



TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: May 9, 2006
SUBJECT: Cable Franchise Lawsuit Against the City of Troy

Municipalities scored a recent victory when the Michigan Supreme Court recently denied leave to appeal in the cases that challenged cable franchise fees as illegal taxes. The City of Troy was one of thirteen municipal defendants served with such a lawsuit. The other municipalities include Ann Arbor, Canton Township, Grand Rapids, Kalamazoo, Livonia, Midland, Muskegon, Plymouth Township, Royal Oak, St. Clair Shores, Warren and Westland. **Eight** of the individual circuit court judges dismissed the lawsuit in against the following jurisdictions: Ann Arbor, Canton Township, Grand Rapids, Livonia, Muskegon, St. Clair Shores, and Westland. The Plaintiffs voluntarily dismissed the Plymouth Township case, and Warren settled their case. Although the remaining three jurisdictions (**Troy**, Royal Oak, and Midland), had filed motions for dismissal, the circuit court judges stayed these cases to wait for a final decision in the Michigan Supreme Court. The Michigan Supreme Court has denied the Plaintiff's application for leave to appeal, thereby finalizing the decisions of the Michigan Court of Appeals.

These eight cases were not formally consolidated at the Court of Appeals, but they were all heard on the same day. Exhaustive briefs were filed in all of the cases, and the Michigan Municipal League Legal Defense Fund also filed an amicus brief in support of the municipal position. These briefs raised several justifications for dismissal, and addressed all of the successful arguments relied upon by the eight separate circuit court judges in the courts below. However, the Court of Appeals relied only on the statute of limitations argument in affirming seven of the eight cases. The Court held that the lawsuits were not filed within one year of the execution of the cable franchise agreements, as required by MCL 600.308(a)(3), and therefore were precluded. However, the statute of limitations defense was not available in the eighth case, since Livonia followed a different procedure in the circuit court. In that case, the Court of Appeals held that Livonia's revenue from the franchise fee in the one- year prior to the filing of the lawsuit was not disproportionate to the expenses for cable in that same year, and therefore the cable franchise fee was not a tax.

With the Michigan Supreme Court decision denying Plaintiff's application for leave to appeal, the stayed case against the City of Troy should also be dismissed, allowing our cable franchise agreements to stay intact. In Troy, the City receives cable franchise fees that represent 5% of the company's gross revenues, which totals approximately \$800,000 per year.

If you have any questions, please let me know.

CC: Cable Advisory Board