

in its sphere of authority as a constitutional commission to investigate and to secure the enjoyment of civil rights without discrimination."

A human relations committee created by ordinance in order to fulfill its function of education, conciliation, mediation, etc. must be able to ascertain the facts. This necessitates inclusion of the power to conduct investigations. Such power to investigate can be conferred. It must be stressed however that such power does not relate to the *enforcement* of civil rights. Therefore, in answer to your Question No. 2, ordinances providing for human relations committees may confer power upon the committee to conduct investigations and such conferred power would not conflict with the Michigan Constitution of 1963.

FRANK J. KELLEY,
Attorney General.

63118.3

ANNEXATION: Home Rule.

A city and a township can by mutual agreement recognize a change in the distribution of population as between themselves following annexation of territory by petition and resolution where no election has been held, and such agreement is binding upon state agencies.

SCHOOLS: School District.

A secretary of a school district does not have authority to sign an annexation petition on behalf of said district in the absence of authorization by resolution of the governing body of said district.

No. 4219

November 18, 1963.

Hon. James M. Hare
Secretary of State
The Capitol
Lansing, Michigan

This will acknowledge receipt of your letter of September 16, 1963, requesting an opinion of the Attorney General as to the questions stated therein which I have rephrased and changed the order as follows:

1. Can a city and a township settle by mutual agreement a change in population following annexation of territory by petition and resolution where no election has been held, and is this agreement binding upon state agencies?
2. Does a secretary of a school district, without authorization by a resolution of the governing body of said district, have authority to sign an annexation petition on behalf of said district?

Section 14 of Act 279, PA 1909 (the Home Rule Cities Act), as last amended by Act 77, PA 1956,¹ provides in part as follows:

"* * * Whenever a part of a city, village or township is annexed to a city, the city to which such territory is annexed shall be entitled to its proper pro rata share of any of the said state funds, moneys

¹ Mason's 1961 Supplement, § 117.14; M.S.A. 1961 Cum. Supp. § 5.2093.

or grants thereafter distributable under the law to the city, village or township from which said territory was detached or to any county agency receiving state funds, moneys or grants in respect to population in such township or townships, determined as follows:

“* * *

“(3) In the absence of such federal census and in lieu of taking an official special census, the city to which said territory was annexed and the cities, townships, or villages from which said territory was detached, may agree by joint resolution of their governing bodies as to the prorating of any such state funds, moneys, or grants between them and between the city and any county agency receiving said funds, moneys, or grants in respect to population in such township or townships as provided above in the case of a newly incorporated city, a certified copy of which joint resolution shall be filed with the secretary of state and shall thereafter be binding upon all parties to said incorporation.

* * *”

This office has stated in its Opinion No. 2543² dated June 7, 1956:

“There are certain physical consequences to the act of a city in annexing a portion of the territory of a township. Not only has the city gained and the township lost a determinable physical area of territory, but each unit is subject to a population shift of people living within the physical area that has been annexed.”

In Opinion No. 1479, dated November 8, 1951³ and Opinion No. 2865⁴, dated February 4, 1957, the effect of the statute permitting such agreement with respect to prorating funds between the two governing bodies to be affected was discussed. In the latter opinion this office said:

“* * * Your second question without changing its legal aspects can be rephrased to read: Can a newly incorporated city or village created from one township settle by mutual agreement with the township the respective amounts of sales tax moneys to be received by each, that is to say, can they agree upon the proportionate distribution of the available sales tax revenues to which they are entitled? *Presumably, in arriving at this agreement and as a basis for same, they will, as a part of the mechanics thereof, determine what their respective populations shall be considered to be.* * * *” (Emphasis supplied)

Therefore, the mutual agreement of the city and township with respect to the prorating of funds is valid and constitutes a legally effective method of determining the basis upon which the official population of the geographic area affected has been allocated for the purpose of prorating such funds.

It is noted that your question is phrased in such a way as to suggest that you may be asking whether the city and township may *change* the total population of the geographic area affected by agreement among themselves. The statute does not empower any change in population by such agreement. The statute sets forth the only method by which population changes can be

² Biennial Report of the Attorney General, Mich. 1955-56, Vol. II, p. 311, 313.

