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COMMISSION ON LEGISLATIVE APPORTIONMENT: Date of Adoption.

CONSTITUTIONAL LAW: Article IV, Sec. 6, Constitution of 1963.

The provisions of Art. IV, Sec. 6, Constitution of 1963, relating to the organization and functions of the Commission on Legislative Apportionment do not go into effect prior to January 1, 1964, being the effective date of the new Constitution, and the secretary of state has no responsibility to issue a call for the purpose of convening a Commission on Legislative Apportionment during 1963.

Meaning of the words "date of adoption" as they appear in Art. IV, Sec. 6, Constitution of 1963, discussed and applied in determining the establishment of the Commission on Legislative Apportionment.

No. 4164 July 26, 1963.

Honorable James M. Hare
Secretary of State
Capitol
Lansing, Michigan

On April 3, 1961, at the biennial spring election, the electors voted favorably on the question of a general revision of the State Constitution. By Act 8, P.A. 1961, effective April 17, 1961, the legislature made provision for a state-wide election to be held on September 12, 1961 for the purpose of selecting delegates to a Constitutional Convention. The delegates so selected met in convention in Lansing on October 3, 1961. They undertook to formulate a proposed Constitution of the State of Michigan which was adopted by the Convention in final form on August 1, 1962. Section 15 of the Schedule and Temporary Provisions contained in the proposed Constitution reads in part:

> "This constitution shall be submitted to the people for their adoption or rejection at the general election to be held on the first Monday of April, 1963."

The first Monday of April, 1963 fell on April 1 and was the date of the biennial spring election at which time the people voted for the adoption or rejection of the proposed Constitution. On April 30, 1963 the board of state canvassers announced that the proposed Constitution had received a favorable vote from the people at the election on April 1. Shortly thereafter a petition for recount of the vote on the adoption of the proposed Constitution was filed with the board of state canvassers and resulted in a recount in approximately 1,800 precincts. On June 20, 1963 the board of state canvassers announced that the recount had not changed the vote sufficiently to affect the outcome of the election and the board gave its final certificate that the proposed Constitution had been adopted by the people. The 16th section of the Schedule and Temporary Provisions of the proposed Constitution contained a sentence reading:

> "If the revised constitution so submitted receives more votes in its favor than were cast against it, it shall be the supreme law of the state

on and after the first day of January of the year following its adoption."

The effective date so fixed was but a restatement of the provision appearing in Article XVII, Section 4 of the Constitution of 1908 and then in effect, reading as follows:

"Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon such constitution or amendments shall take effect on the first day of January following the approval thereof."

The words "such constitution" appearing in the foregoing quoted provision refer to any proposed constitution adopted by a constitutional convention convened for the purpose of drafting its provisions in accordance with the procedure set forth in Section 4, Article XVII, Constitution of 1908, and any implementing legislation.

For purposes of identification, the Constitution approved by the people at the election of April 1, 1963 will sometimes hereinafter be referred to as the Constitution of 1963 or as the new Constitution. Article IV of the new Constitution relates to the Legislative Branch. By its Section 6 a Commission on Legislative Apportionment is established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. Further provision is made in the event of a third political party. Four geographical regions of the state are described in Section 6 from each of which regions one resident shall be selected by each political party organization and the persons so selected shall constitute the members of the apportionment commission. Section 6 of Article IV further provides:

"The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

"The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

"Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of

this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

"Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

"If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

"Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution."

Concerning the foregoing quoted portion of Section 6, you inquire:

1. Should I, as Secretary of State, undertake to issue a call for the purpose of convening the Apportionment Commission in 1963?

2. What is the "date of adoption" of the new Constitution as that term is applied to the Apportionment Commission established by Article IV, Section 6?

Your questions can be readily answered once it is determined whether the time schedule set forth in Section 6 begins operating when the outcome of the vote of the people became officially known in 1963 or begins operating on January 1, 1964, the effective date of the new Constitution.

