There can be no question but that Sec. 675(e) of the Michigan Vehicle Code is a general state law and is binding upon cities, villages and townships. See *People v. McGraw,* 184 Mich. 233 (1915); *People v. Drost,* 353 Mich. 691 (1958).

Since Act 300 P.A. 1949, as amended, supra, by its title provides for "the regulation and use of streets and highways," and a municipal parking lot is a "street or highway" under the act, I find that the title to the Michigan Vehicle Code is in accord with Article V, Sec. 21 of the Michigan Constitution.

Therefore, it is my opinion that Section 675(e) of Act 300, P.A. 1949, as amended, exempts disabled veterans and physically handicapped persons who have been issued a certificate of identification from liability for meter violations on a city owned parking lot.

FRANK K. KELLEY,
Attorney General.

630325.1

ELECTIONS: Residence of servicemen and their families.
RESIDENCE: Change of, by servicemen and their families.

Members of the Armed Forces do not acquire residence in a given community merely by reason of being stationed there. They are not, however, precluded while in service from obtaining a new residence in a community off a federal post. Whether they have abandoned their former residence and acquired a new one is a question of fact to be determined from their actions, as well as their declared intent.

Persons living upon a military post under exclusive federal jurisdiction may not by reason thereof obtain residence in this state and the political subdivision in which the post is located. This is true of civilians as well as servicemen.

No. 4120 March 25, 1963.

Mr. Lawrence Gubow
United States Attorney
Eastern District of Michigan
815 Federal Building
Detroit 26, Michigan

Your request for an opinion notes that at the election held on November 6, 1962, certain Air Force personnel and their wives were not permitted to vote in Oscoda Township, Iosco County, in which is located Wurtsmith Air Force Base. You state that some of the WAFB personnel lived on the base, whereas others resided in the Capehart Housing Section "which apparently is not on federal owned land, but on land which is leased." Citing an opinion[1] of one of my predecessors, you continue:

"* * * While the general principles enunciated in that opinion ap-

[1] O.A.G. 1955-56 Vol. II No. 2807, p. 577.

pear to be quite clear, there remains some confusion as to the facts and we would therefore appreciate your opinion on the following questions:

"1. Does the State of Michigan consider the Capehart Housing Section to be on state-owned or privately-owned land rather than on Federal property?

"2. If the Capehart Housing Section is on federally owned property, does the State of Michigan consider the housing section to be within the exclusive jurisdiction of the Federal Government?

"3. Are WAFB personnel considered to be nonresidents of Michigan under Michigan law apart from their living on the base?"

The cited opinion recognizes the general rule as to the eligibility of members of the Armed Forces who live off the post to become residents of the local community in which they are stationed: While presence in a given place for the constitutional period does not merely because of their presence there qualify them as electors, nevertheless, they are not barred by reason of their service status from acquiring residence and qualifying as an elector of that community. The opinion states with respect thereto:

"* * * The question here presented relates to his right to establish a new residence at his place of service. In *Warren v. Board of Registration,* infra, 401, the court stated with reference to provisions of the 1850 Constitution corresponding to Article III, Sections 2 and 3 of the 1908 Constitution above quoted, as follows:

" 'These provisions do not prevent such persons from becoming residents, if such is their purpose, and if they are able to choose.'

"While such statement has been recognized as being dictum, *Wolcott v. Holcomb,* 97 Mich. 361, 368, nevertheless such general statement is correct. In other words, while a serviceman does not acquire residence in a given community merely by reason of being stationed there, nevertheless he is not prohibited by virtue of such constitutional provisions from gaining a new residence while he is in service. In that particular his status is somewhat comparable to that of a student at an institution of learning. *People v. Osborn,* 170 Mich. 143, 148. *Attorney General ex rel. Miller v. Miller,* 266 Mich. 127, 142-144.

