Charter Township of Ypsilanti
"Placing Residents First"

Supervisor's Office

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CHARTER TOWNSHIP OF YPSILANTI
SPECIAL CLOSED SESSION

Friday, February 13, 2009 – 10:00 a.m.

Board Room, Civic Center, 7200 S. Huron River Drive,
Ypsilanti Township

AGENDA

A Special Closed Session of the Charter Township of Ypsilanti Board of Trustees has been called by Supervisor Brenda Stumbo, pursuant to MCL 15.268 Sec. 8 (e) *to discuss the following item:*

1) Charter Township of Ypsilanti, et al v Washtenaw County et al
Michigan Court of Appeal Nos. 281498 & 282354
Washtenaw County Circuit Court No. 06-059-CK

2/12/09

McLAIN & WINTERS

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February 12, 2009

Brenda L. Stumbo, Supervisor
Karen Lovejoy Roe, Clerk
Larry J. Doe, Treasurer
Charter Township of Ypsilanti
7200 S. Huron River Dr.
Ypsilanti, MI 48197

EXEMPT UNDER FREEDOM OF INFORMATION ACT
MCL 15.243(13)(G)
INFORMATION ON OR RECORDS SUBJECT TO ATTORNEY/CLIENT PRIVILEGE

Re: ***Charter Township of Ypsilanti, et al v Washtenaw County et al***
Michigan Court of Appeal Nos. 281498 & 282354
Washtenaw County Circuit Court No. 06-059-CK

Availability to Attend a Special Board Meeting on Monday, February 16, 2009, at 5:00 p.m., if Deemed Appropriate and Necessary by the Township

Dear Board Members:

As I am sure your respective files reflect, I previously requested last night in an addendum letter dated ***February 11, 2009*** that we go into closed session on Tuesday, ***February 17***, at 5:00 p.m., to discuss the Township's legal options/strategy concerning the Court of Appeals Opinion dated ***February 10, 2009***. However, since the WCBOC is scheduled to meet on Wednesday, ***February 18, 2009***, perhaps it would be advantageous to meet on Monday since any final settlement proposal proffered by the Township could be delivered on Tuesday morning with a request that said proposal be considered by the WCBOC at their Wednesday meeting.

As stated in previous letters, since the Township has 42 days from ***February 10, 2009*** to file an ***Application for Leave to Appeal (Application)*** to the Michigan Supreme Court, to wit: ***March 24, 2009***, in the event the County insists on pursuing the $24/hour differential rate for the eleven month period in question, I believe it to be in the Townships' best interest to determine the County's intentions regarding that issue sooner rather than later. As previously advised, in the event the County is determined to proceed in having an award entered in their favor against the Townships which would amount to a 50% punitive/penalty fee against the Townships who simply exercised their constitutional and legal rights to challenge the breach of the County's promise to fund police services at a defined rate for the years 2004-2010 inclusive, then the Township has no choice but to file the ***Application*** with the Supreme Court.

I have discussed this potential special meeting date with attorney John Whitman who has confirmed his availability to meet either on Monday at 5:00 p.m. or Tuesday at 5:00 p.m. I have not had an opportunity to discuss the availability of attorney Steve Matta or the appellate team; however, I do believe that time is of the essence in receiving a definitive answer from the County vis-à-vis the ***Quantum Meruit*** claim.

If after review of this correspondence you have any questions or I can be of further assistance, please contact me.

Very truly yours,

Wm. Douglas Winters

Wm. Douglas Winters

rsk
cc: Trustees Eldridge /Martin (via email)
Trustees Currie/Sizemore (via fax by Clerk Roe)
Mike Radzik
John Whitman
Steve Matta
Rosalind Rochkind
Megan Cavanagh
Sarah Robertson

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February 11, 2009

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Washtenaw County Circuit Court No. 06-059-CK

Addendum to Previous Letter Dated February 11, 2009 and Request to Go Into Closed Session on Tuesday, February 17, 2009, at 5:00 p.m., to Discuss Township's Legal Options/ Strategy Concerning the Court of Appeals Unpublished Opinion Dated February 10, 2009

Dear Board Members:

After having an additional 12 hours to review the Court of Appeals Opinion dated ***February 10, 2009***, I would strongly recommend the Township Board discuss this Opinion and the Township's legal options and strategy in closed session at its next regular meeting scheduled for Tuesday, ***February 17, 2009***, at 5:00 p.m.

I realize at first glance it may appear that this case is over. However, since the Court has ordered Judge Costello to award Washtenaw County "***...the differential cost of $24 for a PSU for the eleven month period***" and has

remanded said issue "***...for the calculation of an award***," it is imperative that we discuss this issue and other findings made by the Court which I believe to be flawed and erroneous.

For example, it is a legal paradox or, in laymen's words, a "***contradiction in terms***" for the court to rule that there did not exist a formal contract between the parties and then proceed to uphold the dismissal of the promissory estoppel claim on a C8 motion which

> ***...tests the legal sufficiency of a claim by the pleadings alone and all factual allegations contained in the complaint must be accepted as true as well as any reasonable inferences or conclusions that can be drawn from the facts.*** (emphasis supplied)

While the Court of Appeals may have correctly cited the court rule pertaining to C8 motions, it is obvious from their opinion that they ignored this requirement that all factual allegations contained in the Township's complaint be accepted as true "***...as well as any reasonable inference or conclusions that can be drawn from the facts.***" It is a legal non sequitur for the Court to acknowledge the rule of law and then do exactly what the court rule does not allow. This legal "***shell game***" is magnified to even greater heights when one considers the Townships were not allowed to even depose one person in support of its claim for promissory estoppel.

I appreciate each and every one of you who have taken the time to read the legal briefs, previous decisions by Judge Costello and now this 18 page Opinion by the Court of Appeals. I have never encouraged the Township to go down a litigious path without conducting a due diligent review of all pertinent records, documents, agreements, correspondence, etc. This same due diligence was followed in the instant case as evident by the Complaint that was filed.

While I can accept the outcome of any court case the Township is a party to, I cannot and will not sit by and allow the Plaintiff Townships to be treated as sacrificial lambs by being assessed a 50% punitive/penalty fee for exercising its legal rights to challenge the breach of the County's promise to fund police services at a defined rate for the years 2004-2010 inclusive. While over the years I have sometimes strongly disagreed with some of the decisions of the trial court, Court of Appeals, and the Michigan Supreme Court, those disagreements occurred ***after*** the Township was given an opportunity to present its case and

"***...have its day in court.***" In our case, this opportunity did not occur. For that I am deeply embarrassed by the decisions of the trial court and the Court of Appeals.

In closing, I look forward to discussing this matter with all of you during the closed session on ***February 17, 2009*** which meeting will also be attended by attorney John Whitman, Steve Matta (if available) and maybe one of the appellate attorneys.

