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CONSTITUTIONAL LAW: Article V, Sec. 29, Constitution of 1963.
CIVIL RIGHTS COMMISSION: Powers of.
LEGISLATURE: Powers over Civil Rights Commission.

The Civil Rights Commission, established by Article V, Sec. 29 of the Revised Constitution, has plenary power in its sphere of authority to protect civil rights in the fields of employment, education, housing and public accommodations.

The Civil Rights Commission has authority to enforce civil rights to purchase, mortgage, lease or rent private housing.

The legislature is without authority to abrogate or limit the power of the Civil Rights Commission in the fields of employment, education, housing and public accommodations.

The Constitution empowers the legislature to make annual appropriations to finance the effective operation of the Civil Rights Commission. The legislature may in its discretion prescribe the mode and manner in which investigations are to be conducted by the Civil Rights Commission. Failure to enact such legislation is in no way a restriction upon the authority of the Commission.

In its rule-making power the Civil Rights Commission is not subject to Article IV, Sec. 37 of the Revised Constitution. The legislature is without power to set aside the rules of the Civil Rights Commission.

The Civil Rights Commission in promulgation of its rules is bound by the due process clause of both the state and federal constitutions.

No. 4161 July 22, 1963.

Hon. William G. Milliken
State Senator
Traverse City, Michigan

You have requested my opinion relative to the authority of the Civil Rights Commission created under the Revised Constitution. Specifically, your questions are:

1. Does the Civil Rights Commission established by Art. V, Section 29, of the new Constitution have the plenary power to secure the equal protection of civil rights in the fields of employment, education, housing and public accommodations?

2. Does the authority of the Civil Rights Commission over housing extend to the enforcement of civil rights to purchase, mortgage, lease or rent private housing?

3. Is the Legislature empowered to abrogate or limit in any way the authority of the Civil Rights Commission in the fields of employment, education, housing and public accommodations?

4. Must the Civil Rights Commission await appropriate legislation before it may undertake the investigation of alleged discrimination against any person in the fields of employment, education, housing and public accommodations?

5. Are the rules and regulations adopted by the Civil Rights Commission pursuant to Article V, Section 29, subject to legislative authority contained in Article IV, Section 37, or any other provision of law?

In the Revised Constitution approved by the electorate on April 1, 1963, the people have established a Civil Rights Commission in Article V, Section 29 thereof.

Article V, Section 29 provides as follows:

"There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

"The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

"Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law."

The people have mandated in Article I, Secton 2 of the Revised Constitution that:

"No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation."

In the Address to the People, the framers of the Revised Constitution made the following comment relative to Article I, Section 2 of the Constitution:

"This is a new section. It protects against discrimination because of religion, race, color or national origin in the enjoyment of civil and political rights and grants equal protection of the laws to all persons. *The convention record notes that 'the principal, but not exclusive,*

areas of concern are equal opportunities in employment, education, housing and public accommodations.'

"The legislature is directed to implement this section by appropriate legislation and the proposed constitution establishes a Civil Rights Commission in the Article on the Executive Branch." (Emphasis supplied)

Consideration must be given to Article I, Section 4 of the Revised Constitution, which states in pertinent part:

"* * * The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief."

Article VIII, Section 2 of the Revised Constitution provides in part as follows:

"* * * Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."

The people, by self-executing provisions of the Revised Constitution, have established a constitutional body possessed of jurisdiction over the investigation of alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of civil rights guaranteed by law and by the Constitution. This entity is designed to secure the equal enjoyment of such civil rights without discrimination, to adopt rules and regulations for its own procedures, to hold hearings, to administer oaths, to require the attendance of witnesses and the submission of records through court authorization, to issue appropriate orders including cease and desist orders, and to have such other powers as shall be provided by law to carry out its purposes.

From a plain reading of Article V, section 29, it is clear that the people have conferred plenary power upon the Civil Rights Commission in its sphere of authority as a constitutional commission to investigate and to secure the enjoyment of civil rights without discrimination. *Plec v. Liquor Control Commission* (1948), 322 Mich. 691.