The Constitution of 1963 was a General Revision of the Constitution of 1908 within the purview of Section 4, Article XVII, Constitution of 1908, as amended at the general election on November 8, 1960. As hereinbefore recited, under this section of the Constitution of 1908 any general revision or proposed new constitution shall take effect on the first day of January following its approval by a majority of the qualified electors voting thereon. Pursuant to this mandate the new Constitution will take effect on January 1, 1964. To give significance to your first question it must be assumed that you are in doubt as to whether or not the Apportionment Commission established by Article IV, Section 6 of the new Constitution, may be convened by you and undertake to perform its duties during 1963 which obviously is prior to the effective date of the Constitution itself. It is likewise obvious from a reading of Article IV of the Constitution of 1963 that your responsibility regarding the Apportionment Commission and the duties imposed upon that Commission are a part and parcel of the main document, that is, the Constitution of 1963. Thus the narrow issue becomes whether

any part of the Constitution of 1963, including Article IV, Section 6, can lawfully be given any force and effect antecedent to January 1, 1964.

Section 11 of the Schedule of the Constitution of 1908 contains the following statement:

> "Should the revised constitution so submitted receive more votes in its favor than shall be cast against it, it shall be the supreme law of the state on and after the first day of January, 1909, except as herein otherwise provided; otherwise it shall be rejected."

It would appear to be academic that the Constitution of 1908 is and continues to be the supreme law of the state until it is superseded by a new Constitution. The case of *Carton v. Secretary of State*, 151 Mich. 337, was a proceeding in mandamus to compel the secretary of state to submit at the November general election of 1908 the proposed constitution which had been drafted in convention. One of the issues was whether the Constitutional Convention could submit the proposed document to the people at a time differing from that fixed by the legislature. In writing for the majority of the Court, Chief Justice Grant said:

> "The Constitution of 1850 remains the fundamental law of the State until it is changed in the manner provided by that instrument or by revolution. The provision for amending and revising it are as binding upon the several departments of government as any other provision. After the convention is called into being it is limited in its powers by the existing Constitution which it is bound to observe." (p. 340)
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> "The constitutional convention is indeed the child of the law, but of the organic law and not a legislative enactment. In this State the Constitution is the charter of the convention and its sole charter." (p. 347)

The following clear statement of the law is to be found in *Volume XI, Michigan Law Review*, p. 302:

> "Where specific amendments to the constitution are proposed and adopted, every requirement of the existing constitution should be substantially complied with, and the omission of any one vital element will be fatal to the amendment. The constitution is the paramount law, binding upon all who are subject to it; and its mandatory provisions can no more be violated in the manner of its own amendment than in any other act or conduct. As long as a constitution remains, its provisions must be observed in action taken under it; otherwise there will not be government regulated by law, and resort must be had to the right of revolution to justify the action."

Innumerable situations can be conceived where a constitutional convention might consider it desirable to depart from the procedures and mandates of an existing constitution if the provisions thereof were not binding as the supreme law of the state until superseded in the form and manner authorized in the document being revised or replaced. Could anyone believe it to be lawful for a constitutional convention to declare that a proposed constitution should go into effect by proclamation when the existing constitution under which the delegates were convened required a

vote of approval by the people? In the case of *Hamilton v. Secretary of State,* 204 Mich. 439, the Court refused to consider the date of election, November 5, 1918, as the effective date of a constitutional amendment conferring the franchise upon women of the state because, as the Court pointed out, the Constitution of 1908 provided that an amendment shall not take effect until 30 days after the election at which it is approved.

In *DeMaggio v. Attorney General,* 300 Mich. 251, the Court had under consideration the Civil Service Amendment to the Michigan Constitution. The proposal by which the amendment was submitted to the people contained a provision that the amendment should take effect on the 1st day of January following the approval thereof. It was claimed that the provision delaying the effective date was invalid because the Constitution required that every amendment shall take effect thirty days after the election at which it was approved and the election having been held on November 5, 1940 the amendment would be effective December 5, 1940. The Supreme Court held against this contention and said that the 30-day clause in the State Constitution did not prevent the electors from deferring, beyond that interlude, the operation of the amendment. The Court said:

> "There is nothing in the Constitution which prohibits the postponement of the effective date of the operation of the amendment."