Very truly yours,

Wm. Douglas Winters

Wm. Douglas Winters

rsk
enclosures
cc: Trustees Eldridge /Martin (via email)
Trustees Currie/Sizemore (via fax by Clerk Roe)
Mike Radzik
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February 11, 2009

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Re: ***Charter Township of Ypsilanti, et al v Washtenaw County et al***
Michigan Court of Appeal Nos. 281498 & 282354
Washtenaw County Circuit Court No. 06-059-CK

Receipt of Court of Appeals Unpublished Opinion Dated
February 10, 2009

Dear Board Members:

Please find enclosed a copy of the unpublished opinion rendered by the Michigan Court of Appeals (dated ***February 10, 2009***) in regard to the police services lawsuit. While all of us have always believed that the judicial system (while sometimes proceeding at a snail's pace) will eventually make the correct legal decisions based upon the Michigan and Federal Constitutions and the controlling case law as interpreted by the Michigan Supreme Court, unfortunately, this did not occur in this case.

It is difficult to put into words the disappointment and frustration that all of us feel at this moment. The trial attorneys in this case (John Whitman and Steve Matta), along with the appellate team (Rosalind Rochkind, Megan Cavanagh, Sarah Robertson), expended hundreds of hours in a collaborative effort to hold Washtenaw County accountable for the contractual promises that were made to ***ALL*** townships and were relied upon by the elected officials of each and every township board in this county.

Regardless as to whether the parties in this case are able to amicably resolve the remaining issue as to the amount of dollars the Townships owe the County as a result of this decision (which permits the County to charge the Townships a higher rate for the same services provided to other townships during the eleven month period), there is no amount of dollars that will ever restore to the County their loss of honor, integrity and reliability whenever the parties engage in contract negotiations for any services proffered by the County. All of us involved in this case know the truth that Washtenaw County offered contracts for police services for two year intervals from 2004-2010 inclusive at a specific rate, which offer was relied upon and accepted by the townships. It is shameful and appalling that neither the trial court nor the Court of Appeals will allow the Townships to present testimony that would established this fact and reliance beyond any shadow of a doubt.

The Township has 42 days from the date of the unpublished opinion to file an ***Application for Leave to Appeal (Application)*** to the Michigan Supreme Court. In the event the County insists in pursuing a higher rate for police services that were provided to the three townships during the eleven month period in question, then the Township (in my opinion) has no choice but to file the ***Application*** with the Michigan Supreme Court. In further evidence of my belief in the principled and just cause that we have attempted to seek legal and equitable redress on behalf of the Townships, in the event it becomes necessary to file the ***Application***, I would be willing to file said ***Application*** pro bono. In other words, the filing of this ***Application*** would not result in any additional legal fees being incurred by the Townships. By copy of this letter to the attorneys at Garan Lucow, I am also respectfully requesting their agreement to proceed in the same vein.

In closing, while it would be easy to cite chapter and verse the legal flaws contained in the unpublished opinion by the Court of Appeals, I would rather conclude this letter by expressing to the Township how proud I am of all of you and the attorneys from Garan Lucow for trying to insure public safety for all residents who reside in this county. As all of us are aware, unless the County

makes the delivery of police services a high priority so as to protect us from the evil doers who would like nothing more than to create mayhem in a civilized society, the quality of life in our County will continue to deteriorate. Some of you may remember the words from an old country song that was popular a number of years ago that contained the verse "***YOU'VE GOT TO STAND FOR SOMETHING, OR YOU'LL FALL FOR ANYTHING***." Regardless as to the number of years I have remaining to practice law in this state, I will forever remember that in this time of crisis all of us stood shoulder to shoulder to "***STAND FOR SOMETHING***", thus doing the right thing.

Very truly yours,

Wm. Douglas Winters

Wm. Douglas Winters

rsk
enclosures
cc: Trustees Eldridge /Martin (via email)
Trustees Currie/Sizemore (via fax by Clerk Roe)
Mike Radzik
John Whitman
Steve Matta
Rosalind Rochkind
Megan Cavanagh
Sarah Robertson

STATE OF MICHIGAN

COURT OF APPEALS

CHARTER TOWNSHIP OF YPSILANTI, TOWNSHIP OF SALEM and CHARTER TOWNSHIP OF AUGUSTA,

Plaintiffs/Cross-Defendants-Appellants/Cross-Appellees,

and

LINCOLN CONSOLIDATED SCHOOLS and JOHN B. COLLINS,

Plaintiffs,

v

WASHTENAW COUNTY, WASHTENAW COUNTY BOARD OF COMMISSIONERS, WASHTENAW COUNTY ADMINISTRATOR, JEFF IRWIN, LEAH GUNN, ROBERT BRACKENBURY, BARBARA BERGMAN, MARTHA KERN, MARK OUIMET, CONAN SMITH and STEPHEN SOLOWCZUK,

Defendants/Counter-Plaintiffs-Appellees/Cross-Appellants.

UNPUBLISHED
February 10, 2009

No. 281498
Washtenaw Circuit Court
LC No. 06-000059-CK

CHARTER TOWNSHIP OF YPSILANTI, TOWNSHIP OF SALEM and CHARTER TOWNSHIP OF AUGUSTA,

Plaintiffs/Counter-Defendants-Appellants,

and

LINCOLN CONSOLIDATED SCHOOLS and JOHN B. COLLINS,

Plaintiffs,

v

No. 282354
Washtenaw Circuit Court
LC No. 06-000069-CK

WASHTENAW COUNTY, WASHTENAW COUNTY BOARD OF COMMISSIONERS, WASHTENAW COUNTY ADMINISTRATOR, JEFF IRWIN, LEAH GUNN, ROBERT BRACKENBURY, BARBARA BERGMAN, MARTHA KERN, MARK OUIMET, CONAN SMITH and STEPHEN SOLOWCZUK,

Defendants/Counter Plaintiffs-Appellees.

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

In Docket No. 281498, plaintiffs appeal the trial court's grant of summary disposition in favor of defendants on plaintiffs' contract and promissory estoppel claims. Plaintiffs also challenge the trial court's dismissal of their claims pertaining to defendants' constitutional duty to provide specified police services and the costs charged for these services by defendants. They also seek reassignment to an alternative judge on remand. On cross-appeal, defendants challenge the trial court's finding of a violation of the Open Meetings Act and the dismissal of their quantum meruit claim. In Docket No. 282354, plaintiffs appeal the denial of their request for attorney fees and costs for defendants' violation of the Open Meetings Act. We affirm in part and reverse in part.

