

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SALLY VINTER, LESLIE KISH, ASHO CRAINE,  
SUE KIEREN, EUGENE WHITE, MICHAEL SCHECHTMAN,  
and THE ANN ARBOR LEAGUE OF WOMEN VOTERS, on  
behalf of themselves and all others similarly  
situated,

Patrick J. Conlin  
SB 12120

Plaintiffs,

v

Case No. 74-8553-AV

THE CITY OF ANN ARBOR, a municipal corporation,  
and THE ANN ARBOR TRANSPORTATION AUTHORITY, a  
corporate governmental entity established pur-  
suant to statute to acquire and operate a mass  
transportation system for and on behalf of the  
public in the City of Ann Arbor and environs,

*Summons*

Defendants.

COMPLAINT FOR ACCOUNTING, FOR DETERMINA-  
TION OF RIGHTS AND DUTIES, FOR  
RESTORATION OF FUNDS WRONGFULLY MIS-  
APPROPRIATED, AND FOR MANDATORY INJUNCTION

FILED  
JAN 31 4 50 PM '74  
ROBERT H. HARRISON  
COUNTY CLERK

NOW COME PLAINTIFFS in this cause, and each of them,  
and for their complaint, each on his own behalf and on behalf  
of all similarly situated, show the Court as follows:

PARTIES PLAINTIFF AND STATUS TO SUE

1. SALLY VINTER, 603 Sunset Road, Ann Arbor, Michigan,  
is and has for several years last past been a resident and a  
taxpayer of local property taxes and of state income, sales,  
and motor vehicle taxes. She has been the chairman of a  
committee designated "Citizens for a Better Transportation  
System", which successfully promoted the 1973 referendum to  
provide an annual 2 1/2 mill tax levy for mass transportation,  
as set forth hereinbelow.

2. LESLIE KISH, 702 Sunset Road, Ann Arbor, Michigan, is and has for several years last past been a resident and a taxpayer of local property taxes and of state income, sales, and motor vehicle taxes.

3. ASHO CRAINE, 1704 Hermitage Road, Ann Arbor, Michigan, is and has for several years last past been a resident of Ann Arbor and a taxpayer of local property taxes and of state income, sales, and motor vehicle taxes.

4. SUE KIEREN, 3134 Williamsburg Street, Ann Arbor, Michigan, is a graduate student at the University of Michigan, a resident of Ann Arbor, a taxpayer of local property taxes, as well as a taxpayer of state income, sales, and motor vehicle taxes. She is also a bus rider of Ann Arbor Transportation Authority buses, dependent upon and entitled to mass transportation service from the Authority in accordance with its legal powers, duties, obligations and resources.

5. EUGENE WHITE, 2420 Laurelwood Street, Ann Arbor, Michigan, is and has been for several years last past a resident of Ann Arbor, a graduate student of the University of Michigan, and a taxpayer of local property taxes and of state income, sales and motor vehicle taxes. He is also a rider of ANN ARBOR TRANSPORTATION AUTHORITY buses dependent upon and entitled to mass transportation service from the Authority in accordance with its legal powers, duties, obligations and resources.

6. MICHAEL SCHECHTMAN, 1117 White Street, Ann Arbor, Michigan, is a resident of Ann Arbor, a graduate student of the University of Michigan, and has been head of the student task force of the Citizens' Committee for a Better Transportation

System which successfully promoted the referendum to provide an annual 2 1/2 mill tax levy for mass transportation in Spril of 1973 as set forth hereinbelow. He is a taxpayer of state sales and motor vehicle taxes, a rider of ANN ARBOR TRANSPORTATION AUTHORITY buses, and is dependent upon and entitled to mass transportation service from the Authority in full accordance with its legal powers, duties, obligations and resources.

7. THE ANN ARBOR LEAGUE OF WOMEN VOTERS is and has been since 1934 an organization of citizens dedicated to the protection and promotion of good government and to the preservation and enforcement of public fiscal integrity and public accountability for public services, resources, functions and funds.