In the case of *State ex rel. Duffy v. Sweeney,* 152 Ohio St. 308, 89 N.E. 2d 641, the Supreme Court of Ohio had under consideration a proposed amendment to the Constitution of the State of Ohio. The proposed amendment as submitted to the people contained a schedule that it should go into effect immediately upon certification by the secretary of state that a majority of the votes cast at the election were in favor of the amendment. The amendment carried. At the time of the election the Ohio Constitution contained a provision that an amendment to the Constitution required the approval of a majority of the electors voting thereon and that it shall take effect thirty days after the election at which it was approved. In holding the schedule void the Supreme Court of Ohio said:

> "Obviously, nothing in the schedule to this proposed amendment can have any operative effect as a part of the law of this state unless and until the amendment has taken effect and become a part of the Constitution, pursuant to the above-quoted existing and self-executing provisions of the Constitution. In other words, this schedule can be given legal effect only if it is a part of an amendment which has become effective. See State ex rel. McNamara v. Campbell, 94 Ohio St. 403, 115 N.E. 29.
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> "If 'a majority of the electors voting at the general elections of November 8, 1949' had voted in favor of the amendment and the Secretary of State had certified to that fact prior to December 8, 1949, the provisions of Section 2a would not have become effective immediately, because the Constitution, Section 1b, provides that an amendment becomes effective thirty days after the election at which it is approved, not before then. The schedule cannot provide for an earlier effective date than that provided in the existing constitutional provisions."

The legal principles announced in the foregoing cases and law article are persuasive and point to the conclusion that in changing an existing constitution, either by general revision or by amendment, any proposed constitution or amendment cannot be made effective in any manner nor as to any part by writing therein conditions or provisos which conflict with those of the existing constitution. The supreme law of the state cannot be twofold.

In response to your first question, I conclude that if the language of Article IV, Section 6, Constitution of 1963, must be construed as requiring the Commission on Legislative Apportionment to initially convene in 1963, such requirement would be void because in conflict with Section 4, Article XVII of the Constitution of 1908. It follows that there is no duty imposed on you as Secretary of State by the Constitution of 1963 to issue a call for the purpose of convening the Commission on Legislative Apportionment during 1963 or at any time prior to January 1, 1964, the effective date of the new Constitution.

You next ask what is the "date of adoption" of the new Constitution as that term is applied in Article IV, Section 6 thereof to the Commission on Legislative Apportionment. You undoubtedly refer to the following expressions appearing in Section 6:

> "The commission shall be appointed immediately after the adoption of this constitution * * *."
>
> "Within 30 days after the adoption of this constitution * * *, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter."

There is no precise definition of the word "adoption" as it applies to a proposed constitution or a constitutional amendment but the meaning to be assigned depends upon the context in which the word is used and the intention which may be drawn from the entire document and from the result or purpose sought to be accomplished. A review of the following cases will demonstrate the application of the rule.

In the case of *Real v. The People of the State of New York*, 42 N.Y. 270, one John Real had been indicted, tried and convicted of murder. From the facts it appeared that the defendant was first tried in the Court of Oyer and Terminer with Justice George G. Barnard presiding. Defendant was convicted and then appealed to the Court of General Term where the judgment of conviction was affirmed, two of the justices voting for affirmance, one of whom was Justice Barnard, and the remaining justice voting for reversal. The case was heard at the General Term before the election of 1869. At that election there was submitted to the people the adoption or rejection of a new constitution but the judicial article was separately submitted. Under the proposed judicial article any justice was disqualified from sitting at the General Term in review of a case at which he had previously presided. The people adopted the judicial article but rejected the balance of the proposed constitution and it thus became important to determine the date on which the judicial article became effective. Because it is pertinent to your second inquiry, a substantial quotation from the opinion of the Court of Appeals is set forth herein.