I. History

Plaintiffs, Charter Township of Ypsilanti, Salem Township and Charter Township of Augusta (hereinafter "Townships"), have engaged in a series of consecutive contracts for police services through the Washtenaw County Sheriffs Department, with defendants, Washtenaw County and the Washtenaw County Board of Commissioners (hereinafter "defendants"). The Townships have elected to contract for these services within their jurisdictions rather than establish their own police departments. The contracts typically covered two-year time periods and initiated, in the case of the Charter Township of Ypsilanti, in 1965. The issues involved in this appeal concern the contracting period for the years 2006 to 2009.

In order to place the current dispute in perspective, it is helpful to review the most recent contractual history between the parties and how changes in computation of fees for police services have evolved. In 1999, defendants retained the services of Northwestern University Traffic Institute (NUTI) to conduct a study to determine the proper level of police services and evaluate the cost methodology being used to charge for contracted deputies. Following the receipt of this study, defendants formed ad hoc committees to review police services. The

committees sought input through public hearings and from County departments in conducting their evaluation. Using the results and recommendations obtained from NUTI and their own investigations, defendants passed a resolution on June 7, 2000, adopting a new methodology for contracting of police services using police service units (PSUs).[1] Attached to this resolution was a document entitled: "Washtenaw County Police Services Summary of approach to contracting for Police Services," which defined the composition of a PSU and provided an overview of current costs for police services, defendants' financial contribution or subsidization for contracted services, the calculated reimbursement rate for one deputy in 2000 with a phased-in approach for implementation of the new cost methodology beginning in 2002. Notably, even with the adoption of the PSU cost methodology, the Townships were not responsible for the full cost of the contracted police services. Defendants continued to subsidize costs using .5 mills from the General Fund and retained responsibility for the payment of overtime and overhead. In separate contracts covering 2002 through 2003, the Townships contracted for a total of 47 PSUs with defendants.[2]

Because defendants' actual costs exceeded what had been anticipated using this methodology, in late 2002 a Police Services Committee was implemented to review the contracting methodology for use in 2004. In May 2003, the County Administrator, Robert Guenzel, prepared and forwarded a memorandum to defendants' Ways and Means Committee pertaining to a new methodology for use in 2004/2005 contracting. Using this newly developed methodology, defendants would continue to subsidize through the millage level previously utilized, but the Townships would begin to assume some of the burden for overtime charges and the cost of a PSU would be subject to yearly increases of six percent. On June 4, 2003, defendants passed "A Resolution Modifying the Current Methodology for Contracting Police Services" to coincide with the 2004 budget year. Subsequently, 24-month contracts were successfully negotiated between the Townships and defendants for police services for 2004 through 2005.

In 2005, defendants sought a millage increase, in part, to fund an expansion of the jail to address overcrowding, which was rejected by voters. Based on defendants' determination regarding the need to proceed with plans pertaining to the expansion of the physical capacity of the jail, defendants ascertained that funding for this project could be obtained by reducing the level of subsidies being provided for contracted police services. Beginning with the 2006 police service contracts with the Townships, defendants sought four-year contract terms. Defendants proposed the continuation of the .5 mill subsidy through 2006, but beginning in 2007 the Townships would be required to pay a flat fee of $10,000 for each PSU for overtime costs. Defendants would retain responsibility for any additional overtime costs incurred. In 2008, the

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[1] Each PSU would be comprised of (a) a deputy, (b) supervision (sergeant, lieutenant, commander), (c) investigation support, (d) clerical support, (e) dispatch services, (f) transportation costs, and (g) non-personnel support costs.

[2] Specifically, Ypsilanti Township contracted for 44 PSUs; Augusta Township contracted for two PSUs, and Salem Township contracted for one PSU.

PSU concept of pricing would be discontinued and, instead, the Townships would be charged the cost of a basic deputy and any personnel, services or equipment required by the deputy.[3]

When presented with the 2006-2009 contracts, the Townships signed the documents but crossed out the provisions for the 2008-2009 period. The Townships reportedly rejected the four-year provisions because the full economic terms for the 2008-2009 portion of the contract remained undetermined. Because the striking of this portion of the contract was construed as a unilateral rejection of the entire contract, defendants attempted to continue to provide the Townships with ongoing police services, through adoption of the January 4, 2006 resolution for a four-month "bridge" contract, beginning January 1, 2006 and continuing through April 30, 2006. This resolution required the Townships to pay $100 an hour for each PSU, which defendants asserted reflected their approximate cost to provide police services. Plaintiffs rejected this offer and filed the underlying lawsuit.

At the outset of the proceedings in the lower court, the Townships sought a preliminary injunction to prevent the discontinuation of police services and halt any potential layoffs of deputies by defendants. On February 3, 2006, the trial court entered a stipulated order requiring the parties to maintain the status quo pending the filing and hearing of motions for summary disposition. On April 13, 2006, the trial court granted partial summary disposition in favor of defendants on plaintiffs' contract and statutory duty claims, but permitted plaintiffs to file an amended complaint. The trial court vacated the status quo order on April 25, 2006. Ultimately, following additional motions for summary disposition, the trial court dismissed all of plaintiffs' remaining claims, with the exception of their assertion of a violation of the Open Meetings Act, MCL 15.261, *et seq*. Despite finding a violation of a notice provision of the Open Meetings Act, the trial court denied plaintiffs' request for attorney fees and costs for this violation. The trial court also rejected defendants' request for reimbursement for interim police services in quantum meruit for the period of January 1, 2006 to December 6, 2006 when a formal contract for police services did not exist between the parties and which also encompassed the time when the status quo order was in effect. Notably, while this litigation remained pending, the parties did sign, on December 6, 2006, contracts for police services that were effective from the date of execution through 2009. In a stipulated order dated December 6, 2006, which incorporated these executed contracts, the parties specifically reserved their rights to pursue all claims pending in this action.

II. Standard of Review

We review de novo a trial court's ruling on motions for summary disposition. *Armstrong v Ypsilanti Charter Twp,* 248 Mich App 573, 582; 640 NW2d 321 (2002). Specifically, a motion for summary disposition brought pursuant to MCR 2.116(C)(8) "tests the legal sufficiency of a claim by the pleadings alone and all factual allegations contained in the complaint must be accepted as true as well as any reasonable inferences or conclusions that can be drawn from the

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[3] Regardless of whether a jurisdiction contracted for police services, defendants would continue to provide "core services" (also referred to a "County-wide services") without charge.

facts." *Id.* at 583-584. With reference to a motion brought pursuant to MCR 2.116(C)(10), our Supreme Court has ruled that a trial court may grant summary disposition "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Clerc v Chippewa Co War Mem Hosp,* 267 Mich App 597, 601; 705 NW2d 703 (2005) (citation omitted). Questions of statutory interpretation comprise questions of law that this Court also reviews de novo. *Armstrong, supra* at 582. We review a trial court's findings of fact for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol,* 256 Mich App 505, 512; 667 NW2d 379 (2003) (citations omitted). In determining whether the facts presented to a trial court resulted in the formation of a contract comprises an issue of law that we review de novo. *Bracco v Michigan Technological Univ,* 231 Mich App 578, 585; 588 NW2d 467 (1998). Finally, this Court reviews de novo a trial court's dispositional ruling pertaining to an equitable matter. *Blackhawk Dev Corp v Village of Dexter,* 473 Mich 33, 40; 700 NW2d 364 (2005). "The trial court's findings of fact in an equity action can be set aside only if they are clearly erroneous." *Attorney Gen v Lake States Wood Preserving, Inc,* 199 Mich App 149, 155; 501 NW2d 213 (1993).

