records that are in the</p> <p>5 fire department; there are public records that are</p> <p>6 held by the utility department; there are public</p> <p>7 records held by the treasurer's office, the</p> <p>8 supervisor's office, in fact, there are public records</p> <p>9 all over the township.</p> <p>10 Nobody has deprived the clerk of custody of</p> <p>11 those. She still has an obligation under 41.65 to</p> <p>12 have custody of all records, books and papers of the</p> <p>13 township. In fact, they don't allege that she's ever</p> <p>14 been deprived of that custody. And if you look at</p> <p>15 their complaint, they have 13 declarations, and yet,</p> <p>16 it's all anticipated behavior, it's all speculative;</p> <p>17 well, what if, what if this happens. What if the</p> <p>18 administrator locks the clerk out of BS&amp;A? Hasn't</p> <p>19 happened, mind you. Wouldn't happen. In fact, when</p> <p>20 the interim administrator was with the township as the</p> <p>21 assessor, he then had enterprise access over BS&amp;A when</p> <p>22 the clerk was there, and she had no problem with it</p> <p>23 then. Now she has a problem with it, trying to expand</p> <p>24 what is statutorily her obligation under 41.65.</p> <p>25 41.65 also says the township clerk shall be</p>



<p style="text-align: right;">Page 42</p> <p>1 responsible for the detailed accounting records of the</p> <p>2 township, utilizing the uniform charts of accounts</p> <p>3 prescribed by the state treasurer. The township clerk</p> <p>4 shall prepare and maintain the journals and ledgers</p> <p>5 necessary to reflect the assets, liabilities, fund</p> <p>6 equities, revenues and expenditures for each fund of</p> <p>7 the township.</p> <p>8 So in terms of software administration,</p> <p>9 which the board rightfully gave to the interim</p> <p>10 administrator, even though I understand the clerk</p> <p>11 disagrees with that decision, her statutory ability is</p> <p>12 not hampered. We're talking about prepare and</p> <p>13 maintain those records. If, and I don't disagree, if</p> <p>14 the interim township administrator walked into the</p> <p>15 office, picked up what he believed to be the journals</p> <p>16 and ledgers and carried them away, we might have a</p> <p>17 case here. But that's not what happened.</p> <p>18 What happened is, the township board</p> <p>19 decided they were going to hire an administrator. The</p> <p>20 administrator was going to be responsible not only for</p> <p>21 the BS&amp;A software but all other software of the</p> <p>22 township. There is no prohibition against that</p> <p>23 anywhere in statute dealing with township government.</p> <p>24 I've been practicing municipal law for 23 years,</p> <p>25 represent a hundred different townships around the</p>	<p style="text-align: right;">Page 44</p> <p>1 definitions under the statute and allege that somehow</p> <p>2 the clerk's obligations under statute are somehow</p> <p>3 impeded. And yet, they don't actually allege in their</p> <p>4 complaint actual interference. Nowhere. And that's</p> <p>5 because the clerk has the same read/write access that</p> <p>6 she would otherwise have, even if she had enterprise</p> <p>7 access. The only issue is, now she's construing that</p> <p>8 prepare and maintain to say something other than what</p> <p>9 it says, which is prepare and maintain.</p> <p>10 So they want to construe prepare and</p> <p>11 maintain to be something like, nobody else can have</p> <p>12 read access to BS&amp;A, because she has an obligation to</p> <p>13 prepare and maintain. Statute doesn't say that. Now,</p> <p>14 albeit, the statute didn't contemplate electronic</p> <p>15 records probably either. But nonetheless, nobody has</p> <p>16 interfered with that ability to prepare and maintain.</p> <p>17 The second one, or I should say the third</p> <p>18 relief that they ask for is that the clerk has sole</p> <p>19 province to recommend employees and the board has to</p> <p>20 hire them. Regardless of whether or not the court</p> <p>21 believes that maybe the board should allocate more</p> <p>22 resources, maybe they shouldn't, that is in the sole</p> <p>23 discretion of the township board pursuant to 41.75(A).</p> <p>24 It delegates that authority only to the township</p> <p>25 board, not to the clerk, not to the treasurer, not to</p>
<p style="text-align: right;">Page 43</p> <p>1 state. You will not find in statutes governing either</p> <p>2 general townships or charter townships a restriction</p> <p>3 on the ability for the board to either hire employees</p> <p>4 or assign duties to those employees that are hired.</p> <p>5 Which is exactly what happened here. Not necessarily</p> <p>6 to the detriment of the clerk's obligation to prepare</p> <p>7 and maintain. Nothing the board has done has stopped</p> <p>8 her from doing that.</p> <p>9 I want to talk about Mr. Rowley just</p> <p>10 briefly, because Mr. Rowley was charged with putting</p> <p>11 together a plan to deal with the finance department.</p> <p>12 And he actually put together two plans. One where</p> <p>13 they hired somebody to do it and the other was to</p> <p>14 utilize existing staff. And do you know what</p> <p>15 happened? The board decided option two was the better</p> <p>16 option.</p> <p>17 Now Your Honor may not agree with that, the</p> <p>18 clerk certainly doesn't agree with that, Mr. Magyar</p> <p>19 doesn't agree with that, but it's not our role to</p> <p>20 second guess. You can hardly characterize that as</p> <p>21 arbitrary or capricious where you have actual</p> <p>22 resolutions that the board not only moved to adopt,</p> <p>23 debated and then voted on to do. And there's nothing</p> <p>24 in the law that prevents them from doing that.</p> <p>25 Now Mr. Magyar wants to expand the</p>	<p style="text-align: right;">Page 45</p> <p>1 the supervisor, to the board itself. And the board</p> <p>2 has to make that decision.</p> <p>3 And if the court were asked as they are for</p> <p>4 it to step in, how in the world is the court supposed</p> <p>5 to manage that to begin with? Is the court going to</p> <p>6 sit on interviews then and decide who is, say,</p> <p>7 qualified according to the clerk, or is the board</p> <p>8 given that authority pursuant to statute. I think</p> <p>9 it's pretty clear that pursuant to the statute, the</p> <p>10 board has the sole authority. It's not even a</p> <p>11 question.</p> <p>12 The last thing I want to talk about is this</p> <p>13 McKim case, because that's where we really get into</p> <p>14 trying to expand what custody means of the township</p> <p>15 records. And the clerk cites to McKim and says that's</p> <p>16 our best case, that's it. As the judge mentions, it's</p> <p>17 35 years ago and, in fact, there was a decision</p> <p>18 recently that called into question the precedential</p> <p>19 value.</p> <p>20 Now we could, I suppose, sit here and argue</p> <p>21 about whether that is binding or not on the circuit</p> <p>22 court, but if the Court of Appeals itself is calling</p> <p>23 the authority of McKim into question, then I think the</p> <p>24 court probably should pay attention to that. That's</p> <p>25 what you would do. Look to see what is binding</p>

<p style="text-align: right;">Page 46</p> <p>1 precedent and look to see what is not.</p> <p>2 THE COURT: I'm going to interrupt you if I</p> <p>3 may, because I was going to ask you some specific</p> <p>4 questions about McKim. When we look at McKim, and the</p> <p>5 appellate court did vacate two resolutions. The first</p> <p>6 resolution -- in light of the statute. The first</p> <p>7 resolution had to do with mail procedures, mail coming</p> <p>8 in and bills; and the second part was really getting</p> <p>9 to the chase of it, allowing the clerk to have records</p> <p>10 in their home so they could work on it. So location</p> <p>11 of the records and custody and who's going to open the</p> <p>12 mail.</p> <p>13 And they have an explanation of how that</p> <p>14 would impede a duty, in the analysis of McKim. Again,</p> <p>15 it's -- well, I'll comment later in my ruling. It's</p> <p>16 amazing to me that we have appellate review who opens</p> <p>17 the mail and whether he can (inaudible) records. But</p> <p>18 we do.</p> <p>19 Tell me how you think, even -- because it</p> <p>20 is the published decision, it is the one that I have,</p> <p>21 tell me why you think that there is no -- and you kind</p> <p>22 of, you really did kind of address that in your</p> <p>23 argument, no one's impeding, this isn't exclusive</p> <p>24 control, no one's barring it, no one's saying you</p> <p>25 don't have access, but tell me then, even if we're</p>	<p style="text-align: right;">Page 48</p> <p>1 binding because it was issued before November 1st,</p> <p>2 1990, and then cited the Court Rule MCR 7.215(J)(1).</p> <p>3 Further, the Brinkley court limited McKim's holding</p> <p>4 reasoning that, quote, "Neither McKim nor MCL41.65</p> <p>5 expressly gives a township clerk authority to open all</p> <p>6 mail that is delivered to the township. Rather, the</p> <p>7 authorities give a clerk custody over the mail. It is</p> <p>8 not apparent that custody means a clerk can open mail</p> <p>9 addressed to anyone regardless of the subject of the</p> <p>10 mail." Closed quote.</p> <p>11 That's instructive here only inasmuch as</p> <p>12 again, we're not talking about prohibiting anybody</p> <p>13 from accessing the records. That's exactly what McKim</p> <p>14 was addressing in those resolutions. The resolutions</p> <p>15 here that we're talking about, one, are job</p> <p>16 descriptions and saying okay, you're going to do these</p> <p>17 functions administrator, right, this is within your</p> <p>18 job duties. For example, when it comes to BS&amp;A,</p> <p>19 you're going to have enterprise access over BS&amp;A to</p> <p>20 determine who can have access to the various</p> <p>21 components of BS&amp;A.</p> <p>22 So for example, there are clearly some</p> <p>23 areas, like assessing, for instance, where the clerk</p> <p>24 would have no authority to have access to those</p> <p>25 modules; not by statute and not by practical practice</p>
<p style="text-align: right;">Page 47</p> <p>1 both wrong and McKim is controlling, how I get around</p> <p>2 that.</p> <p>3 MR. HOMIER: So McKim is completely</p> <p>4 different than this case because in McKim, the board</p> <p>5 actually precluded the clerk from accessing those</p> <p>6 records. Here, the board has done no such thing. In</p> <p>7 fact, the clerk still has read/write access to all of</p> <p>8 those records, all of them. It's just that she</p> <p>9 believes she should be able to control who else has</p> <p>10 access to those records under some theory that prepare</p> <p>11 and maintain the journals and records mean to the</p> <p>12 exclusion of everybody else even looking at them.</p> <p>13 THE COURT: And I think McKim was talking</p> <p>14 about the fact why the clerk needed those things so</p> <p>15 that they're available to the public, that these</p> <p>16 records are available to the public. It was really</p> <p>17 pointing out the idea it's ultimately these are</p> <p>18 public records.</p> <p>19 MR. HOMIER: That's exactly right.</p> <p>20 Ultimately, these are the public records. Now, I will</p> <p>21 say in McKim -- and we cited this in our brief -- in</p> <p>22 2017, there was a case, Charter Township of Royal Oak</p> <p>23 versus Brinkley, and it's an unpublished decision, but</p> <p>24 it's important because in that case, the court noted</p> <p>25 that the decision in McKim could be considered non-</p>	<p style="text-align: right;">Page 49</p> <p>1 in terms of talking about checks and balances. Right.</p> <p>2 There would be no reason to give the clerk access to</p> <p>3 assessing. And yet, that's exactly what they're</p> <p>4 asking for is, we ought to, by law, have enterprise</p> <p>5 access. The problem is, "by law" is missing here.</p> <p>6 There is no such law. There is no law that says the</p> <p>7 township cannot decide that an administrator, like a</p> <p>8 township manager, allocates the resources of the</p> <p>9 township. In fact, that is their function as the</p> <p>10 administrator. And the board debated that and passed</p> <p>11 a motion. They disagree with it. I understand that.</p> <p>12 But again, it's a policy issue, it's not a legal</p> <p>13 right. And that's why their complaint fails, because</p> <p>14 it does not state a cause of action. There is no</p> <p>15 cause of action certainly that I have ever come across</p> <p>16 where the circuit court would maintain or retain</p> <p>17 jurisdiction for the purpose of determining who the</p> <p>18 township board wants to hire. And I don't think Your</p> <p>19 Honor wants to fill that role. I mean, you can</p> <p>20 imagine all -- first of all, it's a separation of</p> <p>21 powers issue, I mean, on its face.</p> <p>22 When we talk about the finance</p> <p>23 staff, and the township board debated whether or not</p> <p>24 they could meet the needs with existing staff, the</p> <p>25 problem is, the clerk believes that those staff are</p>

<p style="text-align: right;">Page 50</p> <p>1 not qualified, and yet, it's some of those staff, like 2 the deputy treasurer, who are being used to reconcile 3 the books so they can get their audit done. So you 4 can't have to both ways. You can't on one hand say, 5 well, I've got a personality dispute with the deputy 6 treasurer and I don't want her working on my stuff and 7 she's 8 not qualified, but yeah, okay, fine, I'll use her and 9 she's now qualified to do some of those 10 reconciliations. 11 Again, this amounts to policy 12 disputes within the township, and there are remedies 13 for that. Obviously, the election cycle is two years 14 away; that's when voters get to decide who they're 15 going to keep and who's going to go. I'm not 16 certainly contending in the policies here who's right 17 and who's wrong. What I look at, what I have looked 18 at are the actions of the township board. The actions 19 of the township board, a majority of the board was to 20 pass a resolution or move that resolution, debate that 21 resolution and then adopt that resolution. That could 22 hardly be characterized as arbitrary and capricious. 23 Now, we may disagree with the policy choices, but 24 that's for the voters to decide, not the judiciary. 25 So McKim is not on point here at all.</p>	<p style="text-align: right;">Page 52</p> <p>1 were, we cited the law why they would still be 2 considered -- be able to be considered by this court. 3 So as much as Mr. Homier might not want the 4 court to consider or take the side of the clerk and 5 now is in conflict of interest saying her case should 6 be dismissed, the exhibits we provided are perfectly 7 acceptable to consider and should be by the court. 8 Second, this is not the first case nor will 9 it be the last that the Scio Township Board, when in a 10 tumultuous situation hangs its hat on policy. This is 11 not a policy dispute. I don't see how McKim could be 12 any more clear on point why we're here. And Your 13 Honor made the correct observation that that was also 14 a case where the court vacated two resolutions. Not 15 the public, not on a vote, a judicial vacating of 16 violative resolutions. 17 And I've been accused of trying to expand 18 the legislative language, but I think what's actually 19 happening here, what I know is happening is the board 20 is unlawfully restricting the language of the statute. 21 And we know that because McKim already said what 22 custody means. McKim said custody is, quote, 23 "immediate charge and control exercised by a person or 24 an authority." And they defined paper as any writing 25 or printed document and so on and so forth. I won't</p>
<p style="text-align: right;">Page 51</p> <p>1 The clerk still has read/write access, the interim 2 township administrator when he was the assessor at the 3 township had enterprise access then. The board gave 4 it back to the township administrator now. There's 5 nothing in there that violates any statute or law. 6 Period. And to suggest otherwise, it's just not 7 supportable. There's no claim, there's no cause of 8 action. And that's why we filed a motion in lieu of 9 an answer under C(8). I'm happy to answer any more 10 questions 11 THE COURT: I understand. Thank you. 12 Anything else you wanted to say, sir? 13 MR. MAGYAR: Yes, Your Honor. I think just 14 a couple of points really must be addressed that are 15 just not accurate at all. 16 First of all, I would encourage the court, 17 if the board is sticking by their position that they 18 filed a motion to strike, to actually see what that 19 motion looks like, because it's not a standalone 20 motion, it's the very last page of a C(8) motion that 21 spans about four sentences without citation to 22 authority, not even a court rule on striking. And we 23 were very thorough in our response to why these 24 e-mails outside of any board setting responding to the 25 clerk's questions are not privileged, and even if they</p>	<p style="text-align: right;">Page 53</p> <p>1 say it again. 2 So Mr. Homier stands up and says I'm 3 expanding what custody means, he's exactly ignoring 4 the definition our Court of Appeals in a published 5 decision gave to that word for this statute. And it 6 was control, immediate control. 7 And a part that I didn't talk about from 8 McKim earlier is that the board in that case pointed 9 out that the supervisor and the treasurer -- there are 10 specific statutes where certain papers are given to 11 those offices specifically. And the court said, but 12 we have found no other statutory provision which 13 authorizes a person other than the clerk to have, 14 quote, "control", there's the word again in this 15 decision, "control of the township's papers." 16 So McKim said if you're the clerk and you 17 have control over the papers, you have control over 18 the papers unless another statutory provision gives 19 somebody else that control. And we didn't hear from 20 Mr. Homier what provision they're relying on for 21 taking all of the control over the papers and giving 22 it to Mr. Merte as the township administrator. 23 I have also been criticized for having my 24 one case from 1987. Yes, it's a great case for us. 25 There's no getting around that, and I haven't heard</p>

