



Municipal Law News

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SUPREME COURT CONFIRMS THAT DISAPPOINTED BIDDERS MAY NOT SUE A MUNICIPALITY OVER THE MUNICIPALITY'S AWARD OF A BID

- Ronald D. Richards Jr.

The Michigan Supreme Court recently confirmed, and expanded, Michigan's rule that an entity who submits a bid on a municipal project but who does not receive the award (a "disappointed bidder") may not sue over that award decision. *Cedroni Associates, Inc v Tomblinson et al* (released 7-27-12, Docket No. 142339). There, a school district hired the Tomblinson firm to provide architectural services and to help evaluate bidders. Cedroni submitted the lowest bid, but the architect from the Tomblinson firm recommended against awarding to Cedroni due to some negative references.

Cedroni sued the Tomblinson firm, alleging that the firm unlawfully interfered with the contract award and interfered with Cedroni's reasonable business expectancy. The trial court dismissed the action, ruling in favor of the Tomblinson firm. But the Court of Appeals reversed.

The Supreme Court reversed the Court of Appeals and reinstated the trial court's dismissal – ruling against the disappointed bidder. Relevant parts of the Supreme Court's ruling are set out below:

- The Supreme Court reaffirmed the principle that disappointed bidders on public projects have no reasonable business expectancy in being awarded a contract – even if they are the lowest bidder.
- The longstanding rule in Michigan is that a disappointed low bidder on a public contract has no standing to sue to challenge the award of a contract to another bidder.

- The lowest bidder under a contract a municipality proposes to award, whose bid has been rejected, has no right to recover profits which it might have made had its bid been accepted.
- This is so even if the municipality has a Charter that requires the bid be awarded to the lowest responsible bidder.

The Court's decision in *Cedroni* extends the disappointed bidder rule beyond traditional suits against a municipality for awarding a bid to someone other than the lowest bidder. *Cedroni* actually says that the disappointed bidder rule protects municipalities from other claims too – such as the tortious interference claim raised in *Cedroni*. And it protects agents of municipalities, such as architects. It also says disappointed bidders have no reasonable expectation that they will get an award – even if they are the lowest bidder. So this decision protects both the municipality and agents helping the municipality with the bid process (e.g., engineering firms, designer firms, architectural firms).

If you have questions about the *Cedroni* decision, disappointed bidder claims, or the public bidding and awarding process, please contact [Ronald Richards](#). ■■

LIQUOR COMMISSION MAKES CHANGES TO THE LIQUOR LICENSE APPLICATION PROCESS

- Ronald D. Richards Jr.

Effective July 1, 2012, the Michigan Liquor Control Commission (MLCC) changed its procedure for submitting applications to the Commission and obtaining approvals for certain licenses.

Applications for New Licenses

Approvals from local units of government are required, but now only for a new license. The Commission will continue to review all comments received taking into consideration the opinions of the local residents, the local legislative body, and the local law enforcement agency as to the proposed business. The Commission will provide notice to the local legislative body of a pending application.

For new license applications, the first step is to submit the license application to the Commission, along with any license, permit, and inspection fees. The MLCC will conduct an initial review of the application; notify the applicant of deficient items; and provide the applicant with the appropriate local and police forms, including blank fingerprint cards, where applicable.

But then, and this is the new part, the applicant is then responsible for directly submitting its request for local approval to the local unit of government. The Commission will not proceed with the licensing process or consider an application until that local approval request has been made and received.

An application for a new license still requires approval of the local legislative body. The application will not be considered complete until that approval is received.

Applications for Transfer of Ownership, Transfer of Interest, or Transfer of Location of Existing Licenses

An application for transfer of ownership of an existing license, transfer of an interest in an existing license, or transfer of location of an existing license does not require approval of the local unit of government.

Permits

Applications for dance permits, entertainment permits, dance-entertainment permits, topless activity permits, and extended hours permits require approval from both the local unit of government and local law enforcement agency, in addition to the Commission.

Given the above, municipalities may consider being more pro-active to keep apprised of whether any liquor licenses have been transferred in their boundaries – such as reviewing the MLCC’s web site for transfer reports. Of course, if the transfer involves renovating a building, the municipality may still monitor the transfer through its permit authority. Municipalities may also consider revising their ordinances or procedures to comply with this new change in the liquor license transfer approval process.

Source: MLCC Bulletin No. 2012-12 dated June 21, 2012, regarding Local Approvals for Licensing Application Process.

If you have questions about liquor license matters, or the local approval process for a liquor license application, please contact [Ronald Richards](#). ■■

Does A Municipality Really Need a Handbook? Absolutely.

- Melissa J. Jackson

Every employer should understand and appreciate the value of having a handbook that is tailored to its operations, as well as having policies that reflect their current circumstances, and current law. This is just as true for municipal employers. An employee handbook is a compilation of policies that clearly states the expectations of both the employer and employee. The handbook normally provides the following:

1. Written documentation of the employer's rules – such as a rule barring non-employment related use of the municipality's computers, or excessive Internet use;
2. Notices and policies that reflect applicable laws and legal defenses;
3. A designated person to contact with any questions about the employer's policies or rules;
4. Employer obligations to the employee; and
5. An acknowledgement by the employee that he or she has read the handbook.

Through the process of working with your employment attorney in drafting an employee handbook,

municipalities can better protect themselves against potential employment lawsuits and satisfy legal obligations. Those legal obligations can vary, depending on the size and character of the employer. For example, Michigan's Elliott-Larsen Civil Rights Act applies to employers with only one employee, while the federal Title VII of the Civil Rights Act of 1964 applies to employers with just fifteen employees. All employers should be aware of the particular employment laws that apply to it because that dictates legal obligations.

Many employment claims can be prevented by having an employment handbook that clearly and accurately specifies expectations of the employee as well as the consequences of not meeting those expectations. Other employment claims can be quickly, easily, and inexpensively defended if the handbook has certain provisions and disclaimers. An employee handbook that is current can help avoid costly legal expenses. In today's employment climate, an employee handbook is essential. ■■

If you have questions about municipal handbooks, please contact [Melissa Jackson](#).

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2012 Michigan Super Lawyers

Twenty-two Foster Swift attorneys were recently selected for this recognition based on the survey conducted by *Law & Politics* magazine. We were also honored to have Michigan *Super Lawyers* name seven of our attorneys as "Rising Stars."

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