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michigan municipal league  
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## Michigan Medical Marijuana Act - Legal Update

by: [Ronald D. Richards Jr.](#)

Another month, another slew of activity on the medical marijuana front across Michigan. This article highlights two recent events from the Michigan Attorney General's office.

### 1. ATTORNEY GENERAL SIDES WITH MUNICIPALITIES: SAYS MUNICIPALITIES MAY BAR DISPENSARIES

First, Michigan Attorney General Bill Schuette, joined by Representative John Walsh (R-Livonia), Senator Rick Jones (R-Grand Ledge) and Berrien County Prosecutor Art Cotter, announced his efforts to address public safety problems associated with the Michigan Medical Marijuana Act. Specifically, Attorney General Schuette decided to file a brief in *Lott v City of Birmingham* that is pending in Wayne County Circuit Court, where the ACLU has sued to challenge municipalities' decisions prohibiting medical marijuana use and dispensaries. The Attorney General's brief argues that the City of Livonia has the right to ban dispensaries – because the Michigan Medical Marijuana Act violates federal law and that municipalities should not be forced to allow activity that violates federal law.

### 2. ATTORNEY GENERAL STATES THAT COLLECTIVE MARIJUANA FARMS ARE ILLEGAL

Second, Attorney General Schuette issued his first formal Attorney General opinion addressing the Michigan Medical Marijuana Act. (Attorney General Opinion No. 7259). Two State Senators asked the Attorney General if

the Act allows patients and primary caregivers to form cooperatives to jointly grow, store, and share marijuana – or if the marijuana must be separately grown for and provided to a specific patient. The Attorney General stated that the Act does not permit the collective growing or sharing of marijuana plants on cooperative marijuana farms. He stated that the Act requires each patient's plants to be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver. Cooperative marijuana farms do not fulfill those requirements, he commented.

Attorney General opinions are not binding in courts, but courts can find them persuasive. Note that the State Senators also asked the Attorney General two additional questions about operating commercial enterprises to sell or transfer medical marijuana, and if the government may conduct warrantless administrative searches of the persons or property of registered patients or primary caregivers. These questions are still under review by the Attorney General's office.

### Did you miss the Foster Swift Michigan Medical Marijuana Act webinar in May?

Don't worry! You can still view a recording. Just visit: [www.fosterswift.com/news-events-Michigan-Medical-Marijuana-Act-Municipalities.html](http://www.fosterswift.com/news-events-Michigan-Medical-Marijuana-Act-Municipalities.html)

## UPCOMING WEBINAR | Social Media: Developing and Implementing an Effective Policy for YOUR Municipality

### Join Foster Swift's Municipal Team for a FREE webinar.

The use of social media is expanding rapidly every day. How does an employer manage the workplace and the legal consequences of regulating and using these mediums?

During this webinar you will collect strategies to help optimize Facebook, LinkedIn, Twitter, YouTube, Flickr and other social media sites as great business tools instead of employee productivity drains.

#### THIS WEBINAR WILL COVER:

- Why your municipality needs to have a social media policy.
- What needs to be included in your social media policy.
- Monitoring the use of social media.
- How to handle abuse as it relates to the policy.
- Relevant acts and laws.
- Identifying volunteer liability as it pertains to their use of social media in communication regarding your municipality.

#### DATE

Tuesday, August 16, 2011

#### TIME

2:00 p.m. - 3:00 p.m. EST

#### PRESENTERS

**Melissa Jackson**, *Employment Law Attorney*

**Samuel Frederick**, *Information Technology Attorney*

#### COST

Free

#### SIMPLE STEPS TO REGISTER

Go to

<https://www1.gotomeeting.com/register/310882632>  
and complete the registration form.

#### Q&A

Have your questions answered throughout the webinar and during a Q&A session following the presentation.

## Open Meetings Act & Closed Sessions – Beware in Preparing Session of the Open Session

by: **Ronald D. Richards Jr.**

The Michigan Court of Appeals recently handed down a decision that is important for any municipality that holds special meetings or goes into closed session to discuss pending litigation. Many municipalities have occasion for one reason or another to go into a closed session during a special meeting. And municipalities of course know that they must post notice of their special meeting at least 18 hours in advance.