The authority of the Civil Rights Commission is limited only by the Revised Constitution and the Constitution of the United States. *State v. Mountain States Telephone and Telegraph Company* (N.M. 1950), 224 P. 2d 155.

The grant of power in the Constitution carries with it by implication the authority to do all things necessary and appropriate to accomplish the purpose intended by the people. Thus the Civil Rights Commission created by the people in the Constitution is not limited to the powers expressly granted, and the Commission may exercise all powers necessary and essential in the performance of its duties.

Board of Supervisors of Atala County v. Illinois Central Railroad Company (Miss. 1939), 190 So. 241;

Gavey v. Trew (Ariz. 1946), 170 P. 2d 845.

The powers of the Commission should be liberally construed and every power explicitly granted or fairly implied from the language used which is necessary to enable the Commission to exercise the powers expressly granted should and must be accorded. *City of Portsmouth v. Virginia Railway and Power Company* (Va. 1925), 126 S.E. 362, 39 A.L.R. 1510.

Thus there can be no question but that Article V, Section 29 of the Revised Constitution empowers the Civil Rights Commission to conduct investigations, hold hearings and issue final orders upon its own motion when the public interest demands.

It is equally clear that the Commission has been commanded by the people to serve the cause of elimination of discrimination in the fields of employment, education, housing and public accommodations because of religion, race, color or national origin and to advance equal opportunities therein through the fostering of educational programs, studies, and reports. This furthers both the public interest and the interest of the individual.

The legislature cannot decrease or abrogate the constitutional powers of the Civil Rights Commission. It may increase its authority and delegate additional powers to the Commission. *Oliver v. Oklahoma Alcoholic Beverage Control Board* (Okla. 1961), 359 P. 2d 183.

There can be no question that the people have conferred authority not subject to legislative restraint on the Civil Rights Commission to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of civil rights guaranteed by law and by the Michigan Constitution and to secure the equal protection of such civil rights without such discrimination. The provision is self-executing.

Since the authority of the Civil Rights Commission is limited only by the State Constitution and the Constitution of the United States, the legislature may not restrict the Commission in the exercise of such authority. Article V, Section 29, empowers the legislature, in its discretion, to prescribe the manner in which investigations are to be conducted by the Commission. But this power in the legislature is circumscribed by the terms of the Constitution itself as set forth in the section. Where the people use the word "may" and the word "shall" in the same provision of the Constitution, the words should be given their ordinary and accepted meaning. *Smith v. School District No. 6, Fractional, Amber Township* (1928), 241 Mich. 366.

It must follow that within its sphere of authority the Civil Rights Commission is supreme in the exercise of the powers entrusted to it by the people.

The law appears to be well settled that the citizens of a community enjoy certain basic civil rights which are inherent and derived from citizenship in a particular body politic. In discussing civil rights, Corpus Juris Secundum expresses in Volume 14, page 1159, Section 1, the textbook view that:

> "A civil right may be defined as one which appertains to a person by virtue of his citizenship in a state or community, a right accorded to every member of a distinct community or nation. * * *
>
> "In its broadest sense the term 'civil rights' includes those rights which are the outgrowth of civilization, the existence and exercise of which necessarily follow from the rights that repose in the subjects of a country exercising self-government.

> "The term 'civil rights' is also applied to certain rights secured to citizens by the Thirteenth and Fourteenth Amendments to the Constitution of the United States, or by various acts, state and federal."

In the field of employment, the public policy of the State has been spelled out by the Michigan Fair Employment Practices statute, being Act 251, P.A. 1955, as amended; C.L.S. 1956, § 423.301; M.S.A. 1960 Rev. Vol. § 17.458(1), which defined the civil right to equal opportunity in employment. In Section 1 of the Michigan Fair Employment Practices statute it is said:

> "The opportunity to obtain employment without discrimination because of race, color, religion, national origin or ancestry is hereby recognized as and declared to be a civil right."

The new Constitution by establishing the Civil Rights Commission marks a further development of the same public policy.