"A New York court in holding that members of the military forces stationed at Plattsburg Barracks and living off the post for the requisite period of time, qualified as electors, stated in regard to the provision of the New York Constitution similar to Article III, Section 3 of the Michigan Constitution:

" 'This provision of the Constitution is aimed at the participation of an unconcerned body of men in the control through the ballot box of municipal affairs in whose further conduct they have no interest, and from the mismanagement of which by the officers their ballots might elect they sustain no injury. Its effect is not to disqualify such persons from gaining or losing a residence, but renders the fact of sojourn or absence impotent as evidence either to create or destroy it; in other words, presence or absence has primarily no effect upon the political status of such person. The question in each case is still, as it was before the adoption of this provision of the Constitution, one

of domicile or residence, to be decided upon all the circumstances of the case. *Silvey v. Lindsay,* 107 N.Y. 55, 13 N.E. 444. The soldier may acquire a residence in the new locality. His calling the place his home, or believing it to be his home, does not legally make it such. It is not his view of the fact that governs. The facts themselves govern the question. Mere intention is not alone sufficient. It must exist, but must concur with and be manifested by resultant acts which are independent of the presence of the soldier in the new locality.'

"In re Cunningham et al, 45 Mis. Rep. 206; 91 N.Y.S. 974. It follows that the serviceman does not qualify as an elector in a given place merely because of his presence there for the constitutional period. There must also have been an intention on his part to abandon his former residence and establish a new residence at that place."

With respect to members of the Armed Forces and the wives of those members who reside on the post the opinion states:

"If the federal government has acquired and exercises exclusive jurisdiction over the post, then persons living thereon are precluded from gaining status as residents of the state and political subdivisions within the boundaries of which the post is located. As pointed out in 34 A.L.R. 2d 1194, property for military purposes is generally acquired by the federal government by virtue of Article I, Section 8, Clause 17, of the federal constitution which authorizes Congress:

" 'To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;'

"It will be noted that such constitutional provision requires not only an act of Congress but also a corresponding act by the state ceding jurisdiction over such property to the federal government. When the property is so acquired by the federal government, state jurisdiction over the same ceases and persons thereon are no longer subject to state laws. It follows that persons living thereon may not acquire residence in the state or its political subdivisions by virtue of such living thereon.

"On the other hand, if the state retains jurisdiction over the post, those persons living thereon are not precluded from adopting the same as their place of residence. Whether they have in fact done so is a question of fact to be determined as above indicated."

In 1935[2] the director of conservation was authorized to convey title to certain lands situate in Oscoda Township to the federal government for use in connection with the United States Army. Section 2 of that act provides:

"The jurisdiction of said lands is hereby ceded to the United States of America: Provided, That this cession is upon the express condition

[2] Act No. 175, P.A. 1935, as amended by Act No. 115, P.A. 1937, being C.L. 1948 § 3.461 et seq., M.S.A. 1961 Rev. Vol. § 4.101 et seq.

that the state of Michigan shall so far retain concurrent jurisdiction with the United States in and over said lands aforesaid, that all civil and criminal process issued by any court of competent jurisdiction or officers having authority of law to issue such process and all orders made by such court, or any judicial officer duly empowered to make such orders necessary to be served upon any person, may be executed upon said lands in the same way and manner as if jurisdiction had not been ceded as aforesaid."

By a later act[3] consent of the state was given to the acquisition by the federal government by purchase, condemnation or otherwise of any lands in the state which had been or might thereafter be acquired for forts and similar purposes. Sections 2 and 3 of that act specify:

"Sec. 2. Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby ceded to the United States for all purposes, except that the state retains the right to serve thereon all civil and criminal process issuing under authority of the state, but the jurisdiction so ceded shall continue no longer than the United States shall own such land.

"Sec. 3. The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state."

The latter act became effective on January 28, 1942. By a letter under date of April 22, 1943, to then Governor Harry F. Kelly, Henry L. Stimson, the Secretary of War, stated:

"The laws of the State of Michigan, (An act of the legislature of the State of Michigan approved January 29, 1942 (Public Acts, 1942, First Extra Session, p. 11; see also secs. 4.113(1), 4.113(2), and 4.113(3), chap. 18, title 4, vol. 2, Michigan Statutes, Annotated, 1936 (1942 Cumulative Supplement))), permit the assumption of exclusive Federal Jurisdiction over lands within that State, acquired by the United States for military and certain other purposes.

"Under section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which any interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

"Accordingly, notice is hereby given that the United States accepts exclusive jurisdiction over all lands acquired by it for military purposes within the State of Michigan, title to which has heretofore

[3] Act No. 3, P.A. of the first extra session of 1942, being C.L. 1948 § 3.201 et seq., M.S.A. 1961 Rev. Vol. § 4.113(1) et seq.

vested in the United States, and over which exclusive jurisdiction has not heretofore been obtained.

