

for taxes which will be due and payable, based on the status of property and persons as of the tax day December 31, 1963; and that the income limitation of \$7,500 pertains to income earned during the calendar year in which the tax day falls.

FRANK J. KELLEY,
Attorney General.

631104.1

COUNTIES: Board of Supervisors.

Members of county board of supervisors are not entitled to compensation for serving on a district board of health, a county sinking fund commission authorized by Act 161, P.A. 1923, or a county forestry commission.

Members of county board of supervisors are entitled to compensation for serving on a board of determination for a county drain, and a sinking fund commission authorized by Act 42, P.A. 1913.

No. 4216

November 4, 1963.

Hon. Billie S. Farnum
Auditor General
The Capitol
Lansing, Michigan

You have asked whether members of the county board of supervisors may serve on a district board of health, a board of determination for a county drain, county sinking fund commissions, and a county forestry commission. You also asked what compensation, if any, the members should be paid if they do serve on said boards and commissions.

There are two general rules based on existing statutes which are pertinent. First, section 30 of Act 156, P.A. 1851, as last amended by Act 136, P.A. 1962,¹ provides for compensating members of the county board of supervisors for attending board meetings and for serving as a member of a committee of the board, and a supervisor is not entitled to compensation for serving on boards and commissions which are not committees of the county board of supervisors unless there is other statutory authority for it.

The second general rule is based on section 30a of Act 156, P.A. 1851, as amended.² Such rule is, that members of county boards of supervisors cannot receive any appointment from, or be employed in any capacity whatsoever by any officer, board, committee or other authority of such county if there is a salary to be paid for the services.³

The first board that you asked about was a district board of health. Section 7 of Act 306, P.A. 1927,⁴ provides for district boards of health com-

¹ M.S.A. Cur. Mat. § 5.353, p. 171.

² C.L. 1947 § 46.30a; M.S.A. 1961 Rev. Vol. § 5.353(1).

³ The legislature may, in the future, authorize service on governmental bodies established for the purposes set forth in Article VII, Sec. 28 of the Constitution of 1963.

⁴ C.L. 1948 § 327.207; M.S.A. 1956 Rev. Vol. § 14.167.

posed entirely of members of the boards of supervisors of the counties comprising the district. Act 306, however, is silent on the matter of compensation for the board members. Therefore, they may only receive compensation if said board is a committee of the board of supervisors so as to come within the provisions of section 30 of Act 156, P.A. 1851, as amended. Relevant to a determination of the question whether the district board is a committee of the board of supervisors is the language of section 6 of Act 306, P.A. 1927, as last amended by Act 121, P.A. 1963,⁵ which states in part:

"The county or district board of health, or the health committee of the board of supervisors, shall have and exercise the same powers and perform the same duties of a board of health as conferred by law upon the boards of health of townships, villages and cities. All rules and regulations promulgated by any county or district board of health or the health committee of boards of supervisors may be subject to review and approval or disapproval by a majority vote of the full board of supervisors or, in the case of district boards of health, the boards of supervisors affected, before the same shall become effective."

It is readily apparent from this language that the district board of health is not the same as the health committee of the board of supervisors. In addition, other sections of Act 306 show a degree of autonomy inconsistent with a committee of the board of supervisors. Thus, it is my opinion that the district board of health is not a committee of the board of supervisors and that no compensation is authorized for the members of said board.

The second board which you asked about was a board of determination for a county drain. Both section 72 of the Drain Code of 1956 as last amended by Act 228, P.A. 1963,⁶ and section 30a of Act 156, P.A. 1851, as amended, specifically provide that members of the board of supervisors may serve on such a board of determination. Section 72 further provides that the compensation of each member of said board of determination shall be \$8.00 per diem with no additional allowance for mileage, provided, that the county board of supervisors may increase the per diem compensation. Here the legislature has created an exception.⁷ Thus, it is my opinion that members of the county board of supervisors may serve on a board of determination for a county drain and be paid at least \$8.00 per diem. They may be paid more if the county board of supervisors authorizes it.

Your third question concerned the county sinking fund commissions provided for by Act 42, P.A. 1913,⁸ and Act 161, P.A. 1923.⁹ Section 1 of Act 42 states:

"The county treasurer, the register of deeds, the county clerk, the chairman of the board of supervisors and the chairman of the finance committee of the board of supervisors of the several counties of this

⁵ M.S.A. Cut. Mat. § 14.166, p. 617.

⁶ M.S.A. Cur. Mat. § 11.1072, p. 776.

⁷ See O.A.G. 1961-62, No. 3657, p. 229.

⁸ C.L. 1948 § 141.11 et seq.; M.S.A. 1961 Rev. Vol. § 5.631 et seq.

