

# Township Law News

Foster Swift Administrative & Municipal Group

**FOSTER SWIFT**

FOSTER SWIFT COLLINS & SMITH, P.C.  
ATTORNEYS AT LAW

313 S. Washington Square  
Lansing, MI 48933  
PH: 517.371.8100  
FX: 517.371.8200

Suite 230  
32300 Northwestern Hwy.  
Farmington Hills, MI 48334  
PH: 248.539.9900  
FX: 248.851.7504

Suite 200  
1700 East Beltline  
Grand Rapids, MI 49525  
PH: 616.726.2200  
FX: 616.726.2299

11th Floor  
333 West Fort Street  
Detroit, MI 48226  
PH: 248.785.4725  
FX: 248.785.4726

Suite 2D  
205 South Front Street  
Marquette, MI 49855  
PH: 906.226.5501  
FX: 517.367.7331

[www.fosterswift.com](http://www.fosterswift.com)

February 2009

## UPDATE REGARDING TOWNSHIP PARK COMMISSIONS: TOWNSHIP VOTERS MAY NOW DISSOLVE A COMMISSION BY VOTE

In our August 2008 Newsletter, we summarized a Michigan Court of Appeals decision that struck down an attempt by voters to dissolve through an election a township parks commission that township voters previously created. *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389 (2008). The Court explained that the Township Parks Act addresses how to create a township park commission but does not address how to dissolve one. In contrast, several other statutes expressly provide for both *establishing and dissolving* various commissions, boards, and programs by voters. The Court, in line with a 1999 Attorney General opinion on the subject, therefore concluded that a voter-established township park commission may not be dissolved by vote of the electors.

Since that summary, the Michigan Legislature has enacted Public Act 496 to revise the rules on dissolving a park commission. Act 496, which became effective January 13, 2009, now allows township voters to dissolve a park commission by a vote. Act 496 spells out the process to get that question on the ballot – a petition with at least 8% of township voters is required to get the process going. It also specifies what happens to the park's assets if the vote to dissolve the park commission is successful: the park assets are transferred to the township board.

## CHANGES IN LABOR AND EMPLOYMENT LAW UNDER PRESIDENT OBAMA

As expected, many changes have been made or are in the works now that President Obama is in office and Congress is controlled by the Democratic Party. Although many of these changes are intended to affect the private sector, they will also affect municipalities. The following is a summary of statutes and regulations that have been revised or are expected to be passed early in Obama's presidency:

- **Americans with Disabilities Act (ADA).** The ADA, originally passed by Congress in 1990, was amended effective January 1, 2009 to greatly expand the scope of the ADA. From its inception, the ADA was drafted to protect employees from discrimination based on a disability that substantially limits major life activities. The new amendments greatly enlarge the scope of the ADA by expanding the list of "major life activities," expanding the definition of "disability," and directing the EEOC to revise its definition of "substantially limits." The particular changes to the ADA are too voluminous to list here, but by way of example, the list of "major life activities" now includes a wide and expansive list of activities: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking,

(continued on next page)

**Rebecca S. Davies**

248.539.9904  
rdavies@fosterswift.com

**James B. Doezema**

616.726.2205  
jdoezema@fosterswift.com

**Brian G. Goodenough**

517.371.8147  
bgoodenough@fosterswift.com

**Richard L. Hillman**

517.371.8129  
rhillman@fosterswift.com

**Michael D. Homier**

616.726.2230  
mhomier@fosterswift.com

**Steven H. Lasher**

517.371.8118  
slasher@fosterswift.com

**David M. Lick**

517.371.8294  
dlick@fosterswift.com

**Thomas R. Meagher**

517.371.8161  
tmeagher@fosterswift.com

**Ronald D. Richards Jr.**

517.371.8154  
rrichards@fosterswift.com

**Anne M. Seuryneck**

616.726.2240  
aseuryneck@fosterswift.com

**Cole Young**

248.539.9916  
cyoung@fosterswift.com

standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. By expanding this list of major life activities, Congress has effectively expanded the coverage of the Act to a greater number of employees. This greater coverage means more municipal employees can claim protection under the Act. As a result, municipalities will likely see more claims brought under the new ADA amendments and will be required to accommodate a larger group of employees.

- **Family and Medical Leave Act (FMLA).** The FMLA, which was originally passed by Congress in 1993, was amended in 2008 to provide additional job-protected leave rights for (1) covered servicemembers with a serious injury or illness; and (2) for qualifying exigencies arising when a covered military member is on active duty or has been notified of an impending call or order to active duty. The FMLA regulations were amended effective January 16, 2009, to clarify certain aspects of traditional FMLA leave, and to address the newly enacted military leave provisions. The new regulations, which are intended to make administration of FMLA leave more efficient, require updating all FMLA notices and policies that were in effect prior to 2009. These new regulations also create several new procedural hurdles both for municipalities and their employees. Thus, your municipality's human resources personnel must ensure they have the most recent FMLA required notices and policies, and must become familiar with the new employee and employer procedural requirements.
- **Civil Rights Act of 2008.** Title VII of the Civil Rights Act of 1964 saw significant amendments in 1991, with more amendments likely during the Obama presidency. There are numerous proposed changes included in the current bill, so it is likely to see a number of amendments before it can be brought to a vote. If passed, however, this law would increase available punitive damages and the recovery of expenses in discrimination lawsuits.
- **Employment Non-Discrimination Act (ENDA).** Currently, neither federal nor Michigan law protects sexual orientation in the workplace. The ENDA, which is almost certain to pass, would make sexual orientation a protected class like race, color, sex, age, religion, national origin and disability.
- **Healthy Families Act.** The Healthy Families Act would require employers with 15 or more employees to provide seven paid sick days annually for employees working 30 or more hours a week. An employee would be able to accrue up to the full seven days of sick leave and carry it over from year to year, although no more than seven days could be carried from one year to the next.

---

Foster, Swift, Collins & Smith, P.C. is a 107-year old law firm with nearly 100 attorneys in five Michigan offices. The firm's legal solutions are the result of experience, hard work, sound judgment and first rate professionals working cooperatively for the benefit of Foster Swift clients. The firm's attorneys are members of the following client-centered practice groups: Administrative & Municipal • Banking, Finance & Real Estate • Business & Corporate • Commercial Litigation • General Litigation • Health Care • Employment, Labor & Benefits • Trusts & Estates • Workers' Compensation.

Foster, Swift, Collins & Smith, P.C. **Township Law Newsletter** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

**IRS Circular 230 Notice:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.