"It is requested that you return the enclosed copy of this letter, with an indorsement thereon over your signature stating the date of your receipt of this notice."

Receipt of that communication was acknowledged by Governor Kelly on April 30, 1943.

Following receipt of your request for this opinion you were advised that answer to your first question was dependent upon the extent of the jurisdiction ceded and exercised by the federal government over the lands upon which the Wurtsmith Air Force Base and the Capehart Housing Section were situate pursuant to either of the above acts and that the state offices were without the requisite information with respect thereto. You have accordingly obtained and submitted copy of letter under date of January 25, 1963 from Honorable Eugene M. Zuckert, Secretary of the Air Force, to Honorable Burke Marshall, Assistant Attorney General, Civil Rights Division, reading in pertinent part:

"This is with further reference to your letter of 14 January 1963, inquiring whether Wurtsmith Air Force Base, Michigan, and the Capehart Housing area are under the exclusive Federal jurisdiction of the United States.

"Our records show that the area on which the Capehart Housing project is located is part of the base, and that the United States acquired exclusive Federal jurisdiction over the greater portion of the lands within the base, but that it has not acquired any such jurisdiction with respect to the Capehart Housing area. The reason for this seemingly anomalous situation is that Wurtsmith Air Force Base was formerly an Army installation and exclusive Federal jurisdiction was acquired by the United States during the period when the base was under the control of the Army. Subsequently, the base was transferred to the Air Force. Portions of the Capehart Housing area were acquired at various times subsequent to September 1958, when the Air Force decided to acquire the property for the construction of a housing project.

"The 1956 'Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States' concluded that in the usual case, the Federal Government should not acquire any measure of a state's legislative jurisdiction, but that it should hold Federal installations and areas in a proprietarial status only, with jurisdiction remaining in the several states. This policy was approved by the President in his letter of April 27, 1956 to the Attorney General. For this reason, we have not acquired exclusive Federal jurisdiction over the housing area."

You will note from the Secretary's statement in reference to the Capehart Housing area that the federal government has "not acquired exclusive federal jurisdiction over the housing area." Under those circumstances members of the Armed Forces and their families residing thereon would not be disqualified by reason thereof from acquiring residence in and becoming a

qualified elector of Oscoda Township. Whether they have in fact done so presents a question to be determined by the township clerk subject to judicial review in an appropriate case. This is discussed in the first excerpt above quoted from O.A.G. No. 2807.

Inasmuch as your second question is, as evidenced by Secretary Zuckert's letter, based upon an erroneous assumption of fact, no answer thereto is required. It should, however, be observed, that for the reasons set forth in O.A.G. No. 2807, neither military nor civilian personnel who reside upon property over which the federal government has acquired and exercises exclusive jurisdiction may by reason thereof qualify as a resident either of the State of Michigan or of Oscoda Township.

Your third question is construed as inquiring whether Armed Forces personnel who do not reside upon property over which the federal government has acquired and exercises exclusive jurisdiction may become residents and qualified electors of the State and the city or township within which their current place of residence is situated. This issue is discussed and the question answered above.

FRANK J. KELLEY,
Attorney General.

630325.2

CONTRACTS: Installment.
TOWNSHIPS: Parks.

A township board is without statutory authority to purchase real estate for use as a township park on an installment contract payable from general funds.

No. 4138 March 25, 1963.

Mr. Meyer Warshawsky
Prosecuting Attorney
Van Buren County
Paw Paw, Michigan

You have asked my opinion on the following question:

> "Can a township board without an election purchase real estate for use a township park on the installment plan from general funds?"

The law is well settled that a township has no power or authority except as provided by the legislature in pursuance of constitutional grant.[1] Therefore, unless there is statutory authority for a township board to purchase real estate for use as a township park on the installment plan from general funds, the answer to your question must be "No." An examination of the relevant statutes follows:

Section 1 of Act 99, P.A. 1933, as amended,[2] provides:

> "Any contract or agreement *heretofore* entered into by the legis-

[1] *Netzel v. Township Board of Waterford Township,* 267 Mich. 220, (1934) citing 1908 Michigan Constitution, Article VIII, §§16 and 17.

[2] C.L. 1948 § 123.721; M.S.A. 1958 Rev. Vol. § 5.3461.