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CONSTITUTIONAL LAW:
ELECTIONS: Municipal Judges.

The office of judge of a municipal court established pursuant to the Municipal Court Act or the Home Rule Cities Act or the Michigan Uniform Municipal Court Act is a local office for the purposes of nomination and election of the judge and is not a state office within the purview of Article II, Section 5, Michigan Constitution of 1963.

No. 4205 April 21, 1964.

Honorable Russell H. Strange
State Representative
The Capitol
Lansing, Michigan

Your request for an opinion is stated in these words:

> "Since the biennial spring election is no longer allowed on a 'statewide basis' (Art. II, Sec. 5, 1963 Constitution), it is necessary for us to determine whether a municipal judge is a 'state' or 'city' officer.
>
> "On the one hand, he is elected by, and to serve in a city. On the other hand, he is part of the 'one court of justice' (as a court of limited jurisdiction authorized by the legislature) established by Art. VI, Sec. 1, 1963 Constitution.
>
> "If it is determined that he is a 'city' officer, no change will be required. However, if he is to be considered a 'state' officer, action will have to be taken to provide for his election in the fall.
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> "The Elections Subcommittee of the Committee on Constitutional Implementation has directed me to request from your office an opinion as to whether or not these judges are 'state' officers."

Article II, Section 5, Michigan Constitution of 1963, to which you refer, is as follows:

> "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."

Although your request states that the question for determination is whether a municipal judge is a "state" or "city" officer, I direct your attention to the language of Section 5 which uses the word "offices" instead of "officers," the pertinent clause being "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." Your question for determination may therefore be restated to be—Is the office of judge of a municipal court a state office?

There are more than 80 municipal courts in Michigan.[1]

[1] Michigan Manual 1963-64, p. 142.

There are three basic public acts governing the establishment of a municipal court. One such act is the Municipal Court Act (sometimes known as the Flint Act) being Act 269 P.A. 1933, as amended;[2] another is the Home Rule Cities Act being Act 279 P.A. 1909, as amended, particularly Sections 28 through 30;[3] and the third is the Michigan Uniform Municipal Court Act being Act 5 P.A. 1956, as amended.[4]

The Recorder's Court of the City of Detroit[5] and the Superior Court of Grand Rapids[6] are not considered to be "municipal courts" as that term is used in this opinion. Although each of these courts has sometimes been designated as a municipal court, because of the jurisdiction and powers presently conferred on them, the office of judge of each court is considered to be a state office.[7]

Having shown the source of the legislative authority for the establishment of municipal courts in cities, it is next necessary to determine the relation of these courts to the judicial system of the state and the nature of their function. Article VI, Section 1, Michigan Constitution of 1963, cited in your request, contains one sentence reading:

> "The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house."

The foregoing section is a revision of Article VII, Section 1, Constitution of 1908.[8] As written in the Constitution of 1963 this section presents for

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[2] C.L. 1948 and C.L.S. 1961 § 730.101 et seq., M.S.A. 1962 Rev. Vol. § 27.3831 et seq.

[3] C.L. 1948 and C.L.S. 1961 § 117.1 et seq., M.S.A. 1949 Rev. Vol. and 1963 Cum. Supp. § 5.2071 et seq.

[4] C.L.S. 1961 § 730.501 et seq., M.S.A. 1962 Rev. Vol. § 27.3937(1) et seq. Section 23 of the act was amended by Act 54 P.A. 1963, Second Extra Session.

[5] The Recorder's Court of the City of Detroit was created by Local Act No. 326 of 1883. The present statute is found in C.L. 1948 § 726.1 et seq., M.S.A. 1962 Rev. Vol. § 27.3551 et seq. Section 9 was amended by Local Act 2 of 1949. Section 24 was amended by Local Act No. 1 of 1963, second Extra Session. For a history of the development of the Recorder's Court see *People v. Hurst,* 41 Mich. 328 and *Virtue, Survey of Metropolitan Courts, Detroit Area,* 1950 Edition, p. 44 et seq.

[6] The Superior Court of the City of Grand Rapids was created by Act 49, Laws of Mich. 1875. The present statute is found in C.L. 1948 and C.L.S. 1961 § 727.1 et seq., M.S.A. 1962 Rev. Vol. § 27.3611, et seq. For a discussion of the jurisdiction of the Superior Court see *Dunham v. Tilma,* 191 Mich. 688; *Mooney v. Unemployment Compensation Comm.,* 336 Mich. 344; *Taylor v. Auditor General,* 360 Mich. 146 and *Taylor v. Auditor General,* 367 Mich. 256.

[7] My views in this regard as to the Recorder's Court are expressed in *O.A.G. No. 4225* issued by me on February 24, 1964.

