

STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

CONST 1963, ART. 9, § 6: Levy of property taxes in excess of
constitutional limitations.
CONST 1963, ART. 9, § 31:

Without a vote of the county's electorate, a general law county may not levy pre-Headlee taxes as authorized by Const 1963, art 9, § 31 in excess of (1) the 15-mill limitation as allocated annually by the county tax allocation board under Const 1963, art 9, § 6, or (2) its specific share of the 18-mill limitation as fixed by the county voters under art 9, § 6.

Opinion No. 7287

October 21, 2015

The Honorable Joe Hune
State Senator
The Capitol
Lansing, MI 48909

You ask whether, without a vote of the people, a general law county may levy pre-Headlee authorized taxes in excess of the 15- or 18-mill limitations set forth in art 9, § 6 of the Michigan Constitution.¹

Article 9, § 6 of the Constitution imposes limitations on property taxation in the so-called "15-18-50 mill/20-year limitation" provision.² The first paragraph of

¹ In this Opinion, "pre-Headlee authorized taxes" refers to taxes authorized by state law before December 23, 1978, the effective date of the Headlee Amendment.

² The tax rate, or millage, is the number of tax dollars a taxpayer must pay for each \$1,000 of taxable value. A mill equals one one-thousandth of a dollar or \$1 of tax for each \$1,000 of taxable value. For example, if a local millage is 15 mills and the taxable value of the property is \$100,000, the formula would be \$15 x 100, for a property tax of \$1,500.

§ 6 creates the taxing limitations and provides, in part:

Except as otherwise provided in this constitution, the total amount of general ad valorem taxes . . . in any one year *shall not exceed 15 mills* Under procedures provided by law³ . . . separate tax limitations for any county and for the townships and for school districts therein, *the aggregate of which shall not exceed 18 mills* . . . may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county These limitations may be increased to *an aggregate of not to exceed 50 mills* . . . for a period of *not to exceed 20 years at any one time*, if approved by a majority of the electors [Const 1963, art 9, § 6; emphasis added.]⁴

The second paragraph of § 6 creates two exceptions from the tax limitations, and provides:

The foregoing limitations shall not apply [1] to taxes imposed for the payment of principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for the payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or [2], subject to the provisions of Section 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law. [Const 1963, art 9, § 6.]

This “nonapplication provision,” as it is sometimes called, excludes taxes levied to pay for voter-approved public debts or, subject to certain conditions, taxes imposed by cities, villages, charter counties, charter townships, charter authorities or other authorities, from the 15-18-50 mill/20-year limitation. *Butcher v Grosse Ile Twp*, 387 Mich 42, 65; 194 NW2d 845 (1972).

³ The taxing limitations and procedures for adopting separate tax limitations are incorporated and set forth in the Property Tax Limitation Act, MCL 211.201 through 211.217a.

⁴ A 15-mill limitation first appeared in Michigan’s 1908 Constitution. See Const 1908, art 10, § 21.

Section 6 thus prohibits a general law county from levying millage in excess of (1) the 15-mill limitation as allocated annually by the county tax allocation board under art 9, § 6, or (2) its specific share of the 18-mill limitation as fixed by the county voters under art 9, § 6. Section 6 also authorizes a county to place before voters an initiative to exceed this annual or fixed allocation for the county, general law townships, school districts, and other taxing units within the county to a maximum of 50 mills for not more than 20 years.

Here, the County in question is not a charter county,⁵ and thus is not one of the local units of government excluded from the 15-18-50 mill/20-year limitation. See, e.g. OAG, 1985-1986, No 6285, p 46 (April 17, 1985) (noting distinction in treatment between townships and charter townships for purposes of art 9, § 6).⁶ The County did, however, avail itself of the option in § 6 to adopt separate tax limitations through a vote of the people. In November 1964, County voters approved a fixed allocation of 5.50 mills for the County.

