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June 1, 2016

Ms. Diane Rekowski, Executive Director  
Northeast Michigan Council of Governments  
80 Livingston Blvd., Ste. U-108  
P.O. Box 457  
Gaylord, MI 49734

RE: Northeast Michigan Council of Governments  
Our File No. 201337

Dear Ms. Rekowski:

You have requested Smith Haughey Rice & Roegge to provide an opinion confirming that the Northeast Michigan Council of Governments (NEMCOG) is an instrumentality of local government. Based upon the rationale provided below, it is our position that NEMCOG is an instrumentality of local government.

Our firm has only recently begun to provide assistance to NEMCOG in conjunction with regional planning initiatives established by the State of Michigan. We have reviewed the enabling documentation provided by your office, which includes 1976 Bylaws of NEMCOG, as well as copies of Resolutions adopted in the fall of 1976 by the counties of Alcona, Alpena, Cheboygan, Crawford, Montmorency, Oscoda, Otsego, and Presque Isle, Michigan, confirming said Bylaws. According to the Resolutions, the named counties formed NEMCOG for the purposes established in those Bylaws, and each Resolution confirms that on April 8, 1976, the Northeast Michigan Regional Planning and Development Commission resolved to transfer its name and responsibilities pursuant to PA 281 to become known as the Northeast Michigan Council of Governments.

The Bylaws confirm that NEMCOG was formed pursuant to Michigan Public Act 281 of 1945 (also known as MCL 125.11 et seq.). PA 281 originally established regional planning capabilities for local governmental units including cities, villages, incorporated political subdivisions, counties, school districts, special authorities, townships, and any legally constituted governing body responsible for the exercise of governmental functions within a political subdivision of this state. Section 12 of PA 281 specifically provides that regional planning commissions can only be created by local governmental units as defined above. In 1967, the Michigan legislature amended PA 281 to allow regional planning commissions constituted under the Act to transfer by "interlocal agreement," functions, programs, staff, monies, properties, and any other liabilities or assets to a regional council of governments. If such a transfer occurred, the newly named Council of Governments would be entitled to receive and disburse all grants-in-aid and other revenues that would otherwise be available to the regional planning commission.

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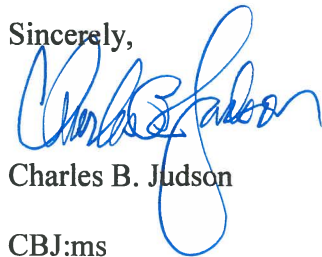
The Northeast Michigan Council of Governments was created as an instrumentality of its local governments in the manner referenced above. As noted, Public Act 281 allows a regional planning commission to be constituted under this Act and to transfer its responsibilities for regional planning by “interlocal agreement” to a council of governments. It is our position that the Counties’ approval of the Bylaws of the Northeast Michigan Council of Governments on April 8, 1976, constituted an interlocal agreement for the reasons set forth below. An “interlocal agreement” is defined as an agreement between Michigan governmental entities to share responsibilities authorized by statute. The term originates under the Michigan Urban Cooperation Act of 1967 (MCL 124.507), which provides that an interlocal agreement may provide for a separate legal entity, which may be a commission, board, or council constituted pursuant to agreement by authorized governmental entities. We also note that under Article II, Section 3, of the Bylaws established by NEMCOG in 1976, and pursuant to its enabling legislation, NEMCOG was established to be considered a public entity. In addition, Article III, Section 1, of said Bylaws, declared the intent of NEMCOG to promote and maintain the principles of intergovernmental cooperation by providing a voluntary organization open to local units of government. The 1976 Bylaws allow NEMCOG to carry out the purposes stated within the Bylaws, and further provides that it “. . . may enter into contracts, agreements, with boards, commissions, councils, federal and state agencies, public and private corporations and individuals. NEMCOG may accept grants of funds made by the State of Michigan, United States of America, or any department or agency thereof, or other public or private agency or individual.”

As a result of our review, we believe that NEMCOG was formed as an instrumentality of local government, specifically the eight counties from which it was created, and is authorized to take actions which are consistent with its purposes incorporated in its existing Bylaws, and as otherwise provided under Public Act 281 of the Public Acts of 1945.

While our opinion is limited to review of documentation provided by your office, the action taken in 1976 to constitute the Northeast Michigan Council of Governments appears consistent with Michigan PA 281. Please note this opinion is specifically limited to the information your office provided for our review, and additional information regarding the formation and operation of NEMCOG since 1976 could impact positions and opinions formulated in this memorandum.

Should you have any questions or request further clarification, please don’t hesitate to contact my office.

Sincerely,



Charles B. Judson

CBJ:ms