8. Plaintiffs VINTER, KISH, CRAINE, KIEREN and WHITE are appropriate representatives of the class of Ann Arbor residents and taxpayers of local property taxes adversely affected by the course of conduct of DEFENDANTS in this cause, as hereinafter set forth, pursuant to GCR 201.2(3) and GCR 208.1.

9. Plaintiffs KIEREN, WHITE and SCHECHTMAN are appropriate representatives of the class of Ann Arbor residents, students, taxpayers and bus riders adversely affected by the course of conduct of DEFENDANTS in this cause, as hereinafter set forth, pursuant to GCR 208.1.

10. Plaintiff ANN ARBOR LEAGUE OF WOMEN VOTERS is an appropriate representative of local public interest in the legal conduct of the public's business by DEFENDANTS CITY OF ANN ARBOR AND THE ANN ARBOR TRANSPORTATION AUTHORITY, and in the legal and proper use of public resources, including

but not limited to the funds of the City and of the Authority, as affected by the course of conduct as hereinafter set forth.

PARTIES DEFENDANT

11. THE CITY OF ANN ARBOR is a home rule city, established and incorporated pursuant to 1909 PA 279, as amended, being MCLA 117.1 et seq; MSA 5.2071 et seq, having charter authority (s. 15.1) to

"acquire, construct, own, operate, improve, enlarge, extend, repair and maintain public utilities"

either inside or outside the City of Ann Arbor or the County of Washtenaw, and having authority to operate public transportation facilities and to join with other governmental entities in operating such facilities. The CITY OF ANN ARBOR is hereinafter referred to as "CITY".

12/ a - THE ANN ARBOR TRANSPORTATION AUTHORITY is a public corporate governmental entity, established on July 15, 1968, by the council of CITY pursuant to 1963 PA 55, as amended, being MCLA 12124.351; MSA 5.3475(1) et seq, an act providing for the incorporation of public authorities to acquire, own and operate mass transportation systems on behalf of the public as common carriers. A copy of Resolution No. R-361-7-68, adopting articles of incorporation for the ANN ARBOR TRANSPORTATION AUTHORITY, is attached hereto as Plaintiffs' Exhibit A. THE ANN ARBOR TRANSPORTATION AUTHORITY is hereinafter referred to as "AATA".

b - After a short term operating contract with an outside firm (June, 1968 to February, 1969), AATA commenced to operate as a common carrier, and has continued to operate and as of the date of the filing of this lawsuit is operating a public bus transportation system in and for the public

of the City of Ann Arbor.

c - AATA commenced service in 1969 with 4 minibuses. Used transit buses were purchased in 1969, as ridership increased, and 16 new air conditioned buses were purchased in 1970, financed by joint-federal-city capital grants as hereinafter set forth. Ridership has increased more than 20 percent since AATA became the operator. It currently operates a fleet of 18 transit coaches on a fixed route system, consisting of radial routes covering most of the City, with a fare of 25¢, monthly passes and special rates for senior citizens and low income residents.

FACTS AND CIRCUMSTANCES CONSTITUTING  
SUBJECT MATTER OF LAWSUIT

13. During the period from 1968 through 1973, City financed the operation of AATA by subsidy obtained through line-item appropriations included in each year's budget, supplementing AATA revenues.

14. a - Two-thirds of the cost of the buses purchased in 1970 was provided by a grant from the U.S. Department of Transportation, Urban Mass Transit Administration, pursuant to the Urban Mass Transportation Act of 1964, being 49 USCA 1601, et seq, pursuant to federal requirements for local participation in the grant as more fully set forth hereinafter.

b - The state made a grant pursuant to 1970 PA 96, in the approximate amount of \$60,000 for an AATA project called "Dial-a-Ride", as your Plaintiffs are informed and believe. State funds are also being made available to AATA pursuant to 1972 PA 327.