This vote fixed the property tax allocation for the County until electors vote to approve a different allocation. Of course, the County and other taxing units within the County subject to the tax limitations of § 6 could still seek to approve

⁵ There are only two charter counties in Michigan – Wayne (1983) and Macomb (2011). Oakland and Bay Counties are organized under the Optional Unified Form of County Government Act, MCL 45.551 et seq. The remaining Michigan counties operate under MCL 45.1 et seq., as general law counties.

⁶ The County would benefit from the public debt exception, but that provision is not applicable here.

additional millage up to 50 mills, but only with voter approval and for a period not to exceed 20 years.

Fourteen years later, in November 1978, Michigan voters approved a series of amendments to the state Constitution, commonly referred to as the Headlee Amendment. See OAG, 1977-1978, No 5417, p 740 (December 20, 1978). These provisions, Const 1963, art 9, §§ 25-34, took effect December 23, 1978. The Headlee Amendment was “part of a nationwide ‘taxpayers revolt’ . . . to limit legislative expansion of requirements placed on local government, to put a freeze on what they perceived was excessive government spending, and to lower their taxes both at the local and the state level.” *Bolt v City of Lansing*, 459 Mich 152, 161; 587 NW2d 264 (1998), quoting *Airlines Parking, Inc v Wayne County*, 452 Mich 527, 532; 550 NW2d 490 (1996); *Waterford School Dist v State Bd of Education*, 98 Mich App 658, 663; 296 NW2d 328 (1980) (The Headlee Amendment’s “ultimate purpose was to place public spending under direct popular control.”).

Relevant to your question, art 9, § 31 provides, in part:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. . . .

This provision “invalidates the levying of any new tax not already authorized by law at the time of the ratification of the Headlee Amendment unless voter approval of that tax is secured.” *Wheeler v Charter Twp of Shelby*, 265 Mich App

657, 664; 697 NW2d 180 (2005), citing Const 1963, art 9, § 31. The Headlee Amendment also amended art 9, § 6 to include the “subject to the provisions of Section 25 through 34 of this article” language in the second paragraph, as well as to include other references to “voter approval.” See OAG No 5417, pp 740-743 (discussing Headlee Amendment and history of art 9, § 6).

“ ‘In interpreting the constitution, [the Michigan Supreme] Court has developed two rules of construction.’ ” *Makowski v Governor*, 495 Mich 465, 472; 852 NW2d 61 (2014), quoting *Soap & Detergent Ass’n v Natural Resources Comm*, 415 Mich 728, 745; 330 NW2d 346 (1982). “First, the interpretation should be ‘the sense most obvious to the common understanding; the one which reasonable minds, the great mass of people themselves, would give it.’ ” *Id.* (citations and quotation marks omitted); *Nat’l Pride at Work, Inc v Governor*, 481 Mich 56, 67; 748 NW2d 524 (2008). “Second, in previous cases [the Court has] considered ‘the circumstances surrounding the adoption of the constitutional provision and the purpose sought to be accomplished[.]’ ” *Makowski* at 472. (internal citations and quotation marks omitted); *Dep’t of Transportation v Tomkins*, 481 Mich 184, 191; 749 NW2d 716 (2008); *House Speaker v Governor*, 443 Mich 560; 575 NW2d 190 (1993).

Against this background, you ask whether, without a vote of the people, the County Board of Commissioners could levy millage in excess of the 15- or 18-mill limitations set forth in art 9, § 6 of the Michigan Constitution.

According to information reviewed in conjunction with your request, the County Board of Commissioners approved by resolution the levying of three millages in December 2014. The first was for 1/27th of a mill to be levied under the Veterans' Relief Fund Act, 1899 PA 214, MCL 35.21 *et seq.*, for the County's Veterans' Relief Fund. The second was for .07 of a mill to be levied under the Advertisement of Agricultural Advantages Act, 1913 PA 88, MCL 46.161, for the promotion of agricultural and economic development in the County. The third was for .5 of a mill to be levied under the Public Highways and Private Roads Act, 1909 PA 283, MCL 224.20, for use in maintaining public roads and streets.