In the field of public education, Michigan has long maintained a well-defined public policy that public education was to be afforded to all of its citizens without discrimination. This public policy was first enunciated by the Michigan Supreme Court in *People v. Board of Education of Detroit* (1869), 18 Mich. 400, where the court ruled that resident children have an equal right to public education without exclusion because of religion, race or color.

The legislature has confirmed this public policy in section 355 of Act 269, P.A. 1955, being C.L.S. 1956 § 340.355; M.S.A. 1959 Rev. Vol. § 15.3355, in proscribing Michigan school districts from maintaining separate schools or departments for any person or persons on account of race or color.

Finally, public policy has been inscribed in Article VIII, Section 2 of the Revised Constitution, supra.

In addition to the above declaration of public policy at the state level, the United States Supreme Court, in the case of *Brown v. Board of Education of Topeka* (1953), 347 U.S. 483, struck down racial discrimination practiced in state supported schools. In its historic decision the court declared:

> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. * * *"

In the area of public and private housing, we have clear and decisive public policy in Michigan establishing a citizen's civil right to purchase, lease or rent both public and private housing. The Michigan Public Accommodations statute in Section 146 of Chapter XXI of Act 328, P.A. 1931, C.L.S. 1956 § 750.146; M.S.A. 1962 Rev. Vol. § 28.343, sets forth:

> "All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of inns, hotels, [motels,] *government housing* * * *." (Emphasis supplied)

In addition to this statute regulating government housing, the United States Supreme Court held in the cases of *McGhee v. Sipes,* which originated in Michigan, and *Shelley v. Kraemer* (1948), 334 U.S. 1, 11, that the enforcement by state courts of covenants restricting the use or occupancy of real property to persons of the Caucasian race constitutes state action and is in violation of the equal protection clause of the Fourteenth Amendment. The United States Supreme Court, in the *Shelley* case, stated:

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee. Thus, § 1978 of the Revised Statutes, 8 USCA § 42, 2 FCA title 8, § 42, derived from § 1 of the Civil Rights Act of 1866 which was enacted by Congress while the Fourteenth Amendment was also under consideration, provides:
>
> " 'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.' "

Thus, it is clear that the Civil Rights Act of 1866 creates a civil right to inherit, purchase, lease, sell, hold and convey real and personal property. It is significant to note that the Civil Rights Act of 1866 draws no distinction between public and private housing. Consequently, one must conclude that Congress intended to create a civil right in the area of private housing as well as public housing. Moreover, the civil right to purchase, hold and convey both private housing and public housing necessarily embraces the right to mortgage both private and public housing, for mortgages are part and parcel of the right to convey and purchase property.

The civil rights afforded by the Civil Rights Act of 1866 were safeguarded by the promulgation and adoption of the Fourteenth Amendment to the Constitution of the United States, thus placing the provisions of the Civil Rights Act beyond the destructive reach of an ordinary majority of Congress forever, within the haven of a constitutional provision. Charles L. Palmer, "The Fourteenth Amendment: Some Reflections on Segregation in Schools," *American Bar Association Journal,* July 1963, Vol. 49, page 645:

The Civil Rights Act of 1866 was re-enacted in Section 18 of the Act of May 31, 1870, subsequent to the adoption of the Fourteenth Amendment.

That the equal opportunity to housing, both public and private, is a civil right protected by the Michigan Constitution is supported by a reading of Article I, Section 2 of the Revised Constitution, Article V, Section 29 of the Revised Constitution, and the Address to the People in support of Article I, Section 2, as well as the Debates of the framers of the Revised Constitution approving the organic law for submission to the people of this State.

In the area of public accommodations, the public policy of the State of

Michigan has been established since 1885 when the legislature established a civil right of all Michigan citizens pertaining to the use of all places of public accommodation. The Equal Accommodations Act, being Section 146 of Chapter XXI of Act 328, P.A. 1931, supra, provides:

> "All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of inns, hotels, (motels,) government housing, restaurants, eating houses, barber shops, billiard parlors, stores, public conveyances on land and water, theatres, motion picture houses, public educational institutions, in elevators, on escalators, in all methods of air transportation and all other places of public accommodation, amusement, and recreation, subject only to the conditions and limitations established by law and applicable alike to all citizens and to all citizens alike, with uniform prices."