15. In 1969 and 1970, the following actions were taken by the CITY and by AATA with regard to the application for a federal grant:

a - On February 17, 1969, AATA filed an application for a capital equipment grant under the Urban Mass

\* AATA application for capital equipment funds, August 29, 1973, p D-28

Transportation Act of 1964, cited supra. The application contained, at page 5, a statement of net project cost of \$858,000.00, and requested a federal grant of \$572,333.00 (2/3 of net project cost), with a local contribution of \$286,167.00 (1/3 of the net project cost). The grant application then contains the following language:

"In the event that it is determined by DOT that the planning requirements under section 4a of the Urban Mass Transportation Act are not fully met, it is understood that the federal grant cannot exceed one-half of net project cost. It is understood, however, that an additional grant may be made equal to one-sixth of net project cost provided that the planning requirements specified in section 4a are fully met within a three year period after the execution of the grant agreement.

"The financing in such case would be:

1. Federal grant (1/2 of net project cost)  
Local contribution (1/2 of net project cost),  
as follows: \$429,250.00
  - (a) An amount equal to 1/3 of net project cost. \$286,167.00
  - (b) An additional amount equal to 1/6 of net project cost. \$143,083.00
  - (c) Total (equals net project cost). \$858,500.00

"The local contribution, including an additional amount equal to 1/6 of net project cost (if required), will be made in cash by the Ann Arbor Transportation Authority, from sources other than Federal funds or Transit revenues. Funds are currently available in the general funds of the City.

"It is understood that an amount equal to 1/6 of the net project cost may be returned to the general funds of the City when and if an additional grant of this amount is made by DOT pursuant to Section 5 of the Act.

"It is further understood that no refund or reduction of the local contribution (exclusive of the additional contribution referred to above) shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant."

(An excerpt from the grant application, containing the quoted language, is attached as Plaintiffs' Exhibit B-1)

b - On September 8, 1969, by Resolution R-385-9-69, (Plaintiffs' Exhibit B-2), the council of CITY adopted a resolution of intent to appropriate capital funds for the acquisition of buses, in aid of AATA's application to the U.S. Department of Transportation for a capital equipment grant. The resolution contains the following language:

"WHEREAS: The Ann Arbor Transportation Authority has applied for financial assistance from the U.S. Department of Transportation for capital equipment; and

"WHEREAS: The request for these funds will require that the City of Ann Arbor participate in the amount of one-third of the total project cost; and

"WHEREAS: This participation amounts to \$429,250.00 (1/2 of \$858,550) with one-sixth (\$143,083.00) refunded upon completion of certain planning functions (on a total City share of \$286,167.00);

"NOW, THEREFORE, BE IT RESOLVED that the Ann Arbor City Council will appropriate \$429,250.00 as required for the capital equipment."

The reference to "refunding" is a recognition of the possibility that the federal participation might increase, upon submission of more detailed local plans, thus reducing the city's required participation in the amount of the increased federal participation. (49 USCA 1603) Your Plaintiffs are informed and believe that the federal government did in fact participate in the amount of two-thirds of the ~~final total~~ project costs,

c - On March 9, 1970 the Council of CITY and the board of AATA authorized the Chairman of AATA to execute the contracts for the grant project (Mich-UTG-9), and City, referring to its commitment to appropriate up to \$429,250.00 (1/2 share) as required for capital improvement, concurred in

the action of AATA. (Plaintiffs' Exhibit B-3) On the same day, CITY authorized the purchase of four forty-five passenger diesel air-conditioned buses for \$137,266.80 for delivery July 15, 1970 (Resolution R-108-3-70, Plaintiffs' Exhibit B-4). The resolution describes the cost per unit as \$34,316.70, and CITY'S share as \$68,633.40.

d - Resolutions R-385-9-69, R-108-3-70, and R-95-370 (Plaintiffs' Exhibits B-2, B-3, and B-4) were made part of the grant application, as Plaintiffs are informed and believe. There is nothing in these or any other resolution of CITY or of AATA current with these transactions, characterizing the CITY'S commitment to participate for its share of the capital equipment grant, or its appropriation to purchase the above designated 45 buses, as an "advance", a "loan", a "debt", or otherwise creating an obligation upon AATA to CITY on account of CITY'S federally required capital equipment contribution to the project cost as above set forth.

