

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.

"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.

Dispute arose as to whether section 9 of the home rule cities act² authorized the detachment of land presently within a city by resolution of the city commission and the approval thereof by the township board. You state that the signers of the petition relied as authority therefor upon the following provision of section 9:

“Provided further, That as an alternate method, where there are no qualified electors residing in the territory proposed to be annexed to said city, other than the person or persons petitioning, a petition signed by a person or persons, firms, corporations, the United States government, or the state or any of its subdivisions who collectively hold the record legal title to more than ½ of the area of the land in the territory to be annexed is filed with the city council of said city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the city council of such city and the approval of the township board of such township.”

With reference thereto you state:

“In the instant case, all of the qualified electors signed the petition, and they collectively held the record legal title to all of the area involved. It was the position of the petitioners that the aforesaid alternate method could also apply in de-annexing property from a city to a township.”

You request my opinion upon the following question:

“Does M.S.A. 5.2088 authorize annexation of land from a city to a township under the ‘Joint Resolution’ procedure therein contained?”

Resolving of the issue presented necessitates review of various provisions of the home rule cities act: By section 6 et seq., provision is made for:

1. Incorporation of a city.
2. Consolidation of one or more existing cities and villages with or without additional unincorporated territory into a new city.
3. Annexation of territory to an existing city.
4. Detachment of territory from an existing city. Provisions with respect to proceedings for each of the above are telescoped into section 6 and the following sections. Normally the procedure prescribed therefor requires the filing of a petition signed by the required number of electors as specified in section 6. Section 7 contains certain requirements relative to such a petition. Section 8 relates to proceedings to be taken by the board of supervisors following the filing of such a petition including the calling of an election thereon.

Section 9 defines “the district to be affected by every such proposed incorporation, consolidation or change of boundaries” the qualified electors of which, as provided in section 8, vote at an election upon such a proposition. It will be noted that throughout these sections provisions are inserted

² Act No. 279, P.A. 1909, being C.L. 1948 and C.L.S. 1956 § 117.1 et seq. Certain sections were later amended. M.S.A. 1949 Rev. Vol. and M.S.A. 1961 Cum. Supp. § 5.2071 et seq. Section 4i was amended by Act No. 166, P.A. 1963.

which are applicable to one or more, and in some cases all of said proceedings, i.e., incorporation, consolidation, annexation and detachment. It will further be noted that in some instances reference is made to either or both annexation and detachment by use of the term "change of boundaries." Section 9 goes on to make special provision for the effecting of the annexation of territory to a city or the detachment of territory therefrom under the particular circumstances therein specified.

Thus, where the city in question has a population of 15,000 or less, property may be "attached" thereto or detached therefrom by a vote of the electors of the city and those of the area to be attached or detached voting separately. Again, if no qualified electors reside in the territory to be annexed or detached, such annexation or detachment may be effected by vote of the electors of the district to be affected voting collectively.

Where the property is adjacent to the city and consists of either a park or vacant property located in a township and owned by the city, the city may annex the same upon resolution of its legislative body without the necessity of obtaining approval thereof by the township board of the township in which the same is located, and without an election.

Where the property to be annexed consists of fractional parts of a platted subdivision, annexation may be effected by resolution of the legislative body of the city together with approval by the legislative body of the adjoining city, village or township in which the property is located.³ It is observed that this is the only instance in which by its terms provision is expressly made for the detachment of property from a city by legislative resolution alone. That this was intended by the legislature to constitute an exception to the general rule requiring an election for that purpose is evidenced by the following provision of section 9:

"* * * This section shall not be construed so as to give any city the authority to proceed hereunder to attach territory from any other city unless the question relative thereto has been voted upon by the voters of the entire cities affected, except as hereinbefore specifically provided, where the territory proposed to be annexed is adjacent to a city and consists of fractional parts of platted subdivision lots, located in an adjoining city."

Provision is also made for the annexation of property to a city upon resolution of the legislative body of the city and the approval of the township board in the following instances:

1. Where the property to be annexed is owned by the State.
2. Where there are no qualified electors residing in the territory proposed to be annexed other than the signers of the petition therefor, which petition must be signed by the record owners of legal title to more than one-half of the area of the land to be annexed. Annexation under the circumstances last above noted is authorized by the provision above quoted, and cited by you as the provision relied upon by the signers of the petition upon whose behalf this inquiry was submitted.

As above noted, section 9 makes reference in certain of its provisions, as

³ *Benjamin vs. City of Huntington Woods*, 349 Mich. 545.

above outlined, for either the annexing or "attaching" of property to a city, or the detaching of property therefrom. As distinguished therefrom, the provision above quoted does not refer specifically to the detachment of property but only to its annexation. Presumably the legislature intended the distinction resulting from the terms employed in the respective provisions of said section. Such construction is further supported by the proviso which follows immediately the above quoted provision:

"* * * Provided further, That at least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the township treasurer. * * *"

The latter provision patently refers to property situate within a township which is proposed to be annexed to a city in that it requires the giving of notice by the township treasurer to the owners of property as shown by the assessment rolls of the township. No comparable provision is made with respect to property situate within a city.

Such provisions are not ambiguous. I am unable to find any basis for concluding that the legislature intended to authorize the detachment of property from a city by a provision which refers only to the annexation of property to a city.

For those reasons, I am of the opinion that the cited provision does not authorize the detachment of property from a home rule city through resolution of its legislative body and approval by the township board.

FRANK J. KELLEY,
Attorney General.

630809.1

EDUCATION, STATE BOARD OF: Certification of school administrators.
SCHOOLS: Administrators.

The State Board of Education is without authority to certificate school administrators in the public schools.

No. 4143

August 9, 1963.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
Lansing, Michigan

You have requested my opinion on the following question:

Does the State Board of Education have authority pursuant to Act 202, P.A. 1903 to certificate school administrators?

By school administrators we understand that you intend to include superintendents, assistant superintendents, principals and assistant principals employed by school districts.