III. Analysis

A. Breach of Contract

The Townships contend the trial court erred in granting summary disposition on their contract claim. In the lower court, the Townships asserted the existence of a "Master Contract" comprised of three documents: (1) the Guenzel May 21, 2003 memorandum, (2) the Washtenaw County Police Services Summary of Approach to Contracting for Police Services developed in 2000, and (3) the June 4, 2003 Resolution adopted by defendants. The Townships argued that these documents comprised a valid and enforceable contract, which required defendants to maintain subsidization for contracted police services at previous levels and the limitation of annual increases in the costs for a PSU to six percent until 2010.

Defendants denied the existence of a "Master Contract," asserting the documents relied on by the Townships merely provided the parameters for contract negotiations and failed to demonstrate any mutuality of agreement sufficient to comprise a valid contract. Defendants further argued that the purported "Master Contract" violated the statute of frauds due to the absence of the formality of authorized signatures and could not be enforced based on the failure of the express condition precedent requiring stable levels of revenue sharing. Citing to the January 1, 2004, contract defendants contend that the integration clause contained in that document would nullify any purported antecedent agreement reflected by a "Master Contract."

For a valid contract to be formed, the following elements are essential: (a) the participation of parties competent to contract, (b) a proper subject matter, (c) legal consideration, (d) mutuality of obligation, and (e) mutuality of agreement. *Hess v Cannon Twp,* 265 Mich App 582, 592; 696 NW2d 742 (2005) (citation omitted). The term mutuality of agreement is understood to refer to a meeting of the minds on all of a contract's material terms. *Kamalnath v Mercy Hosp,* 194 Mich App 543, 548-549; 487 NW2d 499 (1992). "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Id.*

The trial court correctly determined that the three documents relied on by the Townships fail to satisfy the elements necessary to establish a valid contract. "A mere expression of intention does not make a binding contract." *Kamalnath, supra* at 549. Further, "Mere discussions and negotiations cannot be a substitute for the formal requirements of a contract." *Thomas v Leja,* 187 Mich App 418, 422; 465 NW2d 58 (1991). A review of the documents comprising the purported "Master Contract," whether read individually or jointly, clearly evidence merely an intention and framework for negotiation and not a "meeting of the minds" on all essential terms. Even the most formal of the three documents, the "Resolution Modifying the Current Methodology for Contracting Police Services," only indicates authorization for the County Administrator "to negotiate contracts within the parameters of the attached methodology beginning for the year 2004 and provision for those contracts be included in the 2004/2005 budget." Based on this very specific limitation, it is disingenuous for the Townships to contend that these documents comprise an enforceable contract extending into the year 2009. In addition, the attachment of sample blank contracts to the alleged "Master Contract" belies any contention by the Townships that the resolution and the other documents they rely on were intended to comprise the final agreement between the parties. This, coupled with the long history of formal, executed contracts is contrary to the Townships' position.

Even if a "Master Contract" were found to exist, it was supplanted by the 2004 contract, which contained the following integration clause:

> Article XIV – Extent of Contract. This contract represents the entire agreement between the parties and supercedes all prior representations, negotiations, or agreements whether written or oral.

In accordance with general contract principles, "parties are bound by the contract because they have chosen to be so bound." *Archambo v Lawyers Title Ins Corp,* 466 Mich 402, 414; 646 NW2d 170 (2002). It is well recognized,

> [W]here the later contract contains an integration clause, it cannot be said that the later contract does not supersede the earlier contract on the basis that that is not what the parties intended. Obviously, in such a situation, the integration clause provides clear evidence to the contrary, i.e., that the parties *did* intend the later contract to supersede the earlier contract . . . . and thus provides dispositive evidence with regard to which contract is controlling. [*Id.* at 414 n 16 (emphasis in original).]

As noted by the trial court, given the clear and unambiguous language of the integration clause in the 2004 contract, "even if a Master Contract was formed, the integration clause expressly nullifies it."

The Townships assert that the 2004 contract was consistent with, and in fulfillment of, the "Master Contract" and, therefore, the integration clause did not make the Townships' reliance on the "Master Contact" unreasonable. This argument is not viable given our determination that a "Master Contract" is nonexistent. In what seems a rather desperate attempt to support their contract claim, the Townships contend that the integration clause is "ambiguous" and that a question of fact exists regarding its "extent and scope." This argument is merely one more pellet in the shotgun approach to this litigation as the Townships fail to provide any

discussion or law in support of this conclusion. Accordingly, this argument is waived for purposes of appeal. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

In response to defendants' assertion that the proposed "Master Contract" violated the statute of frauds, the Townships, citing *46th Circuit Court v Crawford Co,* 266 Mich App 150; 702 NW2d 588 (2005), rev'd on other grounds 476 Mich 131 (2006), amended 476 Mich 1201 (2006), contend that the signature of the Deputy Clerk on the June 4, 2003 Resolution suffices to meet any signatory requirement. In *Crawford*, this Court determined that a formal resolution approved by a county board constituted an agreement because "A county board speaks only through its official minutes and resolutions and their import may not be altered or supplemented by parole evidence regarding the intention of the individual members." *Id.* at 161. However, the Townships' attempt to use this ruling is misplaced, as *Crawford* is factually distinguishable. At issue in Crawford was a retirement benefit package, which was being developed for employees of the district court. All of the essential terms of that agreement were contained in the subject resolution, thereby constituting a valid contract, when approved by the county board. However, in the circumstances of this case the documents relied on by plaintiffs fail to comprise a valid contract. As such, the sufficiency of defendants' approval of the 2003 resolution for meeting statute of fraud requirements is irrelevant and rendered superfluous by our determination that a contract does not exist.