16. On April 2, 1973, the CITY electorate voted by a majority of 6,947 to amend the CITY charter

"to require the levy of a tax of two and one-half mills annually for the purpose of providing funds for operating and equipping a public transportation system for the City." (Plaintiffs' Exhibit C)

Tax collections are made by CITY, for disbursal to AATA, in an amount estimated by CITY in its current budget at \$1,460,000 (Plaintiffs' Exhibit D-1); specifically designated to the Ann Arbor Transportation Authority. (Plaintiffs' Exhibit D-2) THE BALLOT PROPOSITION CONTAINED NO LANGUAGE PROVIDING FUNDS FOR ANY RETROACTIVE PURPOSE WHATSOEVER. THE LANGUAGE VOTED UPON BY THE PEOPLE AND ALL THE CAMPAIGN INFORMATION DISSEMINATED TO THE VOTERS WAS BASED ON THE VOTED TAX FUNDS GOING TO AATA FOR OPERATION AND EQUIPMENT PURPOSES SUBSEQUENT TO THE REFERENDUM. Not one word was disseminated, stated,



or implied, to say, suggest or infer that any of the voted tax monies could or would go to the CITY on account of past participation by CITY (as required by federal law and by CITY'S commitment above set forth) in a capital equipment project for AATA.

17. Your Plaintiffs are informed and believe that on June 1, 1973, a memorandum was transmitted to AATA from Mr. Kenneth Sheehan, then Assistant Finance Administrator of CITY, stating that \$127,395 (nearly 10% of the millage earmarked for AATA) would be assessed against AATA as a "municipal service charge", based on a formula of the ratio of AATA expenditures to total CITY expenditures applied against general fund overhead expenditures. (Plaintiffs' Exhibit E) On June 15, 1973, after Plaintiff Vinter had challenged the service charge as proposed, your Plaintiffs are informed and believe the acting City administrator addressed a memorandum to the Mayor and Council of CITY, advising them that the application of any service charge formula is "premature" pending further deliberation and discussion between CITY and AATA. (Plaintiffs' Exhibit F) Your Plaintiffs are informed and believe that no service charge has been established or applied as of the date of the filing of this lawsuit.

18. On August 31, 1973, your Plaintiffs are informed and believe that a check/<sup>#1047</sup>was issued to CITY by AATA in the amount of \$189,248.24 payable to capital fund improvement, purportedly for "repayment" of a "loan" to AATA. On the same day, check #1046,<sup>in the amount of \$17,800.00</sup>as your Plaintiffs are informed and believe, issued from the AATA to the Water Supply Receiving

Fund of CITY, purportedly for "loan repayment". After Plaintiff Vinter challenged these payments, on November 1, 1973, a memorandum issued to Mr. Karl Guenther, Director of AATA, from Lauren J. Jedele, City Controller, stating that "a stop payment order has been placed on these checks. . . ." (Plaintiffs' Exhibit G)

19. On October 31, 1973, AATA filed an amended Capital Grant Application with the Urban Mass Transit Administration. It contains an opinion letter by an Assistant City Attorney that AATA will provide its share of project funds from tax receipts collected pursuant to charter amendment requiring levy of two and one-half mills annually for the purpose of providing funds for operating and equipping a public transportation system for the City. (Plaintiffs' Exhibit H) Thus, tax collections from the earmarked levy are pledged and committed by CITY and by AATA, in the current capital equipment application, to the current project.

20. On December 10, 1973, William D. Drake, the chairman of AATA, replied by letter to Plaintiff Vinter's questions about deductions made by City against the 2.5 mills collected from Ann Arbor taxpayers pursuant to the mass transportation referendum (16, supra.) A memorandum dated December 7, 1970, to Mr. Drake from Lauren J. Jedele, City Controller, is attached to and made part of this letter. (Plaintiffs' Exhibit I) The letter contains the statement that the AATA board on November 7, 1973, by a 6-1 vote, approved the city's specific charge of \$142,048 for "past loans" to purchase the Authority's present coach fleet. (Plaintiffs' Exhibit J) The accompanying memorandum of Controller Jedele contains the basis for this "loan repayment" as follows:

