Statement from Wes Nakagiri

During the June 9, 2021 Personnel Committee I stated that there was no statutory authority for Mr. Williams to continue in his HCMA position.

Link to Michigan Compiled Law. <http://www.michiganstatecapitol.com/(S(tlybekjb0ecatvgq2mjbwsen))/mileg.aspx?page=getObject&objectname=mcl-119-51>

My statement was based upon the opinion from legal counsel as to the statute and, moreover, is wholly consistent with the opinion of counsel for HCMA regarding the lack of authority in the statute:

As used in Act 147, “appointed” commissioner refers to a commissioner appointed by the Governor and an “elected” commissioner refers to a commissioner appointed by a county. Although poorly worded, Act 147 provides clarity regarding the gubernatorial appointments, recognizing that “appointed commissioners shall serve for 4 year terms or until their successors are appointed” (quoted in part). MCL 119.54**. Act 147, however, says almost nothing about the terms of the county “elected” commissioners beyond that they “shall be staggered” and that “no term shall be less than 6 years.” Id. Thus the Legislature in drafting this Section anticipated that a county-elected Commissioner’s term could exceed six years but is otherwise silent.**

On June 10, 2021 I was provided a copy of HCMA Bylaws and an opinion from HCMA legal counsel regarding this issue. This opinion was based on the application of the bylaws of HCMA and HCMA’s past practice:

‘The Authority’s Bylaws clarify the ambiguities, both establishing a 6-year term for county-elected Commissioners, and also stating that a Commissioner, whether appointed or elected, continues to serve after the expiration of his/her term until a successor is appointed:

From and after the expiration of the firs terms herein specified, the term of office for each member of the Board of Commissioners subsequently elected by a County shall be for a term of six (6) years, and the term of office for each Commissioner subsequently appointed by the Governor shall be for a period of four (4) years or until their successors are elected or appointed, in accordance with Act 147.’

Though there is no statutory authority for a holdover of this HCMA position, HCMA Bylaws and past practice appear to support a holdover of this position.