"Grover, J. Although the case was heard in the General Term of the Supreme Court, before the election in 1869, at which the judiciary article submitted to the electors was adopted, yet the case was not decided until after the canvass of the votes by the State canvassers and the result showing the adoption of the article was announced by that board. The record shows that one of the three justices by whom the General Term was held presided at the Oyer and Terminer at which the plaintiff was tried and convicted, and that he was one of the two justices who concurred in affirming the judgment. The counsel for the plaintiff insists that section eight of the judiciary article took effect immediately, upon the result of the canvass being announced by the board. If he is right in this, the judgment of affirmance must be reversed, and the cause directed to be reheard in the Supreme Court, for the reason that one of the two justices who concurred in affirming the judgment was, at the time of the affirmance, incompetent to take any part in reviewing the judgment rendered by the Court of Oyer and Terminer, of which he was a member, as a member of the General Term, by section eight of such article. That section provides that no judge or justice shall sit at a General Term of any court, or in the Court of Appeals, in review of a decision made by him or by any court of which he was, at the time, a sitting member. The rule of the common law is, that every law takes effect immediately upon its passage, unless some other time is therein prescribed for that purpose. (1 Kent's Com., 458, Sedgwick's Stat. & Const. Law, 82.) The result of the election showing the adoption of this article by a majority of the votes cast, must, within the meaning of the rule, be deemed its passage. The canvass of the votes cast by the various boards of canvassers as required by law, and announcing the result and certifying the same as required by law, is as much a part of the election as the casting of the votes by the electors. The election is not deemed complete until the result is declared by the canvassers as required by law. When the result was declared by the State board of canvassers, the article was adopted, and under the rule, became operative at once, unless from the nature of the provisions themselves, or those of some other law, it appears that it was to take effect at some future period, or unless it clearly appears that the intention of the framers of the article, and of those by whom it was adopted, was, that it should not take effect until some definite future time. The article in question was framed by the convention convened in 1867, pursuant to a vote of the people, as required by the present constitution and the act of the legislature, (Laws of 1867, chap. 194,) for the purpose of proposing amendments to the constitution, or framing a new one, as by the convention should be deemed expedient. It was provided by section 5 of the act, that when it should be ascertained by the board of State canvassers that any proposition submitted to the people had received a majority of votes in its favor, then that proposition should be declared to be adopted, either as the constitution, a part of the constitution, or an amendment to the present constitution, as the case may be, and that the same should take effect from and after the 31st day of December,

1867, unless the convention should prescribe some other time on which the same should take effect by resolution. This act contemplated that the convention would complete its work and submit the same for the action of the people at the election in 1867. It failed to do this and continued its session for some time subsequent to that election. In 1868 (Laws of that year, chapter 538), the legislature passed an act authorizing the convention to continue its session. In 1868, the convention completed its labors, but the legislature did not, during that year, pass any act providing for the submission of its work, or any part thereof to the people. That body did, however, in 1869, pass such an act, providing for the submission of the entire work of the convention to the people; and by section 5 of the act (chapter 318, Laws of that year), provided that, in case of the adoption of the article in question by a majority of the votes, it should become the sixth article of the constitution of the State. This act is silent as to the time when it should take effect. The article in question was incorporated with other articles designed by the convention to supersede the existing constitution, and to become the future constitution of the State. By the act of 1869, it was all submitted at the election to be held that year, provision being made for a separate vote upon the judiciary, and other articles. By the 5th section of the 14th article it was provided, that this constitution shall be in force, from and including the 1st day of January next, after its adoption by the people. This section related to the entire proposed constitution, the judiciary article included; and had the proposed constitution been adopted, would, of course, have determined the time when all its provisions would have taken effect. But that portion containing this provision was rejected, and it is, therefore, insisted by the counsel for the plaintiff, that it never had any operation. But its insertion shows clearly that the convention intended that no part of the proposed constitution should take effect until that time. The fact that the legislature submitted the judiciary article to a separate vote, could not affect this intention. Those voting for the proposed constitution, or any part of it, saw the time therein limited for its taking effect, and must have voted for it, or any part of it, in reference to such time. To suppose that those voting for the judiciary article, and against the residue of the instrument, intended that the former should take effect, if adopted upon the announcement of the result, would be absurd. All must have understood that such parts, if any, as were adopted should take effect at the time prescribed, irrespective of what might be rejected. This manifest intention of the framers of the article, and of those adopting it, controls the time of its taking effect. That time was January 1, 1870, as to the provision in question. Other provisions of the article, from their very nature, did not take effect until after that time. As to the latter, it is not necessary now to determine when they became operative. It follows that the justice who presided at the Oyer and Terminer was not incompetent to act as a member of the General Term, when the judgment appealed from was rendered."

In the case of *The People of the State of New York ex rel. Davis v. Gardner,* 45 N.Y. 812, the Court of Appeals again had under consideration the general election of 1869 and the time of the adoption of the judicial article of the proposed constitution which had previously been considered by the court in the case of *Real v. The People,* supra. In this latter case the defendant held the office of county judge for a term expiring December 31, 1869. At the general election he was chosen to the same office for an additional term of four years. The fifteenth section of the judicial article which was approved by the people at the same election read:

> "The existing county courts are continued, and the judges thereof, in office at the adoption of this article, shall hold their offices until the expiration of their respective terms."

