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TO: Martha Kern, Chair  
Ways & Means Committee

THROUGH: Robert E. Guenzel  
County Administrator

FROM: Curtis N. Hedger  
Office of Corporation Counsel

DATE: September 19, 2001

SUBJECT: Authorization for Washtenaw County to Join a Lawsuit to be Filed  
by Ottawa County to Compel the State of Michigan to Reimburse  
Counties From the State Child Care Fund for 50% of Capital,  
Lease, Rental or Equipment Costs Related to County-operated  
Juvenile Detention Facilities

**Board Action Requested:**

Corporation Counsel is requesting that the Board of Commissioners authorize Washtenaw County to join a lawsuit that will be filed by Ottawa County before October 1, 2001, against the State of Michigan to compel the State to reimburse the County from the State Child Care Fund for 50% of the County's cost of capital, lease, rental and/or equipment costs related to the County's juvenile detention facility.

**Background:**

Under the Social Welfare Act, MCLA 400.1 et seq, the State of Michigan is required to reimburse Michigan counties for 50% of a county's "necessary" costs to provide foster care services within that county. Several years ago, twenty-five (25) counties, including Washtenaw County, joined in a lawsuit against the State of Michigan when the State took the position that it only had to pay counties 50% of their budgeted, not actual costs in providing these foster care services. ("Oakland County Lawsuit") The counties argued that the State's position violated the Headlee Amendment to the Constitution, which provides, in part, that the State may not reduce the State financed proportion of the necessary costs of any existing activity or service mandated upon local units of government by state law. The Michigan Supreme Court ultimately agreed with the County's position finding that the State must reimburse the counties 50% of any "necessary" childcare cost. The Michigan Supreme Court further defined, "necessary" cost as "any cost that the State would have to incur if it provided the service." As a

result of this case, the State now pays counties 50% of their actual costs to provide foster care services, except as noted below.

A related issue has recently come to light. The State maintains an unofficial policy not to use the Child Care Fund to reimburse any county for capital, lease, rental or equipment costs for any county-operated juvenile detention center. The State, however, will reimburse private entities that maintain juvenile detention centers for the same expenses. Ottawa County is preparing to file a suit in the Court of Claims in Ingham County to contest the State's position on this issue. It has sent an invitation to every county that maintains its own juvenile detention facility to join the lawsuit against the State. Attorney fees will be shared by the participating counties on a pro rata basis calculated on the amount of financial reimbursement each county stands to gain measured against the entire amount of State reimbursement should the lawsuit be successful.

### **Discussion:**

The Social Welfare Act, MCLA 400.1 et seq, requires the State to reimburse counties for 50% of the actual expenditures they incur in providing necessary foster care services to their respective counties. See, MCLA 400.117a(4). The Headlee Amendment to the Michigan Constitution forbids the State from reducing the amount of state funding to the local units of government for any activity required by state law. Const. 1963, art. 9, sec 29. The recent Oakland County Lawsuit clarified that "necessary" costs are any cost that the State would have to incur if it were providing the service. The State has an unofficial policy of not reimbursing counties from the Child Care Fund for 50% of the capital, lease, rental or equipment costs for any county-operated juvenile detention facility. The State will, however, reimburse private entities from the Child Care Fund for these same expenditures, and without a doubt when the State provides detention facilities, it has to spend money on facilities and equipment. Ottawa County is preparing a suit against the State in the Court of Claims in Ingham County alleging that the State's unofficial policy to not reimburse counties for such costs violates the Headlee Amendment to the Constitution, is contrary to the statute, has not been lawfully promulgated and is directly contrary to the Supreme Court's ruling in the Oakland County Lawsuit. Ottawa is hopeful that the same counties that joined together several years ago to contest the State's position to only reimburse the counties for budgeted, not actual costs will join together to contest the State's position on not reimbursing counties for 50% of their capital, lease, rental and/or equipment costs related to county-operated juvenile detention facilities. The total amount of attorney fees will be affected by the number of counties that ultimately join in the lawsuit as the fees will be pro rated based on the amount of potential reimbursement for each county measured against the total amount of reimbursement to all the counties should the lawsuit be successful.

### **Impact on Human Resources:**

None

**Impact on Budget:**

The proposed Resolution limits the County's pro rata share of the attorney fees to \$25,000.00. These fees will be covered by existing funds.

**Impact on Indirect Costs:**

None

**Impact on Other County Departments or Agencies:**

If the Board of Commissioners approves the County's participation in this lawsuit, the Office of Corporation Counsel will periodically contact the attorney for Ottawa County to check on the progress of the suit.

**Conformity to County Policies:**

This request conforms to all appropriate County policies.

A RESOLUTION AUTHORIZING WASHTENAW COUNTY TO JOIN OTTAWA COUNTY IN A LAWSUIT AGAINST THE STATE OF MICHIGAN IN THE COURT OF CLAIMS IN INGHAM COUNTY TO SEEK REIMBURSEMENT FOR 50% OF THE COUNTY'S CAPITAL, LEASE, RENTAL AND/OR EQUIPMENT COSTS RELATED TO THE COUNTY'S JUVENILE DETENTION CENTER.

WASHTENAW COUNTY BOARD OF COMMISSIONERS

September 19, 2001

WHEREAS, the Social Welfare Act, MCLA 400.1 et seq provides, in part, that the State will reimbursement Counties from the Child Care Fund for 50% of the actual cost of providing foster care services in the County; and

WHEREAS, the State is presently following an unofficial policy of not reimbursing counties for 50% of the actual costs for capital, lease, rental and/or equipment costs for county-operated juvenile detention facilities; and

WHEREAS, the State is presently reimbursing privately run juvenile detention facilities for 50% of their capital, lease, rental, and/or equipment costs for operating such facilities; and

WHEREAS, Ottawa County has authorized the filing of a lawsuit against the State of Michigan in the Court of Claims in Ingham County seeking to recover these costs from the State; and

WHEREAS, Ottawa County has extended an invitation to other counties adversely affected by the State's actions, including Washtenaw County, to join their lawsuit and share the cost of litigating such an action against the State.

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners authorizes Washtenaw County to join in the lawsuit to be brought by Ottawa County against the State of Michigan in the Court of Claims in Ingham County to seek the County's proportional share of State reimbursement from the Child Care Fund for capital, lease, rental and/or equipment costs generated by the County's juvenile detention facility.

BE IT FURTHER RESOLVED that the Board of Commissioners directs that the County's share of the pro rata legal fees shall not exceed twenty-five thousand (\$25,000.00) dollars.

BE IT FURTHER RESOLVED that the Board of Commissioners directs the Office of Corporation Counsel to oversee the progress of the litigation and to give periodic reports on the progress of such litigation to the Board of Commissioners.