

CHARTER TOWNSHIP OF COMSTOCK

OATH OF OFFICE

Questions were recently raised by certain members of the public regarding the oath of office to be taken by Township Superintendent Hess. As soon as this issue was raised, the Township looked into the matter and it was determined that Superintendent Hess did take an oath of office on November 22, 2016 to serve in the capacity of an Ordinance Officer for the Township. Superintendent Hess did not take a broader oath of office in his complete capacity as Township Superintendent. Superintendent Hess has now taken the oath of office as of January 7, 2026 for his complete position as Township Superintendent. In fact, all Township employees, including Superintendent Hess, have taken the oath.

Additionally, because other concerns have been raised regarding ordinance enforcement, it should be noted that Township Ordinance Officer Dakota Szczepanski took an oath of office for his position on April 11, 2025. To be complete, it should further be noted that each elected Township Board member took their oath of office in a timely manner following their election as required by law.

The Michigan Constitution of 1963, Article XI, Section 1 provides the oath requirement for officials as follows:

“All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this state, and that I will faithfully discharge the duties of the office of...according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.”

Additionally, MCL 15.151 addresses employees and provides that:

“All persons now employed, or who may be employed by the state of Michigan or any governmental agency thereof, and all other persons in the service of the state or any governmental agency, shall, as a condition of their employment, take and subscribe to the oath or affirmation required of members of the legislature and other public officers by section 2 of Article 16 of the constitution of 1908 of the state of Michigan.”

In light of these two sections of Michigan law, all employees, including Superintendent Hess, have now taken the oath of office.

Treasurer Bloomfield requested that the Township Attorney look at two further questions. She asked about the validity of actions taken by the Township Superintendent prior to taking the oath of office and also about the Superintendent’s authority to take actions following the oath.

It was determined that the actions of the Township Superintendent prior to taking the oath of office are still valid under the doctrine of de facto officers. In the Michigan Supreme Court case *People v Matthews*, 289 Mich 440, the court addresses a de facto officer. The Court addressed that

a person is a de facto officer when he is in possession, and is exercising the duties, of an office; the incumbency is unlawful in some respect; he has at least a fair color of right or title to the office; or has acted as an officer for such a length of time, and under such circumstances of reputation or acquiesce by the public and public authorities, as to afford a presumption of appointment or election and induce people, without inquiry, and relying on the supposition that he is the officer he assumes to be, to submit to or invoke his action.

Based upon the circumstances in this matter, Superintendent Hess's actions in service under his employment contract with the Township was as a de facto officer until he took the oath of office and the validity of prior actions must be accepted.

Additionally, Superintendent Hess has full authority to continue to operate as Township Superintendent. Superintendent Hess is an employee of the Township and is under contract for his services. Having taken the oath of office, Superintendent Hess is no longer a de facto official, and both Township and Superintendent must operate under the currently executed contract. The position of Township Superintendent is different than the elected Township Board members. If elected Township Board members fail to take their oath of office on or before January 1, their position is vacant and the Township Board has 45 days to appoint to fill the vacancy. Superintendent Hess is not an elected official and is under current contract with the Township to perform services.

This public statement was approved by the Comstock Charter Township Board at a meeting held on March 10, 2026.