

Founded in 1852
by Sidney Davy Miller

MILLER CANFIELD

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Via email and U.S. Mail

February 1, 2010

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Not Subject to Disclosure Under Freedom of Information Act

Mr. Brad Smith
Supervisor
Amboy Township
14840 Grass Lake Road
Camden, MI 49232

Dear Brad:

You have asked for us to comment on the ability of the Township of Amboy, County of Hillsdale, Michigan ("Township") to impose certain charges on non-users of the Township's existing wastewater system. Without undertaking a comprehensive review of the facts or circumstances of the Township's user charge system, we will offer general guidance on the subject.

In general, the Township derives its authority to impose rates and charges for its wastewater system from Act 94, Public Acts of Michigan, 1933, as amended, ("Act 94"). Specifically, Section 21 of Act 94 provides that the governing body (i.e. the Township Board) shall fix "[r]ates for services furnished by a public improvement." MCL 141.121. The Township's wastewater system constitutes a public improvement under Act 94. As the Michigan Court of Appeals recognized in Smith v. Township of Norton, Act 94 limits governing bodies "*in making charges for services, facilities, and commodities furnished to the 'users' of said system, there being no provision in said act for charging 'nonusers.'*" 2 Mich. App. 17, 23 (1965).

We hope that you find this information helpful. Should you have any questions please feel free to contact either Tom Colis or me.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: _____

Steven D. Mann

cc: *(via email only)*

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