"During fiscal year 1970-1971, the AATA fund borrowed \$213,072 from the Sewage Disposal System Fund in order to match federal funds for the purchase of a number of buses. (This is the only 'capital borrowing' ever made by the AATA Fund.) Since no one at the time anticipated a special millage for transportation, and since the General Fund was heavily subsidizing AATA operating expenses, it was obviously not realistic to expect the AATA to repay this loan from its own funds. Therefore, it was planned to repay the \$213,072 in three equal installments as follows, from the General Fund budget (over and above the operating subsidy):

1971-72	\$71,024
1972-73	71,024
1973-74	71,024
	<u>\$213,072</u>

"In fiscal year 1971-72 was paid, but an additional \$11,000 was borrowed to meet operating expenses after the General Fund operating subsidy was totally depleted, so that at June 30, 1972, the AATA owed the Sewage Fund \$153,048.

"In fiscal year 1972-73, the AATA borrowed \$17,800 from the Water Supply Fund to meet operating expenses, again after total depletion of the General Fund operating subsidy, and repaid \$4,000 of their debt to the Sewage Fund. Due to budgetary constraints, the second installment of \$71,024 (noted above) was not funded by the General Fund, so at June 30, 1973, the AATA owed the Sewage Fund \$149,048 and the Water Fund \$17,800.

"In fiscal year 1973-74, the AATA borrowed \$189,248 from the Capital Projects Fund; of this amount, \$149,048 was used to fully repay the Sewage Fund and \$40,200 was to pay operating expenses early in the year before the new millage was collected. \$14,000 was also borrowed from the General Fund for the same purposes.

"The end result was that the AATA had the following debts:

Capital Fund:	\$189,248
Water Fund:	17,800
General Fund:	<u>14,000</u>
	\$221,048

"We attempted to obtain Authority permission to repay these debts, and encountered some resistance. The ensuing events are covered in the attached copy of a memorandum to Karl Guenther dated November 1, 1973. The actions noted in that memorandum were taken on the assumption that the debts were legitimate obligations of the AATA, and that any General Fund commitment to repay any part of those debts had been based on an assumption which was no longer valid, i.e., that the AATA had no feasible way of repaying them on its own."

Your Plaintiffs are informed and believe that the AATA had no access to any City funds during any of the years referred to in the above quotation; therefore it did not and could not have performed the acts imaginatively described as "borrowing" from one City fund to another. The records of City and of AATA are devoid of any official action creating any "borrowing" or "debt" from AATA to CITY.

#### LEGAL ISSUES

The facts and circumstances, set forth hereinabove, clearly show that the public trust has been violated, and public funds misused and misappropriated, in at least the following particulars:

21. Neither CITY nor AATA has the power to create debt retroactively, or other than by official action of its governing body, or to create debt except as specifically empowered by law, pursuant to approval of the Michigan Municipal Finance Commission. No such "debts" as those "assumed" after the fact hereinabove were ever presented to or approved by the Municipal Finance Commission. Further, any "borrowing" from City sewage disposal funds or water system funds, during the years referred to, would have been in violation of the constitutional, statutory and ordinance

provisions governing debt service on City's outstanding water and sewer bonds\*, and would have been a violation of the bondholder's contractual rights as pledged by the CITY. Further, the taxpayers, in providing an annual 2.5 mills for the operation and equipment of a local mass transportation system, provided no part of such funds for retroactive or debt purposes. Further, the assertion by or on behalf of CITY of the existence of such "debt" contradicts and violates the commitment made by CITY, as above set forth, to the state and federal governments in its 1970 grant application, and jeopardizes the use of city, state and federal funds pursuant to that grant, as well as threatening the availability of such funds pursuant to grant now under application.

22. State and federal funds granted to CITY for capital equipment for mass transit purposes on the basis of the CITY'S unconditional commitment to pay its required share of such grant have been jeopardized and the requirements of state and federal law violated, by the CITY'S after-the-fact "assumption" that it can appropriate AATA funds to reimburse itself for funds which it is committed to provide by contribution.

23. Currently pending grants are threatened by the open assertion by CITY that it has unilaterally invaded general tax funds made available by the taxpayers for AATA operating and equipment purposes AFTER April, 1973, in order to recoup moneys unconditionally appropriated to AATA in 1970, pursuant to CITY'S required commitment, set forth hereinabove, to participate.