B. Promissory Estoppel

Alternatively, the Townships contend entitlement to appellate relief based on the equitable doctrine of estoppel. In support of their claim of promissory estoppel, the Townships argue that the documents comprising the "Master Contract" contained explicit promises regarding the use of a specific funding mechanism and the ongoing subsidization of costs in contracts for police services. The Townships refer to the projections incorporated in these documents regarding future costs and assert they detrimentally relied on these representations in seeking millages and foregoing the development of their own police departments. Defendants assert that the alleged promises relied on by the Townships are insufficient for the imposition of estoppel and, because express contracts existed regarding the same subject matter, estoppel is precluded. Finally, defendants contend it was objectively unreasonable for the Townships to rely on the alleged statements given the prolonged history of formal contracting and the uncertain nature of the underlying financial projections. The trial court granted summary disposition based on the absence of a "clear and definite" promise by defendants and found that any purported reliance by the Townships, given the uncertainty of defendants' financial projections and the clear indication that "all costs and funding levels would be subjected to biennial review" was unreasonable.[4]

Promissory estoppel is comprised of the following elements: "(a) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character

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[4] We note that the trial court in its April 13, 2006, order and memorandum of law incorrectly refers to equitable rather than promissory estoppel, as pleaded by the Townships. Despite this error, we find no fault in the trial court's reasoning or ultimate decision on this issue.

on the part of the promisee and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." *Novak v Nationwide Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999). "In determining whether a requisite promise existed, we are to objectively examine the words and actions surrounding the transaction in question as well as the nature of the relationship between the parties and the circumstances surrounding their actions." *Id.* at 687. Further, this Court must "exercise caution in evaluating an estoppel claim and should apply the doctrine only where the facts are unquestionable and the wrong to be prevented undoubted." *Id.*

Contrary to the Townships' assertions, the referenced documents do not contain explicit promises. "To support a claim of estoppel, a promise must be definite and clear." *Schmidt v Bretzlaff,* 208 Mich App 376, 379; 528 NW2d 760 (1995) (citation omitted). "[R]eliance is reasonable only if it is induced by an actual promise." *Ypsilanti Twp v Gen Motors Corp,* 201 Mich App 128, 134; 506 NW2d 556(1993) (citation omitted). The Guenzel memorandum refers only to "assumptions" in trying to "determine the appropriate level of service and cost sharing." The delineated costs were clearly designated to be "projections" and indicated the potential for future "modifications." This memorandum indicated that the proposed methodology was dependent on the "long-term fiscal stability" of the County and "on the continuation of State Revenue Sharing at current levels." The June 4, 2003 Resolution clearly provided that the new contracting methodology was intended to "coincide with the County's budget process," which spans specified intervals. The new methodology was to begin on January 1, 2004, and merely authorized the negotiation of contracts initiating that year. There was no indication that the Resolution was a promise to continue beyond the approaching budget year.

The Townships assert defendants used the term "commitment" and that such language comprises a binding promise. However, the Townships ignore the entirety of the statement they cite, which indicated that the "Board of Commissioners *wishes* to make a long term commitment to fund County police services . . . ." (Emphasis added.) "[A] promise must be distinguished from a statement of opinion, a prediction of future events, or a party's will, wish, or desire for something to happen." *First Security Savings Bank v Aitken,* 226 Mich App 291, 313; 573 NW2d 307 (1997), overruled on other grounds 460 Mich 446 (1999). Although the Townships repeatedly assert the existence of promises by defendants, their pleadings are inadequate in identifying, by clear language rather than inference and implication, any definitive declaration by defendants sufficient for the imposition of estoppel.

This Court would further note that, in their complaint, the Townships name as individual defendants eight of the eleven members of the Washtenaw County Board of Commissioners, but allegations pertaining only to Kern and Brackenbury are specifically contained within the pleadings. The complaint fails to contain any allegations regarding six of the eight named members and only infers that statements made by Kern and Brakenbury to a local newspaper comprised promises binding on defendants. In implying these representations are sufficient for the imposition of estoppel, the Townships ask this Court to make too broad of an inferential leap. The allegations pertaining to these individuals are insufficient to meet the requirements for estoppel. As such, the pleadings are inadequate on their face to support claims against any of these individual defendants.

C. Constitutional Duty to Provide Police Services and Cost Allocations

The Townships allege the trial court erred in granting summary disposition on their claim regarding defendants' constitutional obligation to provide police services. The Townships challenge the trial court's determination that the provision of a "road patrol" is not a mandatory service and that defendants did not act in an arbitrary and capricious manner in calculating the price charged for police services. Specifically, the Townships take issue with the trial court's use and application of *Brownstown Twp v Co of Wayne,* 68 Mich App 244; 242 NW2d 538 (1976), asserting circumstances pertaining to population growth and needs of townships have changed significantly since *Brownstown* was decided, making the decision factually inapplicable to this case and outdated. Consequently, the Townships assert that the provision of a road patrol should now be construed as a mandatory service. The Townships contend that this Court should remand the issue to sufficiently develop a record to ascertain what police services are mandated by law and to permit them the opportunity to demonstrate that a stricter duty should be imposed given the prolonged history of dependence by the Townships on defendants' provision of deputies and the absence of alternative options to secure police coverage.

At the outset it is necessary to address the Townships' allegations that the trial court was not properly responsive to its complaint by failing to delineate what police services are legally or constitutionally mandated. A reading of the Townships' complaint only asserts that defendants are required, based on prior practice and historical dependency, to continue to provide all police services previously provided regardless of the existence of a contract. Contrary to the Townships statement of their issue on appeal, the trial court thoroughly addressed the presented issue.

A sheriff's duties are statutory in nature. MCL 45.407 states:

> It is hereby provided that this act shall be so construed as to require the sheriff, under-sheriff and deputy sheriffs to perform all reasonable services within the jurisdiction of their offices for which the county may be liable and to serve and execute all civil writs and processes that may be reasonably served and executed by said officers under salary.

The Townships contend that the phrase "to perform all reasonable services" necessarily equates to all of the duties performed pursuant to the prior contracts between the parties, including a routine road patrol. Following the logic of the Townships' arguments, it is difficult to understand why contractual agreements were ever sought since all such services are construed as being mandatory.

In *Brownstown,* while recognizing the importance of the availability of law enforcement services "for the protection of the safety and welfare of its citizens," this Court read MCL 45.407 and construed "the provision 'reasonable service' to mean the sheriff must perform the duties of the office of sheriff as recognized at common law as well as those statutory duties which do not destroy the sheriff's power to perform the duties of the office at common law." *Brownstown, supra* at 248. Specifically, the common law duties of a sheriff were determined to include:

> [S]heriffs may execute all lawful orders and process of the circuit courts of this state. MCLA 600.582; MSA 27a.582. Sheriffs have charge and custody of the county jail and its prisoners. MCLA 51.75; MSA 5.868. Likewise, statutory law impliedly recognizes the duty of the sheriff to serve process in civil or criminal

> cases, preserve the peace, and apprehend persons committing a felony or a breach of the peace, because the sheriff may recruit suitable aid in performing these functions. MCLA 600.584; MSA 27A.584. Se also MCLA 287.6; MSA 12.375 (enforcement of quarantine orders of animals); MCLA 752.527; MSA 18.1221 (recovery of drowned bodies). [*Id.* at 249.]