<p style="text-align: right;">Page 54</p> <p>1 one case from the board that they're relying on. So I 2 would say one case to zero is a win for the clerk's 3 side. 4 And the McKim court went on again, as I 5 mentioned, I don't want to belabor the point, but 6 after talking about control, they again repeat that 7 under MCL 41.69, it's the clerk, not the general 8 township secretary or anyone else, that has to file a 9 bond especially for the safekeeping of the records, 10 books and papers of the township in the manner 11 required by law. 12 When you are a clerk and someone else has 13 the authority to grant any other employee the power to 14 edit the journal, you are no longer able to safe keep 15 the records and the books subject to your personal 16 liability, and that's exactly the status of Scio 17 Township. 18 There was a comment earlier that Mr. Merte 19 has had access before to BS&amp;A enterprise 20 administrator. Yeah, he absolutely did, because he 21 was the assessor and the IT director, he came back as 22 the administrator. The new IT director is Netsmart, 23 and they, of course, have enterprise administrator. 24 So there's nothing significant about that. 25 Now another thing, there was an assertion</p>	<p style="text-align: right;">Page 56</p> <p>1 still happen at any time. 2 Now again, the unpublished decision that 3 the board relies on did not call into question McKim. 4 In fact, the only thing that was on appeal was whether 5 the board's pleadings were so frivolous that there 6 should have been frivolous filing sanctions in that 7 case. That was the only issue there. And again, it 8 was just noted of what year the decision was. 9 I think -- I want to just address a couple 10 points that there was a violation and what custody 11 means, but I think Your Honor has heard enough from 12 both of us and those were the main points and, of 13 course, this is not a policy dispute. Thank you. 14 THE COURT: Thank you. Counsel, anything 15 else you wanted to say? 16 MR. HOMIER: Yes, just briefly. The clerk 17 wants to equate custody with enterprise access, even 18 control, and yet, they're different things. So, for 19 example, let's suppose for a minute that custody means 20 immediate access to those. Nobody's -- the clerk 21 today can go and get those records. That's access. 22 What the clerk is saying, that I have exclusive 23 access, I get to determine who else has access, I get 24 to determine who the township board hires, I get to 25 determine what finance staff are qualified, I get all</p>
<p style="text-align: right;">Page 55</p> <p>1 that we haven't alleged an (inaudible) violation, and 2 frankly, I'm floored to hear that. Because the entire 3 fight over e-mail in the exhibits I've provided Your 4 Honor, were that immediately upon Mr. Merte being made 5 the administrator, he granted access to another 6 employee, Sandy Egeler, to actually write over and 7 edit and manipulate the general ledger. There's no 8 dispute, even by this side of the table, that that's a 9 violation that did occur. And apparently, by stopping 10 that behavior and returning her to read only, as all 11 attorneys agreed was the right -- that had to happen, 12 that that somehow erases the violation that admittedly 13 without dispute occurred. 14 But the problem is, until the authority 15 that allowed that to happen is vacated, it can happen 16 any time again. It can happen as soon as we walk out 17 of this courtroom, if Mr. Merte decides under the 18 authority he still possesses to assign read/write 19 access to any township employee he wants to in 20 Netsmart, and all he's got to do like he did last time 21 is call up Netsmart and say, here's the resolution 22 that gave me in my job description the authority to do 23 that. So let's not lose sight of the fact that this 24 screen shot that we looked at before when Mr. Merte 25 gave her that access, that was a violation and it can</p>	<p style="text-align: right;">Page 57</p> <p>1 these powers that you won't find in any statutory 2 provision, you won't find in McKim and you won't find 3 in the Wayne County case either. So there is no 4 authority for the position that the clerk has this 5 sole and exclusive custody of those records. 6 It's not sole and exclusive, as Your Honor 7 noted, these are the public records. All you have to 8 do is file a FOIA request and say, I'd like these 9 documents. And then what happens? Either the FOIA 10 administrator needs to compile those documents and 11 then turn them over. It's never exclusive. There are 12 public records throughout the township at their 13 various different departments. Yes, the clerk is 14 charged with custody of those, but it's never been 15 exclusive and will never be exclusive, it can't be. 16 And so in the end, what they're advocating 17 for is this huge expanse of authority under the 18 statute, and you see that when they talk about the 19 sole province to hire people. I mean, you won't find 20 that anywhere. Look at their proposed order. The 21 finance director in paragraph number 6, finance 22 director and any additional staff of Scio Township 23 shall report to the clerk. There's no statutory 24 authority for that. There's not even a case that says 25 that. That's just made up. What the statute actually</p>



<p style="text-align: right;">Page 58</p> <p>1 says, 41.69, is that it's only the deputy clerk that 2 serves at the pleasure of the clerk, and even then, 3 the board gets to decide what compensation is and the 4 scope of the duties performed of the deputy clerk; 5 unless the clerk is absent by reason of sickness, 6 death, disability. That's what the statute allows. 7 There's no other statute that says finance director 8 shall report to the clerk. The board decided 9 otherwise. That's a policy dispute. 10 The clerk shall have exclusive enterprise 11 access and authority over BS&amp;A modules. Again, 12 there's no authority for any of this. The statutes 13 say otherwise. When they say they're not calling for 14 minimum staffing, that's exactly what they're calling 15 for, and 41.3(A) says any minimum staffing 16 requirements are void as a matter of public policy. 17 Now, the legislature changed that in 2011, 18 post Wayne County case, post McKim, in 2011. And they 19 did it not only for general townships but for charter 20 townships as well. So there is no minimum staffing 21 requirement. The board can't be compelled to hire 22 particular staff. It's not within the province of the 23 clerk to determine who gets hired. Pursuant to 24 41.75(A), that authority rests with the board. Thank 25 you, Your Honor.</p>	<p style="text-align: right;">Page 60</p> <p>1 can't point to, am I asking for one employee, two 2 employees, three employees. What minimum staffing am 3 I asking for? There's not -- you can't point to a 4 single one because it's much more -- it's not so black 5 and white as that. It's the Wayne County case, it's 6 that if the board has prevented her from doing her 7 duties, then she at least has, as we've asked for 8 using her language, the right to be the one having the 9 finance staff, when hired, when approved by the board, 10 report to her, under her recommendation, because it's 11 her position and her statutory duties that are 12 affected. So I would challenge counsel to support 13 that assertion about minimum staffing with where have 14 we asked for that. 15 Respectfully, Your Honor, I think 16 everything we've asked for is legally required under 17 the authority as we've provided. 18 THE COURT: Thank you. In this matter, the 19 clerk of Scio township has submitted a request of 20 eight paragraphs for specific relief, which would 21 include continuing jurisdiction by this court. I 22 appreciated the reference to a FOIA request because 23 those types of cases I routinely hear all the time, 24 and I just had the Court of Appeals weigh in on one. 25 So I'm very familiar with that and it's absolutely the</p>
<p style="text-align: right;">Page 59</p> <p>1 THE COURT: I can see you're nervous as a 2 cat there. Do you want to say something else? 3 MR. MAGYAR: I wouldn't say nervous, Your 4 Honor. 5 THE COURT: Agitated as a dog, how's that? 6 MR. MAGYAR: That's better. I'll keep it 7 really brief. I don't think I need to go to the 8 podium. Your Honor, there's a lot of blanket 9 statements about not authority this, no authority 10 that. McKim is the authority. When he say we want 11 exclusive authority as an enterprise access, it's no 12 different than saying we want exclusive custody, i.e. 13 control as McKim says over the papers of the township. 14 That is what we are saying. That is what the statute 15 says. 16 When we say -- when he says it's made up in 17 Count II, I copied the language from the board's 18 resolution. If anyone made it up, it's the board. 19 Because it comes from the August 17, 2021 resolution 20 when they said the supervisor -- the finance director 21 reports to the supervisor. That was a change from 22 when the finance team reported to the clerk. And I've 23 already established and already explained why we think 24 the Wayne County and the Verburg authority, he says we 25 are exactly asking for minimum staffing; yet, counsel</p>	<p style="text-align: right;">Page 61</p> <p>1 ability of anyone to receive public documents. 2 In terms of this record, the exhibits that 3 consist of various e-mails that Scio Township argues I 4 should not consider, should not be part of this record 5 as privilege and they haven't waived the privilege, I 6 go back to my underlying observation that all of us, 7 meaning me as a judge and the clerk and the board of 8 trustees are all elected public officials. 9 And so I am going to consider it as part of 10 the record, because all I have to do is look at the 11 courtroom and pick up that no matter what I decide, 12 one side or the other probably would like to get 13 relief from the Court of Appeals to weigh in and 14 sounds like we're going to give them another 15 opportunity since McKim 35 years ago. 16 Since McKim is cited as controlling and as 17 the best case for the plaintiff, I would like to start 18 with the last statement of the Court of Appeals on 19 that. And granted, it comes at the request to vacate 20 the award of attorney fees, where they said the trial 21 court judge didn't have enough of a record, they could 22 look at it. 23 They did say, as a general rule, attorney 24 fees may be awarded only when authorized by statute or 25 court rule. Under certain circumstances, the</p>

<p style="text-align: right;">Page 62</p> <p>1 appellate courts of the state, this state have 2 recognized an exception to this general rule when a 3 public official incurs attorney fees in connection 4 with asserting or defending the performance of his or 5 her legal duty. They also indicate the decision to 6 award attorney fees is discretionary. Which is always 7 something we talk about, is the law shall or may. So 8 they acknowledge it was discretionary, they 9 acknowledge they can be awarded in certain occasions 10 but the record wasn't clear here. 11 But when I say I want to go back to the 12 last comment of McKim, it's because I actually think 13 it perhaps is the most profound observation. The last 14 paragraph of McKim is: Finally, we wish to register 15 our dismay that as a result of what can best be 16 characterized as a squabble between township officers, 17 the parties have expended approximately 15,000 dollars 18 for legal representation before appeal and have no 19 doubt burdened the resources of the trial court. We 20 view this as an affront to the legal system and the 21 township's taxpayers and an embarrassment to the 22 parties. We hope that in the future, such divisive 23 conduct can be set aside in favor of more productive 24 behavior. 25 Perhaps that's why we don't have an opinion</p>	<p style="text-align: right;">Page 64</p> <p>1 legally to vacate the decision of Scio Township Board. 2 I take no position as to whether it's wise, not wise, 3 whether I agree or whether I disagree. It's frankly 4 none of my business. It's the business of the elected 5 officials and the public that has elected them to 6 perform their duties. 7 Because the rest of the relief requested in 8 the seven point proposed order really derives out of a 9 determination that these resolutions overstepped the 10 bounds and, in fact, impeded the clerk from performing 11 function, I see no basis to consider those as well. 12 Therefore, on behalf of the Scio Township, would you 13 please, sir, submit an order saying the case is 14 dismissed for the reasons stated on the record, it is 15 a final order of this case, and close it so that both 16 sides can get appellate review. And I am more than 17 happy to reopen the case and do whatever the Court of 18 Appeals tells me to do because that's their province. 19 Thank you very much. 20 MR. MAGYAR: Thank you, Your Honor. 21 MR. HOMIER: Thank you, Your Honor. 22 (Proceedings concluded at 3:01 p.m.) 23 24 25</p>
<p style="text-align: right;">Page 63</p> <p>1 in the last 35 years. Maybe somebody actually 2 listened to, that's a pretty strong statement. 3 In this case on the proposed motion in 4 Count I and Count II of Plaintiff's Complaint, it 5 starts with a request to vacate two resolutions of the 6 board as violating or impeding the clerk's statutory 7 responsibilities. The first one was dated August 8 17th, 2021, the second was dated February 22nd, 2022. 9 The rest of the relief requested really emanates from 10 a decision that those resolutions under McKim must be 11 vacated, and as the township indicated, it speaks of 12 things like restoring enterprise's authority over BS&amp;A 13 and that the clerk have the sole province of 14 recommending certain people for hiring by the board. 15 I think the township's point that the 16 language of a statutory responsibility to maintain 17 custody of records, again, so that they're there and 18 available for things like FOIA requests for the 19 public, I do not read into that language that this is 20 exclusive. And the relief that's being requested I 21 think is asking me to read something into the 22 responsibility and statute that I don't see. 23 Unlike McKim, I don't think these two 24 resolutions impede the clerk from performing statutory 25 responsibilities, and therefore, I don't see a basis</p>	<p style="text-align: right;">Page 65</p> <p>1 2 3 4 5 6 7 8 9 10 11 CERTIFICATE OF NOTARY 12 STATE OF MICHIGAN ) 13 ) SS 14 COUNTY OF MACOMB ) 15 16 17 I, CAROLYN GRITTINI, certify that this 18 proceeding was transcribed by me on the date 19 hereinbefore set forth; that the foregoing proceeding 20 was recorded by me stenographically and reduced to 21 computer transcription; that this is a true, full and 22 correct transcript of my stenographic notes so taken; 23 and that I am not related to, nor of counsel to, 24 either party nor interested in the event of this 25 cause.</p>



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*Carolyn Grittini*

CAROLYN GRITTINI, CSR-3381  
Notary Public,  
Macomb County, Michigan.

My Commission expires: July 15, 2024

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of Scio  
Township,

Plaintiff,

Civil Action No. 22-000414-CZ

vs.

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,

Defendant.

Mark J. Magyar (P75090)  
DYKEMA GOSSETT PLLC  
Attorneys for Plaintiff  
201 Townsend St., #900  
Lansing, Michigan 48933  
(616) 776-7523  
mmagyar@dykema.com

Michael Homier (P60318)  
Laura J. Genovich (P72278)  
Foster Swift Collins & Smith PC  
Attorneys for Defendant  
1700 East Beltline, N.E., Suite 200  
Grand Rapids, MI 49525-7044  
Phone: 616.726.2238  
mhomier@fosterswift.com  
lgenovich@fosterswift.com

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**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION,  
DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

At a session of the Washtenaw County Circuit Court held in Ann  
Arbor, Michigan, on September 21, 2022

PRESENT: Honorable \_\_\_\_\_  
Hon. Timothy P. Connors

This matter having come before the Court on Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(I)(1) and Defendant's Motion for Summary Disposition under MCR 2.116(C)(8), the Court having reviewed the pleadings and all filings relative to Plaintiff's and Defendant's motions, and having conducted a hearing on the motion,

the Court being fully informed in the premises and for the reasons stated on the record of the September 21, 2022, hearing:

IT IS HEREBY ORDERED that:

- 1.) Plaintiff's motion for summary disposition is GRANTED;
- 2.) Defendant's motion for summary disposition is DENIED;
- 3.) The August 17, 2021 Scio Township Board Resolution 2021-31, including attachment(s), is VACATED,
- 4.) The February 22, 2022 Scio Township Board Resolution 2022-05, including attachment(s), is VACATED.
- 5.) The Clerk shall have exclusive Enterprise Administrator access and authority over the BS&A modules of the General Ledger, Fixed Assets, Payroll, Accounts Payable, Purchase Orders, Utility Billing, Miscellaneous Receivables, and Cash Receipts, which are a portion of the current journals and ledgers of the Township, and all prior actions by Defendant to the contrary are VACATED;
- 6.) The Finance Director and any additional finance staff of Scio Township shall report to the Clerk, and the Clerk shall oversee the hiring of the Finance Director and any additional finance team staff and recommend such hire(s) for approval by the Scio Township Board.
- 7.) The Court retains continuing jurisdiction to ensure that the Clerk is not prevented from performing her statutory duties or interfered with in the performance of her statutory duties.
- 8.) Plaintiff is awarded her attorneys fees and costs in connection with this lawsuit because it was filed to defend the performance of her legal duties. Plaintiff shall file her Bill of Costs and supporting materials on or before \_\_\_\_\_, 2022, after which the Court will determine whether a hearing regarding the appropriate award of fees is necessary.

This is a final order deciding all issues between all parties and providing complete relief as between all parties, and closes this case.

---

Honorable Timothy P. Connors  
Circuit Court Judge

Dated: September 21, 2022

Revised Statutes of 1846 (EXCERPT)  
Township Clerk.

**41.65 Custody of records, books, and papers; preservation; delivery to successor in office; accounts; accounting records; journals and ledgers.**

Sec. 65. The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law. The township clerk shall file and safely keep all certificates of oaths and other papers required by law to be filed in his or her office, and shall record those items required by law to be recorded. These records, books, and papers shall not be kept where they will be exposed to an unusual hazard of fire or theft. The township clerk shall deliver the records, books, and papers on demand to his or her successor in office. The township clerk shall also open and keep an account with the treasurer of the township, and shall charge the treasurer with all funds that come into the treasurer's hands by virtue of his or her office, and shall credit him or her with all money paid out by the treasurer on the order of the proper authorities of the township, and shall enter the date and amount of all vouchers in a book kept by the township clerk in the office. The township clerk shall also open and keep a separate account with each fund belonging to the township, and shall credit each fund with the amounts that properly belong to it, and shall charge each fund with warrants drawn on the township treasurer and payable from that fund. The township clerk shall be responsible for the detailed accounting records of the township utilizing the uniform chart of accounts prescribed by the state treasurer. The township clerk shall prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.

**History:** R.S. 1846, Ch. 16;—Am. 1850, Act 66, Imd. Eff. Mar. 5, 1850;—CL 1857, 557;—CL 1871, 701;—Am. 1875, Act 178, Imd. Eff. May 1, 1875;—How. 739;—CL 1897, 2338;—CL 1915, 2117;—CL 1929, 1005;—CL 1948, 41.65;—Am. 1989, Act 77, Imd. Eff. June 20, 1989.

## Two questions

James Fink <james.fink@finkandfink.com>

Thu 8/12/2021 1:04 PM

To: Jessica Flintoft <jflintoft@ScioTownship.org>

Madam Clerk –

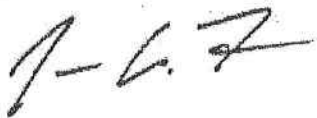
You asked me two questions –

Can the board designate someone other than the CAO to file required reports under the UBAA?

It appears that the answer is NO.

But the board may designate someone other than the CAO to have final responsibility for the budget (MCL 141.434).

May the Clerk, as the person responsible to prepare and maintain ledgers (and other financial records) have the authority to grant/deny access to manipulate (use read/write functions) the records? I find no specific case law, but the answer must be YES. The clerk, as the responsible party, must be able to limit the ability of others to ENTER or REMOVE financial data.



James A. Fink  
Fink & Fink, PLLC  
320 N. Main St., Ste. 420  
Ann Arbor, MI 48104  
734-994-1077  
734-994-3737 (fax)

### NOTICE

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AA060



SCIO TOWNSHIP  
WASHTENAW COUNTY, MICHIGAN  
RES #2021-31

RESOLUTION ADOPTING JOB DESCRIPTIONS FOR SUPERVISOR, TOWNSHIP ADMINISTRATOR

AUGUST 17, 2021

At a Special Meeting of the Township Board of Scio Township, Washtenaw County, Michigan, held at the Scio Township Hall, 827 N Zeeb Road in said Township, on August 17, 2021 at 4:00 p.m.

Members Present: Hathaway, Palmer, Flintoft, Courteau, Jerome, Knol, Vogel

Members Absent: None

The following preamble and resolution were offered by Vogel and supported by Palmer.

WHEREAS MCL 41.69 requires that the township clerk appoint a deputy clerk who shall serve at the pleasure of the Clerk; MCL 168.29 allows the township clerk to appoint a number of assistants as may be necessary to carry out the general provisions of the election law; MCL 41.77 requires that the township treasurer appoint a deputy treasurer who shall serve at the pleasure of the Treasurer; and MCL 41.61(2) allows the township supervisor to appoint a deputy supervisor who serves at the pleasure of the Supervisor; and

WHEREAS, other than the appointments noted directly above, MCL 41.75a prescribes that township employees shall serve at the pleasure of the township board and shall perform duties lawfully directed by the township board, except those duties that are delegated by law to another township official, unless consent has been granted; and

WHEREAS, the Scio Township Board of Trustees desires to retain responsibility for continuing and creating positions and authorizing appointments or continuation of appointments to positions and specifying and fixing the compensation for positions; and

WHEREAS, the Scio Township Board of Trustees desires to retain responsibility for the hiring and firing of township employees, upon the recommendation of and carried out by direct supervisor, and in accordance with all governing statutes, ordinances, administrative rules, and collective bargaining agreements; and

WHEREAS, MCL 41.2(b) prescribes that a township board may make contracts necessary and convenient to exercising corporate powers, that the Scio Township Board of Trustees desires to retain responsibility for approving all contracts for services, but desires to delegate the coordination and management of major contracts to the Supervisor or the Clerk; and

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AA061

WHEREAS, MCL 141.424 requires the Supervisor, as Chief Administrative Officer, to make an annual financial report of the Township and deliver it to the Treasurer of the State of Michigan in the form and pursuant to the schedule provided by the Uniform Budgeting and Accounting Act; and

WHEREAS MCL 41.65 requires that the Clerk prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township; and

WHEREAS, MCL 41.78 requires the Treasurer keep an accurate account of the receipts and expenditures of township money in a book or by electronic means; and

WHEREAS, the Scio Township Board of Trustees does desire to delegate and assign certain administrative duties to represent and carry out employer management rights to the Supervisor, Clerk, Treasurer; and Township Administrator; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Scio Township Board of Trustees adopts the attached job descriptions for the positions of Supervisor and Township Administrator and affirms the responsibilities and authorities assigned in those job descriptions

BE IT FURTHER RESOLVED THAT this resolution shall be effective on the date of adoption; all provisions shall sunset at the conclusion of the first meeting following November 20, 2024; and its implementation shall be formally reviewed by the Board of Trustees at the First Regular Meeting in April of each year, at which time the Supervisor, Clerk, Treasurer, and Township Administrator shall present reports on this resolution's implementation, its benefits, and recommendations for any changes.