The issue before the Court of Appeals was the proper construction to be given to this language from the constitutional article. Did the county judge hold his office until the expiration of four years from the 31st of December, 1869, or was he limited under the foregoing language to the term of office presently held by him and which expired December 31, 1869. The court held that the county judge had been elected to a four year term beginning January 1, 1870 and in reaching that result considered the phrase "at the adoption of this article." In its opinion, after quoting from Section 15 of the judicial article the sentence set forth above, the court said:

> "Now, when this sentence speaks of 'the existing county courts,' it must mean the county courts existing when the article went into effect. And as it went into effect on the 1st day of January, 1870, it means those existing on that day. The absurdity cannot be imputed to the constitutional convention of intending to continue the county court without also continuing the judge thereof. And yet, if the term of office mentioned in that sentence is that which expired 31st December, 1869, the court would be continued, while, through the year 1870, there would be no judge of the court. * * * If we extend our view to other sections of the article, we shall find still greater reason to conclude that, by the phrase 'at the adoption of this article,' was meant at the time when the article took effect. * * * Now, in all these sections is evident one general purpose of continuing in existence and uninterrupted operation the courts named in them, and of continuing in office, until the expiration of their respective terms then current, the judges whom the article found in office. * * *.
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> "It cannot be claimed, with any reason, that the intention of the framers of the proposed Constitution was to interrupt; it was rather to continue, without interruption, the powers and functions of the State, in all the co-ordinate branches of the government. We should not, from a too close adherence to the literal signification of words and phrases, impute to them that they meant that the judicial system, as a whole, should be in abeyance, or that any of its contemplated parts should be halting behind the others, for want of power to start abreast with them. The real intention, when ascertained, will always prevail over the literal sense of terms."

The same Section 15 of the judicial article of the proposed constitution

of the State of New York submitted to the people at the general election of 1869 was again before the courts in the case of *The People, ex rel. Clark v. Norton,* Vol. 59 Barbour's Supreme Court Reports (New York) 169. In that case the court had for decision whether a county judge had been duly elected. Involved again was the question of when the pertinent section had been adopted. The justice of the lower court before whom the case was tried came to the conclusion that it was the evident intent of the framers and the people in adopting the section in question, not only that the county courts should be continued, but that the judges in those courts should be continued in office. It would be impossible to give uniform effect to this intention except by construing the words "at the adoption of this article" to mean at the time of the taking effect of the entire article. In support of his opinion this justice said:

> "Constitutional and legislative enactments are to be so construed as to give effect to the evident intention of those who enact them. 'That intention is to be deduced from a view of the whole and of every part of the enactment, taken and compared together. The real intention, when actually ascertained, will always prevail over the literal sense of terms, and the reason and intention of the law giver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction and absurdity. (1 Kent's Com. 462.)"

On appeal to the Supreme Court the decision of the trial court was affirmed. The opinion of the Supreme Court contains the following pertinent statement:

> "What is the meaning of this term 'adoption,' as here used, and to what period does it relate? Does it relate to the time when the articles should become a part of the constitution of the State, or to a time prior to that, when it could have no voice, or force, or effect whatever, when the electors decided that it should form part of their constitution, and become of force at a future day. To any mind, this is exceedingly clear. The terms used in this section, 'the existing county courts,' 'at the adoption of this article,' and 'the jurisdiction they now possess,' all speak of, and refer to, the same period precisely, to wit, when the sixth article should become of force as part of the organic law."

There is no present Commission on Legislative Apportionment in Michigan. Its creation is to come from the Constitution of 1963, Article IV, Section 6 which says: "A commission on legislative apportionment is hereby established. * * *." Nothing in Section 6 fixes the date of establishment of this Commission prior to the effective date of the new Constitution on January 1, 1964. Compare in this regard the language of the new Constitution in Article V, Section 28 establishing a state highway commission and in Section 29 of the same article establishing a civil rights commission. If the words of Section 6 providing for the appointment of the Comission immediately after the adoption of the new Constitution are read as requiring action prior to January 1, 1964, the filling of the membership and any attempt by the members to act would be but an idle gesture since the Commission itself does not come into being or have status until the 1st of January, 1964. In this connection the provisions of the Constitutioon of 1835

appearing in Sections 6 and 9 of its Schedule are readily distinguishable. Under those provisions of 1835 the people were voting for the first time upon the adoption of a state constitution which would have immediate effect if the vote was favorable. There was no inconsistency in voting at the same election for state officers who would immediately enter upon the duties of their offices should the proposed constitution be adopted. A similar plan under a proposed city charter was approved in the case of *Streat v. Vermilya,* 268 Mich. 1.