However, as repeatedly found by this Court there exists "no statutory requirement that the sheriff provide a road patrol." *Id.* (See also, *Cahalan v Wayne Co Bd of Comm'rs,* 93 Mich App 114, 123; 286 NW2d 62 (1979), reaffirming the decision in *Brownstown* refusing "to order the Wayne County Board of Commissioners to allocate funds to operate a road patrol, because there was no statutory or common law duty requiring the sheriff to perform such a service.")

Although this Court did construe the existence of a "stricter duty" in the absence of alternative police services, the Townships disingenuously suggest this implies the provision of road patrol services. Rather, this Court specifically determined:

> [N]either the common law nor Michigan statutory authority impose a duty on the sheriff to supply a full-time road patrol on all county roads and highways. A stricter duty is imposed upon the sheriff to maintain law and order in those areas of the county not adequate policed by local authorities. This *does not mean that the sheriff must regularly patrol those areas.* All that is minimally required is that the sheriff exercise reasonable diligence to (1) keep abreast of those areas inadequately policed, which may require limited vigilance, (2) monitor criminal activity or unusual conditions in the county, and (3) respond professionally to calls for assistance from the citizenry. [*Brownstown, supra* at 251 (emphasis added).]

In a subsequent opinion, acknowledging the holding in *Brownstown,* this Court observed:

> No public official can provide all the services that he would like to provide, and it is for him to use his judgment as to how he will make his money spread. If he is politically astute, he can perhaps make sufficient political capital of his inability to render services to create pressure upon the legislative branch to increase his appropriation. But no court can very well take a hand in that game. Nor can the court even suggest, much less dictate, in what way an official shall shift his funds in order to comply with a duty which the court has found the law imposes upon him. [*Wayne Co Sheriff v Wayne Co Bd of Comm'rs,* 148 Mich App 702, 708; 385 NW2d 267 (1986) (internal citations and quotation marks omitted).]

Consequently, the trial court properly followed the precedent established by this Court in determining the absence of a common law or statutory basis to mandate the provision of road patrol services. See *City of Taylor v Detroit Edison,* 475 Mich 109, 136 n 9; 715 NW2d 28 (2006).

A similar conclusion is supported in an opinion issued by the Michigan Attorney General. "Although Attorney General opinions are not binding on this Court, they can be persuasive authority." *Lysogorski v Bridgeport Charter Twp,* 256 Mich App 297, 301; 662 NW2d 108 (2003). In OAG, 2976, No 4966, p 369 (April 6, 1976), addressing the requirement to provide

police protection to villages "absent a specified contractual obligation," the Attorney General opined:

> It follows that for purposes of law enforcement and police protection, a sheriff is obligated to enforce county ordinances and state laws throughout the county, including those areas designated as villages. This obligation embraces police protection services supplied by the county sheriff and is limited only to the sheriff's duties to "matters for which the county may be liable."
>
> However, the distribution of deputy sheriffs throughout the county remains an administrative function within the discretion of the sheriff. A village, which desires additional police protection, has the option of entering into a contract with the county where by the sheriff would be obligated to provision additional manpower to the village . . . or by the establishment of a village police force. [*Id.* at 370.]

As recognized by the trial court, the Separation of Powers doctrine[5] is implicated in these determinations. "Under established separation of powers doctrine, legislative power must be insulated from judicial interference. This Court has consistently held that in disputes such as the present one, the judiciary will not interfere with discretionary actions of a legislative body such as defendant board of commissioners." *Wayne Co Sheriff, supra* at 704. Although the trial court was within the purview of its authority to interpret the statutes pertaining to the mandatory functions of the sheriff in providing police protection to the Townships, the trial court correctly recognized the limitations imposed on its ability to dictate to defendants what constitutes "serviceable" levels of policing and restricted itself to a determination regarding whether the method used to ascertain the amounts assessed was arbitrary and capricious.

> As previously discussed by this Court:
>
> The separation of powers doctrine mandates the preservation of the legislative, executive, and judicial branches of government as entities distinct from one another. The power to appropriate money is exclusively legislative in character. This Court has consistently refrained from interfering with a legislative body's exercise of discretion in appropriating funds. In order to warrant judicial intrusion, the legislative action must be "so capricious or arbitrary as to evidence a total failure to exercise discretion." [*Police Officers Assoc of Michigan v Oakland Co*, 135 Mich App 424, 430; 354 NW2d 367 (1984) (internal citations omitted).]

The result urged by the Townships is misplaced, as it would require the judiciary to micro-manage the legislative duties and responsibilities of defendants.

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[5] US Const Arts I, II, III, § 1; Const 1963, art 3, § 2.

The Townships further obfuscate the issue by attempting to integrate a variety of arguments, without actually presenting any substantive legal support for their position other than to assert that defendants and the trial court erred in their interpretation and the application of cited cases and statutes. This is insufficient, particularly in seeking appellate review. To the extent the Townships contend that defendants were arbitrary and capricious in determining the rates to be charged for non-mandatory police services, a review of the lower court record leads this Court to affirm the trial court's October 4, 2007, opinion:

> [Defendants] have considered every aspect of the situation. They have not proceeded pell-mell to determine the PSU rate, and they certainly have not "picked a figure out of the air". To the contrary they have attempted to determine how many deputies are needed for mandatory police services and backed that number out of the equation of the total number of deputies in eventually settling on the monetary rate per PSU. One must keep in mind that additional services are still provided that fall outside of this rate. [(Internal citations omitted.)]

While the Townships may dispute the methodologies employed in making this cost determination, they fail to demonstrate that the manner in which defendants proceeded was not thorough and based on a considered analysis.

In support of their contention that the cost methodology used was arbitrary and capricious, the Townships cite to comments by two members of the Washtenaw County Board of Commissioners, who opined that the setting of a differential rate for the Townships from those local governments that had signed contracts with defendants appeared punitive and retaliatory. However, the cited statements, without more, are insufficient because "individual board members' viewpoints are not relevant since the board exercises its power as a collective entity and not as individuals." *Wayne Co Sheriff, supra* at 705 (citation omitted).

D. Open Meetings Act Violation and Attorney Fees

On cross-appeal, defendants contend the trial court erred in finding the form of a meeting notice used by defendants violated the OMA because it failed to designate that a quorum of the Board of Commissioners would be present at the Leadership Committee meeting when the Sheriff's request for independent legal representation was denied. Defendants argue that posting of the notice for the Leadership Committee meeting was sufficient to indicate that a quorum of the Board would be present. Further, defendants assert that the Board's subsequent re-enactment of their decision, pursuant to MCL 15.270(5), precluded the trial court from granting any form of declaratory relief on the Townships' OMA claim. In response, the Townships contend the trial court erred in not awarding them attorney fees and costs based on the language of the statute. As a result, the Townships seek an award of actual attorney fees and costs in the amount of $313,396.01.