**ROLL CALL VOTE:**

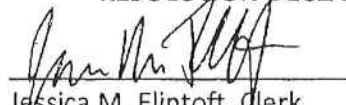
**AYES:** Hathaway, Palmer, Courteau, Jerome, Vogel

**NAYS:** Flintoft, Knol

**ABSENT:** None

**ABSTAIN:** None

**RESOLUTION DECLARED ADOPTED.**

  
Jessica M. Flintoft, Clerk  
Scio Township

DATED: August 17, 2021

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AA062

## TOWNSHIP SUPERVISOR

**Working Title:** Supervisor

**Funding:** To be determined by the Board of Trustees (BOT)

**Salary:** Full time, permanent, exempt, \$72,000 plus benefits

**Reports to:** Voters

**Supervises:**

- Township Administrator (shared authority with BOT)
- Assessor
- Budget & Finance Director (pending authorization of this position)

**Work Location:** Scio Township Hall

### Supervisor Duties Based on Statutory Authority

**Meetings:** Serve as moderator of any township meeting, deciding questions of order, granting authority to persons to speak at the meeting and making conduct-based interventions. The supervisor should vote on all issues upon which a vote is required unless there is some proper legal reason, approved by the BOT, for abstaining. Set a date and time for special meetings.

**Appointments:** Nominate individuals to serve on Township boards, commissions and committees and as representatives of the Township to outside boards/committees.

**Enforcement:** Work with enforcement officer to enforce township ordinances.

**Representation:** ex officio member of all BOT advisory committees and represent the Township on various outside organizations. Serve on board of elections commission.

**Budget:** Prepare the annual budget under policies formulated by the township board and state law and work with the clerk and others to keep the BOT advised on financial conditions of the township.

### Direct Reports:

Supervise the assessing function including determination of special assessments. Assessor reports to supervisor. Supervisor oversees hiring of assessor and recommends hire for BOT approval.

Supervise the budget function including preparation of the annual budget and any such budget amendments as may be necessary or appropriate throughout the year for BOT approval. Budget & Finance Director reports to supervisor. Supervisor oversees hiring of Budget and Finance Director and recommends hire for BOT approval.

With BOT approval, supervisor may oversee other staff.



## **Supervisor Duties Based on Authority From BOT/other**

**Administration:** Chief Administrative Officer for Township participating in regular management meetings. Chief Executive Officer (CEO) and a voting member of the Downtown Development Authority (DDA) Board, Chair of the Township's BOT's Budget and Finance Committee serve on the board and operating committee of Loch Alpine Sanitary Authority (LASA), facilitate communication with and between the various Township advisory boards and commissions.... Participate in contract negotiation/oversight: GFL, Fire, Ann Arbor Water & Sewer, consultants.... Supervise the Township Administrator (together with the BOT) in carrying out such functions as are delegated to them.

**Financial Reporting and Audit Function:** As *Chief Administrative Officer* per the Uniform Budget and Accounting Act, the supervisor is responsible for preparation of the Township's annual financial report to the state which, by statute, must be audited. Supervisor will oversee the audit and selection of the auditor and make recommendations for hiring the same for BOT approval.

**Human Resources:** Help guide hiring processes including recruiting, interviewing, and assessment of candidates for senior staff and other positions at the discretion of the supervisor. Help formulate policy for performance review and other human resource programs, serve on HR committee if such committee exists.

**Township Growth:** Supervise planning and development processes such as Land Use Master Plan, PUD negotiations, facilitate communications between various parties in development projects, supervise public improvements of the township, including capital improvements, Township-led SAD projects, sustainability initiatives, and collaboration with partner organizations

**Legal:** Serve as the Township's designated point of contact for transacting legal business, implement administrative actions such as land divisions, help represent BOT in the Gelman effort.

**Meeting Agenda:** Collect and create agenda items in collaboration with the BOT and citizens, and approve a proposed agenda for incorporation with the meeting packets so that the Clerk may distribute to the BOT and public in a manner consistent with any Rules of Order that may be adopted by the BOT.

**Legislation:** Act as chief legislator, bringing recommendations for consideration by the BOT, seeking legislative actions by other bodies on behalf of the Township.

**Conflict Resolution:** Receive and respond to complaints to the Township and/or requests for action by the Township. Mediate disagreement between interests.

**Communications:** Serve as the primary spokesperson for the Township, write communications on behalf of Township, review and approve for publication general communications, such as newsletter.

## TOWNSHIP ADMINISTRATOR

**Working Title:** Director of Operations

**Funding:** To be determined by the Board of Trustees

**Salary:** Full time, permanent, exempt, \$80,000-110,000 plus benefits

**Reports to:** The Board of Trustees (including Clerk, Treasurer and Supervisor)

**Supervises:**

- Office Coordinator
- Human Resources Generalist
- Director of Utilities
- Fire Chief
- Project Manager
- Consulting Contracts (Public Safety, Engineering, Planning, Information Technology)
- Other positions as assigned

**Work Location:** Scio Township Hall

### Position Summary

The Township Administrator is responsible for the day to day running of the Township's operations including providing effective methods in its business operations. The incumbent will develop, interpret, and implement Township policies and procedures and ensure compliance with these policies, as well as statutes and ordinances. Decisions made by the Township Administrator will directly impact the effective functioning of the Township's services. The incumbent will work to improve the operational systems and processes to support the Township's mission by developing reports, communication strategies and organizational planning. The Township Administrator is responsible for the various areas of operations but may not necessarily be performing individual tasks and may delegate as needed.

### Responsibilities

#### Administration

- Plan, monitor, evaluate and supervise the Township's administrative services and information management across all areas of the Township including but not limited to

Fire, Utilities, General Government, Planning and Zoning, Parks and Pathways, Open Space, and all other initiatives of the Township

- Effectively administer all reporting departments and associated personnel including the ability to recruit, provide professional development and manage performance
- Track implementation of all Board of Trustees approved actions
- Organize and chair management meetings (currently bi-weekly)
- Research and develop best practices of business processes, work flows and cross-functional work teams to meet the needs of the various areas of the Township

#### Finance

- Assist the Supervisor in preparing and administering the annual budget and related financial reports under policies formulated by the Board and state law
- Act as the purchasing agent for the township
- Collaborate with others in the township to guide compliance with bidding procedures and conduct all sales of personal property which the township board may authorize to be sold

#### Contract Management

- Coordinate and administer township contract negotiations, applications to the township such as zoning applications, industrial tax, farmland agreements, and all others that may come to the township
- Continually study and provide input to the Board of Trustees as to the best way to leverage in-house staff vs the use of outside consulting resources
- Ascertain that all terms and conditions imposed in favor of the Township or its inhabitants in any public utility franchise or in any contract are faithfully kept and performed
- Monitor relationships with outside consultants to ensure effective communication and best practices to make judicious use of the Township's resources
- Prepare, review, and execute contracts and subcontracts for authorized disbursements for services rendered; prepare and process all necessary documents for fiscal payments to vendors and provide fiscal budgetary controls

#### Information Technology and Data Management

- Serve as the Township's Chief Information Officer to develop and manage the ability to collect and share usable information to increase efficiency and extend open data to the public



- Manage and/or administer the design and development of data structures and data extracts to support comprehensive data collection, loading, and extraction for complex analyses
- Collaborate with others to develop the Township's use of Geographic Information Systems (GIS) across Utilities, Parks and Pathways, Assessing, Open Space and Protected Natural Areas

#### Management of Projects

- Serve as the overall Project Manager for the Township including development of project management best practices and processes to ensure alignment with the priorities and outcomes
- Participate in strategy development with Township officials
- Responsible for assembling project team, assigning individual responsibilities, identifying appropriate resources such as additional support staff as needed
- Create a budget, if needed, for approval
- Develop a schedule to ensure timely completion of the project
- Produce reports on status updates including goals met and actions deferred
- Following completion of project and implementation provide a final report including reflecting on what worked and what did not work to ensure success in future endeavors

#### Human Resources

- Serve as the personnel director for all township employees, included bargained-for employees
- Direct all human resource functions such as recruitment, hiring, performance review, professional development, compensation best practices and employee relations
- Participate in contract negotiations for bargained-for staff and maintain relationships with union representatives
- Serve as the Township Training Officer to provide access to required and recommended training

#### Facilities Management

- Responsible for the preservation and maintenance of township property, tools, and equipment
- Manage assignment of office and workspace
- Participates in construction and renovation projects as needed
- Administer requests for phone, cell, internet, and access to buildings
- Coordinate disposition of property

### Township Meetings Coordination

- Attend all meetings of the Township Board of Trustees with the right to take part in discussions but without the right to vote
- Assist the Supervisor with agenda preparation including assembling components, tracking the queue of potential agenda items and inclusion of status updates
- Partner with Clerk and Supervisor to manage Board of Trustees meetings logistics including room preparation, technical needs, and taking minutes or assigning the responsibility to others

*Responsibilities and reporting relationships may be modified based on the needs of the Township of Scio*

### **Qualifications**

A bachelor's degree in public administration, business administration/operations or associated area or equivalent is required

A master's degree or graduate studies in Data Sciences, Urban or Regional Planning, Public Administration, Public Policy, Public Health or related field is preferred

Five to seven years of administrative/professional work with preference for experience in government/public administration

Understanding of the principles finance, budgeting, and purchasing

Demonstrated effective verbal and written communication skills including public presentations

Ability to lead an organization and interact with tact and diplomacy

Proven capacity to manage various aspects of a complex organization

Five to seven years' experience supervising, mentoring and professionally developing a variety of staff

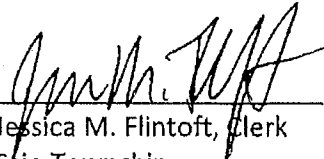
Ability to work proactively in an organization both independently and interactively as part of a team

Strong organizational skills with competency and experience using technical and administrative tools including Microsoft Office Suite and project management software to effectively manage an operation's business practices

Desired software expertise includes Geographic Information Systems (GIS) and BS&A

CERTIFICATE

I, Jessica Flintoft, hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Township Board of Scio Township, County of Washtenaw, State of Michigan, at a Special Meeting held on AUGUST 17, 2021 and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

  
\_\_\_\_\_  
Jessica M. Flintoft, Clerk  
Scio Township

DATED: September 15, 2021

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1 MR. FINK: -- I repeat that advice --

2 CLERK FLINTOFT: -- welcome another motion to  
3 table.

4 MR. FINK: -- but since we have talked about it,  
5 as I understand it, we're talking about the three changes  
6 in this specific job description. It adds Human Resources  
7 Generalist and Project Manager to the chain of command for  
8 the Administrator, and it adds the words:

9 "...and related financial reports..."

10 Under the Finance --

11 CLERK FLINTOFT: And the fourth change is it  
12 changes supervise and slash oversight to supervise.

13 MR. FINK: Okay.

14 CLERK FLINTOFT: At top.

15 MR. FINK: Yeah, it's not bolded because it's  
16 not there, so I missed that.

17 CLERK FLINTOFT: Uh-huh.

18 MR. FINK: So the first part of that I think is  
19 who is responsible for Finance in a Township, and I will  
20 repeat what I have said before is that that is clearly and  
21 soundly to me the responsibility of the Clerk who is  
22 responsible for the general ledger and the books and  
23 records and in conjunction with the work that the  
24 Treasurer does there's the checks and balances that are  
25 there. That does not mean that the Supervisor can't

1 prepare a budget or have the Administrator assist the  
2 Supervisor in preparing and administering the annual  
3 budget and related financial reports under policies  
4 formulated by the Board and state law.

5 I think the question comes up, what do we mean  
6 by --

7 TRUSTEE KNOL: Right.

8 MR. FINK: -- "...and related financial  
9 reports"?

10 TRUSTEE KNOL: Right.

11 MR. FINK: There is a -- and I know Mr. Davis is  
12 listening and he will correct me on anything later, but  
13 there is a principle under the law that you presume  
14 statutes and ordinances to be valid, and you read them in  
15 the way that makes them valid. So if someone interprets  
16 "...and related financial reports" to mean that the Board  
17 is saying the Clerk is not responsible for the general  
18 ledger, and not only responsible, has that authority, then  
19 that interpretation would be incorrect. But if you  
20 interpret it as I do, which is that the Supervisor will be  
21 preparing the budget with the Administrator and the  
22 related financial reports that go with the budget, such as  
23 getting information from the Clerk and the Treasurer, then  
24 I don't see how it is a conflict between the two roles, or  
25 that it would be illegal.



1           When Trustee Knol first asked the question, I  
2           thought she was asking about a potential conflict between  
3           the job description that you adopted recently and this  
4           one, and my answer to that is that the Board can amend  
5           motions and resolutions and ordinances as much as it  
6           wants, and I'm not giving a political opinion on this,  
7           whether it makes sense or not. And bodies do that all the  
8           time. We see Congress and presidents make 180 degree  
9           shifts in policy when someone new takes office. This  
10          Board could do exactly the same thing.

11          So if you want to adopt a new Administrator's  
12          job description every second Tuesday of the month from now  
13          until your term's end, you have the legal authority to do  
14          that. I would say that that would be ridiculous, but you  
15          can do that.

16          I think I have answered the three things that I  
17          thought I was being asked.

18          CLERK FLINTOFT: And one clarification. I read  
19          it as "prepare and administer related financial reports."

20          TRUSTEE KNOL: Yeah. Me, too. I had a broader  
21          interpretation of that.

22          SUPERVISOR HATHAWAY: I think -- I think -- I  
23          think Attorney Fink has answered this question, that  
24          people can read things into documents and they can come  
25          away with an interpretation that is counter to what the

1 intent is of the language. That's possible to have  
2 happen, and that if that happens, and it is, and that  
3 interpretation is, you know, shows that there's a conflict  
4 with a, you know, statute, that we can clarify that, "Oh,  
5 no; that's not what it meant."

6 MR. FINK: My answer to that is you can have  
7 your Administrator prepare and administer any report you  
8 want as long as it doesn't infringe upon the statutory  
9 authority of the Treasurer or the Clerk, and the  
10 Supervisor I assume would be delegating some  
11 responsibility and authority there. Well, delegating  
12 authority. You can't delegate your responsibility.

13 So again, when you read that in the context of  
14 the authority of the other elected officials, I don't  
15 think that it creates a conflict.

16 UNIDENTIFIED SPEAKER: With the word  
17 "administer."

18 MR. FINK: Because the Administrator cannot  
19 usurp the Clerk's authority.

20 SUPERVISOR HATHAWAY: Trustee Courteau?

21 TRUSTEE COURTEAU: I wonder whether simply  
22 substituting the word "analysis" for "report" is part of  
23 what this issue hinges on, because this is not trying to  
24 diminish any of those reporting duties of the Clerk. In  
25 my reading of this it sounds like it's mainly financial

SCIO TOWNSHIP  
WASHTENAW COUNTY, MICHIGAN  
RES #2022-05

RESOLUTION UPDATING THE TOWNSHIP ADMINISTRATOR JOB DESCRIPTION AND  
AUTHORITY AND DESIGNATING FOIA COORDINATOR

At a Regular Meeting of the Township Board of Scio Township, Washtenaw County, Michigan,  
held on the February 22, 2022 at 7:00 p.m.

Members Present: Hathaway, Palmer, Flintoft, Courteau, Jerome, Knol, Vogel

Members Absent: None

The following preamble and resolution were offered by Hathaway and supported by Palmer.

WHEREAS MCL 41.69 requires that the township clerk appoint a deputy clerk who shall serve at the pleasure of the Clerk; MCL 168.29 allows the township clerk to appoint a number of assistants as may be necessary to carry out the general provisions of the election law; MCL 41.77 requires that the township treasurer appoint a deputy treasurer who shall serve at the pleasure of the Treasurer; and MCL 41.61(2) allows the township supervisor to appoint a deputy supervisor who serves at the pleasure of the Supervisor; and

WHEREAS, other than the appointments noted directly above, MCL 41.75a prescribes that township employees shall serve at the pleasure of the township board and shall perform duties lawfully directed by the township board, except those duties that are delegated by law to another township official, unless consent has been granted; and

WHEREAS, the Scio Township Board of Trustees desires to retain responsibility for continuing and creating positions and authorizing appointments or continuation of appointments to positions and specifying and fixing the compensation for positions; and

WHEREAS, the Scio Township Board of Trustees desires to retain responsibility for the hiring and firing of township employees, upon the recommendation of and carried out by direct supervisor, and in accordance with all governing statutes, ordinances, administrative rules, and collective bargaining agreements; and

WHEREAS, MCL 41.2(b) prescribes that a township board may make contracts necessary and convenient to exercising corporate powers, that the Scio Township Board of Trustees desires to retain responsibility for approving all contracts for services, but desires to delegate the coordination and management of major contracts to the Township Administrator; and

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WHEREAS, MCL 141.424 requires the Supervisor, as Chief Administrative Officer, to make an annual financial report of the Township and deliver it to the Treasurer of the State of Michigan in the form and pursuant to the schedule provided by the Uniform Budgeting and Accounting Act; and

WHEREAS MCL 41.65 requires that the Clerk prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township; and

WHEREAS, MCL 41.78 requires the Treasurer keep an accurate account of the receipts and expenditures of township money in a book or by electronic means; and

WHEREAS, the Scio Township Board of Trustees does desire to delegate and assign certain administrative duties to represent and carry out employer management rights to the Supervisor, Clerk, Treasurer; and Township Administrator; and

WHEREAS, the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq., provides for public access to certain public records of public bodies and prescribes the powers and duties of certain public officers and public bodies; and

WHEREAS, section 6 of the Act requires that a township shall designate an individual as the public body's Freedom of Information Act Coordinator, who shall be responsible for accepting and processing requests for the township's public records, and for approving a denial under section 5 of the Act;

NOW, THEREFORE, BE IT RESOLVED that on February 22, 2022, the Scio Township Board designates the Township Administrator to serve as the Township FOIA Coordinator, and that he may designate other Township staff to act on his behalf to accept and process written requests for the Township's public records and approve denials

BE IT FURTHER RESOLVED that the Public Summary of FOIA Procedures and Guidelines and related documents shall be updated to reflect the redesignation of Township FOIA Coordinator

BE IT FURTHER RESOLVED THAT, the Scio Township Board of Trustees adopts the attached job description for the position of Township Administrator and affirms the responsibilities and authorities assigned in that job description

BE IT FURTHER RESOLVED THAT this resolution updates the Township Administrator's job description and authority from Resolution #2021-31 adopted August 17, 2021, and supersedes Resolution #2021-19 adopted June 8, 2021, by appointing the Township Administrator as FOIA Coordinator and modifies #2021-18 adopted June 8, 2021, to reflect that change

BE IT FURTHER RESOLVED THAT this resolution shall be effective on the date of adoption; all provisions shall sunset at the conclusion of the first meeting following November 20, 2024.