[8] Article VII, Section 1, Constitution of 1908, reads as follows: "The judicial power shall be vested in 1 supreme court, circuit courts, probate courts, justices of the peace and such other courts of civil and criminal jurisdiction, inferior to the supreme court, as the legislature may establish by general law, by a 2/3 vote of the members elected to each house."

the first time in a Michigan Constitution the concept that the judicial power of the state is vested exclusively in one court of justice. The effect of this is to recognize the concentration of judicial power in the judicial branch of state government to be exercised by the several courts enumerated or permitted by the Constitution. However, this is not a new doctrine in Michigan. As long ago as 1858 the Supreme Court in the case of *Chandler v. Nash,* 5 Mich. 409, held that the Constitution of 1850, having vested the whole judicial power of the state in certain specified courts and officers and having made provision for the election of all judicial officers by the people, the legislature could not confer any portion of such judicial power upon any officer not elective, and not so specified. Therefore the Court held an act of the legislature which undertook to confer judicial power upon notaries public under certain circumstances was unconstitutional and void.

Under the Constitutions of 1963 and 1908 the legislature has the authority to establish additional courts not described in the Constitution by name but only by the designation of "limited jurisdiction" in the Constitution of 1963 and "inferior to the supreme court" in the Constitution of 1908. The corresponding section in the Constitution of 1850 did not permit this flexibility. The first section of Judicial Article VI of the Constitution of 1850 stated:

> "The judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the legislature in cities."

The definitive language of the 1850 Constitution was the product of popular dissatisfaction with the courts which had been established under the Constitution of 1835. The first section of Article VI of the 1835 Constitution had granted the legislature a broad sweep of authority by declaring:

> "The judicial power shall be vested in one supreme court, and in such other courts as the legislature may from time to time establish."

Under the 1835 grant the legislature established three major courts—the supreme court, the court of chancery, and circuit courts. The supreme court was peripatetic in nature, first composed of three judges who held an annual joint session of the supreme court in each of the judicial circuits and who additionally presided individually over the circuit courts in the various counties. Under the Judiciary Act of 1836 two circuit court associate judges were to be elected in each county. They were not required to be lawyers as the act imposed no qualification for the office. They came to be known as "side judges" and the office soon fell into disrepute. Under the revised statutes of 1846 the supreme court was to consist of a chief justice and three associate justices who were to sit en banc as the supreme court but who were also required to preside individually in the various circuit courts of the counties comprising their respective judicial circuits. The separate court of chancery was abolished. County courts were established in each organized county with a judge elected locally for a term of four years.[9]

[9] *Norton, Judicial Reform in Michigan Between Two Constitutions, 1835-1850,* Vol. 51, Michigan Law Review, p. 203. See also *Streeter v. Paton,* 7 Mich. 341, 348, 349.

When the Constitutional Convention of 1850 met in session a matter for prime consideration was the reorganization of the structure of the courts. In the debates which ensued a general dissatisfaction was expressed over the expense and inconvenience to the people under the county court system. This same complaint was made about the circuit courts. It was said that each of these courts was held in the county seat and travel was expensive and time consuming to go there to commence a suit or to have one tried. The people needed a court more readily accessible and it was proposed that a system of district justice courts be established by the board of supervisors in each organized county for the convenience of the people. It was said in debate that outside of the county seat there were communities and neighborhoods where the people gathered, such as the mill or the store, and the board of supervisors could create a district for each such location and establish a justice court therein to be presided over by a district justice who could try cases of limited jurisdiction. This proposal was initially adopted by the Constitutional Convention. (Debates pp. 819-821) The convention's action was subsequently reconsidered and the provision for the establishment of municipal courts was substituted and adopted.

The effect of this provision in the Constitution of 1850 is well stated by our Supreme Court in the case of *The People on the relation of Covell v. The Treasurer of Kent County*, 36 Mich. 332, 333, where the Court said:

> "The constitution, it is true, declares that 'the judicial power is vested in one supreme court, in circuit courts, in probate courts and in justices of the peace.' But it also in the same section declares that 'municipal courts of civil and criminal jurisdiction may be established by the legislature in cities.'—Art. VI, § 1. This is a plain reservation to the legislature of the power to carve out the judicial power vested in the other courts named such authority as it would be proper to confer upon city courts, and to create such courts for its exercise. Where that is done, the legislature must determine the extent of the authority to be given the municipal courts, subject to the restriction that it must not exceed that which can properly pertain to a municipal court."