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\* Outstanding Ann Arbor water and sewer revenue bonds reported by the Municipal Finance Commission on January 22, 1974:

Water:	7/1/49	\$ 220,000	Sewer:	2/1/49	\$255,000
	7/1/58	240,000		7/1/54	59,000
	3/1/64	2,450,000		4/1/59	400,000
	5/1/66	615,000		1/1/64	1,450,000
	1/1/68	345,000		5/1/66	945,000
	4/1/70	910,000			
	7/1/71	725,000			
	7/1/72	875,000			

24. Tax funds made available by the class of Plaintiff property taxpayers have been misused to ameliorate past financial "stringencies" of the CITY, rather than for the purpose for which the voters paid the tax moneys.

25. State funds contributed and requested for AATA Dial-a-Ride projects have been misused, and misuse of state funds now applied for is threatened, by the course of conduct of CITY in dipping into mass transit funds when convenient to get the CITY out of a financial bind, even by creating, by "assumption", a debt where none originally existed.

26. CITY and AATA personnel have committed illegal acts of omission, misfunction and malfunction, both with respect to exercise of the prerogatives of the AATA, and with respect to the integrity of public funds held in trust for the Ann Arbor public for development and operation of an urgent public necessity: i.e., a reasonable, accessible and effective mass transit system for Ann Arbor.

27. The constitutional, statutory and ordinance provisions governing service on outstanding CITY water and sewer bonds have been violated by invasion of water and sewer funds pledged and sacred to the holders of outstanding bonds, in violation of the order of the Municipal Finance Commission, thus threatening the credit of the CITY and, thereby, of the State.

28. The exercise of public functions of CITY and of AATA, and the fiscal integrity of each, are threatened, thwarted, and jeopardized by the continued involvement of CITY, as hereinabove set forth, in the collection and disposition of AATA funds and the conduct of AATA operations, to the extent that personnel of CITY are able

to manipulate, control and misapply AATA funds unilaterally. Further, the inaction of AATA, to the extent that AATA has not asserted its prerogatives to exercise control of its fund, or has acquiesced in the course of conduct of CITY as set forth hereinabove, constitutes a usurpation of office, non-feasance, and a failure effectively to discharge the duties of office, on the part of functionaries of both CITY and AATA.

29. Your Plaintiffs are fearful and justly apprehensive that unless the Court acts quickly to halt the hereinabove set forth course of conduct, to clarify the relationships between CITY and AATA, and to set a course to steer by which is lawful and satisfactory to all public agencies concerned, the result must be failure to protect the public function and the public fisc.

30. Your Plaintiffs are informed this day, and believe, that Defendant AATA, at a board meeting held January 30, 1974, rescinded the previous approval of Defendant City's charge of \$142,048 referred to in paragraph 20 hereinabove; and may have taken other action in recognition of AATA'S legal responsibilities as recited herein.

RELIEF

WHEREFORE, Plaintiffs pray that this Court will

1. Enter an order requiring CITY to show cause why a restraining order should not enter forthwith, prohibiting city from further manipulation of AATA funds, or of any mass transit funds derived from taxation or otherwise, pending further order of this Court;

2. Enter a preliminary injunction prohibiting CITY from making, charging or adjusting AATA funds derived from

taxes or otherwise, for any purpose whatsoever, pending further order of this Court;

3. Require a full, complete and prompt accounting to the Court, based on an audit by independent accountants, by CITY and by AATA of all functions and funds affecting the mass transportation system;

4. Find and declare the respective duties and prerogatives of CITY and of AATA with respect to collection, disbursement and use of mass transit funds, with respect to operation of Ann Arbor transit systems, and with respect to adjustment of past transactions, including but not limited to those hereinabove set forth;


5. Enter a judgment requiring CITY to restore and pay into AATA'S account any and all funds "deducted" by CITY from AATA revenues or from collection of taxes voted in 1973 for mass transportation, and further requiring CITY to restore such other funds as may be due and owing from CITY to AATA together with interest on all such sums at the appropriate rate.

6. Afford to Plaintiffs such other and further relief as the Court shall deem meet.

DATED: January 31, 1974

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