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ROLL CALL VOTE:

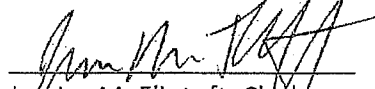
AYES: Hathaway, Palmer, Courteau, Jerome, Vogel

NAYS: Flintoft, Knol

ABSENT: None

ABSTAIN: None

RESOLUTION DECLARED ADOPTED.

  
\_\_\_\_\_  
Jessica M. Flintoft, Clerk  
Scio Township

DATED: February 22, 2022

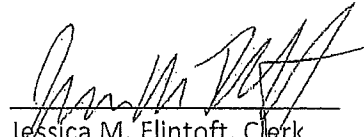
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CERTIFICATE

I, Jessica M. Flintoft, hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Township Board of Scio Township, County of Washtenaw, State of Michigan, at a Regular Meeting held on February 22, 2022, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

  
\_\_\_\_\_  
Jessica M. Flintoft, Clerk  
Scio Township

DATED: 2/23/22

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AA077

## TOWNSHIP ADMINISTRATOR

**Working Title:** Director of Operations

**Funding:** To be determined by the Board of Trustees

**Salary:** Full time, permanent, exempt, \$80,000-110,000 plus benefits

**Reports to:** The Board of Trustees (including Clerk, Treasurer and Supervisor)

**Supervises:**

Consulting contracts (including Public Safety, Engineering, Planning, Information Technology). All Township employees other than the deputy clerk, deputy treasurer, and deputy supervisor report upward to the Township Administrator.

**Work Location:** Scio Township Hall

### Position Summary

The Township Administrator is responsible for the day to day running of the Township's operations including providing effective methods in its business operations. The incumbent will develop, interpret, and implement Township policies and procedures and ensure compliance with these policies, as well as statutes and ordinances. Decisions made by the Township Administrator will directly impact the effective functioning of the Township's services. The incumbent will work to improve the operational systems and processes to support the Township's mission by developing reports, communication strategies and organizational planning. The Township Administrator is responsible for the various areas of operations but may not necessarily be performing individual tasks and may delegate as needed.

### Responsibilities

#### Administration

- Plan, monitor, evaluate and supervise the Township's administrative services and information management across all areas of the Township including but not limited to Fire, Utilities, General Government, Planning and Zoning, Parks and Pathways, Open Space, and all other Initiatives of the Township
- Effectively administer all departments and associated personnel including the ability to recruit, provide professional development and manage performance

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AA078

- Track implementation of all Board of Trustees approved actions
- Organize and chair management meetings (currently bi-weekly)
- Organize and chair Budget & Finance Committee meetings (currently monthly)
- Serve as Township FOIA Coordinator
- Research and develop best practices of business processes, work flows and cross-functional work teams to meet the needs of the various areas of the Township

#### Finance

- Assist the Supervisor in preparing and administering the annual budget and related financial reports under policies formulated by the Board and state law
- Oversee and prioritize the allocation of Finance staff work time to accomplish tasks
- Hold ultimate authority over BS&A administration and accessibility
- Act as the purchasing agent for the township
- Collaborate with others in the township to guide compliance with bidding procedures and conduct all sales of personal property which the township board may authorize to be sold

#### Contract Management

- Coordinate and administer township contract negotiations, applications to the township such as zoning applications, industrial tax, farmland agreements, and all others that may come to the township
- Continually study and provide input to the Board of Trustees as to the best way to leverage in-house staff vs the use of outside consulting resources
- Ascertain that all terms and conditions imposed in favor of the Township or its inhabitants in any public utility franchise or in any contract are faithfully kept and performed
- Monitor relationships with outside consultants to ensure effective communication and best practices to make judicious use of the Township's resources
- Prepare, review, and execute contracts and subcontracts for authorized disbursements for services rendered; prepare and process all necessary documents for fiscal payments to vendors and provide fiscal budgetary controls

#### Information Technology and Data Management

- Serve as the Township's Chief Information Officer to develop and manage the ability to collect and share usable information to increase efficiency and extend open data to the public

- Hold ultimate authority over administration of all software including assignment of access
- Manage and/or administer the design and development of data structures and data extracts to support comprehensive data collection, loading, and extraction for complex analyses
- Collaborate with others to develop the Township's use of Geographic Information Systems (GIS) across Utilities, Parks and Pathways, Assessing, Open Space and Protected Natural Areas

#### Management of Projects

- Serve as the overall Project Manager for the Township including development of project management best practices and processes to ensure alignment with the priorities and outcomes
- Participate in strategy development with Township officials
- Responsible for assembling project team, assigning individual responsibilities, identifying appropriate resources such as additional support staff as needed
- Create a budget, if needed, for approval
- Develop a schedule to ensure timely completion of the project
- Produce reports on status updates including goals met and actions deferred
- Following completion of project and implementation provide a final report including reflecting on what worked and what did not work to ensure success in future endeavors

#### Human Resources

- Serve as the personnel director for all township employees, included bargained-for employees
- Direct all human resource functions such as recruitment, hiring, performance review, professional development, compensation best practices and employee relations
- Participate in contract negotiations for bargained-for staff and maintain relationships with union representatives
- Serve as the Township Training Officer to provide access to required and recommended training

#### Facilities Management

- Responsible for the preservation and maintenance of township property, tools, and equipment
- Manage assignment of office and workspace
- Participates in construction and renovation projects as needed
- Administer requests for phone, cell, internet, and access to buildings



- Coordinate disposition of property

#### Township Meetings Coordination

- Attend all meetings of the Township Board of Trustees with the right to take part in discussions but without the right to vote
- Assist the Supervisor with agenda preparation including assembling components, tracking the queue of potential agenda items and inclusion of status updates
- Partner with Clerk and Supervisor to manage Board of Trustees meetings logistics including room preparation, technical needs, and taking minutes or assigning the responsibility to others

*Responsibilities and reporting relationships may be modified based on the needs of the Township of Scio*

#### **Qualifications**

A bachelor's degree in public administration, business administration/operations or associated area or equivalent is required

A master's degree or graduate studies in Data Sciences, Urban or Regional Planning, Public Administration, Public Policy, Public Health or related field is preferred

Five to seven years of administrative/professional work with preference for experience in government/public administration

Understanding of the principles finance, budgeting, and purchasing

Demonstrated effective verbal and written communication skills including public presentations

Ability to lead an organization and interact with tact and diplomacy

Proven capacity to manage various aspects of a complex organization

Five to seven years' experience supervising, mentoring and professionally developing a variety of staff

Ability to work proactively in an organization both independently and interactively as part of a team

Strong organizational skills with competency and experience using technical and administrative tools including Microsoft Office Suite and project management software to effectively manage an operation's business practices

Desired software expertise includes Geographic Information Systems (GIS) and BS&A



**SCIO TOWNSHIP BOARD OF TRUSTEES**  
**Regular Meeting**  
**February 22, 2022**  
**7:00 PM**  
**Meeting Hall with remote participation**

**MINUTES**

As Approved March 8, 2022  
*Amendments in blackline*

**A. CALL TO ORDER**

**B. ROLL CALL**

Hathaway called the meeting to order at 7:03pm.

Present: Hathaway, Palmer, Flintoft, Courteau, Jerome, Knol, Vogel (left meeting during Item J2.)

Absent: None.

**C. ADOPTION OF AGENDA**

Motion by Hathaway to remove *D1. Approval of Minutes of Regular Meeting of September 14, 2021* because the item is unnecessary, to move *J2. Appointment of New Trustee member to the Scio Township Board of Trustees* to directly follow F. PUBLIC COMMENT, and to add an item under CONSENT AGENDA as *H6. Amendment to Moore Conservation Easement on North Delhi Road as emailed to the Board earlier in the day.*

Due to late arrival of H6. Amendment to Moore Conservation Easement on North Delhi Road, Knol asked that it be moved off CONSENT AGENDA. ~~Hathaway concurred.~~

Knol raised the concern that the Supervisor had removed the option for Public Comment on each Possible Action item for tonight's meeting, referring to text appearing on AGENDA G. PUBLIC COMMENT "This is the time for members of the public to speak for up to 3 minutes on any matter on the agenda for this meeting. There is another opportunity for general public comment at the conclusion of the meeting." Knol discussed the lack of published Board rules in relation to the provisions of the Open Meetings Act, of prior Board practice.

Motion by Knol, support by Flintoft, to call for public comment during the Board's hearing of possible action items during the Scio Township Board meeting of February 22, 2022, and for a roll call vote.

Hathaway asked that the Township Attorney Michael Homier respond to Knol because Hathaway had consulted with Homier prior to changing the text under G. PUBLIC COMMENT on the Proposed Agenda.

Homier, Knol, and Hathaway engaged in a discussion of the facts, and different perspectives on if the practice or rule should be changed at this time or in this manner.

Palmer noted that the Rules of Order deliberation would soon resolve this question, and suggested proceeding with tonight's meeting with current practice, and not make a change at this juncture.

The Board discussed the issue. Members of the public interrupted the Board discussion with protest of the Supervisor's proposed change.

Vogel suggested the Board proceed tonight with current practice, noting the amount of time the Board had already spent on this discussion.

Hathaway suggested dispensing with voting on question, and to proceed with the current practice. Flintoft and Knol insisted on a roll call vote on the seconded motion on table.

**YES: Palmer, Flintoft, Courteau, Jerome, Knol, Vogel.**

**NO: Hathaway.**

**ABSTAIN: None.**

**ABSENT: None.**

**MOTION PASSED 6-1.**

Flintoft introduced amendment to remove Agenda Item J4. *Rules of Order for the Board of Trustees* from agenda. Flintoft said that the Board was confronting a 'lame duck' situation with tonight being both Trustee Vogel's last Board meeting and the night the Board plans to appoint a new Trustee.

**Motion by Flintoft, support by Knol, that because the Board has already accepted the resignation of Trustee Vogel effective February 28<sup>th</sup> and she will not be bound by these Rules; and whereas the Board is planning tonight to appoint a Trustee effective March 1<sup>st</sup> who will be bound by these Rules; Therefore be it resolved, that the Board should consider these Rules of Order when the Board members that will be bound by these Rules are present to deliberate on them, at the next Regular Meeting of March 8<sup>th</sup>.**

Knol said this second draft of Rules of Order was premature to put on agenda. Palmer suggested moving forward with Rules deliberation tonight. Vogel said she supported deliberation on Rules with proposed modifications made by Administrator and Attorney because it had not seemed to her that Clerk and Supervisor would resolve differences.

**YES: Flintoft, Knol.**

**NO: Hathaway, Palmer, Courteau, Jerome, Vogel.**

**ABSTAIN: None.**

**ABSENT: None.**

**MOTION FAILED 2-5.**

**Motion by Hathaway, support by Courteau, to remove D1. *Approval of Minutes of Regular Meeting of September 14, 2021* because the item is unnecessary, to move J2. *Appointment of New Trustee member to the Scio Township Board of Trustees* to directly follow F. PUBLIC COMMENT, and to add an item under NEW BUSINESS as H6. *Amendment to Moore Conservation Easement on North Delhi Road* as emailed to the Board earlier in the day.**

**MOTION PASSED by voice vote.**

The video recording of the 2/22/22 meeting is available at [sciotownship.org](http://sciotownship.org) and shall be retained as provided by state law and township policy.

#### **D. APPROVAL OF MINUTES**

##### **D.2 Approval of Minutes of Regular Meeting of February 8, 2022**

Vogel offered two corrections to her comments under J1 and J2.

Motion by Flintoft, support by Palmer, to approve the February 8, 2022 Draft Minutes as amended and to include a banner atop the minutes "The video recording of 02/08/2022 meeting is available at [sciotownship.org](http://sciotownship.org) and shall be retained as provided by state law and township policy."

MOTION PASSED by voice vote with Courteau and Vogel voting No.

##### **D.3 Approval of Minutes of Special Meeting of February 15, 2022**

Motion by Flintoft, support by Knol, to approve the February 15, 2022 Draft Minutes as presented and to include a banner atop the minutes "The video recording of 02/15/2022 meeting is available at [sciotownship.org](http://sciotownship.org) and shall be retained as provided by state law and township policy."

MOTION PASSED by voice vote with Vogel voting No.

#### **E. COMMUNICATIONS to the BOARD OF TRUSTEES**

##### **E.1 Information Correspondence Received**

Flintoft noted the correspondence published, and noted that since publication the Board had received 10 additional letters of support for Trustee candidate Jillian Kerry.

#### **F. PUBLIC COMMENT**

Rusty Towers expressed concern over proposed limitations to discussion by the public and by Board members in the proposed Rules of Order.

Caroline Altomare stated her support for trustee candidate Jillian Kerry; expressed concerns over the transfer of responsibility for FOIA from the Clerk to the Administrator.

Ian Hubert stated his lack of understanding over the effort to limit the input of the public in Board deliberations as proposed in Rules of Order.

Kathleen Brant stated that the software recently purchased is the property of Township and should not reside on Supervisor's private computer; complained that Board is not following purchasing policy.

Pam Boyd read from the State Constitution, the Pledge of Allegiance, and the Board members' oath of office.

Pat Stein stated that the power of the Supervisor is not that of a king or powerful executive and demanded that public support for Jillian Kerry convince Board to offer her the open trustee position.

The video recording of the 2/22/22 meeting is available at [sciotownship.org](http://sciotownship.org) and shall be retained as provided by state law and township policy.

Leigh Ann Phillips-Knope asked what the purpose is of changing the FOIA process and of limiting public comment; asked the Board to appoint Jillian Kerry.

Abby Vakilian said that FOIA should remain with the Clerk because she is elected; complained of a meeting cancelled by the Clerk and the Supervisor. Vakilian claimed that some people oppose the Clerk on moral grounds.

Steve Feinberg stated he was galvanized into public comment by the GFL issue and the lack of transparency; and asked for a roll call vote on the trustee appointment.

Melinda Kerr, resident of Waterloo Township, asked for an amendment to a conservation easement agreement entered into by her parents with Scio Township.

Jillian Kerry expressed support for saying Pledge of Allegiance at the beginning of the Board meetings; recounted that Vogel suggested dipping into the General Fund at a recent TAP meeting.

Jeff Grover characterized the attacks on the Clerk as inconsistent with Christian value of love, that the Clerk has conducted self with honor, and asked Board to come together.

Marty Mayo wondered about the feelings of a silent majority of residents, and asked Clerk to offer a count of the written correspondence received in support of each trustee candidate

Flintoft shared that the Board had received 1 letter of support for Bob Walsh; 6 letters for Patrick McLaughlin; and 60 letters for Jillian Kerry.

Paula Globerson recalled the public being able to question the Board during public comment under Supervisor Tickle, and called the removal of FOIA from the Clerk suspicious.

Gil Crisman endorsed the candidacy of Jillian Kerry because she exemplifies honest and transparent communication.

Roger Rayle emphasized the importance of the Board representing all of the township, and stated that Jillian Kerry represents the voice of the people.

Barry Lonik reported on the closing of the Andres Trust property (formerly Aprill Farm), and noted that the property had been conserved for agricultural use at a cost of 29% of its value to the Township.

Peter Davis asked the Supervisor to appoint Jillian Kerry to the open trustee seat in honor of Hathaway's father who was a former law colleague of Davis's.

Heather Berkovitz condemned the process of choosing a new trustee as unfair and biased and complained of lack of diversity on the Board.

Rob Pattinson characterized the opportunity to invite Jillian Kerry onto the Board of Trustees as a chance to move into a new era of honesty, integrity, and listening; called the removal of FOIA from the record keeper a mistake.

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David Read referred to the history of the Rules of Order discussion and noted that the conditions agreed to by the Board for bringing the issue back have not been met; objected to proposed time limits on meetings, limitations on Board discussion, and limits on public comment.

Jonathan Greenberg said he finds the agenda disheartening in its attempts to limit discussion and debate.

## J. NEW BUSINESS

### J.2 Appointment of new Trustee member to the Scio Township Board of Trustees

Vogel recused herself, leaving the meeting at 8:46pm.

David Rowley, Township Administrator, introduced the item. Rowley provided overview of the process to date and the question before the Board of Trustees.

**Motion by Jerome, support by Palmer, to appoint Patrick McLaughlin as Trustee to the Scio Township Board of Trustees to complete a term until November 20, 2022.**

Jerome thanked everyone for their interest in filling the position, expressing gratitude for the public interest. Jerome said that McLaughlin presented the best qualities for the position. Jerome said that McLaughlin would be independent, and had familiarity with relevant issues and important skills.

Knol expressed strong support for Jillian Kerry because she has attended Board meetings, has a depth of knowledge, and an understanding of the diverse issues facing Township. Knol said Kerry has deep and extensive community support, a willingness to work hard, and could bring some healing to this divided Board.

Palmer said that McLaughlin has more of the kind of experience important to serving as a trustee. Palmer also said that Kerry is a strong candidate, and thanked everyone for applying.

Flintoft thanked the three for sitting down with her yesterday. Flintoft said all three would run as Democrats, support reproductive freedom, support voting rights, and work to protect the earth. Flintoft expressed her strongest support for Kerry due to overwhelming support from community including staff members. Flintoft said she supported Kerry because she would make Board more of a coalition and more representative than we are now.

Hathaway said he would vote for McLaughlin because of his service on Parks Advisory Board and LASA. Hathaway said McLaughlin engages in constructive dialogue, and was most prepared of any of the four interviewed.

Flintoft underscored Kerry's popularity with voters, and how clearly Kerry wants to serve the community in this position.

Knol said that Kerry or Walsh are better choices for this appointment at this time.

Steve Feinberg stated the biggest problem of this Board is lack of transparency and trust, and urged Board to consider this big picture.



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Abby Valkinan claimed there is no legitimacy to this nomination because the Board did not interview all of the candidates.

The Board entered recess at 9:20pm.

The Board returned from recess at 9:27pm.

Kathleen Brant explained that FOIA requests uncovered that some were motivated to vote for a single waste hauler in order to meet criteria to become a charter township, and that is why there is skepticism about changing the FOIA coordinator.

Ian Hubert noted that 89.5 percent of correspondence received by the Board favored Jillian Kerry to fill the open trustee seat and that this Board has a huge problem with trust and perception.

Pat Stein asked Vogel, Palmer, Courteau, and Jerome to list the times they had failed to vote with the Supervisor.

Jeff Grover instructed the Board to listen to the public in order to bring healing.

Leigh-Ann Phillips-Knope expressed her fear for our township if the Board doesn't listen to the people and choose Jillian Kerry.

Marty Mayo stated that the written correspondence received by the Board does not represent the township as a whole, only the people who are engaged and most are not.