The public policy of the State is declared by constitution, by statute and by judicial decision. *Groehn v. Corporation and Securities Commission* (1957), 350 Mich. 250; *Skutt v. City of Grand Rapids* (1936), 275 Mich. 258.

In addition to the foregoing review of civil rights created by the Revised Constitution, legislation and case law, it is appropriate for us to review the pertinent aspects of the deliberations of the framers of the new Michigan Constitution for the purpose of determining the scope of the authority of the new Civil Rights Commission as understood by the delegates to the Constitutional Convention. The law in Michigan is well settled that a court, in attempting to interpret the meaning of the language of a constitution, shall consider the proceedings of the Convention which approved the language and the official Address to the People upon the subject in question. *Kearney v. Board of State Auditors* (1915), 189 Mich. 666.

On March 29, 1962, the 110th day of the proceedings of the Convention, the Convention adopted an amendment sponsored by Delegates Austin, Barthwell, Binkowski, Nord, Norris, Young and Mrs. Daisy Elliott, which created a Civil Rights Commission and asserted that the Commission shall have jurisdiction over the specific fields of employment, education, housing and public accommodations. That amendment stated in part:

> "It shall be the duty of the Commission * * * to investigate violations of, and to secure the protection of the civil right to employment, education, housing, public accommodations, and to such other rights as provided for by law and the constitution."
>
> Official Record, Constitutional Convention 1961, one hundred tenth day, March 29, 1962, p. 1982.

On April 5, 1962, the 115th day of the proceedings of the Convention, Delegates Van Dusen, J. B. Richards, John Hannah, Goebel, King, Martin and Bentley offered a substitute amendment which deleted explicitly the aforementioned four areas. Delegate Van Dusen said:

> "Mentioning them again in this section would in our opinion be redundant. There is no intention to change, in any respect, the nature of the civil rights protected by this commission from the amendment as adopted by the committee of the whole, to the substitute."

Delegate Van Dusen continued:

"In the final paragraph, which spells out the powers of the commission, it has been made clear that the powers granted by the constitution are self executing, as in the case of the Austin amendment. * * * No new law would be necessary. * * * There is nothing in the substitute which in any way vitiates the amendment adopted by the committee of the whole. It establishes a civil rights commission. It provides for the powers of that commission. It is self executing in both of those respects."

Delegate Binkowski, in addressing himself to the subject matter of the jurisdiction of the new Civil Rights Commission, remarked:

"For the record, I would like to defer to Mr. Van Dusen because I think that this point should be clarified in case we have a judicial review of this section so that it is clear if this Convention does not go on record as adopting the Austin and Elliott amendment that certainly it is not to be construed that we do not want a civil rights commission operating in those enumerated areas."

Delegate Van Dusen, in answer, stated:

"Mr. President, I would answer Mr. Binkowski's question very clearly. I don't think that the substitute amendment intends any substantive difference in this area. I thought I made that reasonably clear in my opening remarks. The only reason for omitting the 4 enumerated areas of discrimination was that in view of the report of the committee on declaration of rights, suffrage and elections in connection with Committee Proposal 26, that committee made it very clear *that among the civil rights protected by the constitution and among the civil rights, therefore, to be within the area of concern of this commission, are the matters of equal opportunity in employment, education, housing and public accommodations.* If I may, in further response to Mr. Binkowski's question, I would like to just read very briefly from this report in which the committee on declaration of rights stated. (The following report is from Dr. Pollock's opening statement in support of Committee Proposal 26 at the first reading of that proposal):

" 'Several factors have impressed the committee with the advisability of incorporating an equal protection and civil rights section in the new constitution. Delegate John Hannah, who it will be observed is the chairman of the United States Commission on Civil Rights, gave impressive and moving testimony before the committee upon the wisdom and necessity of such a clause to protect Negroes and other minorities against discrimination in housing, employment, education, and the like.' " (Emphasis supplied)

Delegate Van Dusen (continuing):

"Later on in the same report they state that:

" 'The principal but not exclusive areas of concern are equal opportunities in employment, education, housing and public accommodations.' "

Official Record, Constitutional Convention 1961, Seventieth day, February 1, 1962, p. 740.

