

entitled Act 2, P.A. 1964, shall not take effect until the expiration of 90 days after the end of the session at which it was passed.

Therefore, it is the opinion of the Attorney General that the law enacted by the legislature in response to initiative petition amending the provisions of Act 4, P.A. 1937, Extra Session, *supra*, to require mandatory tenure in Michigan school districts, which has been entitled Act 2, P.A. 1964, takes effect 90 days after final adjournment of the 1964 Regular Session of the Michigan Legislature unless suspended by operation of law within such 90 day period by the filing of a valid referendum petition in accordance with the provisions of Article II, Sec. 9, *supra*.

FRANK J. KELLEY,  
*Attorney General.*

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**CITIES: Home Rule -- Charter Elections.**

Under the Home Rule Act, being Act 279, P.A. 1909, as amended, proviso limitation in Sec. 16 does not carry over into Sec. 17 so that a new charter commission may be selected as often as valid petition is filed within 10 days after canvass and determination of vote rejecting a proposed charter as provided by Sec. 17. Each new charter commission selected after petition under Sec. 17 becomes subject to proviso limitations in Sec. 16.

No. 4259

April 14, 1964.

Mr. Samuel H. Olson  
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You advise that your office has been presented with a problem involving the interpretation of Secs. 16 and 17 of the Home Rule Act, Act 279, P.A. 1909, as amended, being C.L. 1948 and C.L.S. 1961 § 117.16 and § 117.17; M.S.A. 1961 Cum. Supp. § 5.2095 and § 5.2096.

The problem faced arises with the rejection by popular vote of a proposed charter and the initiation of procedures for resubmission of a charter to the electorate. At issue here is whether or not the statutes cited place an absolute limitation on the subsequent resubmission of charter drafts to the electorate of the proposed city.

Under the terms of Sec. 16 where the proposed charter is rejected, the elector receiving the highest number of votes cast for the office of mayor becomes mayor *de facto* of the proposed city until a mayor for such proposed city is elected and qualified pursuant to a charter which shall have been approved by the electorate.

For the first 10 days following the election at which the proposed charter was rejected, the electors of the proposed city may petition the *de facto* mayor for the selection of a new charter commission. This step is recognized by the provision of Sec. 16 requiring the *de facto* mayor to take no further action until 10 days have elapsed after the election at which the

charter was rejected. This gives time for petitions for the selection of new charter commission to be circulated and filed in the manner provided in Sec. 17.

If the petition for the selection of a new charter commission is not filed within the 10 day period pursuant to Sec. 17, then the *de facto* mayor is required to proceed in accordance with the provisions of Sec. 16 and must notify the original charter commission to reconvene and within 90 days after such notice, to provide such revision, amendment or amendments to the original draft of the charter as they shall deem fit. By Sec. 16 the proposed charter with such amendment or revision as the reconvened charter commission shall see fit to propose shall be resubmitted to the qualified electors of the proposed city in the same manner and with like notice and proceedings as was required in the first instance, which proceedings shall continue until the qualified electors of the proposed city have, by majority vote, approved a charter.

Under the above recited provisions of Sec. 16, there was no apparent limit to the number of revisions and amendments which could continue to be made by the reconvened charter commission with each proposal being submitted to the electorate for approval. In fact, the process was to be continued until an acceptable charter was approved. In 1947 by the adoption of Act 201, P.A. 1947, the legislature added the proviso portion to Sec. 16 thereby placing a limitation of three resubmissions of a proposed charter to the electors and an overall time limitation of two years for ultimate approval of the charter following the time of election on the question of incorporation of the proposed city. No such corresponding proviso was written into Sec. 17 by the 1947 session of the legislature and none has been enacted since.

In my opinion under the applicable rules of statutory construction, the proviso portion appearing in Sec. 16 is limited to that section and may not be construed as also modifying the provisions of Sec. 17. Ordinarily the purpose of a proviso is to modify and limit the preceding provisions of the enactment of which it is a part. *Bauman v. Grand Trunk Western Railroad*, 353 Mich. 279, 285; *Ford Motor Company v. Village of Wayne*, 358 Mich. 653, 660. See also, *Attorney General, ex rel Mullane v. Township of Wyoming*, 352 Mich. 649, and *Severance v. Oakland County Board of Supervisors*, 351 Mich. 173.

Having reached the conclusion that the proviso limitation in Sec. 16 does not carry over into Sec. 17, it is my opinion that a new charter commission may be selected as often as desired if a valid petition is filed within the 10 day period from the canvass and determination of the vote on any proposed charter, all in accordance with the requirements of Sec. 17. Each new charter commission starts its work under and is subject to the provisions of Sec. 16. I point out that under Sec. 17 all persons who have served on previous charter commissions within one year shall be ineligible as members of any successive commissions.

FRANK J. KELLEY,  
*Attorney General.*