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July 22, 2024

Wheeling Township Board of Trustees
1616 N. Arlington Heights Road,
Arlington Heights, Illinois 60004

Re: Application of Public Act 103-565 to Wheeling Township's 2022 Community
Mental Health Board Ballot Referendum – Opinion Letter

Dear Supervisor Penner and Township Trustees:

We have been asked to provide an opinion regarding the Township's mental health referendum. The facts, as we understand them, are that at the 2022 general election, certain Wheeling Township's voters approved a citizen petition-initiated ballot referendum creating a Community Mental Health Board and levying a new property tax. The text of the approved Township 2022 ballot referendum asked: "Shall Wheeling Township levy an annual tax not to exceed 0.15% for the purpose of providing mental health facilities and services including facilities and services for the person with a developmental disability or substance abuse disorder, which levy will have a single additional tax of a maximum of 0.15% of the equalized assessed value of the taxable property therein extended for such purposes?"

Any referendum seeking to impose a new rate must also comply with the provisions of the Illinois Property Tax Code. 35 ILCS 200/18-190. Section 18-190(a) requires the following:

The ballot for any proposition submitted pursuant to this Section shall have printed thereon, but not as a part of the proposition submitted, only the following supplemental information (which shall be supplied to the election authority by the taxing district) in substantially the following form:

(1) The approximate amount of taxes extendable at the most recently extended limiting rate is \$..., and the approximate amount of taxes extendable if the proposition is approved is \$....

(2) For the ... (insert the first levy year for which the new rate or increased limiting rate will be applicable) levy year the approximate amount of the additional tax extendable against property containing a single family residence and having a fair market value at the time of the referendum of \$100,000 is estimated to be \$....

(3) Based upon an average annual percentage increase (or decrease) in the market value of such property of %... (insert percentage equal to the average annual percentage increase or decrease for the prior 3 levy years, at the time the submission of the proposition is initiated by the taxing district, in the amount of (A) the equalized assessed value of the taxable property in the taxing district less (B) the new property included in the equalized assessed value), the approximate amount of

July 22, 2024

Page 2

the additional tax extendable against such property for the ... levy year is estimated to be \$... and for the ... levy year is estimated to be \$

(4) If the proposition is approved, the aggregate extension for ... (insert each levy year for which the increase will apply) will be determined by the limiting rate set forth in the proposition, rather than the otherwise applicable limiting rate calculated under the provisions of the Property Tax Extension Limitation Law (commonly known as the Property Tax Cap Law).

While the language tracked the requirements of the Community Mental Health Act, it is undisputed that the question that appeared on the ballot did not include the additional language required by the Property Tax Extension Law Limit (“PTELL”) to promote tax transparency. At the 2022 elections, six townships (Addison, Lisle, Naperville, Schaumburg, Vernon, and Wheeling) and Will County passed referenda related to community mental health boards. However, with the exception of Vernon Township’s referendum, the other referenda did not contain the language required by PTELL. Briefly summarized, the question on the ballot specified the percentage of equalized assessed valuation that would be taxed but did not specify the dollar amount of the tax.

In an apparent attempt to remedy this situation without requiring these taxing bodies to seek additional referendum approval, the Illinois General Assembly passed Public Act 103-565, purportedly to cure and validate certain referendums creating community mental health boards approved before November 17, 2023. We have been asked whether Public Act 103-565 cured and validated the township’s 2022 citizen petition-initiated ballot referendum. For the reasons stated below, Public Act 103-565 does not cure and validate the Township’s 2022 ballot referendum as the curative legislation does not apply to citizen petition-initiated ballot referenda.

Non-home rule units of government, such as the Township, must strictly comply with PTELL’s property tax transparency requirements when levying new property taxes via a ballot referendum question authorized by state statute. See 35 ILCS 200/18-190(a). The Second Appellate District has noted this section of the Property Tax Code:

“...appears to override any provisions of other laws, requiring that the taxing entity follow section 18-190(a) (i.e., conduct a direct referendum pursuant to the PTELL's ballot requirements and article 28 of the Election Code) when it seeks referendum approval to levy a new tax rate authorized by statute.” *Hampshire Twp. Rd. v. Cunningham*, 2016 IL App (2d) 150917 at ¶25.

Additionally, an Illinois court has held that any non-home rule referendum levying a property tax must strictly comply with section 18-190 of the Property Tax Code or a county clerk may refuse to extend the newly levied tax. See *Dundee Township v. Cunningham*, Case No. 21-MR-000801 (Ill. Cir. Ct. Kane County, 2021).

July 22, 2024
Page 3

If Public Act 103-565 did not cure and validate the Township's 2022 citizen petition-initiated ballot referendum, the referendum's failure to strictly comply with PTELL will frustrate the Township's efforts to levy and collect the property tax funding the Township Community Mental Health Board approved by the referendum.

The Illinois General Assembly passed Public Act 103-565 on November 17, 2023. This legislation amended the Illinois Election Code, the Property Tax Code, the Counties Code, and the Community Mental Health Act to cure and validate certain ballot referendum questions under the Community Mental Health Act (405 ILCS 20/ *et seq.*).

Public Act 103-565 amended section 5(a-5) of the Community Mental Health Act to cure and validate any resolution-initiated ballot referendum imposing an annual tax approved before November 17, 2023, that complies with section 5(a). See 405 ILCS 20/5(a-5) (codifying Public Act 103-565's amendments to the Community Mental Health Act). Section 5(a) of the Community Mental Health Act covers resolution-initiated ballot referendum questions which are placed before voters at a primary or general election after being approved by a municipal legislative body and certified to election authorities by a municipal clerk. Under the amended section 5(a-5), any **resolution-initiated referendum** creating a community mental health board and levying an annual property tax is cured and validated despite not strictly complying with PTELL if it substantially complies with 405 ILCS 20/5(a).

However, Public Act 103-565, as drafted, does not apply to **citizen petition-initiated referenda** authorized under section 7 of the Community Mental Health Act (405 ILCS 20/7). A citizen petition-initiated ballot referendum is placed before voters at a primary or general election upon citizen petition circulators collecting enough petition signatures to have the ballot referendum question placed on a ballot. The Township's 2022 citizen petition-initiated ballot referendum question was placed on the 2022 general election ballot and approved by township voters under section 7 of the Community Mental Health Act.

As enacted, Public Act 103-565 does not cure and validate the Township's 2022 referendum question because section 5(a-5) of the amended Community Mental Health Act only cures and validates referenda initiated by acts of public bodies, not citizen-initiated referenda. The Township's 2022 ballot referendum question was a citizen petition-initiated ballot referendum and is therefore not cured and validated by Public Act 103-565.

For the reasons explained above, Public Act 103-565 does not cure and validate the Township's 2022 ballot referendum creating a township Community Mental Health Board and levying a new property tax. We are available to discuss the issues addressed in this opinion letter further at your convenience.

ANCEL GLINK

July 22, 2024
Page 4

Sincerely yours,

A handwritten signature in cursive script that reads "Keri-Lyn Krafthefer". The signature is written in a dark ink and is positioned below the "Sincerely yours," text.

Keri-Lyn Krafthefer

cc: Kenneth Florey, Robbins Schwartz