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**ELECTIONS: Judges of recorder's court for the city of Detroit, election of under 1963 Constitution.**

The judges of the recorder's court for the city of Detroit are state officers, and are to be elected at the general November election as provided by law in accord with Article II, Section 5 of the 1963 Constitution. Legislation to accomplish this purpose will be necessary.

No. 4225

February 24, 1964.

Honorable Joseph J. Kowalski  
House of Representatives  
Lansing, Michigan

You submit the following question for the opinion of the Attorney General:

"Does the 1963 Constitution alter the present procedure for the election of judges of the recorder's court for the city of Detroit so that new legislation is required?"

The 1963 Constitution provides as follows:<sup>1</sup>

"Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected."

This provision eliminates biennial spring elections of state officers, but it does not interfere with the continuance of spring elections of city officers.

The answer to your question involves a determination of the status of the judges of the recorder's court for the city of Detroit as either "state" or "city" officers. If they are state officers within the meaning of Art. II Sec. 5, the present procedure for their election is altered, and new legislation will be required. If, on the other hand, they are city officers, no legislative changes are necessary.

As presently constituted, the recorder's court of the city of Detroit is divided into two divisions. One is known as recorder's court of the city of Detroit, and the other as the recorder's court of the city of Detroit — traffic and ordinance division.

These divisions have many attributes and characteristics of separate and independent tribunals. Each has exclusive and original jurisdiction not possessed by the other. Each has its own clerk and is, for most purposes, administratively independent of the other. A judge of the recorder's court may be assigned to sit in the traffic and ordinance division in the absence or disability of one or more of its judges, but there is no provision which would permit a traffic and ordinance court judge to sit in the recorder's court under similar circumstances.<sup>2</sup>

The judges of each division are elected at the same biennial city spring election, but a separate ballot is used for the candidates of each division.

<sup>1</sup> 1963 Constitution, Article II, Section 5.

<sup>2</sup> C.L. '48 § 725.18, M.S.A. 1962 Rev. § 27.3958.

Despite these factors pointing to the existence of 2 separate and distinct tribunals, the recorder's court of the city of Detroit is a single court, of which the traffic and ordinance division is an integral part.<sup>3</sup> It must be considered as one unit for the purpose of ascertaining whether its judges are state or city officers.

The recorder's court of the city of Detroit was established in 1857. It acquired its present jurisdiction and functions through a series of legislative enactments, charter provisions, and referenda.<sup>4</sup>

The jurisdiction of the recorder's court of the city of Detroit within the geographic boundaries of the city is in many respects similar and equivalent to both that of a circuit court and that of a justice court. It conducts prosecutions for offenses arising both under state laws and city ordinances. Its traffic and ordinance division has original and exclusive jurisdiction over felonies, crimes, misdemeanors, and offenses committed within the corporate limits of Detroit and arising under the Michigan vehicle law and other state laws relative to traffic on public highways, as well as original and exclusive jurisdiction over ordinance violations.<sup>5</sup>

The judges of the recorder's court division are occupied exclusively with matters which arise under the laws of the state. These include prosecutions for crimes, misdemeanors, felonies, and other offenses against the criminal law of the state. They sit as examining magistrates in the conduct of examinations, issue numerous writs and other process, conduct condemnation cases in which the city of Detroit is a party, and have some civil jurisdiction. This leads the Attorney General to the conclusion that the recorder's court for the city of Detroit is a state court, and that its judges are state officers.

This conclusion is strengthened by the consideration that this court functions under powers and possesses jurisdiction that comes from a state, rather than a local source; that it is concerned with the execution of state laws; and that it is beyond the power of the city of Detroit to grant or take away its principal jurisdiction and powers conferred by the state.

The reported cases recognize that recorder's court judges are state officers, for the reason that they exercise jurisdiction over state cases, namely misdemeanors and felonies.<sup>6</sup> As state officers, their future elections are governed by the provisions of Article II, Section 5 of the 1963 Constitution.

<sup>3</sup> *Attorney General, ex rel. Judges of Recorder's Court of Detroit v. Judge of Recorder's Court of Detroit*, 250 Mich. 448.

<sup>4</sup> Act No. 55 Laws 1857, Act No. 326 Local Acts 1883, as amended by Act No. 408 Local Acts 1893, C.L. 1948 § 726.1 *et seq.*; M.S.A. 1962 Rev. § 27.3551 *et seq.*; Act No. 408 Local Acts 1893, C.L. 1948 § 726.1, *et seq.* H.S.A. 1962 Rev. § 27.3551, *et seq.*; Act No. 369 P.A. 1919, as amended, C.L. 725.1, *et seq.* M.S.A. 1962 Rev. § 27.3941 *et seq.*

<sup>5</sup> Footnote No. 2.

<sup>6</sup> *Murtha v. Lindsay*, 187 Mich. 79, citing *People v. Jackson*, 8 Mich. 78; *Civil Service Commission of the City of Detroit v. Engel*, 187 Mich. 83; *Burton v. City of Detroit*, 190 Mich. 195; *Grosscup v. Wayne Circuit Judge*, 233 Mich. 362. See also *Attorney General ex rel. Judges of Recorder's Court v. Judges of Recorder's Court*, 250 Mich. 448 (1930), at 449, and *Attorney General ex rel. Dickinson v. City Election Commission of the City of Detroit*, 202 Mich. 626,

Under the present law<sup>7</sup> the judges of the recorder's court of the city of Detroit are elected at a spring election held in the city of Detroit. This procedure is not in harmony with the requirement of Article II, Section 5 of the 1963 Constitution that all elections for national, state, county and township offices be held on the first Tuesday after the first Monday in November of each even-numbered year, or on such date as members of the U. S. Congress are regularly elected.

Therefore, in answer to the question submitted by you, it will be necessary for the legislature to enact new legislation providing for the future election of judges of the recorder's court for the city of Detroit at elections held as specified in Article II, Section 5 of the 1963 Constitution.

FRANK J. KELLEY,  
*Attorney General.*

**CONSTITUTIONAL LAW: Civil Service.**

**CIVIL SERVICE: Exempt positions.**

In accordance with Sec. 5, Article XI of the Constitution of 1963 each of the principal departments, which are the result of the reorganization provided for in Sec. 2, Article V of the Constitution of 1963, are entitled to two exempt positions when requested by the department head, one of which must be policy-making. The Civil Service Commission may exempt three additional positions of a policy-making nature within each of the principal departments.

No. 4272

February 28, 1964.

Mr. John C. Mackie  
Highway Commissioner  
Mason Bldg.  
Lansing, Michigan

You have written me asking how many positions exempt from civil service are allowed each principal department under Sec. 5, Article XI of the Constitution of 1963.

The part of Sec. 5 pertinent to your inquiry is paragraph one, which states:

"The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in

analyzing the dual nature of the court whereby those judges assigned to ordinance violations and criminal actions triable by city justices of peace are in a sense functioning as officials of a city court.

<sup>7</sup> C.L. 1948 § 726.4, M.S.A. 1962 Rev. § 27.3554; C.L. 1948 § 725.8, M.S.A. 1962 Rev. § 27.3948.