



THE SENATE  
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January 8, 2021

The Honorable Dana Nessel, Attorney General  
Attn: Opinion Department  
G. Mennen Williams Building  
P.O. Box 30212  
Lansing, MI 48909

RE: Request for Letter Opinion

Dear Attorney General Nessel,

I write today to ask for a formal letter opinion regarding the Master Concession Agreement (MCA) of May 2005 between the Detroit Wayne County Port Authority (DWCPA), a government agency, and the Ambassador Port Company (APC), a private Michigan corporation.

As State Senator for Senate District 1, I represent a significant portion of the industrial riverfront properties in Southeast Michigan and that includes the 34-acre general cargo port facility in Detroit referenced in the MCA and as well as multiple prospective MCA expansion properties. The MCA gives APC the ability to expand properties covered by the MCA to logistics-oriented properties anywhere in Wayne County. One specific MCA expansion property that concerns me is the 183-acre, Environmental Protection Agency designated Superfund site known as the former McLouth Steel site in Trenton. As the MCA limits liability for any breach by APC of environmental laws, I have significant concerns about a Superfund site becoming an Expansion property under the MCA and then being conferred tax exempt status. This site was purchased in 2018 by Crown Enterprise, which is part of a logistics conglomerate associated with the Ambassador Bridge, Ambassador Port Corporation, and the vast logistics holding company Centra, Inc.

Two of my legislative predecessors and I have gathered a significant amount of detailed background information related to the MCA, DWCPA, APC, current operations, and historical and contextual background, including the original MCA and all associated documents, independent contemporary legal memorandums/opinions which document significant concerns about the validity and legality of the MCA and media articles that express the continuing public concern about the agreement.

Also concerning to me is the combination of the MCA with legislation, SB 667 (SB 711 of 2017), which seeks to expand the ability of the DWCPA to enter into public private partnerships with properties and/or port facilities within its jurisdiction which encompasses the entirety of Wayne County. This would expand the DWCPA's ability to receive and accept Federal, State, municipal, public, or private aid in the construction, operation, or financing of port facility projects. Significantly, the bill would remove the requirement that a port facility be owned by the DWCPA. My concern is that redevelopment of the McLouth site could be subject to the terms of the MCA with little to no input by the City of Trenton, Wayne County, or the State of Michigan. There is a strong possibility that the local government would not receive property tax revenues if the site became a DWCPA Expansion site.

## **Background:**

The Detroit Wayne County Port Authority (DWCPA) is a port authority organized under Public Act 639 of 1979. The DWCPA was incorporated in 1981 by the city of Detroit and Wayne County. In 2005, the DWCPA acquired property and a port terminal on the Detroit River south of the Ambassador Bridge at the foot of Clark Street in Southwest Detroit. The property had been owned by the city of Detroit and leased to the Detroit Marine Terminal Company (DMT). Originally the DWCPA intended to sell bonds to finance improvements to the property, but instead acquired that property as part of a 2005 Master Concession Agreement. APC provided a \$2.1 million-dollar loan to DWCPA for DWCPA to purchase this 34-acre port terminal property. The loan appears to have unusual interest and repayment terms that significantly benefit APC and hinders the public agency from independently exercising its legal rights, duties and privileges to serve the public interest. The DWCPA has been making sizeable interest payments on the promissory note for years, yet the balance allegedly due continues to increase due to the sky-high interest rates. Indeed, media reports state that there is no amortization schedule that shows the promissory note ever being paid off.

The 2005 Master Concession Agreement is an agreement between the DWCPA and the Ambassador Port Company (APC) that granted the APC an exclusive 25-year Concession to operate and manage a port facility in and around the former DMT property. The MCA provides for three subsequent 25-year extensions at option of the Concessionaire, the Ambassador Port Company. The MCA also confers tax-exempt status to the Concessionaire and the ability for APC to expand the properties covered by the MCA to transportation and logistics-oriented properties anywhere in Wayne County. The MCA provides that “the Port Authority agrees that any freight handling or storage Port Facility, intermodal rail loading and unloading facility, truck loading terminal, or other comparable transportation facility located in Wayne County under the control, authority, or supervision of the Port Authority will, at the election of Master Concessionaire, be subject to the terms and provisions of this Master Concession Agreement and incorporated into the Facility.” These expansion properties would then also benefit from the tax-exempt status conferred by the MCA. This is an unparalleled level of power given to a private company to control transportation and properties in the most populous county in Michigan. Given the anti-competitive environment and unfair advantage the MCA creates for APC and its related companies and the fact that the state currently provides no significant oversight, the MCA should be examined for its potential violation of antitrust laws.

The MCA also provides that APC can favor business and properties that it and its related companies own as the concessionaire, in order to develop and expand the port. This may be a violation of the Port Act, which governs agreements between marine terminal operators that “engage in exclusive, preferential or cooperative working arrangements”. If the exclusive powers granted to APC through the MCA have led to concerns regarding transportation cost or availability of marine transportation services -- for example, the blocking of a supplier delivery location to provide its goods for the construction of the Gordie Howe International Bridge in a reasonable and direct way -- this could violate the Shipping Act.