Paula Globerson suggested that all Board and committee members should use township email addresses for all township business; objected to time limits proposed in Rules of Order.

Jonathan Greenberg complained about references to a 'silent majority' that supports Board actions.

Roger Rayle claims that a cabal has taken over the elected body; referred to the practice of pause and deliberation modeled by Native American leadership bodies.

Harvey Somers stated that Board members are not meeting their responsibilities to represent us.

Michele Cody stated she was appalled by the authoritarian bent when robust discussion is key and expressed her support for Jillian Kerry.

Gil Crisman expressed the hope that the Board would vote for Jillian Kerry who represents different opinions.

Pam Boyd proclaimed that the Board is subverting the voice of the active, passionate residents in attendance.

Rob Pattinson expressed the hope that the Board would listen to the residents who have spoken.

Flintoft noted that McLaughlin was not in attendance.

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**YES: Hathaway, Palmer, Courteau, Jerome.**

**NO: Flintoft, Knol.**

**ABSTAIN: ~~Vogel~~.**

**ABSENT: ~~None-Vogel~~.**

**MOTION PASSED 4-2.**

Vogel returned to the meeting in progress.

## **G. REPORTS**

### **G.1 Monthly Financial Reports**

Flintoft noted the written financial reports provided.

### **G.2 Regular Reports from Supervisor, Clerk, Treasurer, Administrator, and Committees**

As Administrator, Rowley said biweekly management meetings are ongoing, and has asked management to review employment policies of Township. Rowley said that as of March 1<sup>st</sup> he will have been in the Township for 3 months, and will offer recommendations to Board to improve operations. Rowley said he is working with Clerk to develop recommendations to improve financial operations.

As Chair of Budget and Finance Committee, Rowley said Committee would meet March 3<sup>rd</sup> at 10am.

As lead on Gelman efforts, Trustee Knol reported that the February 17 Community Meeting went pretty well, with approximately 125 residents in attendance via Zoom. Knol said she would be working with Hathaway to capture all the unanswered questions and post answers on Township website.

As Clerk, Flintoft thanked Rowley for his work on the finance proposal, and implored Board to be prepared to vote 'yes' on proposal when it is brought forth on March 8<sup>th</sup>.

As Treasurer, Palmer reported that tax season is wrapped up and that they are on schedule.

As representative on Broadband Task Force, Jerome said there was no update.

On behalf of Parks Advisory Board, Jerome said the Parks Advisory Board was refining its budget proposal with the TAP Committee.

Jerome said that the Land Preservation Commission looks forward to presentation to Board on priorities for possible renewal millage. Jerome noted the RFP that is active for Township's first Buy-Protect-Sell opportunity for the Renz property, and expressed optimism for the enterprise.

On behalf of the Sustainability Task Force, Vogel said the Task Force had met again with the UofM graduate students prepared to conduct their Masters Projects, and planned to coordinate their work with the County's Climate Resiliency plan.

On behalf of the Transportation Alternatives Planning Committee, Vogel said that the Committee had focused its efforts on budget request, as well as the PROS planning process.

On behalf of the Roads Advisory Committee, Knol said the Committee would meet next week.

The video recording of the 2/22/22 meeting is available at [sciotownship.org](http://sciotownship.org) and shall be retained as provided by state law and township policy.

As Supervisor, Hathaway had no report.

## **H. CONSENT AGENDA**

### **H.1 Payment of the Bills**

To approve the payment of claims presented and accept the previous check run report.

### **H.2 Authorization to purchase stretcher for 2022 Lifeline Rescue vehicle**

To waive the bidding process for a sole source vendor and to purchase a demo 2019 Stryker stretcher for the 2022 Lifeline rescue at a cost of \$14,236.95 from Stryker Medical, to be paid for with prior appropriation of American Rescue Plan Act (ARPA) federal funds (Fund 528).

### **H.3 Approval of banner atop Approved Minutes of Meetings of the Board of Trustees**

To ask the Clerk to publish a banner atop Approved Minutes of meetings of the Board of Trustees that reads "The video recording of MM/DD/YYYY meeting is available at [sciotownship.org](http://sciotownship.org) and shall be retained as provided by state law and township policy."

### **H.4 Adobe Acrobat Standard License Subscriptions**

To approve a total of nine adobe acrobat subscriptions with NetSmart at an annual cost of \$1,618.92.

### **H.5 Parks Recreation Open Space Plan Five-year Renewal Consulting Contract**

To approve the attached Carlisle/Wortman Associates Proposal of Services in the amount of \$20,072.00 for development of the Township's 2023 – 2027 Recreation Master Plan subject to review by the Township Attorney.

Motion by Jerome, support by Vogel, to approve the Consent Agenda as presented.

MOTION PASSED by voice vote.

## **I. UNFINISHED BUSINESS**

There was none.

## **J. NEW BUSINESS (continued)**

### **H6. Amendment to Moore Conservation Easement on North Delhi Road**

Motion by Knol, support by Courteau, that the Township sign and record the attached amendment to the Moore conservation easement as recommended by the Land Preservation Commission specifying that the existing residential dwelling may be expanded.

Kathleen Brant expressed her support for granting the amendment to the easement.

YES: Hathaway, Palmer, Flintoft, Courteau, Jerome, Knol, Vogel.

NO: None.

ABSTAIN: None.

ABSENT: None.

MOTION PASSED 7-0.

### **J.1 Establish Permanent Polling Places in Scio Township**

Flintoft described the duties of the Township Board, and explained the proposed placement of polling places within Scio Township's 8 precincts. Flintoft thanked Deputy Clerk Gillis for her work, and polling places for offering their space.

**Motion by Courteau, support by Jerome, to adopt resolution as presented to establish permanent polling places in Scio Township.**

Abby Valkinan asked that the polling place for Precinct 8 be moved out of a church since voters may not be comfortable voting in places of worship.

Rob Pattinson asked if voters would need to apply again to be on the Permanent Absent Voters list if their polling place changes.

Flintoft shared her efforts to expand use of secular locations for polling places, and said there would be no need for any voter to sign up again to be on the Permanent Absent Voters list.

**YES: Hathaway, Palmer, Flintoft, Courteau, Jerome, Knol, Vogel.**

**NO: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**MOTION PASSED 7-0.**

### **J.3 Township Administrator Job Description and Authority and Designation as FOIA Coordinator**

Hathaway said that the Administrator started on December 1<sup>st</sup> 2021, and ~~since then the Supervisor has identified and he has been working hard but it's become clear that the Board should delegate additional authority the Board should delegate to the Administrator.~~

**Motion by Hathaway, support by Palmer, to adopt the attached resolution Updating the Township Administrator Job Description and Authority and Designating FOIA Coordinator.**

Flintoft said she would like to read a prepared statement to speak first to issue of FOIA, and then to issue of financial records.

Regarding FOIA, Flintoft said that David didn't ask for yet another assignment, and she had not asked for this assignment to be re-assigned. Flintoft said it is very typical for the Clerk, as custodian of almost all Township records, to be the FOIA coordinator. Flintoft said she has carried out her responsibilities as FOIA Coordinator in accordance with the statute and Township policies.

Flintoft said she has processed a few hundred requests over the last 2.5 years, and made more items available online to reduce requests. Further, Flintoft has made sure staff is well trained to make process easy for the public. Flintoft said she has fulfilled almost all FOIA requests because they are legitimate requests and the public is entitled to these public records. Flintoft said she has denied some requests in part, and a couple in full, in accordance with exemptions under the law to balance the interests of the Township and the interests of the public. Flintoft reported she has had 0 appeals, and

0 lawsuits, and that all have been handled properly. Flintoft thanked Kristy Aiken and Mary Gillis for their assistance on these efforts.

Flintoft said that David is ethical and capable of serving as FOIA Coordinator, and is confident he will continue to comply with all laws and policies. Flintoft implored David, if Hathaway or any other officer pressures you to not follow our laws and policies, to immediately report any interference to this Board.

Regarding her statutory duties of finance and records, Flintoft said that these changes were again Hathaway using the Administrator's job description as a petty attack on her. Flintoft said, "The language, the effort, it's unnecessary. There's no problem being solved by these changes. David and I work really well together—we collaborate daily—and anyone who in the office at work sees that. We share a vision of professionalizing the Township and getting it to where it needs to be. And, just like me, David follows the law. I want to be very clear here—David is very ethical and knows he works for the people."

Flintoft said, "my opposition is to this Supervisor and to what's being asked of this Board—and I want to be clear—that Will continues to use pretexts—there have been dozens of motions and resolutions over the last year—pretexts to simply target me. Whether it's me personally is really of no consequence. What's worse is to target the Office of the Township Clerk. And that is why what is being proposed here tonight is so serious, and so wrong, and why I want to explain what is going on here.

"The most fundamental core checks and balances over public monies in this Township are under threat. And, if this attack were happening to the Township Treasurer, it would be just as serious. Township Clerks and Treasurers enjoy special protections because each of us have duties under that statute that we are personally responsible for. That is why Boards don't do this sort of thing.

"First, there is no question that I am the duly elected Clerk of Scio Township. In fact, I was the top vote getter of anybody here at this table. From the Michigan Constitution—Article VII, Section 18 excerpt—'In each organized township there shall be elected...a clerk... whose legislative and administrative powers and duties shall be provided by law. My duties are provided by law, by the statute.

"The remarkable arrogance of this resolution of Will's is this: it is the job of the legislature to set forth the Clerk's duties—and they are set forth—in statute for my duties not just in my role over Elections but also on Finance and Records. The statute is clear. The statute is plain. And, when in Green Oak Township in the 1980s a Board went as wayward as this Board seems to be headed tonight, the Clerk took that Board to Court and won, decisively.

Referring to the proposed revisions to the Township Administrator's job description, Flintoft proudly reminded the Board that we had first accomplished unanimity in adoption of the job description on July 27<sup>th</sup>, with Vogel making the motion and Flintoft seconding. It was just a few weeks later at the Special Meeting of August 17<sup>th</sup> called by the Supervisor, that he offered addition of 'and related financial reports' under heading of 'Finance.'

Flintoft said, "This was added by the Board on 8/17, over my objection and stated lack of consent under MCL41.75a, and due to my stated belief that under MCL 41 as a whole it is not the Supervisor's job to prepare and administer financial reports. In fact, it would create a subordination, contrary to MCL 15.181. Yet, this Board passed this resolution, 5-2. I repeat my objection and stated lack of consent.



Flintoft said, "regarding the second and third bullet points which are newly proposed tonight: 'Oversee and prioritize the allocation of Finance staff work time to accomplish tasks' and 'Hold ultimate authority over BS&A administration and accessibility.' This clearly conflicts with statutes--MCL 41.65 'The Clerk prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.' Under MCL 41.65 the Clerk 'open and keeps a separate account with each fund belonging to the township...' As well, this would conflict with my statutory duty under Uniform Budget and Accounting Act MCL 141.421(1) as I am the official who by law...is charged with the responsibility for the financial affairs of this local unit of government, I 'shall insure that the local unit accounts are maintained and kept in accordance with the chart of accounts.'

Flintoft continued, "MCL 41.75a reserves duties statutorily vested in the officers from being assigned by the Board—unless consent is granted. This is the authority under which I declared, with much explanation and full unanimous support for the past two years including from the former Manager—beginning June 1<sup>st</sup> 2019 when I was first appointed Clerk—that I would not grant consent for another person to supervise and direct the work of the Finance Director and Finance Manager insofar as they conducted work to carry out my statutory duties. Donna directed their work as related to hers; I to mine. I maintain this position.

"I am grateful to have David as a partner in the management of the staff, as HR director, and as Administrator. He may conduct performance reviews, timesheets, design or assign workflows, but I really believe I would actually be abandoning my obligations as Township Clerk if I did not maintain oversight over the staff insofar as they are working in the BS&A components that are required to prepare and maintain the journals and ledgers of this Township. I must have custody and control of the journals and ledgers. Without such custody and control, I would never be able to fulfill my obligation to ensure that these journals and ledgers have integrity. Who has modified them? Using what standards? I wouldn't be able to answer those questions.

"This proposed action is arrogant. It is not a Township Board's job to either grow or shrink my statutory duties. That is the duty of the legislature.

Flintoft referred to the heading 'Information Technology and Data Management', referring to newly proposed second bullet point, 'hold ultimate authority over administration of all software including assignment of access.' She said, "Insofar as this bullet point relates to access to technology, this is already in David's domain. He's the Chief Information Officer. He oversees our Managed IT Services contractor, and I'm very grateful for that. But, insofar as this bullet point intends to place ultimate access to Township records, to information, I object, under MCL41.75a which reserves duties statutorily vested in the officers from being assigned by this Board—unless consent is granted.

"MCL41.65 is clear: 'The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law.' There are some papers that are the custody of the treasurer, of the supervisor, but most Township records are my responsibility and I take that responsibility seriously.

"So again, I am elected by the people. I am not subordinate to the Board. Otherwise, it would be a breach of duty if I did not exercise control over the access to Township records, particularly when they may be at risk of deletion or destruction.

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"I will close by saying that the constitution, the statute, and the case law support my position. I urge the Board to reject this resolution as presented."

Hathaway asked Township Attorney Michael Homier to join. Flintoft demanded Hathaway ask the Township Attorney a legal question. Hathaway asked Homier to respond to the Clerk's assertions about her statutory authority in relation to the proposed job description and authority for the Township Administrator.

Homier said there is a disagreement on how clear the statute is, and said that the case law on subject is not altogether clear. Homier said that the McKim case dealt with opening mail and storage of records. Homier said that even though the Clerk prevailed in that case, the Court was very critical of the Township wasting \$15,000 of taxpayer money in litigating that case.

Homier said but what it does not answer is if the financial records of the Township which may be spread in a lot of different locations fall under the purview of custody and control if one has access to them in the Township. Homier asked does financial staff who may work on that fall under the direction of the Board or the direction of one officer of the Board. Homier said he thinks it's under the Board's direction.

Homier said it's a different question if the Board were to deprive any one officer from performing their statutory duties as well, for example, if the Board employed finance staff and prevented the Clerk from accessing that finance staff so that she could fulfill her statutory duties, that would be problematic under the statute. Homier said that there is not one case dealing directly with that issue; said that he has looked. Homier said that there are no Attorney General opinions dealing with that issue; said that he has looked. Homier said that to say that it is perfectly clear how a court would interpret the statute in that given situation, goes too far.

Flintoft asked Homier to comment on the words "hold ultimate authority" appearing twice in the proposed job description, and asked if those were Homier's or Hathaway's words.

Referring to "'Hold ultimate authority over BS&A administration and accessibility,'" Homier said he didn't believe that would become an issue unless somebody deprives anybody access that they need to carry out their statutory duties. Homier said he reads that language as administration over the BS&A software itself and accessibility to that software, which is something he would expect an Administrator to do.

Homier referred to "hold ultimate authority over administration of all software, including assignment of access," saying it seems similar to the one he'd just read.

Homier said he did not draft this.

Flintoft said there is no administrative access that David doesn't have that this Board has to bring.

Hathaway said it is not just his administrative access, it is his control over Township employees in general, having administrative access; that he would be the person who would have control over that access.

Flintoft said that David and she are calling BS&A to make that happen.

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Hathaway said that there is no problem then. Flintoft criticized Hathaway for spending his time this way.

Flintoft said she had no further questions for Homier, and that she stands by her statement. Flintoft said she believes what she is saying is true, that she can read and comprehend the law, that she knows her job, and that she is sick and tired of this Board following this petty crazy waste of time for this Township.

Palmer asked Flintoft to keep her remarks appropriate, professional, and focused on the issues. Flintoft thanked Palmer for the reminder, and told Palmer that when she sees the Foster Swift bills she will understand, referring to her own level of frustration.

Knol said she had questions for Homier, and comments on proposed job description which would go toward discussion of the Board. Knol said she'd read the McKim case decision, it said that the Clerk must have custody or control of Township papers and that she cannot fulfill her duty of safekeeping of these records unless she has that. Knol said that the Clerk would need to guarantee a chain of custody of the records and who has access to them, acknowledging this is an older case of 20-25 years ago. Knol said that the principle would still apply now in the digital era when it is different. Knol said that there are many comments from the Court of Appeals in this case that are significant.

Knol asked if Homier had prepared a written opinion on this issue. Homier said no, and that he had sent the Board a memo outlining various statutory authorities. Knol said she knows and was clear on everything in that. Homier said if Knol is asking him if he has drafted an opinion on a hypothetical question that has not been asked of me then no the answer is no.

Knol asked Homier if he would agree, referencing the McKim case, that the Clerk must have custody or control of Township papers; otherwise, she can't fulfill her duty of safekeeping of the records.

Homier said he would agree that McKim says what is says. Homier said if Knol would like him to draw conclusions from that in some other ~~content~~ context he would be happy to draft an opinion, but has not done it. Knol said she thinks that could be helpful to the discussion.

Courteau said the Board heard citations to several specific laws including MCL 41.76, 41.65, and then to the Uniform Accounting Act 141.421. Courteau asked Homier if there is anything in his reading of those components of the Michigan code that contradicts what's been said in this job description.

Homier said he doesn't think that you could read the job description as to hold or deprive any of the officers of fulfilling their statutory duty; that's just how he reads it. Homier said he certainly agrees that you could look at it and read it a certain way, but he has been clear on this issue and will say it again. Homier said this is different than a situation in which the Township would say actively deprive somebody from fulfilling their statutory duties as opposed to letting an Administrator administer, which is why you hired him.

Palmer said that she doesn't see the duties outlining here as taking away the statutory responsibility for our Clerk or a Clerk; that it is not taking anything away, that they still have the responsibility. Palmer said years ago the Clerk physically did it, but now in Scio we have staff. Palmer said it is still Jessica's responsibility to make sure those things are correct, and the way they're supposed to be that we're doing our fiduciary responsibility, according to law, following the rules. Palmer said this isn't changing the responsibility, but clarifying. Palmer said she doesn't see this proposal as jeopardizing or

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taking away any officers' responsibilities, and that any staff we hire report to David. Palmer expressed confidence in David appropriately coordinating with respective officers. Palmer said it is not taking anything away from Clerk's responsibility.

Vogel said it is pivotal that the Township was two years without a manager, that many things got out of alignment: responsibilities, breadth of positions, all shifted in ways in that void. Vogel said we have an administrator who is experienced, expert, and wise. Vogel said the Board can rebalance things. In regards FOIA, Vogel said, speaking for herself, that she is more comfortable with FOIA out of the elected official position and into the professional Administrator position. Vogel said there have been anomalies that she is not comfortable with, and this shift on FOIA feels important.

In regards to the administrative systems, Vogel said we now have a chief of staff who needs to be responsible for all of the tools for running the operations of Scio Township that includes our software systems and it doesn't exclude anybody it is just a part of being a Chief of Staff. Vogel said there have been uncomfortable anomalies.

Flintoft asked Vogel for examples.

Vogel said she is not going to speak about them in a public forum. Flintoft urged her to share out examples. Vogel raised the example of the Supervisor being excluded from Granicus. Flintoft said that was because he was deleting files.