It is also nearly inevitable that municipalities may have occasion to go into a closed session to discuss pending litigation. Of course, they can go into closed session for only a specific purpose set out in the Open Meetings Act. That Act allows closed sessions to discuss with their attorney trial

or settlement strategy in connection with specific pending litigation where doing so in an open session would have a detrimental effect on the trial or settlement position of the municipality. During a closed session conducted based on that purpose, the municipality's attorney likely gives advice or recommendations on trial or settlement strategy. But since no decisions can be made in closed session, the municipality must close the "closed session" part of the meeting and then go back into open session for any decisions. That raises the question of how much detail the open session minutes must provide as to any decision the municipality makes regarding the trial or settlement strategy.

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## Open Meetings Act | continued from page 2

The Michigan Court of Appeals recently handed down a decision that is instructive on both the 18-hour special meetings notice requirement and the detail required to be in open session minutes that follow a closed session where litigation or settlement strategy is discussed. *Citizens for Public Accountability v Northville Charter Twp*, unpublished per curiam (decided 5-26-11).

### THERE ARE TWO KEY POINTS:

1. The 18-hour requirement for special meetings does not require posting for 18 business hours. Nor does it mean putting the notice in a spot that is publicly available for 18 hours. (In *Northville Charter Twp*, the Court upheld the notice even though it was posted in a part of the township hall that was not accessible to the public for the full 18 hours, the notice was posted.)
2. Though rare in our judgment, a court can find a municipality to have violated the Open Meetings Act if its open session minutes are too skimpy. The *Northville Charter Twp* Court ruled the township violated the Open Meetings Act because its minutes of the open session that followed the closed session were too skimpy and did not reflect the actual "decision." On July 24th, the

township held a closed session to consider settlement of pending litigation. The agenda item merely said "REIS litigation." The minutes of the July 24th meeting state that the purpose of the closed session was to "discuss with the township attorneys the litigation and settlement issues..." Minutes of the open session that followed the closed session then say this about the "decision" made: "Township Board authorizes the Township Supervisor and Clerk to execute any appropriate documents, if presented as outlined, and recommended by the Township attorney." In reality, the Township Board's decision was to sign a consent judgment to settle the REIS litigation. The Court held that the minutes do not adequately reflect the actual decision made, and therefore do not meet the Open Meetings Act's requirements. The Court suggested that the proper way would be to (1) state the actual decision to settle the case; (2) state the documents the attorney presented during the closed session; or (3) state if the documents presented were full, final, or draft settlement proposals.

If you have questions about the Open Meetings Act in general or its provisions on notice and closed sessions, feel free to contact [Ronald Richards \(517.371.8154\)](tel:517.371.8154) or [Anne Seuryneck \(616.726.2240\)](tel:616.726.2240) of the Foster Swift Municipal Practice Group.

## FOCUS: Bond Counsel

### Foster Swift's "PA 4 Team"

by: [John M. Kamins](#)

Foster Swift is pleased to announce our new "PA 4 Team." This team consists of experienced Foster Swift attorneys focused on helping financially challenged municipalities and school districts, emergency managers, bond trustees, and others understand and use Michigan's recently enacted Public Act 4.

Technically speaking, PA 4 refers to the Local Government and School District Fiscal Accountability Act that Governor Snyder signed into law in March 2011. It superseded a

statute commonly called "Act 72" or the "Local Government Fiscal Responsibility Act." PA 4 allows earlier intervention and assistance to address financially challenged local governmental units and school districts. It also expands the powers of emergency financial managers compared to Act 72.

PA 4 is certainly not without controversy or legal dispute. Indeed, a pending Ingham County Circuit Court case challenges PA 4's validity. Elsewhere, some persons are pursuing steps to try to

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make PA 4 subject to a statewide referendum in the November 2012 general election.

For as long as PA 4 remains on the books as the "law of the land," and as long as local governmental units face financial challenges, Foster Swift's PA 4 Team stands ready to counsel on the many issues that it can present. Our PA 4 team includes lawyers in several of Foster Swift's practice areas, including its municipal, municipal bond, public finance, labor and employment, pension and health care benefits, real estate, receivership, bankruptcy, and litigation practices. This wide

involvement allows our PA 4 team to counsel on all financial issues facing local governmental units, to help achieve feasible solutions through consent agreements under PA 4 and diverse restructuring activities – operational, contractual, and financial – under Michigan and federal law.

If you are interested in learning more about Foster Swift's PA 4 Team, please contact [John Kamins](mailto:jkamins@fosterswift.com) (248.785.4727 or [jkamins@fosterswift.com](mailto:jkamins@fosterswift.com)) or [Ronald Richards](mailto:rrichards@fosterswift.com) (517-371-8154 or [rrichards@fosterswift.com](mailto:rrichards@fosterswift.com)).

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