

## **ATTORNEY WRITES**

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### **Free Lake Weed Treatment?**

Very few lake associations in Michigan can compel lakefront property owners (or others who use the lake involved) to contribute funds to pay for aquatic weed control, whether done by chemical treatments, mechanical harvesting, or other means. A voluntary lake association simply cannot force its members (or even nonmembers) to contribute money for aquatic weed treatments. The only exceptions involve “strong” lake associations created by binding deed restrictions (which give the association, implicitly or expressly, the power to levy mandatory dues or assessments for aquatic weed control) or properly created statutory summer resort associations (which are actually quite rare). Accordingly, a significant number of lake associations have lobbied their local municipality (either a township, city, or village) to impose a governmental special assessment district around the lake involved to provide funding for aquatic weed control.

Municipalities (particularly Michigan townships) have broad authority to create special assessment districts for a variety of public improvement projects, including aquatic weed control. Once a special assessment district has been properly established, the cost of the public improvement is allocated to the properties in the district that benefit from the improvement, and the costs are placed on the property tax roll. Unlike dues for aquatic weed treatment that may be imposed by lake associations (which are almost always voluntary), the payment of special assessments are mandatory.

Although there is no practical way of ascertaining how many special assessment districts have been created in Michigan for the purpose of aquatic weed control, it is likely that over one hundred townships have created such districts. The most commonly utilized statute for creating special assessment districts in townships, for the purpose of aquatic weed control, is MCL 41.721 *et seq.* The special assessment process is usually initiated by interested property owners submitting a petition to the township. When presented with a petition signed by a majority of the affected property owners, most township boards will approve the requested special assessment district for aquatic weed treatment. Officials in some townships, however, are reluctant to do so, citing concerns about increased paperwork, costs to the township, potential for liability, and upsetting landowners who oppose a special assessment district. Yet most of the time, these concerns are baseless. All of the reasonable costs for setting up and administering a special assessment district, including the attorney fees and engineering fees required to set up the district initially, can be included in the assessments, which are paid by the property owners in the district. While setting up and administering a special assessment district involves a certain amount of paperwork for township officials, any additional administrative costs incurred by the township can be added to the special assessment tax roll. The township’s potential for liability is minimal given that municipalities are generally protected by governmental immunity. Finally, while some property owners may oppose the special assessment district, township officials

should be mindful that the benefits of the public improvement often outweigh the cost to these property owners and that the concerns of those opposed may not be sufficient to prevent the formation of a special assessment district, particularly where a sizeable majority of the affected property owners favor the district.

If the governing body of a municipality appears reluctant to create a special assessment district for aquatic weed control purposes (even though a majority of affected landowners support such a district), then perhaps that municipality should be reminded of MCL 41.418. That statute authorizes a municipality to pay for aquatic weed control in public lakes out of the general fund in cases where a special assessment district is not utilized. Although the statute does not require the municipality to pay for aquatic weed control, it eliminates the excuse by some municipalities involved that they cannot utilize general taxpayer dollars for that purpose. With this statute in mind, those who favor the creation of a special assessment district can stress to the municipality involved that they are not requesting payment from the general fund for aquatic weed control, but are willing to submit to a special assessment for that purpose. If the municipality remains reluctant to create the special assessment district for aquatic weed control, it can be argued that the municipality should step in and spend general taxpayer funds for that purpose under MCLA 41.418.