See Also Address to the People, Article I, Section 2, supra.

Delegate Van Dusen (continuing):

"The only reason for the mention of the specific areas of discrimination from the substitute amendment now in consideration was that it would be redundant to mention them in the light of the action already taken with respect to committee Proposal number 26; and further it would be construed perhaps as a limitation upon the powers of the commission which was not intended by the sponsors of the Austin amendment or by the sponsors of the substitute now before the Convention."

After Delegate Van Dusen concluded, Delegate Pollock commented:

"Mr. President, I merely want to make this observation as the chairman of the committee on rights, suffrage and elections, that precisely the same point as Mr. Van Dusen has pointed out, was thoroughly discussed in our committee. It was then thoroughly discussed on the floor of this Convention in connection with the minority report which Mr. Norris prepared and we agreed unanimously, a little bit later, that these words were not necessary; they were not good constitutional language, and it is nobody's intention to exclude these areas; * * *."

The "Norris" report referred to by Dr. Pollock is found in the Official Record, Constitutional Convention 1961, Seventieth day, February 1, 1962, pp. 740-741. The report subscribed to by Delegates Norris, Dade, Hatcher, Hodges and Buback recommended the following language for the equal protection clause.

"Each person in Michigan shall enjoy the equal protection of the law. No person shall, because of his race, color, religion, national origin or ancestry, be discriminated against in employment, housing, public accommodations, education, or in his enjoyment of all other of his civil rights, by the state or any political or civil subdivision thereof, or any firm, corporation, institution, labor organization or any other person."

It is readily apparent that it was the clear and unmistakable intention of the framers of the Constitution that the substitute amendment which was adopted, yeas 111, nays 10, granted authority to the Civil Rights Commission to protect and secure the equal opportunity in employment, education, housing and public accommodations. Nor can there be any question that the framers of the Revised Constitution intended that the Civil Rights Commission would implement the protection afforded by Article I, Section 2 of the Revised Constitution.

My reading of the Revised Constitution is supported by an examination of the Proceedings of the Convention after the substitute amendment to Article V, Section 29, was adopted on April 5, 1962, supra.

On the 129th day of the Proceedings of the Convention, April 26, 1962,

Delegate Stevens offered an amendment to Article I, to add a new section 22 to read as follows:

> "THE RIGHT OF THE OWNER OF REAL PROPERTY TO CONVEY, GRANT, OR DEVISE SAID PROPERTY SHALL BE LIMITED ONLY BY LAW."

The amendment was not adopted. Official Record, Constitutional Convention 1961, One hundred twenty-ninth day, April 26, 1962, p. 2866.

Another unsuccessful effort to amend Article I of the Revised Constitution in a similar manner was made on May 7, 1962, the 133rd day of the Proceedings of the Constitutional Convention, through amendment offered by Delegates Stevens and Kuhn to add section 24 to Article I to read as follows:

> "THE RIGHT OF THE OWNER OF REAL PROPERTY TO CONVEY, GRANT, OR DEVISE SAID PROPERTY SHALL BE LIMITED ONLY BY GENERAL LAW. THE LEGISLATURE SHALL NOT DELEGATE THIS POWER."

The amendment was not adopted. Official Record, Constitutional Convention 1961, One hundred thirty-third day, May 7, 1962, p. 3092.

It is most significant that the fruitless efforts to amend the Revised Constitution were made after provision for the Civil Rights Commission through Article V, Section 29 of the Revised Constitution had been approved by the delegates.

The intent of the framers is therefore clear that the Civil Rights Commission has plenary power to investigate and to secure equal opportunity in the field of housing.