Vogel said that this conflict was exactly the situation—with such conflict in our elected side of our house, we have got to get our critical systems and FOIA, out of that conflict so things cannot be weaponized.

Flintoft said that if anyone deletes files that she will stop them; that that is her job.

Vogel said she is very comfortable with the shifts of FOIA and administration of software systems.

Referring to finance, Vogel said the Township had engaged an attorney specifically expert in municipal financing. Vogel said there is a distinction between keeping the record, and all the work that is required to create the record which is the role of the Township Administrator. Vogel said two of Administrator's key levers is being HR director being able to bring on and cultivate best staff needed, and Financial Management of the Township so that we are professional, deeply capable, to enable this Board to meet its fiduciary responsibilities which it has not been able to do because the Board is not getting good financial information at the Board table which is unacceptable.

Jerome said he would not claim to be an expert in MCL41.65 or 41.75 or the like. Jerome said the statute clearly requires a Deputy Treasurer and Deputy Clerk. Jerome said he is in favor of Administrator being head of Human Resources, and people reporting to him. Jerome would consider it an issue if the Administrator did not provide the Clerk access to detailed accounting records. Jerome said he agrees with the Clerk that it is her job to capture that, but that it is not her job to manufacture that. Instead, Jerome said that the staff reporting to David would provide Clerk with all the information that ~~I need~~ she needs. Jerome said the accounts must be 'filed and preserved' that doesn't necessarily mean 'created by', as Jerome reads it. Jerome said overseeing the administration of all the staff would help to correct some of the disjunct among budget staff. Jerome still has some outstanding questions about duties of specific staff. Jerome said he supports David overseeing that staff to help them provide the Clerk with what ~~I need~~ she needs to make sure ~~I am~~ she is meeting my

her statutory requirements. Jerome said there is no intent to circumvent statutory responsibilities of any Township officer. Jerome said it doesn't appear there is anything in opposition of the statutory responsibilities of the Clerk.

Flintoft said she appreciates David as a partner. Flintoft said she's not referring to an organizational chart or reporting structure, but when it comes to the actual work of preparing and maintaining the books, that is under my direction. Flintoft said she expects David and herself to continue to work well together because they are both professionals. Flintoft said that this is about a problem that isn't there. Flintoft said it is the Board's prerogative to move assignment of FOIA Coordinator. Referring to the other re-assignments, that it is about some pretext, that it is suddenly going to fill the finance staffing gaps we have.

Flintoft said Homier takes direction from Hathaway alone because that's what Homier has been told to do. However, Flintoft said it is not the duty of this Board to tell Flintoft or Palmer how to carry out their duties. Flintoft said she carries out her responsibilities cooperatively and responsibly. Flintoft said the organization of working with an Administrator works. What doesn't work, Flintoft said, is this whole package that Hathaway has put together—the words presented before us is what doesn't work, and raise all of the problems I laid out as clearly as I possibly can for this Board. Flintoft again urged the Board not to accept the proposed resolution as is.

Further, Flintoft asked at least for a correction to a new error presented in the Administrator's job description, under "Supervises," saying that the positions should be listed and major consulting contracts. Flintoft said David needs to continue overseeing these.

Knol said in terms of FOIA Coordinator, that it is typically the Township Clerk in a general law township. Knol said when she was Township Clerk from 2004 to 2008, she was the FOIA Coordinator, despite the Township employing a full time Manager. Knol said she often consulted with an Attorney as needed, but Knol did the work. Knol referred to the research distributed to the Board by Kathleen Brant showing how commonplace it is for the Clerk to serve as FOIA Coordinator.

Knol asked Hathaway what term 'to hold ultimate authority over administration of software including assignment of access.' Hathaway clarified that Knol would be interested in the answer to both references to 'to hold ultimate authority.' Hathaway said that 'ultimate authority' means that if there is a question about accessibility to the software by anyone who works for the Township that the ultimate decision would rest with the Township Administrator. Hathaway said he has spoken with the David Rowley about this, and that Rowley is better informed than is Hathaway about the software.

Knol asked Hathaway, why change the FOIA Coordinator when it is working well? Why assign this to the Township Administrator rather than to Flintoft who has done an excellent job, and didn't request a change. Hathaway said Vogel put it very well earlier. Hathaway said if a Township Administrator had been in place last summer, he asserted that the majority of the Board would have assigned it to the Township Administrator. Hathaway said the Board had to find a place to put the FOIA assignment in the absence of a central administrator. Hathaway said in this vacuum of last two years, many functions have been assigned elsewhere that would more appropriately have been assigned to a Township Administrator. Hathaway said this and other proposed changes are to get away from the kind of siloes that have grown up in the separation of functions. Hathaway said ultimately the goal is to provide the Township staff to work across the Township without these artificial barriers that have grown up. Hathaway said it is not to hinder anyone's effectiveness, but to allow the Administrator to assign



resources to where they are needed, and to make decisions about priorities that are not driven by siloes.

Knol referenced Hathaway's comment that he thought a majority of the Board would have assigned the FOIA Coordinator to an Administrator last summer had we had one. Knol acknowledged Hathaway's affirmative nodding. Knol said that the Board never discussed that, and that would have required a Board deliberation or discussion, and it was never discussed. Hathaway said the Board did deliberate on the question. Knol said the Board did not deliberate on the question. Hathaway said that the Board had deliberated on assignment of FOIA Coordinator. Knol said that the Board had not deliberated before on this question.

Knol asked Vogel why she believes it should be the Administrator instead of the Clerk.

Vogel said there had been a precedent set in the Township. Vogel said her understanding was she it had been assigned to Jim Merte. Flintoft clarified that Jim Merte had been the IT Director, pulling email archive queries as needed. Flintoft said she had served as FOIA Coordinator for 2.5 years, and before that it was Township Manager Bryce Kelley.

Vogel said she does not have the level of trust or confidence in the Clerk to manage that process or manage others objectively. Vogel said politics are a large aspect of the dynamics, saying she thinks there is a very tight alignment with a segment of residents, and that there is a very strong bias. Vogel said that erodes her sense of confidence in the neutrality of the Clerk's Office. Vogel said that when a resident says the Deputy Clerk sent a small group of us the correct link to the Board meeting, my brain goes, 'wow that's interesting, who's the small group, why that group and not another group.'

Vogel said it "assaults the fundamental objectivity required in the Office of the Clerk." For months, Vogel said she has seen enough on this Board, asking 'what FOIA request gets a fee and what one doesn't?' Flintoft interjected, saying that none of the FOIA requestors are charged a fee.

Vogel said she is not confident. Vogel said she is more confident getting FOIA out of the political elected side of the house, out of any bias, and into the very professional management of the Administrator.

Hathaway asked Rowley to comment. Rowley said that as he understood the questions being asked of him and the direction that was discussed as to what possible changes may be appropriate. Rowley said it is generally best practice—most common—that all employees except Deputy Clerk, Deputy Treasurer, Deputy Supervisor report to Administrator if there is one. Flintoft interjected saying she was fine with that.

In regards to FOIA, Rowley said that the question asked of him was what was his knowledge or expertise with FOIA. Rowley said he has dealt with FOIA for 25 years, and was one of the instructors of the FOIA class for MSU Extension, and is very familiar. Rowley said it is the Board's decision to appoint whomever as FOIA Coordinator. Rowley said if the Board wishes that he serve as FOIA Coordinator, that is fine.

In regards to allocation of finance staff, Rowley said that that goes along with overall supervision of all staff. Rowley said he and Clerk consult regularly, and are currently working on a finance proposal both short term and long term to meet financial needs of this organization, noting that Scio has greater needs than for which we are providing services.

In regards to BS&A, Rowley said he is extremely familiar with BS&A and the administration of it. Rowley said one of the issues here in Scio is how it was originally set up. Flintoft concurred. Rowley said the set up is quite unique in how it is currently structured, and that needs to change.

Rowley said administration of any other software is already part of his responsibilities, managing the IT services for the Township. Rowley said he is willing to what the Board assigns, and that he is committed to using resources where they are needed to meet services and accountability.

Kathleen Brant asked Board members whether they had read the relevant statutes and claimed they are breaking statutes.

Abby Vakilian called this discussion a 'food fight' and claimed it is ruining business.

Ian Hubert called this resolution a waste of time and a power play, adding that 80 percent of townships use the Clerk for FOIA.

Jillian Kerry stated that the motivation to change the FOIA Coordinator is keep the public from discovering what Board members have said.

Paula Globerson expressed skepticism in the proposed change to the FOIA coordinator.

Jeff Grover questioned whether Board members understood the optics of their behavior and asked them to focus on doing what's best for the Township.

Pam Boyd said if it isn't broken don't fix it; claimed the problem with the Board is some members are not honest and forthright.

Jonathan Greenberg stated the Board is not listening as evidenced by the proposed limits on public discussion.

Rob Pattinson stated the Board should apologize to the Administrator for the difficult position he's been put in and asked how control over software affects checks and balances.

Kim Phillips-Knope observed that the township lawyer present seems biased in favor of the Supervisor; stated that the integrity of the work is Clerk's concern so it is commonsense to have her in control of it.

Roger Rayle observed that trust in this Board needs to be restored but the opportunity to do so tonight was not taken.

Flintoft asked the Board to at least restore the deleted supervision of major Consulting Contracts. Rowley said he thought that would be important. Hathaway said it was unnecessary to add back. Jerome suggested adding it back. Vogel asked Flintoft for specific language to be restored.

Flintoft offered proposed amendment to job description under heading of 'Supervises' to add back "Consulting Contracts (including Public Safety, Engineering, Planning, Information Technology)." Both Hathaway and Palmer accepted the amendment.

Flintoft asked Hathaway, for the record, if he drafted both the resolution and job description here. Hathaway said that he had created the resolution based on a prior resolution drafted by Township Attorney Jim Fink, which was then reviewed and approved by Township Attorney Mike Homier. Hathaway said both township attorneys were consulted. Flintoft asked Hathaway if either Township Attorney approved this job description. Hathaway asked Homier to answer.

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Homier noted the late hour, that the questions being asked are policy questions not legal questions. Homier said he works for the Board. Homier said if the Board would like to get rid of him, to go ahead. Homier said he was not the one asking questions until midnight. Homier confirmed he gets paid for every hour he works. Homier said that if there are legal questions he will answer them.

Homier said he is not making a recommendation on the question one way or another, that this is a policy issue that the Board can implement if it so decides. Homier said he thinks it is lawful in terms of the statutory context and the Administrator's role. Homier said it is the Board's decision on policy, it is not Homier's decision.

Flintoft repeated her question to Homier, referring to the job description's proposed changes, did Homier approve the bolded words such as 'hold ultimate authority.' Flintoft wants to know if this is our Township Attorney-approved language or not.

Homier asked Flintoft what her legal question was. Flintoft said her question is if this is his work product. Homier said that no it was not his work product. Flintoft thanked Homier and confirmed that the proposed changes to the job description were not Homier's work product. Homier said that as the changes are stated he has no legal issues with the proposed changes. Flintoft said she understands, and that this is not Homier's work product. Homier said he did not write it.

Hathaway ~~seemed~~ said to Flintoft ~~saying~~ that in fact it was her advice that we should not pay attorneys to do work if there were things that we as members of the Board of Trustees could do ourselves. Hathaway said he consulted with both Township Attorneys, that they reviewed the work product, but that it was Homier's advice that this was something that Hathaway could do himself.

**Motion by Hathaway, support by Palmer, to adopt the attached resolution, as amended, Updating the Township Administrator Job Description and Authority and Designating FOIA Coordinator.**

**YES: Hathaway, Palmer, Courteau, Jerome, Vogel.**

**NO: Flintoft, Knol.**

**ABSTAIN: None.**

**ABSENT: None.**

**RESOLUTION ADOPTED 5-2.**

#### **J.4 Rules of Order for the Board of Trustees**

Knol noted that it was midnight.

**Motion by Knol, support by Palmer, to postpone consideration of *Item J4. Rules of Order for the Board of Trustees* until the next regular meeting, as first agenda item.**

**YES: Palmer, Flintoft, Knol, Vogel.**

**NO: Hathaway, Courteau, Jerome.**

**ABSTAIN: None.**

**ABSENT: None.**

**MOTION PASSED 4-3.**

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#### **K. PUBLIC COMMENT**

Abby Vakilian stated that the most independent candidate was Jillian Kerry and the Board's failure to appoint her to the trustee opening was tone deaf.

Pam Boyd thanked the Board for choosing McLaughlin, who will galvanize the community opposition to the Board.

Ian Hubert predicted that appointing Jillian Kerry as Trustee would have restored public faith in the Board; and begged Palmer, Courteau, Jerome, and Vogel to vote independently of the Supervisor.

Jillian Kerry said it had been an exciting week for the Township, with many residents hopeful of seeing a change; she expressed her hope that McLaughlin really is an independent thinker.

Kathleen Brant speculated that the Township lawyer might feel uncomfortable charging the Township to attend long Board meetings when he isn't giving legal advice.

Jeff Grover begged the Board to show that they are listening to the public.

Jonathan Greenberg stated he was appalled that the Township Attorney would complain about public comments regarding his behavior.

Caroline Altomare stated her disappointment in Board decisions and the Board itself and apologized to the Clerk for what she has endured.

Roger Rayle stated that this meeting proves that a lot of people are paying attention but unfortunately some Board members are not.

Leigh-Ann Phillips-Knope described a powerful bias on the Board was demonstrated when Jerome was allowed to reply to a resident but Palmer was not; called the attitude displayed by the new Township Attorney troubling and unacceptable.

Rob Pattinson thanked Vogel for voting to postpone consideration of new Rules of Order which he expected the Supervisor to ram through at the end of a long meeting.

Pat Stein observed that the Supervisor encouraged a resident who spoke in favor of McLaughlin to speak up but not those who spoke in favor of Kerry.

#### **L. ADJOURNMENT**

**Motion by Courteau, support by Palmer, to adjourn.**

**MOTION PASSED** by voice vote.

Meeting adjourned at 12:24am.

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

Company Name	Scio Township	Admin	Service Type	# of Tickets	Total Hours
<b>Business Unit:</b>				<b># of Tickets: 6</b>	<b>Hours: 0.07</b>
<b>Ticket #:</b> 744083	<b>Location:</b> NetSmart	<b>Status:</b> Closed			<b>Hours:</b> 0.00
<b>Summary:</b>	Please install another monitor for Sandy Egeler. I believe we will need to buy a new monitor. I d				
<b>Resolution:</b>					
<b>Ticket #:</b> 764761	<b>Location:</b> NetSmart	<b>Status:</b> Resolved			<b>Hours:</b> 0.00
<b>Summary:</b>	FW: Urgent steps for Township Administrator transition				
<b>Resolution:</b>	Wednesday 05/11/2022 4:15pm UTC-04/ Sean Goldman- I spoke with Jim Merte and confirmed with Kristy Aiken that Jim has returned to Scio Township. Will's email was concerning since we have not had very much interaction. I have enabled Jim's access on the servers and in Exchange 365.				
<b>Ticket #:</b> 764978	<b>Location:</b> NetSmart	<b>Status:</b> New - To Do			<b>Hours:</b> 0.07
<b>Summary:</b>	RE: EXTERNAL Ticket# 762435/Scio/2nd monitor -- has been updated				
<b>Resolution:</b>	Thursday 05/12/2022 1:08pm UTC-04/ David LeMon- Hi Terry  I can see the quote was generated but not able to see if it has been presented to the approvers process of SCIO. I have informed Dean that you are chasing, and let him know to reach out. I am assigning this ticket directly to him so if you reply to it, he will receive your responses.  Regards david				
<b>Ticket #:</b> 764990	<b>Location:</b> NetSmart	<b>Status:</b> New - To Do			<b>Hours:</b> 0.00
<b>Summary:</b>	FW: EXTERNAL Ticket# 762435/Scio/2nd monitor -- has been updated				
<b>Resolution:</b>					
<b>Ticket #:</b> 765321	<b>Location:</b> NetSmart	<b>Status:</b> New - To Do			<b>Hours:</b> 0.00
<b>Summary:</b>	Your GFI Archiver license expires in 90 days				
<b>Resolution:</b>					
<b>Ticket #:</b> 765498	<b>Location:</b> NetSmart	<b>Status:</b> Ongoing			<b>Hours:</b> 0.00
<b>Summary:</b>	FW: Urgent steps for Township Administrator transition				
<b>Resolution:</b>					
Company Name	Scio Township		Service Type	# of Tickets	Total Hours

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Tue 05/17/2022 9:18AM UTC-04

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AA101



Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

# NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

Business Unit:	Admin	Location:	NetSmart	Status:	Closed	# of Tickets:	1	Hours:	0.00
Ticket #:	763232	Summary:	New Computer detected at Scio Township \ Main					Hours:	0.00
Resolution:									
Company Name:	Scio Township	Service Type:	Application	# of Tickets:	6	Total Hours:	0.10		
Business Unit:	Managed Service	# of Tickets:	6	Hours:	11.10				
Ticket #:	761020	Location:	NetSmart	Status:	Resolved - Remote			Hours:	1.05
Summary:	miss dlig mapping file format								
Resolution:	Tuesday 05/17/2022 8:25am UTC-04/ Ryan Eckhoff-								
	- Reached out to Richard								
	- Remoted into his computer								
	- Discussed issue at hand								
	- Reviewed file								
	- They do not have a program that supports the file type needed by misdig								
	- Downloaded and installed google earth pro								
	- Pro version still cannot convert the files								
	- Does not appear to be a valid way to convert the files to the necessary file type without software that supports SHP/SHPX files								
	- Explained this to Richard and his operator								
	- They are all set for now								
	Richard if you need anything else please let us know.								
	Thank you,								
	Ryan								
Ticket #:	761717	Location:	NetSmart	Status:	Closed			Hours:	0.02
Summary:	Accessing email remotely								
Resolution:									
Ticket #:	761808	Location:	NetSmart	Status:	Closed - Remote			Hours:	4.51
Summary:	Current version of Google Chrome needed								

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AA102

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

**Resolution:** Wednesday 05/04/2022 1:22pm UTC-04/ Malachi Corliss-  
Good afternoon Jessica!

I did troubleshooting on this issue and was able to find the cause of the issue.  
- It appears that there may have been an old policy that blocked updates for Chrome.  
- Eric assisted you with creating a key in the background to enable this for Chrome, and I have done this site-wide.  
- I was able to verify my Registry update is applying correctly.

Please confirm that other users are able to update Chrome successfully.  
You may need to restart the computers for this change to apply.

I left you a voicemail with my findings, but you can also email me back on this ticket and I will see your update.  
I will mark this ticket as pending confirmation for now, and will monitor for your status update. Please respond within the next day to let me know if this fixed your issue or not. I am happy to assist further.

Thanks!