State law authorized each of these millages well before the Headlee Amendment's passage in 1978. Moreover, the millage rates approved by the County Board of Commissioners did not exceed the rates authorized by law for each of these millages. See MCL 35.21 (1/10th of a mill for Veterans' Relief Fund); MCL 46.161 (0.50 of a mill for agricultural and industrial advertising); MCL 224.20 (1 mill in counties where total assessed valuation is more than \$300 million). Because these millages were authorized by law before the Headlee Amendment became effective and the approved rates did not exceed the rates authorized by law, the County Board of Commissioners' decision to levy these millages without the approval of county voters did not violate art 9, § 31. *American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 357; 604 NW2d 330 (2000) (“[W]e agree . . . that the Headlee exemption of taxes authorized by law when the section was ratified permits the levying of previously authorized taxes even where they were not being levied at

the time Headlee was ratified[.]”); *Bailey d/b/a The Pines Motel v Muskegon County Bd of Comm’rs*, 122 Mich App 808, 821; 333 NW2d 144 (1983).

But this analysis does not completely answer whether the approval of these millages violated the taxing limitations set forth in art 9, § 6. According to your request, it is the County’s position that because art 9, § 31 permitted the three millages, as pre-Headlee authorized millages, to be levied, the levies are not subject to the tax limitations of art 9, § 6.

The Michigan Court of Appeals addressed a similar argument in *Grosse Ile Committee for Legal Taxation v Grosse Ile*, 129 Mich App 477, 494; 342 NW2d 582 (1983), leave denied, 419 Mich 870 (1984). In *Grosse Ile*, the plaintiff filed claims in both the circuit court and the Michigan Tax Tribunal, arguing that the local taxes exceeded the aggregate cap of 50 mills set forth in art 9, § 6. The defendants argued that the 50-mill limitation was modified or otherwise eliminated with the passage of the Headlee Amendment. The Court of Appeals disagreed:

After careful consideration, we find that *the Headlee amendment left the former 15-mill, 18-mill, and 50-mill limitations of § 6 intact, and merely added an additional restriction to § 6*. Nowhere in the language of the Headlee amendment is there any indication that the already existing limitations contained in § 6 were to be abolished. [*Id.* at 494; emphasis added]

The Court of Appeals observed that before the Headlee Amendment, the 15-18-50-mill limitations “applied to all units of government with two major exceptions.” *Id.* at 494. The first exception was “for any of those units of government when taxes were imposed ‘for the payment of principal and interest on

bonds or other evidences of indebtedness.’” *Id.* The second exception “was for taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority, or other authority, the tax limitations of which are provided by charter or by general law.” *Id.*

But after the Headlee Amendment was ratified, there were new limitations:

[T]he “charter” exceptions were limited for the first time by the necessity of gaining electorate approval for new or increased taxes. Thus, it appears that the only effect the Headlee amendment had upon § 6 was to impose the additional requirement of electorate approval before the exceptions to the 50-mill limitation would be operative.” [*Id.* at 495 (citation omitted); see also *American Axle*, 461 Mich at 355-356 (reviewing art 9, § 6 and describing art 9, § 31 as adding the “requirement of voter approval of new taxes.”).]

The Court further observed that § 6’s “subject to the provisions of Section 25 through 34 of this article” language applies only to the second exception and not to the taxing limitation provision in § 6:

[B]ecause the amendment of § 6 was made at the time other provisions of the Headlee amendment were added the specific reference to the other provisions of the Headlee amendment applied only to the “charter” exception to the limitations contained in § 6, and the language in § 6 which sets forth the limitations was not also amended, we are unpersuaded by the defendants’ argument that the Headlee amendment abolished the 50-mill limitation contained in § 6. It is clear to us that the framers of the Headlee amendment were well aware of the existing language of § 6; and, because no amendment concerning the limitations contained in § 6 was proposed, we find that the Headlee amendment did not abolish the 50-mill limitation. [*Id.*]