Article V, Section 29 of the Revised Constitution is the supreme law of the State of Michigan after January 1, 1964. Because the people have conferred exclusive power upon the Civil Rights Commission to investigate and secure civil rights in the field of employment, education, housing and public accommodations, the Fair Employment Practices Commission, authorized by section 5 of Act 251, P.A. 1955, as amended, being C.L.S. 1956 § 423.305; M.S.A. 1960 Rev. Vol. § 17.458(5), shall be without authority to investigate and to hold hearings because of discrimination in employment practices in the State of Michigan after January 1, 1964, the effective date of the Revised Constitution.

It should be stressed that the authority of the Civil Rights Commission is plenary within the *sphere of its powers* as set forth in Article V, Section 29 of the Revised Constitution.

Because Article V, Section 29 of the Revised Constitution recognizes that the rights of any party to direct and immediate legal or equitable remedies in the courts of the state are not to be diminished, any persons aggrieved because of denial of any accommodations, privilege or facility afforded by Section 146 of Chapter XXI, Act 328, P.A. 1931, as amended, supra, could pursue legal remedies afforded by Section 147 of the act, and such other remedies as may be provided by law.

The Constitution expressly authorizes review of final orders of the Commission, including cease and desist orders and refusal to issue complaint

to be tried *de novo* in the circuit court having jurisdiction as provided by law. In this regard consideration should be given to the decision of the Michigan Supreme Court in *Darling Company v. Water Resources Commission* (1955), 341 Mich. 654, where the court, in construing a statute providing for an appeal from an administrative agency to the circuit court in chancery as a *"review de novo,"* held that the statute imposed a right and duty upon the court to pass judgment upon the decision in the order of the commission on the record of such proceedings before said Commission.

In the construction of constitutions, language used by the framers is presumed to be employed in the sense in which it has been judicially interpreted. See *People v. Powell* (1937), 280 Mich. 699; *In re Chamberlain's Estate* (1941), 298 Mich. 278; *Knapp v. Palmer* (1949), 324 Mich. 694.

No. 1. Therefore, it is the opinion of the Attorney General that the new Civil Rights Commission, established by Article V, section 29 of the Revised Constitution, has plenary power within the sphere of its authority, to protect civil rights in the fields of employment, education, housing and public accommodations.

No. 2. No purpose would be served in restating the authorities that have been advanced in support of the conclusion contained in answer to question No. 1. Suffice it to say that when the people conferred plenary power upon the Civil Rights Commission to protect civil rights in the field of housing, included within such grant is the enforcement of civil rights to purchase, mortgage, lease or rent private housing.

Therefore, the Civil Rights Commission has authority to enforce civil rights to purchase, mortgage, lease or rent private housing.

No. 3. Because the people have provided for the Civil Rights Commission in the Revised Constitution, the authority of the legislature over that constitutional body must be found in the Constitution.

I find no authority in the Constitution under which the legislature could abrogate or limit in any way the power of the Civil Rights Commission in the fields of employment, education, housing and public accommodations. It is equally clear that the legislature, in its discretion, *may* prescribe the mode or manner in which investigations are to be conducted by the Civil Rights Commission. Failure of the legislature to enact legislation relative to the manner or exercise of this power is in no way a restriction upon the authority of the Commission.

Nor may the legislature abrogate or limit the authority of the Civil Rights Commission through the admitted constitutional power of the legislature to appropriate moneys for operation of the Commission. Although the people have expressly provided that "the legislature shall provide for an annual appropriation for the *effective* operation of the Commission" (emphasis supplied), there is reason to believe that the legislature will fulfill the mandate of the people in this regard.

Therefore, it is my opinion that the legislature is without authority to abrogate or limit the power of the Civil Rights Commission in the fields of employment, education, housing and public accommodations.

No. 4. With the exception of appropriations to finance the operation

of the Civil Rights Commission under the authorities listed herein, there appears to be no question but that the Civil Rights Commission is self-executing and shall exercise the authority vested in it by the people under Article V, section 29 on January 1, 1964, when the Revised Constitution becomes effective.

