

The law recognizes a distinction between an election and the primary election for the nomination of the candidates at such election.<sup>5</sup> 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.

FRANK J. KELLEY,  
*Attorney General.*

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**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:

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

"A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation from cities as provided by law."

The constitutional language does not prohibit the designation of an alternate, nor does it prescribe the manner of designation of the members from the various townships to serve on the county board.

The present statute governing attendance at meetings of county boards of supervisors by representatives of townships provides that the supervisors of each township shall attend the annual meeting, and every adjourned or special meeting of which he shall have notice.<sup>1</sup>

Temporary appointments to township offices are controlled by statutory provision in pertinent part as follows:

"Whenever there shall be a vacancy, or when the incumbent shall, from any cause, be unable to perform the duties of his office, in either of the township offices, except that of justice of the peace and township treasurer, the township board may make temporary appointments of suitable persons to discharge the duties of such offices respectively; and such persons so appointed shall take the oath of office, or file the notice of acceptance required by law, and shall continue to discharge such duties until the office is filled by election or until the disability aforesaid be removed."<sup>2</sup>

This statute was construed by a former Attorney General not to authorize appointment of a substitute to sit in a meeting of the county board in place of a supervisor whose absence was due to "causes not actually incapacitating him"<sup>3</sup> such as inconvenience or disinclination. With this opinion, I agree.

House Bill 258, concerning which you inquire, would have amended the last quoted statute by adding the following language:

"Whenever it shall appear that the supervisor of any township will be unable to attend any meeting of the board of supervisors of the county, the township board may designate any resident of the township as an alternate. The alternate shall attend such meetings of the county board as have been designated and may exercise all the powers thereat which the township supervisor could exercise."

There being nothing in the applicable constitutional provisions to require only the presence of elected officers as distinguished from appointed members at meetings of the board of supervisors of a county, and nothing to prevent the township board from designating an alternate when it appears that the regular member will be unable to attend, it is my opinion that the language of the amendment as above quoted does not offend the constitution.

In reaching this conclusion, I have given consideration to the fact that the word "alternate," according to *Webster's Third International Dictionary*, means

<sup>1</sup> C.L. '48 § 41.63; M.S.A. 1961 Rev. Vol. § 5.54.

<sup>2</sup> C.L. '48 § 41.58; M.S.A. 1961 Rev. Vol. § 5.42.

<sup>3</sup> O.A.G. 1945-46, No. O-3629, p. 378.

“an extra appointed to take the place of another . . . unable to perform his duty. . . . , a substitute . . . .”

Thus, should House Bill 258 be enacted, in the event the regular township member appears at the meeting, the designation of the alternate, being contingent upon the disability and consequent absence of the regular, would terminate automatically, so that there could be no question of the respective merits of two rival claimants for the right to be seated at a given meeting. So construed, the provision of the amendment does not appear to contravene the provisions of Article VII, Section 7 of the 1963 Constitution.

Therefore, your first question is answered by my ruling that the provisions of House Bill 258 are not unconstitutional.

You also ask if appointment of City Supervisors by the City Council of a home rule city, and appointment of substitute to sit on the board in temporary replacement of a supervisor who is ill or absent, is proper under the constitution.

Section 27 of the Home Rule Act authorizes cities to provide by charter “for the selection by appointment or election of representatives on the board of supervisors of the county.”<sup>4</sup>

Validity of a charter provision adopted under this section and providing for appointment rather than election of supervisors of a city has been upheld by the Michigan Supreme Court.<sup>5</sup> Home rule cities are grantees of a system of general powers, subject only to certain enumerated restrictions.<sup>6</sup> There being no prohibitory restriction upon the power of a home rule city to appoint substitutes or alternates for city supervisors unable to attend meetings, it therefore is logical to conclude that such power is not *ultra vires* and may be exercised.

Therefore, the answer to your second question is that, where so authorized by charter provision adopted in accordance with law, the governing body may appoint an alternate to represent the city at a meeting of the board of county supervisors when it appears that the official representative of the city will be unable to attend.

FRANK J. KELLEY,  
*Attorney General.*

<sup>4</sup> C.L.S. '61 § 117.27; M.S.A. 1961 Cum. Supp. § 5.2106.

<sup>5</sup> *Attorney General ex rel. Lodge v. Bryan*, 182 Mich. 86.

<sup>6</sup> Article VIII, § 20, Mich. Const. 1908; Article VII, § 22, Mich. Const. 1963; *Gallup v. City of Saginaw*, 170 Mich. 195, 200.