In the later case of *Grand Rapids, Newaygo and Lake Shore Railroad Company v. Gray*, 38 Mich. 461, it was held that "municipal courts" within the meaning of the restrictive language of Article VI, Section 1 of the Constitution of 1850, were courts intended for the benefit of and to meet the wants of the city in which they were established and could not exercise a jurisdiction, territorially co-extensive with the county in which they were organized.[10] This territorial limitation disappeared in the adoption of the Constitution of 1908 where the words "municipal courts" were dropped

[10] The history of the establishment of municipal courts by action of the legislature pursuant to the Constitution of 1850 is not entirely clear. It would appear that in some instances the legislature by local and special acts established a justice court or "city justice" without specific designation as being a municipal court. See, for example, justice court in Battle Creek by Local Act 430 of 1899, justice court in Flint by Local Act No. 347 of 1901, justice court in Ishpeming by Local Act No. 251 of 1891, justice court in Jackson by Local Act No. 399 of 1905, justice court in Kalamazoo by Local Act No. 475 of 1897, justice court in Lansing by Local Act No. 405 of 1893.

from the first section of the judicial article and instead the legislature was authorized to establish other courts of civil and criminal jurisdiction inferior to the supreme court as it may see fit. Under the 1908 Constitution it appears clear that the legislature could authorize the establishment of courts in cities to be given jurisdiction throughout the county. This is precisely what was done for cities under the home rule cities act, supra.

> *Fifteenth Annual Report of the Judicial Council of Michigan, Part II, A Study of Justices of the Peace and Other Minor Courts—Requisites for an Adequate State-Wide Minor Court System* by Edson R. Sunderland, pp. 83, 84.

As hereinbefore noted, the legislature has enacted three basic statutory methods for the establishment of municipal courts. The decision as to which type of municipal court will be established within the city is made at the city level by its electors provided the city can qualify within the scope of the applicable statute. Thus a city may change the structure of its municipal court from one established under the provisions of the Home Rule Cities Act to one established under the Municipal Court Act. *Attorney General v. Guy*, 334 Mich. 694.

It must be conceded that a judge of a municipal court in Michigan is vested with a part of the judicial power of the state.[11] This necessarily follows from the recitals of Section 1, Article IV of the Constitution of 1963. But this does not mean that for purposes of his election and compensation that the office occupied by the municipal court judge cannot be regarded as a local one. In the case of *Attorney General v. Bolton*, 206 Mich. 403, the Supreme Court recognized that justices of the peace are constitutional officers in whom is vested a part of the judicial power of the state but went on to say:

> "Assuming that justices of the peace are an integral part of the judicial system of the State, they are nevertheless local officers and their selection is matter purely of local concern. No one excepting those directly charged with their nomination and election have any possible interest in the subject of when or how their selection shall be brought about." (p. 412)

The above quotation from the *Bolton case was* re-examined and explained by the Supreme Court in the subsequent case of *Sharp v. Farrell*, 243 Mich. 246, 249, wherein the Court reaffirmed its former conclusion—"that in respect to his election a justice of the peace is a local officer."

Attorney General Thomas M. Kavanagh, in issuing his Opinion No. 2548 on July 23, 1956, discussed the nature of the office of municipal judge under the charter of the city of Mt. Pleasant and said:

> "Acts of a municipal judge are often pursuant to the provisions of state laws of general application. Because of these powers a municipal

[11] Our Supreme Court reached this conclusion as to a township justice of the peace in the case of *Faulks v. The People*, 39 Mich. 200, 202 and as to a justice of the peace for the city of Pontiac in the case of *Holland v. Adams*, 269 Mich. 371, 374.

judge is, in my opinion, an officer performing a function in the scheme or plan of state government although he is elected locally."
(O.A.G. 1955-56, Vol. II, 415, 418)

I am persuaded that the people in their adoption of the Constitution of 1963 did not intend by the language appearing in Section 5 of Article II of that document to change the time of elections of the judges of the municipal courts throughout the state. The Official Record of the Michigan Constitutional Convention of 1961 has been examined as to this section and there is no mention in the Debates by the delegates indicating any intention to change the existing procedures for the election of municipal court judges. In my opinion the office of judge of a municipal court established pursuant to the Municipal Court Act, the Home Rule Cities Act, or the Michigan Uniform Municipal Court Act is a local office and is not a state office within the purview of Section 5, Article II, Michigan Constitution of 1963.

FRANK J. KELLEY,
Attorney General.

640422.1

TAXATION: Property — township — 15 mill amendment.

A township, whether chartered or unchartered, is entitled to an allocation of a minimum tax rate under the provisions of the Property Tax Limitation Act which is not repugnant to Section 6, Article IX, Michigan Constitution of 1963.

No. 4300 April 22, 1964.

Hon. William H. Thorne
State Representative
State Capitol
Lansing, Michigan

Your letter of February 20, 1964 requests my opinion upon the following question:

"Does * * * Section 6 Article 9 (Finance and Taxation) of the new Michigan Constitution exclude a Charter Township from participating in the division of the tax limitations, whether under the 15 mills or 18 mills, * * *?"

The mentioned constitutional provision limits the total ad valorem property tax rate to 15 mills of state equalized valuation. It further authorizes the legislature to enact measures permitting a majority of the qualified electors of a county to adopt a fixed division of millage for the county, its townships and school districts, the total of which tax rate limitations shall not exceed 18 mills.[1]

The second paragraph of Section 6, Article IX, Constitution of 1963, provides:

[1] The 18-mill limitation is more fully discussed in Attorney General Opinion No. 4243 dated February 20, 1964.