As early as 2006, the terms of the MCA drew critical scrutiny due to the unusually favorable conditions to the APC and disadvantages to the public agency, DWCPA. A legal analysis of the MCA prepared for another entity with interest in riverfront development is included as an exhibit to this letter, along with the MCA, the Springing Interest Agreement, the Promissory Note executed between the DWCPA and APC and an analysis prepared by the City of Detroit’s Research and Analysis Division in 2018. A review of these exhibits reveal that attorneys representing government interests at the City, State and Federal level as well as private entities all expressed concern regarding the validity and legality of the MCA. For example, specific concerns include that the MCA allows the APC to manage the facility for an initial term of 25 years, with three additional 25-year terms available to the APC at its election, without any affirmative vote of the local government that originally voted on a resolution related to the MCA.

Under the terms of the MCA, the Detroit City Council and Wayne County Commission no longer have legislative authority or oversight regarding capital investments APC may make at the DWCPA port terminal even though such actions will accrue debt obligations for DWCPA and attach to public property.

There are numerous other concerns with the MCA. The agreement claims to extend the tax-exempt status of the DWCPA, granted by the Port Authority Act, to include all APC operations within the port terminal facility. State law allows for properties to be tax-exempt when the properties are used for public purposes. However APC, a private corporation, is exempt from property taxes (real and personal) as well as City of Detroit taxes while conducting a profit-making business on public property.

The DWCPA can no longer sell or obligate its property without the consent and approval of APC. Under the agreement, contract negotiations for materials or real property are to be done by the APC. Additionally, the loan has no structured payment schedule, allowing the APC to deduct payments from the DWCPA's 2.5% share of gross receipts, while, at the same time, imposing interest and/or penalties on those payments at its discretion whenever gross receipts are insufficient to meet the variable quarterly payment. In 2017, the Senate Fiscal Agency reported that the DWCPA audit listed port revenue at \$205,720 or 2.5% of gross receipts. The DWCPA never actually received this as a payment since the APC chose to apply this amount to the loan payments due. It should be noted that the 2.5% gross revenue amount equates to 100% gross revenue in excess of \$8,000,000. The SFA went on to state, "If not for the master concession agreement, it is possible that the DWCPA could be self-sustaining with that kind of revenue, even if it had to share most of it with a contractor to manage daily operations." In 2018, the House Fiscal Agency noted that as of September 30, 2017, after 10 years and \$1.7 million in payments, the Note Payable balance was \$2.0 million, 96% of the original Promissory Note.

The terms of the MCA strongly suggest that when the MCA was executed, reasonable due diligence was not performed, the public had little or no knowledge of this transaction. The MCA must be evaluated for its validity and enforceability and whether it currently serves the public's best interest.

### **Request for Opinion**

I request an Attorney General review of the attached documents which give a much more thorough background and raise many legal arguments, and subsequent to that review, I ask for your opinion as to the following questions:

- 1) Is the Master Concession Agreement legally valid and was it legally executed under the laws of the State of Michigan? Does the Master Concession Agreement violate any Michigan laws regarding ports, shipping, antitrust, nonprofits, and/or improper delegation of legislative authority? Are there specific sections of the Master Concession Agreement that are in violation of Michigan law and should be declared unenforceable or invalid? For example, does the egregiously one-sided nature of the Master Concession Agreement render it unconscionable or otherwise unenforceable? To what extent, if any, does the 2005 execution of the Master Concession Agreement have on its enforceability when, among other things, the Master Concession Agreement today so severely restricts the DWCPA's functionality and otherwise is not in the public's best interest?
- 2) Are the loan terms laid out in the Promissory Note and Springing Interest Agreement fair to the DWCPA and its incorporators, the City of Detroit and Wayne County, and were they executed properly?
- 3) Does the MCA allow for a property such as McLouth Steel to become an Expansion Property under the terms of the agreement? Does the local taxing authority have any jurisdiction as to whether the operator of the property would have tax-exempt status?

Thank you for your consideration. Please do not hesitate to contact my office if you have questions or need more information. If you are unwilling or unable to issue an opinion in response to my request, I humbly ask that you please provide, in detail, the reason or reasons for your denial.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Chang". The signature is written in a cursive, flowing style.

Stephanie Chang  
State Senator, District 1

Enclosures:

- Exhibit 1: Master Concession Agreement, signed and dated 5/17/05
- Exhibit 2: Promissory Note 7/7/05
- Exhibit 3: Springing Interest Agreement 7/7/05
- Exhibit 4: Memorandum - "Analysis of Master Concession Agreement" dated 4/27/06
- Exhibit 5: Memorandum - "Analysis of possible claims with respect to the Master Concession Agreement" dated 8/9/06
- Exhibit 6: Memorandum City of Detroit Legislative Policy Division - "Detroit Wayne County Port Authority and the Master Concession Agreement/Springing Interest Agreement and how it relates to Senate Bill 711" dated 4/17/18
- Exhibit 7: House Fiscal Agency memo dated 11/30/2018
- Exhibit 8: Senate Fiscal Agency memo, Summer, 2017
- Exhibit 9: Senate Bill 667 (2019), and related analysis