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Honorable Mark H. Schauer
State Representative
The Capitol
Lansing, MI

Dear Representative Schauer:

The Attorney General has asked me to respond to your letter expressing concerns about section 4(6) of the Michigan Right to Farm Act, 1981 PA 93, MCL 286.471 *et seq*; MSA 12.122(1) *et seq*. Section 4(6), added by 1999 PA 261,[1] preempts local ordinances that conflict with the Michigan Right to Farm Act or with agricultural and management practices developed under the act.

Your first concern is the relationship between section 4(6) of the Michigan Right to Farm Act and Const 1963, art 7, § 34, which requires liberal construction of constitutional and statutory provisions relating to local units of government.

Section 4(6) of the Michigan Right to Farm Act provides:

> Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as

[1] 1999 PA 261 was signed into law and filed with the Secretary of State on December 28, 1999. It was not given immediate effect. Thus, under the 90-day provision in Const 1963, art 4, § 27, it became effective on March 10, 2000, since in 1999 the legislative session ended on December 10, 1999. 1999 Journal of the Senate 2074 (No. 87, December 10, 1999); 1999 Journal of the House 2583 (No. 87, December 10, 1999).

> otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution
>
> that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act.

Under section 2(d) and section 4(8) of the Michigan Right to Farm Act, the Michigan Commission of Agriculture is directed to adopt generally accepted agricultural and management practices.

In Const 1963, art 7, § 34, the people have mandated that constitutional and statutory provisions dealing with local units of government be liberally construed in their favor. It provides:

> The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

Michigan's appellate courts have consistently ruled that Const 1963, art 7, § 34, is not an independent grant of authority to local units of government to act in any particular area. Rather, this constitutional provision simply provides a guide for interpreting statutes that confer authority upon local units of government by requiring that such statutes be liberally construed. *Arrowhead Development Co v Livingston County Rd Comm*, 413 Mich 505, 511; 322 NW2d 702 (1982); *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310, 319; 471 NW2d 321 (1991); *Eyde Construction Co v Meridian Charter Twp*, 149 Mich App 802, 807; 386 NW2d 687 (1986); *Natural Aggregates Corp v Brighton Twp*, 213 Mich App 287, 295; 539 NW2d 761 (1995).

Section 4(6) of the Michigan Right to Farm Act does not grant powers to local units of government. Thus, it does not fall within the scope of Const 1963, art 7, § 34. Further, since Const 1963, art 7, § 34, is not an independent grant of authority to local units of government, it is not offended by the section 4(6) language that preempts local ordinances that conflict with the Michigan Right to Farm Act or with agricultural and management practices developed under the act.

Your second concern is whether section 4(6) of the Michigan Right to Farm Act

infringes upon the authority of townships to adopt ordinances for the public health, safety and welfare under the Township Ordinance Act,[2] or the authority of townships to incorporate under the Charter Township Act.[3]

Addressing your second concern requires an analysis of township powers under Michigan law. Michigan courts have ruled that townships do not have their own police power. The power of townships to adopt ordinances arises from statutes passed by the Legislature. Township ordinances are subordinate to state statutes. The Legislature may, in a subsequent statute, modify a township ordinance it had previously authorized. *Brandon Twp v North-Oakland Residential Services, Inc*, 110 Mich App 300, 304-305; 312 NW2d 238 (1981); *lv den* 412 Mich 900 (1982).

In *Brandon Twp, supra*, the township claimed that the Legislature could not, by statutory amendment, determine that a state licensed residential facility housing six or fewer persons was a permitted use in areas zoned for single family dwellings under township zoning ordinances. In rejecting plaintiff's claim, the court ruled that:

> The fallacy of this theory becomes immediately apparent upon analysis of the nature of the authority granted to townships to enact zoning ordinances. Const 1963, art 7, § 17 provides:
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> > "Each organized township shall be a body corporate with powers and immunities provided by law."
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> As a panel of this Court, in *Lake Twp v Sytsma*, 21 Mich App 210, 212; 175 NW2d 337 (1970), stated:
>
> > "Townships have no police power of their own; they may exercise such power only by virtue of a grant by the state, and in cases of zoning, power is extended through zoning enabling acts." (Citation omitted.)
>
> It can be stated as a general principle of law that local zoning ordinances are subordinate to otherwise permissible legislative enactments. See *Dearden v Detroit*, 403 Mich 257; 269 NW2d 139 (1978), *Detroit Edison Co v Wixom*, 382 Mich 673; 172 NW2d 382 (1969), *Renshaw v Coldwater Housing Comm*, 381 Mich 590; 165 NW2d 5 (1969), *DeGaynor v*

[2] 1945 PA 246, MCL 41.181 *et seq*; MSA 5.45(1) *et seq*.
[3] 1947 PA 359, MCL 42.1 *et seq*; MSA 5.46(1) *et seq*.

> *Dickinson County Memorial Hospital Board of Trustees*, 363 Mich 428; 109 NW2d 777 (1961), *Dingeman Advertising, Inc v Saginaw Twp* , 92 Mich App 735; 285 NW2d 440 (1979).
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> * * *
>
> Neither the township nor its residents enjoy a constitutional right to any benefits of zoning restrictions unfettered by the State Legislature. Thus, while the Legislature enabled the township to enact zoning ordinances, it did not misrepresent or conceal the fact that subsequent laws could change or modify those ordinances established. There was no constructive fraud. Township residents could not, as the trial court concluded, rely upon the continuance of single family residence restrictions for their neighborhood. The Legislature is not "estopped" from enforcing the zoning exemption.

Brandon Twp, 110 Mich App at pp 304-305.

The Michigan Supreme Court has ruled that the Legislature may preempt local ordinances in a specified area of the law by adopting express statutory language to that effect. *People v Llewellyn*, 401 Mich 314, 323; 257 NW2d 902 (1977). If a statute's language is clear, it must be given its plain meaning and no interpretation is necessary. *Dussia v Monroe County Employees Retirement System*, 386 Mich 244, 248-249; 191 NW2d 307 (1971). In section 4(6) of the Michigan Right to Farm Act, the Legislature has expressly and clearly stated its intention to preempt conflicting local ordinances under specified circumstances. Therefore, section 4(6) does not unlawfully infringe upon the authority of townships under the Township Ordinance Act to adopt ordinances to secure the public health, safety and welfare, and the authority of townships under the Charter Township Act to incorporate and function as a charter township.

Your third concern is whether section 4(6) of the Michigan Right to Farm Act infringes upon the power of townships, under the Township Planning Act,[4] to engage in township planning. Section 3(1) of the Township Planning Act authorizes a township board to create a township planning commission. Section 6(1) of that act directs the planning commission to adopt a basic plan for the development of the

[4] 1959 PA 168, MCL 125.321 *et seq*; MSA 5.2963(101) *et seq*.

unincorporated portions of the township.

Based on the authorities noted above in response to your second concern, it is clear that the Legislature has the power to preempt local ordinances or resolutions that conflict with the Michigan Right to Farm Act or with agricultural and management practices developed under the act. The Township Planning Act does not prevent the Legislature from preempting local ordinances or resolutions that

conflict with the Michigan Right to Farm Act. Therefore, section 4(6) of the Michigan Right to Farm Act does not unlawfully infringe upon the power of townships, under the Township Planning Act, to engage in township planning.

Sincerely,

William J. Richards
Deputy Attorney General