³ Biennial Report of the Attorney General, 1951-52, p. 386.

⁴ Biennial Report of the Attorney General 1957-58, Vol. 1, p. 68, 70.

brought about; namely, by the latest federal census prior to distribution but since such annexation or, in the absence of such federal census, by official special census as provided by statute. The enumeration of these methods of necessity excludes the making of a change in population by agreement.⁵ Where a statute is plain and unambiguous it must be applied in accordance with the plain intent of the legislature (*City of Lansing v. Twp. of Lansing*, 365 Mich. 631, 1959).

To illustrate by example, suppose that the last official census figure for the geographic area involved designates the population count at 1,500. The effect of the statute under discussion is to empower the city and the township to determine by agreement that of the 1,500, 500 shall be treated as dwelling in the township and 1,000 as dwelling in the city. This agreement will thereby provide a basis upon which state funds can be allocated. The statute does not permit the township and city to agree that the total population of the geographic area affected shall be increased to 2,000.

The Frankenmuth School District is a fourth class district, and the duties of the secretary are set forth in C.L. 1948, Section 340.61⁶ as follows:

"It shall be the duty of the secretary of the board:

"First, To act as clerk at all meetings of the board;

"Second, To record the minutes of all meetings, orders, resolutions and other proceedings of the board in proper record books and sign the same;

"Third, To give or cause to be given the prescribed notice of the annual election and of any special elections of the district;

"Fourth, To prepare the annual report of the school district and such other reports as may be required by the superintendent of public instruction;

"Fifth, To draw and sign orders upon the district treasurer for all moneys to be disbursed by the district, and present such orders to the president to be countersigned by that officer. Each order shall be properly numbered and dated, shall specify the sources of the funds called for, and the purpose for which and the fund upon which it is drawn; and

"Sixth, To perform such other duties as are or shall be required by law or by the board."

Further inquiry reveals that the petition for annexation referred to was a petition filed under Section 9 of the Home Rule Act⁷ which provides in pertinent part as follows:

"* * * 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

⁵ "That which is expressed makes that which is implied cease to exist." *Sebewaing Industries vs. Sebewaing*, 337 Mich. 530.

⁶ M.S.A. 1959 Rev. Vol. § 15.3061.

⁷ Act 279 of the Public Acts of 1909, Section 9 as last amended being found at M.S.A. 1961 Cum. Supp. § 5.2088.

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: * * *."

Thus, the secretary was signing on behalf of the school district as an owner of the territory sought to be annexed.

The statute above noted does not authorize the secretary of a fourth class school district to execute a petition for annexation on behalf of the school district without authorization from the governing body of the district. A school district acts through its board of education.⁸ Therefore, it is my opinion that the secretary of a fourth class school district does not have authority to sign an annexation petition on behalf of the school district unless such authority has been conferred by official resolution of the board of the district.

FRANK J. KELLEY,
Attorney General.

631118.5

ADMINISTRATIVE BOARD: Transfer of jurisdiction.
CONSERVATION, DEPT. OF: Transfer of jurisdiction.
MENTAL HEALTH, DEPT. OF: Transfer of jurisdiction.

Transfer of jurisdiction of state owned lands from department of mental health to the department of conservation cannot be effected by a recordable instrument. However, recording requirement is severable and transfer may be accomplished by appropriate action by director of department of mental health, the department of conservation, and the state administrative board.

No. 4221

November 18, 1963.

Mr. Charles F. Wagg, Director
Department of Mental Health
Cass Building
Lansing, Michigan

Your letter requesting the preparation of a recordable instrument transferring the jurisdiction of certain lands described in Act 26 of the Public Acts of 1963 from the department of mental health to the department of conservation has been received. Act 26 states:

"Sec. 1. The department of mental health, with the approval of the department of administration and the state administrative board, is hereby authorized to transfer to the jurisdiction of the department of conservation the following described lands located in Tuscola county, state of Michigan:

⁸ See *Tavener v. Elk Rapids Rural Agricultural School District*, 341 Mich. 244; *McLaughlin v. Board of Education of Fordson School District*, 255 Mich. 667; *Mathews v. Kalamazoo Board of Education*, 127 Mich. 530.