Malachi Corliss  
NetSmart Plus Field Technical Specialist

**Ticket #:** 762936      **Location:** NetSmart  
**Summary:** I need help installing software on Pollbook2.scdlo.loc  
**Resolution:** Wednesday 05/04/2022 9:25am UTC-04/ Bryon Hochkins-  
user needs id maker software installed  
software package already downloaded  
ran installer, added shortcuts  
issue resolved

**Ticket #:** 762936      **Location:** NetSmart      **Status:** Closed - Remote      **Hours:** 0.15

**Ticket #:** 763546      **Location:** NetSmart  
**Summary:** BS&A is not working on the website.

**Ticket #:** 763546      **Location:** NetSmart      **Status:** Closed - Remote      **Hours:** 2.24

Confidential

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Tue 05/17/2022 9:18AM UTC-04

RECEIVED by MCOA 2/6/2023 2:19:47 PM

AA103

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

**Resolution:** Monday 05/09/2022 11:12am UTC-04/ Kristy Aiken Kaiken@ScioTownship.org  
BS&A is working now on the website. Thank you!!!

Thank you,

Kristy Aiken  
Scio Township  
Office Coordinator  
827 N. Zeeb Road  
Ann Arbor, MI 48103  
(734) 369-9400

**Ticket #:** 764254

**Location:** NetSmart

**Status:** Closed - Remote

**Hours:** 3.13

**Summary:** BS&A Database Error

**Resolution:** Tuesday 05/10/2022 10:20am UTC-04/ Nate Sherman-  
Remoted into scio6:

There were a few transaction logs that were too large, which caused the disk to fill up on space  
Backed up the transaction logs to another disk and then tried shrinking the transaction logs to free up space  
After the transaction logs finished backing up and shrinking, the drive gained more space  
Reviewed Maintenance Plans in SQL, there were a few that existed, but were pointing to a drive that no longer exists (G drive)  
Modified one of the backup maintenance plans so that it points to the K drive since that drive had a lot of free space available.  
Checked the other SQL instance to see if those maintenance plans were configured correctly, noticed that this one also had some issues with pointing to the wrong drive  
Modified the maintenance plan on the other instance so that it points to the K drive  
Remoted into scio1:  
Checked SQL jobs to make sure that everything was functioning properly  
Checked SQL disk space and verified that the transaction logs replicated with no issues  
Called Rebecca:  
Remoted into the PC, the application was able to launch with no issues  
Rebecca tried voiding a check, which also worked with no issues  
Rebecca asked me if I could create a ticket for issues with the printer, scanner, and the dual monitors. Told Rebecca that I will create a ticket for each issue  
Told Rebecca that I will keep this ticket open to make sure that the maintenance plans that we created will run with no issues  
Please let me know if you have any questions or concerns. Thanks! Have a great day!

- Nate Sherman

Company Name: Scio Township

Service Type: Server

# of Tickets: 6

Total Hours: 10.29

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Tue 05/17/2022 9:18AM UTC-04

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AA104

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

Business Unit:	Managed Service	Location:	Status:	Closed - Remote	# of Tickets:	Hours:
Ticket #:	761460	NetSmart				Hours: 0.00
Summary:	DRV - Free Space Remaining for C drive is < 10% Total Size. Free space is 7510 MB at Scio Township					
Resolution:	Thursday 04/28/2022 4:04pm UTC-04/ ConnectWise Software Free space on C drive is greater than 10 % of total space.					
	Thursday 04/28/2022 1:01pm UTC-04/ ConnectWise Software Free space on C drive is greater than 10 % of total space.					
	Thursday 04/28/2022 10:58am UTC-04/ ConnectWise Software Free space on C drive is greater than 10 % of total space.					
	Thursday 04/28/2022 9:56am UTC-04/ ConnectWise Software Free space on C drive is greater than 10 % of total space.					
Ticket #:	762207	NetSmart				Hours: 0.83
Summary:	DRV - Free Space Remaining < 10% Total Size Exclude C drive NOC servers:108638 - SCIO6 6512 E					
Resolution:	Wednesday 05/04/2022 4:02pm UTC-04/ ConnectWise Software Drive Free Space is back to normal on Scio Township\SCIO6 at Main.					
	Wednesday 05/04/2022 12:59pm UTC-04/ ConnectWise Software Drive Free Space is back to normal on Scio Township\SCIO6 at Main.					
	Wednesday 05/04/2022 10:55am UTC-04/ ConnectWise Software Drive Free Space is back to normal on Scio Township\SCIO6 at Main.					
	Wednesday 05/04/2022 9:55am UTC-04/ ConnectWise Software Drive Free Space is back to normal on Scio Township\SCIO6 at Main.					
Ticket #:	762303	NetSmart				Hours: 0.12
Summary:	VPN					
Resolution:	Monday 05/02/2022 10:06am UTC-04/ Bryon Hochkins- remoted into Rebecca's device reset password issue resolved					
Ticket #:	762490	NetSmart				Hours: 2.62
Summary:	DRV - Free Space Remaining for C drive is < 10% Total Size. Free space is 7511 MB at Scio Township					

Confidential

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

**Resolution:** Thursday 05/05/2022 4:05pm UTC-04/ ConnectWise Software  
Free space on C drive is greater then 10 % of total space.

Thursday 05/05/2022 1:02pm UTC-04/ ConnectWise Software  
Free space on C drive is greater then 10 % of total space.

Thursday 05/05/2022 10:59am UTC-04/ ConnectWise Software  
Free space on C drive is greater then 10 % of total space.

Thursday 05/05/2022 9:56am UTC-04/ ConnectWise Software  
Free space on C drive is greater then 10 % of total space.

**Ticket #:** 762898

**Location:** NetSmart

**Status:** Closed - Remote

**Hours:** 5.79

**Summary:** BS&A Login Issue

**Resolution:** Thursday 05/05/2022 10:18am UTC-04/ Mike Merchant:

Review the issue. Failover several mirrored databases back to SCIO6. Contact Kristy to test access. The application appears to lock up when opened. Review application activity with process monitor and find repeated calls to SCIO6/BSA which the application is unable to access. Investigate and locate the folder on the server which appears to be the intended share path. Share the folder and verify that Kristy is able to launch the application. Correct permissions in the folder to address errors when launching the application from the COUNTERR2 machine. Restore an isolated backup copy of SCIO6 and verify the share path and add additional missing shares for F:\Backups and F:\Images.net.

Wednesday 05/04/2022 9:00am UTC-04/ Zhan Shahnazarlan-

- Call was escalated to me by Jennifer
- Diagnosed problem, checked and verified hard drive space on SCIO6 and SCIO2. Verified databases are still in sync. Forced a failover back to SCIO6. Appears drive on SCIO server was low which caused the failover
- All databases are now active on SCIO6
- Jennifer's team will follow up and change status to resolved ticket

**Ticket #:** 764272

**Location:** NetSmart

**Status:** Closed - Remote

**Hours:** 0.93

**Summary:** FW: EXTERNAL Server Storage Error

**Resolution:** Wednesday 05/11/2022 9:40am UTC-04/ Vince Tucker-

Researched the error message, found possible solution to fixing truncated logs.  
The amount of disk storage available on SCIO1 does not appear to be full and I could not identify whether LOG\_Backup was linked to another drive.  
Consult MMerchant regarding my findings and where I was impeding in progress.  
The storage issue was affecting SCIO6.

Per our discussion, he may have already resolved the issue yesterday.

Verified with Laurie that the error pertaining to the transaction log database being full.

Company Name: Scio Township

Service Type: Peripherals

# of Tickets: 6

Total Hours: 6.72

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Tue 05/17/2022 9:18AM UTC-04

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AA106



Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

Business Unit:	Managed Service	Location:	Status:	# of Tickets:	Hours:
Ticket #:	761704	NetSmart	Closed - Remote	6	1.82
Summary:	Monitors				Hours: 0.42
Resolution:	Tuesday 05/03/2022 9:23am UTC-04/ Eric Martinez-called -went into laptop - has an hdmi -used VIEW - displayport and a weird usb connection - usb SHOULD work -tried it - did not recognize it -made sure monitor was on auto -still nothing - may need drivers but easiest would be to use an HDMI cable -she said she may have one lying around -if she needs any additional help, she will call -resolving				
Ticket #:	762435	NetSmart	Closed - Remote		Hours: 0.13
Summary:	2nd monitor				
Resolution:	Monday 05/02/2022 1:29pm UTC-04/ Bryon Hochkins-created purchase ticket and assigned to VCIO your VCIO Sean Goldman will create an quote and reach out to Jessica. please reach out to Dean if you have any questions about the process. He has been CC'ed on this email for ease of communication				
Ticket #:	762943	NetSmart	Closed - Remote		Hours: 0.33
Summary:	Laurie's external speakers have no sound, appear to not be powered.				
Resolution:	Friday 05/06/2022 11:24am UTC-04/ Chuck Smith-I emailed her to call me and she said she already fixed it				
Ticket #:	762955	NetSmart	Closed - Remote		Hours: 0.33
Summary:	Scanner				
Resolution:	Wednesday 05/04/2022 12:59pm UTC-04/ Bryon Hochkins-user needed to select dual monitors in the rdp shortcut installed drivers for scanner installed scanner application issue resolved				
Ticket #:	764358	NetSmart	Resolved - Remote		Hours: 0.43

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Tue 05/17/2022 9:18AM UTC-04

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AA107

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

# NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

<b>Summary:</b> Issues with Scanner									
<b>Resolution:</b>									
<b>Ticket #:</b> 764361		<b>Location:</b> NetSmart		<b>Status:</b> Resolved - Remote			<b>Hours:</b> 0.18		
<b>Summary:</b> Setup Dual Monitors									
<b>Resolution:</b> Friday 05/13/2022 8:34am UTC-04/ Bryon Hochkins- checked use both monitors function on RDP profile confirmed it worked as expected									
<b>Company Name:</b> Scio Township				<b>Service Type:</b> MUST CHANGE		<b># of Tickets:</b> 6		<b>Total Hours:</b> 2.02	
<b>Business Unit:</b> Managed Service						<b># of Tickets:</b> 6		<b>Hours:</b> 4.02	
<b>Ticket #:</b> 761888		<b>Location:</b> NetSmart		<b>Status:</b> Waiting for Confirmation			<b>Hours:</b> 3.82		
<b>Summary:</b> Scanner not working									
<b>Resolution:</b>									
<b>Ticket #:</b> 762366		<b>Location:</b> NetSmart		<b>Status:</b> Closed			<b>Hours:</b> 0.00		
<b>Summary:</b> FW: EXTERNAL Reminder: Select a time for Phone Call with Client Experience Escalations									

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

**NetSmart  
Company Service**  
Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

**Resolution:** Monday 05/02/2022 10:07am UTC-04/ Terry Soave  
This issue has been resolved. Thank you!

Terry

Terry Soave  
Scio Township Fire Department  
Administrative Assistant  
Phone: 734 / 665-6001

From: NetSmart Plus &lt;noreply@timezest.com>  
Sent: Sunday, May 1, 2022 2:25 PM  
To: Terry Soave &lt;tsaave@sciotownship.org>  
Subject: EXTERNAL Reminder: Select a time for Phone Call with Client Experience Escalations

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[image]

Hi,

You recently received a request to schedule a time with us to continue working on your issue with you. It does not appear that you have scheduled a time with us yet. We are sending this final reminder, please select a time for a 30-minute Phone Call with Client Experience Escalations at NetSmart Plus, regarding your ticket: #761717 - Accessing email remotely

Click the following button to choose a time that suits you:  
Choose a time

If we do not hear back from you within the next 24 hours, this ticket may be closed. However, if closed it can be reopened at any time in the future.

Kind regards,  
NetSmart Plus

This email was sent by TimeZest Inc

<b>Ticket #:</b> 763168 <b>Summary:</b> BS&A <b>Resolution:</b>	<b>Location:</b> NetSmart	<b>Status:</b> Closed - Remote	<b>Hours:</b> 0.00
<b>Ticket #:</b> 763190 <b>Summary:</b> VM - no message <b>Resolution:</b>	<b>Location:</b> NetSmart	<b>Status:</b> Closed - Remote	<b>Hours:</b> 0.00
<b>Ticket #:</b> 763237 <b>Summary:</b> Rich Hughes scio township <b>Resolution:</b>	<b>Location:</b> NetSmart	<b>Status:</b> New - To Do	<b>Hours:</b> 0.00

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AA109

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

<b>Ticket #:</b> 763599	<b>Location:</b> NetSmart	<b>Status:</b> TimeZest - Client has Scheduled	<b>Hours:</b> 0.20
<b>Summary:</b> Scio Township miss dig mapping			
<b>Resolution:</b>			
<b>Company Name:</b> Scio Township	<b>Service Type:</b> Printer	<b># of Tickets:</b> 2	<b>Total Hours:</b> 1.14
<b>Business Unit:</b> Managed Service		<b># of Tickets:</b> 2	<b>Hours:</b> 1.14
<b>Ticket #:</b> 761951	<b>Location:</b> NetSmart	<b>Status:</b> Closed - Remote	<b>Hours:</b> 0.91
<b>Summary:</b> Scio Township			
<b>Resolution:</b> Wednesday 05/04/2022 8:32am UTC-04/ Vince Tucker- Review ticket and check documentation for DYMO setup, found guide in reference to their QVF support, there's a particular order to set up. Attempt to call, but line was busy, Laurie not in directory. Called back and spoke to Kristy, who transferred me over. I left a voicemail message, when no one answered.  Laurie called back shortly after, I connected to her workstation. Verified DYMO 450 Turbo printer, search for driver for install. Installed the legacy driver as it works best, she tested but it failed to print. The previous label driver interfered with the new driver. Laurie unplugged the label printer, then I uninstalled both the old and new label drivers as well as the DYMO software. Review installation steps.  Reinstalled DYMO software and had her plug the device back in, then tested again confirming to be successful.			
<b>Ticket #:</b> 765107	<b>Location:</b> NetSmart	<b>Status:</b> Resolved - Remote	<b>Hours:</b> 0.23
<b>Summary:</b> Printer keeps disconnecting from the user's PC			
<b>Resolution:</b> Friday 05/13/2022 8:11am UTC-04/ Bryon Hochkins- discussed issue with Rebecca printer errored out on test print re-added printer confirmed printer worked as expected issue resolved			
<b>Company Name:</b> Scio Township	<b>Service Type:</b> Network	<b># of Tickets:</b> 1	<b>Total Hours:</b> 1.85
<b>Business Unit:</b> Managed Service		<b># of Tickets:</b> 1	<b>Hours:</b> 1.85
<b>Ticket #:</b> 762612	<b>Location:</b> NetSmart	<b>Status:</b> Scheduled	<b>Hours:</b> 11.85
<b>Summary:</b> slow/dropping Internet at the fire station			
<b>Resolution:</b>			

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Tue 05/17/2022 9:18AM UTC-04

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AA110

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

Company Name	Sub-Township	Service Type	User Management	# of Tickets	Total Hours
Business Unit	Managed Service			# of Tickets	Hours
Ticket #:	762974	Location:	NetSmart	Status:	Closed - Remote
Summary:	Fw: EXTERNAL				Hours: 0.07
Resolution:	Wednesday 05/04/2022 11:12am UTC-04/ Michael Edwards- Good morning Terry,  I have blocked the spam sender in the 365 admin center. Please continue to forward us any suspicious looking emails as always.  Thank you,  Michael				
Ticket #:	763478	Location:	NetSmart	Status:	Closed - Remote
Summary:	Login issues				Hours: 0.25
Resolution:	Friday 05/06/2022 8:16am UTC-04/ Grant Whitmer- Grant Whitmer Fri 05/06/2022  -Laurie called in and explained the password issue -She informed me that she was locked out and it said incorrect password -Verified the user by sending an email verification code -Reset password -Discussed if there was anything else I could assist with -Marking ticket as resolved				
Ticket #:	764762	Location:	NetSmart	Status:	Resolved - Remote
Summary:	Disable User - 5/13/2022 @ 5PM				Hours: 0.12
Resolution:	Monday 05/16/2022 9:03am UTC-04/ Michael Edwards- Logged into SCIO2 DC, disabled user's account Logged into 365 admin, blocked sign-in and removed licenses Logged into SCIO1, entered BSA admin tool and set user's access to No Access for all fields				
Ticket #:	765468	Location:	NetSmart	Status:	Closed
Summary:	FW: Township Administrator's authority over BS&A and other software				Hours: 0.00

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Tue 05/17/2022 9:18AM UTC-04

RECEIVED by MCOA 2/6/2023 2:19:47 PM

AA111



Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

**Resolution:** Friday 05/13/2022 4:55pm UTC-04/ Sean Goldman- Called Jim Merte and remoted into his computer. Logged into BS&A using Admin4Scio credentials. Enabled James Merte in BS&A and enabled Enterprise Administrator access. Removed Jessica Flintoft's Enterprise Administrator's access. Logged out of BS&A. Admin4Scio account. Jim successfully connected to BS&A. Disabled David Rowley's access within BS&A.

Company Name	Scio Township	Service Type: Incident	# of Tickets: 15	Total Hours: 2.84
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**Business Unit:** Professional Services

**Ticket #:** 761921 **Location:** NetSmart **Status:** Closed **Hours:** 0.00

**Summary:** DRV - Free Space Remaining < 10% Total Size Exclude C drive NOC servers:108638 - SCIO6 6512 E

**Resolution:** Saturday 04/30/2022 9:56am UTC-04/ ConnectWise Software

Drive Free Space is back to normal on Scio Township\SCIO6 at Main.

Friday 04/29/2022 12:30pm UTC-04/ ITBD NOC 2-HI Team,

we have received DRV - Free Space Remaining &lt; 10% Total Size Exclude C drive NOC servers:108638 - SCIO6 6512 E

steps performed:

Login to the server

checked in E: drive 12gb is free out of 210gb

In E: drive it contains backup folders

(which we are not authorize to move or delete data from it)

Adjusted older shadow copies, and now 26.4gb free.

now its more then threshold

all looks good,hence closing the case.

**Ticket #:** 762090 **Location:** NetSmart **Status:** Resolved **Hours:** 0.77

**Summary:** UPTIME - SVR 45 Days Since Reboot:99007 - SCIO5 6494 SCIO5

**Resolution:** Friday 05/13/2022 9:55am UTC-04/ ConnectWise Software

UPTIME - SVR 45 Days Since Reboot SUCCESS on Scio Township\SCIO5 at Main for SCIO5 result Microsoft Windows Server 2012 R2 Standard x64.