Accordingly, the Court of Appeals held that it was “unconstitutional for the Township of Grosse Ile to impose aggregate taxes that exceed the 50-mill limitation set forth in § 6.” *Id.* The Court, however, remanded to the Michigan Tax Tribunal

for a determination as to whether Grosse Ile Township's taxes actually exceeded the 50-mill limitation.⁷

The *Grosse Ile* Court's analysis of the 50-mill limitation applies equally well to the 15- or 18-mill limitations. Indeed, if the Headlee Amendment did not modify or remove the 50-mill limitation from art 9, § 6, the 15- or 18-mill limitations remain as well. This conclusion is consistent with the language of art 9, § 6 and the Headlee Amendment. As noted in the *Grosse Ile* decision, the phrase "subject to the provisions of Section 25 through 34 of this article" appears in the second exception of the nonapplication provision. It does not appear in the first paragraph of art 9, § 6, which places limits on a county's taxing authority. The plain reading indicates that the Headlee Amendment did not change the 15-mill and 18-mill limitation. The same reasoning governs the initial phrase of the first paragraph of art 9, § 6, "Except as otherwise provided in this constitution." Nothing in §§ 25 through 34 of art 9 expressly address the limitations imposed by § 6 and consequently the Headlee Amendment does not set aside the constraints that § 6 imposes on the taxing authority of local units of government.

This conclusion is also consistent with the intent of the voters. The Headlee Amendment's purpose of limiting taxes and allowing more direct popular control would be thwarted if the 15- and 18-mill limitations did not apply because the Headlee Amendment was ratified to provide greater, rather than fewer, protections

⁷ For a discussion of the application of the 50-mill limit to a specific voted millage, see OAG, 1981-1982, No 5866, p 87 (April 7, 1981).

from tax increases. Without the 15- or 18-mill limitations in place, it is conceivable that a local populace would have less control over public spending than it did before the Headlee Amendment—a result contrary to the Amendment’s very purpose.

Here, it is not just the 18-mill limitation that applies; the specific limitations approved by voters within the 18-mill limitations adopted under art 9, § 6 also apply. As noted above, County voters approved a 5.5 mill allocation to the County in 1964. However, the 5.5 mill allocation was rolled back to 4.5493 mills under the Headlee Amendment. Const 1963, art 9, § 31; MCL 211.34d. Accordingly, the maximum millage the County could levy in 2014, without a vote of the people, was 4.5493 mills. If the three millages were levied within the County’s available 4.5493 mills there was no violation of art 9, § 6. Conversely, if the three millages were levied in excess of the County’s 4.5493 mill allocation, the levy violated the tax limitations adopted by County voters under art 9, § 6.

In summary, although the County Board of Commissioners’ approval by resolution of the levying of three millages did not violate art 9, § 31, the levy violated art 9, § 6 if the levy caused the County to exceed its allocated mills as approved by voters. It is the County Board of Commissioners’ responsibility to ensure that the limitations of art 9, § 6 are met. OAG, 1989-1990, No 6654, p 363 (August 16, 1990). If the County wishes to levy a millage in excess of its constitutional and voter-approved limitation, it may do so through a vote of the people under the 50-mill/20-year provision of art 9, § 6.

It is my opinion, therefore, that, without a vote of the county's electorate, a general law county may not levy pre-Headlee taxes as authorized by Const 1963, art 9, § 31 in excess of (1) the 15-mill limitation as allocated annually by the county tax allocation board under Const 1963, art 9, § 6, or (2) its specific share of the 18-mill limitation as fixed by the county voters under art 9, § 6.

A handwritten signature in black ink, reading "Bill Schuette". The signature is written in a cursive style with a long horizontal flourish extending from the end of the name.

BILL SCHUETTE
Attorney General