Although the Townships' allegations pertaining to alleged violations of the OMA changed during the course of the litigation, for purposes of this appeal only their assertion that consideration of the Sheriff's request for independent legal representation was not properly noticed is before this Court. The Sheriff submitted a request for independent legal representation, which was placed on the January 19, 2006 meeting agenda for the Wayne County Board of Commissioners Leadership Committee. The Leadership Committee rejected the

Sheriff's request for legal representation, and minutes of that meeting were developed. There appears to be no legitimate dispute that notice of this meeting was posted and that it was held in a room accessible to the public. Rather, the alleged violation of the OMA centers on the failure of the notice to indicate that a sufficient number of commissioners would be present at that meeting to constitute a quorum.[6] Defendants subsequently disbanded the Leadership Committee and, in September, the Ways and Means Committee of the Board of Commissioners re-enacted the decision to deny the Sheriff's request for legal fees and retention of outside counsel, pursuant to MCL 15.270(5).

On summary disposition, the trial court, relying on this Court's ruling in *Nicholas v Meridian Charter Twp Bd,* 239 Mich App 525, 528; 609 NW2d 574 (2000), found the meeting notice to be inadequate.[7] The trial court determined that the presence of a quorum of the Board at the Leadership Committee meeting necessitated that the public be informed, "the business to be undertaken would actually be considered by the township board rather than the particular committee actually specified on the notice." *Id.* at 532. The trial court rejected the Townships' additional requests for an injunction against future violations of the OMA and to invalidate the decisions of the Leadership Committee. The trial court determined that, since the Leadership Committee had already been voluntarily disbanded, there existed no basis for the granting of an injunction. Further, because the prior actions of the Leadership Committee were re-enacted by the WCBC in accordance with MCL 15.270(5), the trial court ruled, "there are no grounds for an invalidation of the official action of the WCBC." Based on its finding of a violation of the OMA, the trial court permitted the matter to proceed for a determination of attorney fees and costs, which would be recoverable pursuant to either MCL 15.273(2) and/or MCL 15.271(4), finding that defendants were not "insulate[d]" against the imposition of sanctions for violation of the OMA.

Three sections of the OMA, MCL 15.261 *et seq.*, are relevant to this issue. First, MCL 15.270 provides in relevant part:

> (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.
>
> (2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3), in making the decision or if failure to give notice in accordance with section 5 has

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[6] Following redistricting, the reduction of the number of Commissioners from 15 to 11 resulted in the six Board members on the Leadership Committee to constitute a quorum of the Board.

[7] The trial court relied solely on the ruling of the *Nicholas* Court in making this determination and implied disagreement with that ruling when stating it did "not interpret the applicable statutes to provide for such notice."

> interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

This section of the OMA also contains the provision pertaining to re-enactment. In accordance with MCL 15.270:

> (5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Notably, this section does not provide for an award of costs and attorney fees. See *Leemreis v Sherman Twp*, 273 Mich App 691, 699; 731 NW2d 787 (2007).

In contrast, in MCL 15.271, "the Legislature provided a distinctly different cause of action against public bodies for noncompliance" with the OMA. *Leemreis, supra* at 699. MCL 15.271, states, in relevant part:

> (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

Significantly, MCL 15.271 permits the imposition of attorney fees and costs, stating:

> (4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

Finally, MCL 15.273 allows for a "different cause of action against a public official who intentionally violates the act." *Leemreis, supra* at 700. MCL 15.273(1), provides:

> A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

At the outset we note that although the Townships alleged, "Defendants collectively and individually have each intentionally violated the OMA," relief was only requested pursuant to MCL 15.271(4). Based on their own pleadings, and consistent with the trial court's failure to "make a specific finding that any public official or individual Commissioner of the WCBC had 'intentionally' violated the OMA," we will not consider the Townships request for attorney fees

and costs pursuant to MCL 15.273(1). Further, because MCL 15.270 does not provide for costs and attorney fees for violation under this section of the OMA, we restrict our review of the Townships' claim to MCL 15.271(4).

Three requirements exist to obtain an award of costs and attorney fees pursuant to MCL 15.271(4):

> (1) a public body must not be complying with the act, (2) a person must commence a civil action against the public body "for injunctive relief to compel compliance or to enjoin further noncompliance with the act," and (3) the person must succeed in "obtaining relief in the action." [*Leemreis, supra* at 704.]

Because the Townships did not meet the third criteria of successfully "obtaining relief in the action," the trial court was justified in denying an award of attorney fees. Even though the trial court determined that a "technical violation" occurred pertaining to "the adequacy of notice," an injunction was unnecessary because the Leadership Committee had been voluntarily disbanded precluding future repetition of the violation. Hence, as in *Leemreis,* "even if the trial court properly granted declaratory relief, it was not declaratory relief that was the 'equivalent' of an injunction or in lieu of an injunction." *Id.* at 707. In addition, the trial court did not invalidate the decision of the Leadership Committee due to re-enactment of the vote by the entire Board of Commissioners. Because the Townships "did not receive the invalidation it sought, it could not obtain attorney fees, regardless of whether the defendant, as a consequence of the action, reenacted the meeting in which the alleged violation occurred." *Id.* at 709.

Defendants contend it was improper for the trial court to even consider the issue of attorney fees because the reenactment of the decision rendered the issue moot, thereby depriving the trial court of jurisdiction. Pursuant to this Court's decision in *Leemreis*:

> The statute and caselaw are clear that once a decision is reenacted, it "shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment," MCL 15.270(5), and it "stands untainted by procedural deficiency," *Manning v City of East Tawas,* 234 Mich App 244, 252; 593 NW2d 649 (1999). If a plaintiff seeks invalidation and a subsequent reenactment precludes invalidation, there is no longer any actual controversy within the context of the case . . . . In the absence of an actual controversy, the trial court lacks subject-matter jurisdiction to enter a declaration judgment. *McGill v Automobile Ass'n of Michigan,* 207 Mich App 402, 407; 526 NW2d 12 (1994). [*Id.* at 703.]

As a result, "[t]he trial court erred in considering this moot issue in the guise of granting declaratory relief and, because there was no longer any case in controversy, lacked subject-matter jurisdiction . . . ." *Id.* Because the subsequent reenactment cured the defect, any issue pertaining to the existence of a violation of the act was rendered moot.