**Ticket #:** 762091 **Location:** NetSmart **Status:** Resolved **Hours:** 0.32

**Summary:** UPTIME - SVR 45 Days Since Reboot:99007 - SCIO10 6497 SCIO10

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AA112

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

<b>Resolution:</b> Thursday 05/05/2022 9:55am UTC-04/ ConnectWise Software UPTIME - SVR 45 Days Since Reboot SUCCESS on Scio Township\SCIO10 at Main for SCIO10 result: Microsoft Windows Server 2012 R2 Standard x64.			
<b>Ticket #:</b> 762854	<b>Location:</b> NetSmart	<b>Status:</b> Closed	<b>Hours:</b> 0.00
<b>Summary:</b> Disk - E: Drive Space Critical-SCIO6(6512):124873 - SCIO6 6512 E: <b>Resolution:</b> Wednesday 05/04/2022 1:50am UTC-04/ ConnectWise Software Disk - E: Drive Space Critical-SCIO6(6512) SUCCESS on Scio Township\Main\SCIO6 has returned to over 1GB of free space.			
<b>Ticket #:</b> 763029	<b>Location:</b> NetSmart	<b>Status:</b> Closed	<b>Hours:</b> 0.00
<b>Summary:</b> EV - Drive Errors and Raid Failures:80 - SCIO6 6512 22-05-04 11:26:01: An error was detected on devl <b>Resolution:</b>			
<b>Ticket #:</b> 763693	<b>Location:</b> NetSmart	<b>Status:</b> Resolved	<b>Hours:</b> 0.50
<b>Summary:</b> DRV - Free Space Remaining < 10% Total Size Exclude C drive NOC servers:108638 - SCIO6 6512 E <b>Resolution:</b> Wednesday 05/11/2022 9:56am UTC-04/ ConnectWise Software Drive Free Space is back to normal on Scio Township\SCIO6 at Main.			
<b>Ticket #:</b> 763830	<b>Location:</b> NetSmart	<b>Status:</b> Closed	<b>Hours:</b> 0.50
<b>Summary:</b> Disk - E: Drive Space Critical-SCIO6(6512):124873 - SCIO6 6512 E: <b>Resolution:</b> Monday 05/09/2022 2:00am UTC-04/ ITBD NOC- HI Team,  We received an alert for Disk - E: Drive Space Critical-SCIO6(6512):124873 - SCIO6  Logged into automate Cleared temp files and folders Configures shadow copies storage space Found shadow copy is disabled for Drive E: System now has 10Gb space available  Hence proceeding with ticket closure  Regards, Gabe  Monday 05/09/2022 1:59am UTC-04/ ConnectWise Software Disk - E: Drive Space Critical-SCIO6(6512) SUCCESS on Scio Township\Main\SCIO6 has returned to over 1GB of free space.			

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Tue 05/17/2022 9:18AM UTC-04

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AA113

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

## NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

<b>Ticket #:</b> 763860	<b>Location:</b> NetSmart	<b>Status:</b> Closed	<b>Hours:</b> 0.50
<b>Summary:</b> EV - Drive Errors and Raid Failures:80 - SCIO2 6491 2022-05-09 05:03:57: The device, \Device\Harddis			
<b>Resolution:</b> Monday 05/09/2022 8:30am UTC-04/ ITBD NOC- Hi Team,  We received an alert for EV - Drive Errors and Raid Failures:80 - SCIO2 6491 2022-05-09 05:03:52: The device, \Device\Harddis  Steps Performed: - Logged into server SCIO2. - Checked disk management - drive status found healthy. - Ran CHKDSK - No errors found. - Ran wmic diskdrive get status - OK. - Ran sfc scanow - completed successfully.  These events are generally generated during paging operations like from mapped drive or USB drives or during data swapping between system and drive.  Hence, Proceeding with ticket closure.  Regards, Rauf			
<b>Ticket #:</b> 763861	<b>Location:</b> NetSmart	<b>Status:</b> Closed	<b>Hours:</b> 0.00
<b>Summary:</b> EV - Drive Errors and Raid Failures:80 - SCIO2 6491 2022-05-09 05:03:54: The device, \Device\Harddis			
<b>Resolution:</b>			
<b>Ticket #:</b> 763862	<b>Location:</b> NetSmart	<b>Status:</b> Closed	<b>Hours:</b> 0.00
<b>Summary:</b> EV - Drive Errors and Raid Failures:80 - SCIO2 6491 2022-05-09 05:03:52: The device, \Device\Harddis			
<b>Resolution:</b>			
<b>Ticket #:</b> 764184	<b>Location:</b> NetSmart	<b>Status:</b> Assigned	<b>Hours:</b> 0.00
<b>Summary:</b> ITBD Alerts has found SCIO2 server is offline of Scio Township\Main.			
<b>Resolution:</b>			
<b>Ticket #:</b> 764194	<b>Location:</b> NetSmart	<b>Status:</b> Resolved	<b>Hours:</b> 0.00
<b>Summary:</b> LT - Offline Servers 30 Min:144568 - SCIO2A 6528 SCIO2A			
<b>Resolution:</b> Monday 05/09/2022 10:51pm UTC-04/ ConnectWise Software SCIO2A is in a SUCCESS state at client:Scio Township location:Main, the last heartbeat was received at 5/9/2022 10:51:34 PM			
<b>Ticket #:</b> 764195	<b>Location:</b> NetSmart	<b>Status:</b> Resolved	<b>Hours:</b> 0.00
<b>Summary:</b> LT - Offline Servers 30 Min:144568 - SCIO2B 6539 SCIO2B			

Confidential

Location: NetSmart  
Business Unit: All  
Board: All  
Company: Scio Township

# NetSmart Company Service

Period: 05/01/2022 to 05/17/2022

Service Type: All  
Status: All  
Show: Billable  
Hours: Actual  
Include Tickets With No Time Entries: Yes

<b>Resolution:</b> Monday 05/09/2022 10:51pm UTC-04/ ConnectWise Software SCIO2B is in a SUCCESS state at client:Scio Township location:Main, the last heartbeat was received at 5/9/2022 10:51:35 PM			
<b>Ticket #:</b> 764228	<b>Location:</b> NetSmart	<b>Status:</b> Resolved	<b>Hours:</b> 0.00
<b>Summary:</b> Disk - E: Drive Space Critical-SCIO6(6512):124873 - SCIO6 6512 E: <b>Resolution:</b> Tuesday 05/10/2022 10:59am UTC-04/ ConnectWise Software Disk - E: Drive Space Critical-SCIO6(6512) SUCCESS on Scio Township\Main\SCIO6 has returned to over 1GB of free space.			
<b>Ticket #:</b> 764280	<b>Location:</b> NetSmart	<b>Status:</b> Resolved	<b>Hours:</b> 0.25
<b>Summary:</b> DRV - Free Space Remaining < 2 GB:7 - SCIO6 6512 E <b>Resolution:</b> Tuesday 05/10/2022 3:55pm UTC-04/ ConnectWise Software Drive Free Space is back to normal on Scio Township\SCIO6 at Main.  Tuesday 05/10/2022 11:30am UTC-04/ ITBD NOC- HI Team,  Issue: DRV - Free Space Remaining &lt; 2 GB:7 - SCIO6 6512 E  Connected to the server via screen connect Checked and found drive E has 121 GB free out of 210 GB i.e; 58% Alert is cleared  hence closing the case  Regards, Raymond			
<b>Report Totals:</b>		<b>Total Tickets:</b> 53	<b>Total Hours:</b> 43.57

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AA115



Audit Record Details

General Information

Date/Time: 5/13/2022 5:19 PM

User Name: Sandy

User Name: James

Summary: User Modified

Details

Type/Reference #	Action	Field	Old Value	New Value
Security: 290	Modified	(GL) Program Access Level	Set Access	Administrator Access

Total Details: 1

Close

Total Entries: 42



EXTERNAL RE: BS&A access and finance staff.

Homier, Michael <MHomier@fosterswift.com>

Wed 5/18/2022 1:21 PM

To: James Merte <jmerte@ScioTownship.org>; Jessica Flintoft <jflintoft@ScioTownship.org>

Cc: Will Hathaway <WHathaway@ScioTownship.org>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jim,

I am not concerned about who has Enterprise Access to the software and understand that the Board has made a policy decision to give that authority to the administrator. However, it is my further understanding that the Clerk will maintain read/write access to the journals and ledgers. With regard to Ms. Colasanti and Ms. Egeler, I agree with the Clerk that they should only have read access. With read access, both can still document journal and ledger entries that should be added or corrected and pass those on to the Clerk who has the statutory obligation to "prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township." MCL 41.65. Let me know if you have any questions. Thanks.

**Michael D. Homier**

Attorney

Foster Swift Collins & Smith PC

1700 East Beltline, N.E., Suite 200

Grand Rapids, MI 49525-7044

Phone: 616.726.2230; 517.371.8120

Mobile/Text: 517.285.4251

Fax: 517.367.7120

[mhomier@fosterswift.com](mailto:mhomier@fosterswift.com)

[www.fosterswift.com](http://www.fosterswift.com)

---

**From:** James Merte <jmerte@ScioTownship.org>

**Sent:** Tuesday, May 17, 2022 12:25 PM

**To:** Jessica Flintoft <jflintoft@ScioTownship.org>

**Cc:** Will Hathaway <WHathaway@ScioTownship.org>; Homier, Michael <MHomier@fosterswift.com>

**Subject:** RE: BS&A access and finance staff.

Jessica,

I explained this all in my original email and don't have anything further to add. If you would like to discuss the legality of this, I refer you to Mr. Homier at Foster Swift.

Jim

---

**From:** Jessica Flintoft <jflintoft@ScioTownship.org>

**Sent:** Tuesday, May 17, 2022 9:54 AM

**To:** James Merte <jmerte@ScioTownship.org>

**Cc:** Will Hathaway <WHathaway@ScioTownship.org>; James Fink <james.fink@finkandfink.com>

**Subject:** Re: BS&A access and finance staff.

Do you have any answers to my questions, Jim?

Jessica Flintoft  
Clerk  
[Scio Township](mailto:jflintoft@sciotownship.org)

827 N. Zeeb Road  
Ann Arbor, MI 48103  
[jflintoft@sciotownship.org](mailto:jflintoft@sciotownship.org)  
(734) 369-9400

To view your sample ballot, find out where to vote, or confirm your voter registration status  
see <https://vote.michigan.gov/mvic/>

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**From:** Jessica Flintoft <[jflintoft@ScioTownship.org](mailto:jflintoft@ScioTownship.org)>  
**Sent:** Sunday, May 15, 2022 2:41 PM  
**To:** James Merte <[jmerte@ScioTownship.org](mailto:jmerte@ScioTownship.org)>; James Fink <[james.fink@finkandfink.com](mailto:james.fink@finkandfink.com)>  
**Cc:** Will Hathaway <[WHathaway@ScioTownship.org](mailto:WHathaway@ScioTownship.org)>; Donna Palmer <[DEPalmer@ScioTownship.org](mailto:DEPalmer@ScioTownship.org)>;  
Sandy Egeler <[SEgeler@ScioTownship.org](mailto:SEgeler@ScioTownship.org)>; David Helisek <[David.Helisek@plantemoran.com](mailto:David.Helisek@plantemoran.com)>  
**Subject:** Re: BS&A access and finance staff.

Jim, what legal authority is it that you believe you have to allow people, without my authorization, to manipulate the General Ledger?

What legal authority is it you think you have to have removed by Enterprise Administrator access?

I do not authorize Sandy or Nancy to manipulate the General Ledger.

David Helisek agreed with my determination that Sandy did not need access to manipulate the General Ledger in order to prepare for the audit. In fact, he encouraged me to keep the restriction on Sandy's access in place, as read only, as a bare minimum internal control. She could write journal entries out, if needed.

Jim, you need to get some legal advice from our Township Attorney, or other reputable attorney that you trust. What you, Will, Sandy, and now Nancy are doing is wrong. You must stop.

Jessica

Jessica Flintoft  
Clerk  
Scio Township  
827 N. Zeeb Road  
Ann Arbor, MI 48103  
[jflintoft@sciotownship.org](mailto:jflintoft@sciotownship.org)  
(734) 369-9400

To view your sample ballot, find out where to vote, or confirm your voter registration status  
see <https://vote.michigan.gov/mvic/>

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**From:** James Merte <[jmerte@ScioTownship.org](mailto:jmerte@ScioTownship.org)>  
**Sent:** Sunday, May 15, 2022 2:02 PM  
**To:** Jessica Flintoft <[jflintoft@ScioTownship.org](mailto:jflintoft@ScioTownship.org)>  
**Cc:** Will Hathaway <[WHathaway@ScioTownship.org](mailto:WHathaway@ScioTownship.org)>; Donna Palmer <[DEPalmer@ScioTownship.org](mailto:DEPalmer@ScioTownship.org)>;  
Sandy Egeler <[SEgeler@ScioTownship.org](mailto:SEgeler@ScioTownship.org)>  
**Subject:** BS&A access and finance staff.

Jessica,

I have granted access in BS&A general ledger software to Sandy as necessary to complete the FYE and prepare for audit and asked her to begin immediately. Since commencement of this task is so late, I

have also authorized a new temporary employment agreement with Nancy Colasanti to assist in the effort.

Notwithstanding your legal challenge to the same, I have taken this action to comply with the terms of my employment agreement and Township Administrator Job Description, (and the clear expectation of the Board). The applicable section is as follows:

*Finance*

- *Assist the Supervisor in preparing and administering the annual budget and related financial reports under policies formulated by the Board and state law*
- *Oversee and prioritize the allocation of Finance staff work time to accomplish tasks*
- *Hold ultimate authority over BS&A administration and accessibility*
- *Act as the purchasing agent for the township*
- *Collaborate with others in the township to guide compliance with bidding procedures and conduct all sales of personal property which the township board may authorize to be sold.*

I have done this, not as an act of confrontation or willful disrespect, but out of a sense of urgency. The task at hand is not optional and further delaying its completion may cause substantial harm to Scio Township. The Township residents are expecting its officials and staff to do their jobs well and in a timely fashion.

On a more practical note: I have 100% confidence that staff assigned to complete the FYE and audit preparation are both competent and experienced. Sandy Egeler has completed this task successfully for over 25 years and her intimate knowledge of the Scio Township general ledger may very well make her *the* most qualified person of anyone, internal or external to the organization.

I'm hoping we can move forward from this and work together cooperatively on the many issues that need our attention in the service to Scio Township residents.

-As a side note: I have intentionally narrowed the distribution of this communication to internal leadership only. Although everyone has the freedom to share this as they see fit, I would hope we could all start to model a healthier working relationship.

Jim

James Merte  
Scio Township  
(734) 369-9400  
[jmerte@sciotownship.org](mailto:jmerte@sciotownship.org)

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# Township of Scio

Washtenaw County, Michigan

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**Financial Report**  
**with Supplemental Information**  
**March 31, 2022**

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## **Independent Auditor's Report**

To the Board of Trustees  
Township of Scio

### **Opinions**

We have audited the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Township of Scio (the "Township") as of and for the year ended March 31, 2022 and the related notes to the financial statements, which collectively comprise the Township's basic financial statements, as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Township as of March 31, 2022 and the respective changes in its financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinions**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of the Township and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Township's ability to continue as a going concern for 12 months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and, therefore, is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

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To the Board of Trustees  
Township of Scio

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Township's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Township's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### ***Required Supplemental Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and the required supplemental information, as identified in the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, which considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplemental information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

#### ***Supplemental Information***

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Township's basic financial statements. The other supplemental information, as identified in the table of contents, is presented for the purpose of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the other supplemental information is fairly stated in all material respects in relation to the basic financial statements as a whole.

*Plante & Moran, PLLC*

December 15, 2022

## Section I - Internal Control Related Matters Identified in an Audit

In planning and performing our audit of the financial statements of the Township as of and for the year ended March 31, 2022, in accordance with auditing standards generally accepted in the United States of America, we considered the Township's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Township's internal control. Accordingly, we do not express an opinion on the effectiveness of the Township's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses, and, therefore, material weaknesses or significant deficiencies may exist that were not identified.

However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.

A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis.

We consider the following deficiencies in the Township's internal control to be material weaknesses:

- **Cash Receipts and Deposits** - During the year ended March 31, 2022, the Township identified that on a specific date moneys had been collected and a deposit slip that was completed, but moneys were not deposited to the bank and credited to the Township. Although this was detected by the Township, the reconciliation and resolution of this error was beyond the range of timely internal controls. Without adequate procedures and controls surrounding cash receipts and reconciliations and deposit functions, there is risk of misappropriation of assets. We recommend that the Township implement procedures and controls to close and reconcile receipts on a daily basis, take deposits to the bank only with prepared deposit slips that have been reconciled to daily receipt reports, and prepare deposit slips and take deposits to the bank the same day.
- **Segregation of Duties** - During the audit, we identified that individuals with access to post adjustments to the general ledger also had access to cash receipt and custody functions. We recommend that the Township implement adequate mitigating controls or further segregate these functions in order to avoid misappropriation of assets.
- **Tax Billings** - During the year ended March 31, 2022, the Township erroneously missed billing multiple special assessments and multiple county millages on the tax roll. While the Township detected this error and will be billing on the next tax cycle, the Township's detection was well beyond the range of timely internal controls. We recommend that the Township review procedures and controls surrounding property tax and special assessment billings in order to strengthen the processes to ensure billings are complete and accurate.
- **TIF Property Tax Capture** - During the audit, we identified that the TIF capture for the Downtown Development Authority (DDA) was calculated using improper taxable values, resulting in an adjustment proposed by Plante & Moran, PLLC and recorded by the Township to increase the property tax revenue for the DDA and a related receivable. We recommend that the Township implement procedures and controls to include a level of review of TIF capture calculations in order to ensure that revenue is properly recorded.

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**Section I - Internal Control Related Matters Identified in an Audit  
(Continued)**

- **Audit Adjustments and Supporting Schedules** - As part the audit, Plante & Moran, PLLC identified and management recorded multiple adjustments to accounting records in order for the financial statements to be in accordance with generally accepted accounting principles and GASB accounting guidance, which included adjustments to federal revenue, unearned revenue, accounts payable, expenses, receivables, and cash. Additionally, as part of the audit, there were multiple follow ups and updates needed to reconcile certain schedules that did not reconcile to the general ledger when turned over for audit. Without adequate procedures and controls in place to ensure the accounting records are recorded in accordance with accounting standards and supporting schedules properly reconcile to the general ledger, there is a risk of material misstatement to the Township's financial statements.

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**STATE OF MICHIGAN**

MI Court of Appeals

**Proof of Service**

<b>Case Title:</b> SCIO TOWNSHIP CLERK V SCIO TOWNSHIP BOARD	<b>Case Number:</b> 363414
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1. Title(s) of the document(s) served:

<b>Filing Type</b>	<b>Document Title</b>
Brief	Scio Clerk v. Scio Board, 2.6.23, Appellant's Brief
Appendix	Flintoft Final Appendix

2. On 02-06-2023, I served the document(s) described above on:

<b>Recipient</b>	<b>Address</b>	<b>Type</b>
Mark Magyar Dykema Gossett PLLC 75090	mmagyar@dykema.com	e-Serve
Michael Homier FosterSwift 60318	mhomier@fosterswift.com	e-Serve
Laura Genovich FosterSwift 72278	lgenovich@fosterswift.com	e-Serve

This proof of service was automatically created, submitted and signed on my behalf through my agreements with MiFILE and its contents are true to the best of my information, knowledge, and belief.

02-06-2023

Date

/s/ Mark Magyar

Signature

Dykema Gossett PLLC

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