The number of members of the state senate is presently fixed at 34 by Section 2, Article V, Constitution of 1908, as amended at the general election in 1952. The Constitution of 1963 by Section 2 of Article IV increases the number of members of the state senate to 38 and increases the term of office from 2 to 4 years with the first election for the 4 year term to be held at the general election in 1966 (Section 5 of the Schedule and Temporary Provisions). By the 1952 amendment to Section 3, Article V, Constitution of 1908, the membership of the state house of representatives is fixed at 110. Section 3, Article IV of the new Constitution continues the number of members in the house of representatives at 110 to be elected for 2 year terms. Under the foregoing sections of the new Constitution, members of the senate and members of the house of representatives respectively are to be elected from single member districts. By the new Constitution it is the duty of the Legislative Apportionment Commission to fix the respective districts from which state senators and house members will be elected. These same sections prescribe formulae for arranging the state into senatorial districts and into representative areas. In determining the districts, one of the factors to be used is population. Article IV, Section 6, establishes a Commission on Legislative Apportionment with the basic requirement that it shall reapportion the senate and house of representatives districts following each federal decennial census. The last such census was taken in 1960 but it is the clear intent of Section 6 that the Commission on Legislative Apportionment shall be organized and shall undertake to reapportion the senate and house of representative districts under the new Constitution prior to the federal decennial census to be taken in 1970. In answering your first question I have said that Article IV, Section 6 of the new Constitution imposed no lawful responsibility to organize the Commission on Legislative Apportionment during 1963 and that you had no duty as Secretary of State to undertake to convene such a Commission in this year. But it is my belief that it was the intention and understanding of the people in adopting the new Constitution that a reapportionment of the legislature would be undertaken prior to the completion of the federal decennial census in 1970. I consider it incumbent upon those charged with responsibility for organizing and convening the Commission on Legislative Apportionment to proceed with their respective functions after the Constitution becomes effective on January 1, 1964 in accordance with the time schedule outlined in Section 6. Should the issue come before our Supreme Court it is my judgment that the Court would construe the term "adoption of this constitution" as it appears in Section 6 as being equivalent to January 1, 1964, the effective date. I find support for this conclusion in the opinions by our Court in the cases of *City of Jackson v. Commissioner of Revenue,* 316 Mich. 694 at pages 720 through 723 and in *Board of Education of the*

City of Detroit v. Superintendent of Public Instruction, 319 Mich. 436 at pages 445 through 448. In each of these cases the Court construed Section 23 of Article X as added in 1946, commonly known as the Sales Tax Diversion Amendment, and gave to that amendment a construction of its words which would permit it to have meaning and constitutional vitality. As was said by the district judge in the case of *Heitsch v. Kavanagh*, 97 F. Supp. 749, United States District Court, Eastern District of Michigan, Southern Division:

> "It is settled beyond dispute that the Constitution is not self-destructive. The powers which it confers on the one hand it does not immediately take away on the other; * * *."

Although it is my opinion that the Commission on Legislative Apportionment cannot legally undertake the performance of its duties prior to January 1, 1964, the effective date of the new Constitution, I believe that you, as Secretary of State, and all others concerned should proceed immediately thereafter with their respective functions under Article IV, Section 6, in accordance with its provisions.

FRANK J. KELLEY,
Attorney General.

630731.1

ELECTIONS: Annexation to home rule city of land having no electors residing thereon.

CITIES: Home rule detachment of property by resolution of legislative bodies.

The provision authorizing the annexation to a home rule city of property having no electors residing thereon, aside from the petitioners who are required to hold title to more than one-half of the area of the property to be annexed, by resolution of the city council and approval by the township board does not authorize the detachment by such procedure of land from a city.

No. 4178 July 31, 1963.

Honorable Robert VanderLaan
State Senator
4745 Curwood, S.E.
Grand Rapids, Michigan

Your request for an opinion states:

> "A portion of Paris Township, Kent County, Michigan, was recently annexed to the City of Grand Rapids.
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> "All of the qualified electors residing in a portion of said territory recently petitioned the city and township to annex said land to Paris Township from the City of Grand Rapids, under the provisions of Section 9, Act 279 of 1909, as amended (M.S.A. 5.2088).[1]"

[1] C.L.S. 1956 § 117.9, M.S.A. 1961 Cum. Supp. § 5.2088.