So that the Civil Rights Commission may discharge the duties imposed upon it by the people through constitutional mandate, appropriation to insure "effective" operation of the Commission on and after January 1, 1964 requires that the legislature fulfill the obligation reposed in it by the people in the year 1963. In this regard the Governor should consider the inclusion of an appropriation for the Civil Rights Commission within the call for a special session of the legislature contemplated for the fall of 1963.

No. 5. Article IV, section 37 of the Revised Constitution provides as follows:

> "The legislature may by concurrent resolution empower a joint committee of the legislature, acting between sessions, to suspend any rule or regulation promulgated by an administrative agency subsequent to the adjournment of the last preceding regular legislative session. Such suspension shall continue no longer than the end of the next regular legislative session."

It is clear that the above provision applies to non-constitutional administrative bodies, and consequently this legislative power would not be applicable to a constitutional body such as the Civil Rights Commission, which is a constitutional authority serving in the executive branch of the government. O.A.G. 1943-44, p. 444. See, also, *Plec v. Liquor Control Commission, supra.* The people intended Article IV, section 37, to apply to those administrative agencies created by the legislature, to which the legislature has delegated the rule-making power.

The court in the case of *Sylvester v. Tindall* (1944), 18 So. 2d 892, emphatically declares that the legislature cannot set aside the rules of constitutional bodies when it observes on page 900 of its opinion:

> "Thus the people, when acting through a constitutional amendment set up an administrative commission, such as the one we are dealing with here, to accomplish certain public purposes, it can clothe the commission with power to adopt rules and regulations to carry out the purpose of the amendment which would have the effect of repealing any and all statutes relating to the same subject matter which are in conflict with the purpose and intent of the constitutional amendment and with the rules and regulations adopted pursuant thereto."

See, also, *Price v. City of St. Petersburg* (1947), 29 So 2d 753, and *A. A. Beck and Joe Griffin, et al v. Game and Fresh Water Fish Commission of the State of Florida* (1948), 35 So. 2d 594.

In both cases the court followed the rule established in the case of *Sylvester v. Tindall, supra.*

In the promulgation of its rules, the Civil Rights Commission is bound by the due process clause of both the State and federal constitutions.

In answer to your inquiry, then, it is the opinion of the Attorney General that Article V, section 29 of the Revised Constitution is self-executing and confers upon the Civil Rights Commission plenary power within its sphere of authority which includes securing equal protection of civil rights in the fields of employment, education, housing and public accommodations.

FRANK J. KELLEY,
Attorney General.

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ELECTIONS: Board of Canvassers, bipartisan membership required by the 1963 Constitution.
CONSTITUTIONAL LAW: Article II, Sec. 7, Constitution of 1963.
WORDS AND PHRASES: "Any board of Canvassers"

The requirements of Article II, Section 7 of the 1963 Constitution are applicable to every board of canvassers which under statutory or charter provision is charged with the duty of canvassing the votes cast at any election.

No. 4189 July 24, 1963.

Honorable Russell H. Strange
Chairman, Elections Subcommittee
Legislative Interim Committee on
Implementation of the Constitution
R.F.D. No. 1
Clare, Michigan

Your letter dated July 9, 1963, cites Article II, Section 7 of the Revised Constitution, which reads:

> "A board of state canvassers of four members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party."

Referring to the last sentence of said section, you request my opinion:

> "* * * as to the scope of the word 'any'—i.e. does it include boards of canvassers in counties, cities, villages, townships, school districts, etc?"

Resort has been had to the record of the Proceedings of the 1961 Constitutional Convention as a means of determining the intent of the delegates.[1] Section 7 originated as section h of Committee Proposal No. 58,

[1] *Holland vs. Clerk of Garden City,* 299 Mich. 465, 470. *Kearney vs. Board of State Auditors,* 189 Mich. 666, 671, 673, quoted with approval in *School District of City of Pontiac vs. City of Pontiac,* 262 Mich. 338, 346 and in *City of Jackson vs. Commissioner of Revenue,* 316 Mich. 694, 720.