The trial court did conduct an evidentiary hearing pertaining to the Townships' request for attorney fees. However, the Townships' attorneys were unable to demonstrate, with any degree of certainty, the time and costs expended in the pursuit of their claim for violation of the OMA. Specifically, as discussed by the trial court in its November 13, 2007 opinion:

> [T]he Plaintiffs' attorneys testified truthfully but failed to clearly establish the "actual" attorney fees and costs attributable to the OMA claim. For example, Mr. Whitman frequently utilized qualifying terminology that "50 percentage-ish" of the claim fees were for the OMA claim. Mr. Matta also candidly admitted that it was difficult to distinguish certain fees given the nature of the multiple claims. It was logical for the witnesses to conclude that a significant portion of time was spent on the OMA claim since they were initially precluded from pursuing discovery on the other claims. To the extent this Court would need to speculate or rely upon conjecture in determining "actual" attorney fees and costs such a finding would be arbitrary.

It is incredible to this Court that the Townships could have expended sufficient time and effort in pursuing this one claim to justify their contention of entitlement to over $300,000 in attorney fees and costs, particularly given their inability to substantiate the primary claims underlying this cause of action.

E. Quantum Meruit

On cross-appeal, defendants assert the trial court erred in ruling their quantum meruit counterclaim had been rendered moot. Defendants contest the trial court's determination that the subsequent signing of the December 2006 contracts rendered the claim moot because the contracts were not retroactive and specifically reserved the right to pursue this claim. Surprisingly, the Townships concur that the trial court's determination that the issue was moot was in error. Rather, the Townships contend that defendants were not entitled to any relief in quantum meruit because there had been no demonstration of a benefit received due to the failure of the trial court to adequately distinguish between mandated and non-mandated police services. In effect, the Townships respond to this issue by arguing a different claim.

"[A] claim of quantum meruit is equitable in nature." *Morris Pumps v Centerline Piping, Inc,* 273 Mich App 187, 199; 729 NW2d 898 (2006). "The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Id.* at 194. To obtain a recovery based on a claim of quantum meruit both the "receipt of a benefit" and a resulting inequity "because of the retention of the benefit" must be established. *Id.* at 195.

Defendants filed a claim in quantum meruit for the difference between their requested rate of $77 for a PSU from the discounted rate of $53 paid for a PSU during the period spanning January 1, 2006 through December 6, 2006, when the parties did not have a formal contract and encompassing the period of time when the status quo order had been terminated by the trial court. Although other governmental units that entered into long-term contracts with defendants received the discounted rate of $53, defendants contend it would be inequitable to permit the Townships to receive the services at this same rate due to additional administrative costs incurred.

It cannot be disputed that the Townships received a benefit by continuing to receive full police services at the discounted rate for the 11-month period spanning January 1, 2006 to December 6, 2006, without having committed to a contract during this protracted litigation. Further, the trial court made a factual determination that defendants were burdened by the

Townships' receipt of this benefit and that the amount of $77 for a PSU was not arrived at in an arbitrary and capricious manner. Our review of the record leads us to conclude that these factual findings by the trial court do not give rise to a definite and firm conviction that mistakes were made. Thus, giving due deference to the trial court's factual determination regarding the prejudice to defendants as a result of the Townships' receipt of the discounted rate without the benefit of a formal contract, we are persuaded the trial court erred in failing to award defendants the differential cost of $24 for a PSU for the 11-month period on their quantum meruit claim. Therefore, we reverse the trial court's grant of summary disposition on defendants' quantum meruit claim and remand this issue to the trial court for calculation of an award.

F. Judicial Disqualification

The Townships, for the first time on appeal[8], seek disqualification of the assigned judge, asserting bias and that he improperly granted summary disposition pursuant to MCR 2.116(C)(8). Specifically, the Townships allege that Judge Costello "repeatedly decided issues of fact when no such findings were warranted." Despite the voluminous record available, the Townships cite only to the following portion of the trial court's November 13, 2007, ruling denying their request for attorney fees based on a violation of the OMA to support their contention of bias:

> To the understandable frustration and disappointment of the Plaintiffs however, this Court cannot find that it warrants the assessment of actual attorney fees and costs. Certainly the Plaintiffs' main objective was to derail the assessment for Police Service Units which translates into million [sic] of current and future dollars for the participating townships. The OMA claim was but one more attempt to accomplish this goal. A review of the court file and history of this case will revel [sic] the shifting and developing claims regarding the OMA claim by the Plaintiffs. Even if the OMA claim was maintained as a separate action this Court cannot find that the Plaintiffs received the "relief" they pursued under the statute.

Although the above assertions provide the sum and substance of the Townships' proffered evidence of purported bias by the trial court judge from the lower court record, they contend in their appellate brief that it comprises "overwhelming evidence."

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[8] We note that a motion for disqualification was filed by plaintiffs in the lower court premised on Judge Costello's voluntary disclosure that his daughter was in the process of interviewing for a summer clerkship with the Dykema Gossett law offices, located in Chicago, Illinois. Judge Costello denied plaintiffs' request for his recusal and our review of the lower court record reveals no attempt by plaintiffs to seek a de novo review of this ruling. Further, on appeal, plaintiffs fail to cite to any concerns pertaining to the lower court motion for disqualification and premise their argument before this Court on alleged bias demonstrated by his rulings being contrary to the strictures of MCR 2.116(C)(8).

The Townships' request for disqualification of the trial judge lacks both a legal or factual basis. In accordance with *Cain v Dep't of Corrections,* 451 Mich 470, 512; 548 NW2d 210 (1996), "[I]n order for disqualification . . . to be proper, the judge must have shown actual bias against a party or a party's attorney." In this instance, the Townships primarily assert the trial judge was biased based on his rulings in favor of defendants. Their pleadings are completely inadequate as "judicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a 'deep-seated favoritism or antagonism that would make fair judgment impossible' and overcomes a heavy presumption of judicial impartiality." *Armstrong, supra* at 597 (internal citations omitted).

Our review of the record and lower court rulings reveals the trial court's thorough and even-handed approach with both parties. The Townships conveniently ignore that the trial court permitted them to amend their complaint and did not limit or unduly restrict oral arguments on any issue. A review of the opinions issued by the judge demonstrates great attention to detail and an effort to accurately recount the arguments presented by both sides. Noteworthy is the fact that the Townships do not allege the trial court failed to correctly reiterate their arguments, did not understand their position or failed to provide a legal basis for its various rulings. On several occasions, the trial court expressed empathy for the Townships and provided them with opportunities to address issues or arguments raised by defendants by extending discovery and refusing to grant defendants' requests for summary disposition. "Repeated rulings against a litigant, even if erroneous, are not grounds for disqualification. The court must form an opinion as to the merits of the matters before it. This opinion, whether pro or con, cannot constitute bias or prejudice." *Armstrong, supra* at 597-598. Further, the trial court did not rule exclusively in favor of defendants as it sided with the Townships on the claimed violation of the OMA and dismissed the counterclaim raised by defendants for quantum meruit.

IV. Conclusions

We affirm in part and reverse in part and remand for further proceedings consistent with this opinion. Pursuant to MCR 7.219(A), for taxation of costs purposes, we find defendants to be the prevailing parties in this appeal. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher