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ELECTIONS: Township officers.

CONSTITUTIONAL LAW: Election of township officers.

The 1963 Constitution requires that the first election of constitutional township officers be held in November, 1964. Inasmuch as there is presently in effect legislation providing for the election of township officers on that date, and the nomination of candidates for the offices to be elected, it is mandatory that the election officials proceed to call and hold a township election for that purpose, even if the legislature fails to adopt further implementing legislation.

The term of constitutional township officers first elected under the 1963 Constitution may be fixed by the legislature to commence in April of 1965, such township offices not being included in Article XI, Section 2, of the Michigan Constitution of 1963. Such constitutional township officers must be elected for a term of not less than two years nor more than four years, as fixed by Article VII, Section 18, of the Michigan Constitution of 1963, and the legislature may prescribe that the constitutional township officers initially elected at the general November election in 1964 shall serve a term expiring on November 30, 1968, or December 31, 1968, with constitutional township officers elected thereafter for terms of two or four years. The legislature may fix the date for the holding of the preceding primary election for the nomination of candidates for township officers other than the date of the primary for the nomination of candidates for state offices, provided that such primary is held in the same year as the general election for township officers.

No. 4316

April 22, 1964.

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

Your request for opinion states:

“Incumbent constitutional township officers were elected at township elections held on the first Monday in April in odd-numbered years. Aside from justices of the peace, they were elected on the first Monday in April, 1963 — for a term of office to expire in April, 1965.

“As you are aware, Section 5 of Article II of the 1963 Constitution eliminated spring elections by providing that ‘all elections for . . . township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year . . .’ Section 18 of Article VII further provides that ‘In each organized township there shall be elected for terms of not less than two nor more than four years as prescribed by law, a supervisor, a clerk, a treasurer, and not to exceed four trustees . . .’

“To date no legislation has been enacted implementing such constitutional provisions, either by providing for their election in November, or by specifying a term of office other than two years.

"Your opinion is therefore requested on the following questions:

"[1] Does the Constitution require the constitutional township officers be elected at the November 1964 election?

"[2] Present statutes provide for the holding of township elections the first Monday in April of odd-numbered years. If the answer to the first question is in the affirmative, and if legislation is not enacted to implement the change in election dates, are the provisions of the 1963 Constitution self-executing so as to authorize and require election officials to proceed with the calling and holding of township elections in November, 1964?

"[3] Since the terms of incumbent township officers will expire in April of odd-numbered years, is it permissible for the legislature to provide by statute that those elected at the first November election subsequent to the effective date of the 1963 Constitution shall take office in April next following that election? (Unless the terms of township officers are lengthened beyond two years, this would, in effect, mean that those first elected would be elected to a term of less than two years, or a period of approximately one year and eight months.)

"[4] Is there any reason why legislation could not be enacted setting the date for the township primary elections at a date other than that at which state officers are to be nominated?"

Inasmuch as your questions pertain to constitutional township officers, any reference made herein to township officers, unless the context clearly indicates otherwise, should be deemed limited to constitutional officers.¹

In O.A.G. No. 4201² it was ruled that the first election of county officers under the 1963 Constitution must be held in November, 1964, and that the legislature was without authority to postpone the holding of such election until November, 1966. That holding was based upon the provisions of Article II, Section 5, and the lack of applicable provision in the Schedule and Temporary Provisions of the 1963 Constitution providing for either the delay of holding the election, or that the first election for a four year term should not be held until November, 1966. Article II, Section 5 provides for the holding of elections in November of the even-numbered years for township offices, as well as county offices. Accordingly, the rationale of Opinion No. 4201 with respect to the election of constitutional county officers is likewise applicable to the election of constitutional township officers, and necessitates answering your first question in the affirmative.

Your second question arises by reason of the fact that only two of the four bills³ introduced at the Second Extra Session of 1963, for the purpose

¹ Article VII, Section 18, Michigan Constitution of 1963.

² Issued October 17, 1963.

³ House Bill 28, in part amending §§ 534 and 551 of the Mich. election law as they relate to primary elections for township officers, was enacted by the legislature and became Act No. 57, P.A. 1963 Second Extra Session. House Bill 30, as it in part amended §§ 643 and 697 of the Mich. election law to provide for the election of township officers at the general November election, was enacted by the legislature and became Act No. 56, P.A. 1963, Second Extra Session. House Bill 18, which in part purported to amend §§ 343, 345, 348 and 354 of the Mich.

of amending the Michigan election law⁴ to implement the 1963 Constitution with respect to the election of township officers, were adopted.

Act No. 56, P.A. 1963, Second Extra Session, amended section 643 of the Michigan election law to provide that at the general November election there shall be elected, when required by law, township officers. In addition, Act No. 56 amended section 697 of the Michigan election law to provide that at the general November election the names of the following constitutional township offices: supervisor, clerk, treasurer, trustees and members of the board of review, shall be placed on the ballot in the years that elections for such offices are to be held. Act No. 56, P.A. 1963, Second Extra Session, repealed section 644 of the Michigan election law, as it related to the election of officers at the biennial spring election, and other sections not applicable here.

Act No. 57, P.A. 1963, Second Extra Session, amended section 534 of the Michigan election law to provide for primary election of candidates for office in certain townships where candidates are subject to nomination at a primary, and section 551 of the Michigan election law as it relates to the time for the filing of nomination petitions with the township clerk. This act also repealed section 536 of the Michigan election law, providing for a biennial spring primary election to be held on the third Monday in February for candidates for township offices, where applicable, and other sections of the Michigan election law not in issue here.

Section 643 of the Michigan election law, as amended by Act No. 56, P.A. 1963, Second Extra Session, provides that at the general November election there shall be elected, when required by law, township officers, and section 697 of the Michigan election law, as amended by Act No. 56, P.A. 1963, Second Extra Session, specifies that at the general November election the names of the offices of township supervisor, clerk, treasurer and trustee shall be placed on the ballot.

The two bills, House Bills 18 and 19, which failed of passage proposed implementing amendments to certain sections of Chapter 16 "township offices" of the Michigan election law, supra. Among those sections are section 341, enumerating the elective township offices; section 358, providing for the holding of a township election on the first Monday in April in the odd-numbered years, and listing the officers to be elected; section 362, prescribing the term of office; and, section 345, providing for and fixing the date of the preceding primary election.

In light of this legislative history of implementing legislation adopted by the legislature in the Second Extra Session of 1963, your question becomes:

election law relating to the primary for township officers, was duly passed by the House of Representatives on December 11, 1963, but was not enacted by the Senate. Thus, it never became law. House Bill 19 sought to amend §§ 358 and 362 of the Mich. election law to provide for the election of township officers at the general November election and to specify the commencement of the term of township officers so elected, was not enacted by the House, being rereferred to the Committee on Elections on December 11, 1963.

⁴ Act No. 116, P.A. 1954, as amended. C.L.S. 1961 § 168.1 et seq., M.S.A. 1956 Rev. Vol. and M.S.A 1963 Cum. Supp. § 6.1001 et seq.

Is additional legislation required before township elections can be held at the general November election in 1964? The answer to your first question requires that the township election be held at the general November election in 1964. Acts 56 and 57, P.A. 1963, Second Extra Session, provide adequate procedures for the nomination of candidates at a primary election, where applicable, and at the general November election to fulfill the mandate of the people that constitutional township officers be elected in November of 1964.

I now turn to your third question.

Although Article VII, Section 18, of the Michigan Constitution of 1963 prescribes that in each organized township there shall be elected a supervisor, a clerk, a treasurer and not to exceed 4 trustees for terms of not less than two nor more than four years as prescribed by law, it is clear that the aforesaid township officers must be elected for terms of either two years or four years. Article II, Section 5, requires all elections for township offices must be elected for terms of either two years or four years. Article II, Section 5, requires all elections for township offices to be held on the first Tuesday after the first Monday in November in each even-numbered year. Reading these two sections together, it is impossible for the aforesaid township officers to be elected for a term of three years.

The Constitution operates as a limitation upon the powers of the legislature. *In re Palm*, 255 Mich. 632 (1931). I find no limitation in the Constitution upon the authority of the legislature to fix the commencement of the term of the constitutional township officers on a date certain in April of 1965. Article XI, Section 2, of the Michigan Constitution of 1963, when it specifies that certain enumerated officers shall begin their term of office at 12:00 noon on the first day of January next succeeding their election, does not apply to township officers.

It must follow, therefore, that the legislature is empowered to amend the Michigan election law to provide that the constitutional township officers provided for in Article VII, Section 18, elected at the general November election in 1964, shall begin the terms of their respective offices on a date certain in April of 1965. Because constitutional township officers will now be elected in November, your attention is directed to section 362 of the Michigan election law, as the appropriate section of the law which must be amended if the terms are to commence in April of 1965.

The people have recognized the authority of the legislature to prescribe a four year term for the constitutional township officers enumerated in Article VII, Section 18, of the Michigan Constitution of 1963. Therefore, the legislature may provide, if it so desires, that the constitutional township officers initially elected at the general November election of 1964 serve terms of more than two years, but less than four years, with such terms to expire on November 30, 1968 or December 31, 1968 as the legislature shall fix, and therefore, serve for two year terms or four year terms, as the legislature shall determine, to commence on December 1, 1968 or January 1, 1969.

Consideration will now be given to your fourth question.

The law recognizes a distinction between an election and the primary election for the nomination of the candidates at such election.⁵ While the Constitution fixes the date for the holding of the election to township offices, it does not purport to fix or otherwise limit the authority of the legislature to fix the date for the holding of the preceding primary for the nomination of candidates. It follows that the legislature is free to fix the date thereof and provide that the same be held either at the same time as the primary for the nomination of federal, state and county officers, or at some other date, provided that the primary election be held in the same year as the election to fill township offices is to be held.

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Attorney General.

640504.1

SUPERVISORS: Board of County – designation of alternates to sit in place of absent members.

Legislation or charter provision authorizing the designation of an alternate to sit on the board of county supervisors in the absence of a member from a township or a representative of a city on the board would not be in contravention of Article VII, Section 7, of the 1963 Constitution.

No. 4298

May 4, 1964.

The Honorable Carl O. Little
State Representative
The Capitol
Lansing, Michigan

Your request for an opinion states:

“I enclose, herewith, House Bill 258 which purports to allow a Township Board to temporarily appoint any resident to act in behalf of an elected Supervisor to sit in any meeting of the Board of Supervisors.

“In the City of Saginaw, City Supervisors are appointed by the City Council. They also temporarily replace any Superior who is ill or absent by appointing a substitute to sit on the Board for this purpose.

“The question is whether this bill is Constitutional; also, whether it is Constitutional for a City Council to make such substitute appointments.”

You do not refer to any specific grounds upon which the constitutionality of this bill is challenged. The issue is whether the amendment proposed by the bill which would authorize the township board to designate an alternate to attend a meeting of the board of supervisors in place of a supervisor would be in contravention of Article VII, Section 7, of the 1963 Constitution, providing for the board of county supervisors. That section reads:

⁵ *Attorney General ex rel. Reuter v. City of Bay City*, 334 Mich. 514 (1952).