⁹ C.L. 1948 § 141.31 et seq.; M.S.A. 1961 Rev. Vol. § 5.651 et seq.

state, shall constitute and be a board of county sinking fund commissioners.”

This language clearly designates the chairman of the board of supervisors and the chairman of the finance committee of the board of supervisors of the several counties of this state to serve on a board of county sinking fund commissioners. Section 8 of the act¹⁰ states that the necessary expenses of that board shall be a proper charge to be paid from the county general fund, and specifically provides that the chairman of the board of supervisors and the chairman of the finance committee shall receive as compensation the sum of \$3.00 per day and their traveling expenses at the rate of 10c per mile one way over the usual traveled route from their residence to the place of meetings of said board. Thus, it is my opinion that the chairman of the county board of supervisors and the chairman of the finance committee of the county board of supervisors may serve on a county sinking fund commission authorized by Act 42 and receive \$3.00 per day and their traveling expenses and other necessary expenses as provided for in section 8.

Section of Act 161, P.A. 1923,¹¹ states:

“The county treasurer, the county clerk, the register of deeds, the chairman of the board of supervisors and the chairman of the finance committee of the board of supervisors of the several counties of this state shall constitute and be a board of sinking fund commissioners: Provided, however, That in counties having a board of auditors, the board of sinking fund commissioners shall consist of the county treasurer, the county clerk, chairman of the board of supervisors and the chairman of the board of county auditors.”

Section 7 provides that the board of sinking fund commissioners shall receive their actual expenses incurred in the performance of their duties which shall be a proper charge against the county to be paid from the general fund. Act 161 does not provide for any salary or per diem compensation. Therefore, while the chairman of the board of supervisors and the chairman of the finance committee of the board of supervisors may serve and receive reimbursement for their actual expenses, they are not entitled to any compensation for their services unless the county sinking fund commission is a committee of the board of supervisors so as to come within the provisions of section 30 of Act 156, P.A. 1851, as amended. Clearly, said commission is not a committee of the board of supervisors since it is not even appointed by the board of supervisors.¹² Thus, it is my opinion that members of the county sinking fund commission authorized by Act 161 who are also on the county board of supervisors are not entitled to any salary or per diem compensation.

¹⁰ C.L. 1948 § 141.18; M.S.A. 1961 Rev. Vol. § 5.638.

¹¹ C.L. 1948 § 141.32; M.S.A. 1961 Rev. Vol. § 5.652. (In any county within the state of Michigan, which may have elected to act under the provisions of Act 42, P.A. 1913, the provisions of said act shall continue in force until said county shall by referendum elect to operate under Act 161, P.A. 1923.)

¹² See *Ewing v. Ainger*, 96 Mich. 578, and *Ewing v. Ainger*, 97 Mich. 381.

Finally, you asked about a county forestry commission established pursuant to section 3 of Act 217, P.A. 1931, as amended,¹³ which states:

"The legislative body of any municipality desiring to proceed under this act may appoint a forestry commission for the municipality to consist of 3 members, only 1 of whom shall be a member of the legislative body making such appointment. The members of such commission shall hold office for a term of 4 years and until their successors are appointed and have qualified, except that when first appointed 1 shall be appointed for a term of 4 years, 1 for a term of 3 years, and 1 for a term of 2 years. Any vacancy shall be filled by appointment by the legislative body at any regular session."

The act is silent as to any compensation for members of the commission. Therefore, if the county board of supervisors appoints one of its members to the forestry commission, as authorized by section 3, he could only receive compensation for such services if the commission is a committee of the county board of supervisors. Examination of the other provisions of Act 217 does not reveal an intent to create a forestry committee of the board of supervisors, but rather indicates that this commission, like a district board of health, has a degree of autonomy not found in a committee of the board of supervisors. Thus, it is my opinion that a member of a county board of supervisors who serves on a county forestry commission cannot receive compensation for his services.

FRANK J. KELLY,
Attorney General.

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CIVIL SERVICE: Police and Firemen.
FIRE DEPARTMENTS: Civil Service.

Position of fireman chauffeur may be abolished by reclassification. Whether or not the abolition of that position by reclassification of positions was lawful would depend on the circumstances.

No. 4190

November 5, 1963.

Honorable E. D. O'Brien
State Representative
The Capitol
Lansing, Michigan

I have received your letter asking my opinion on a question arising under Act 78, P.A. 1935, as amended,¹ which provides for the establishment of a civil service system for fire and/or police departments.

Your question and the accompanying example was stated substantially as follows:

¹³ C.L.S. 1956 § 320.203; M.S.A. 1958 Rev. Vol. § 13.283.

¹ C.L. 1948 and C.L.S. 1956 § 38.501 et seq. and Acts 43 and 94, P.A. 1957; M.S.A. 1958 Rev. Vol. § 5.3351 et seq.